Council of the European Union

Brussels, 7 June 2024
(OR. en)

Interinstitutional File: 2023/0167 (COD)

10825/24
ADD 1

LIMITE

EF 201
ECOFIN 654
CODEC 1459

NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee
Subject:	Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directives (EU) 2009/65/EC, 2009/138/EC, 2011/61/EU, 2014/65/EU and (EU) 2016/97 as regards the Union retail investor protection rules *- Mandate for negotiations with the European Parliament: legal text*

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Directives (EU) 2009/65/EC, 2009/138/EC, 2011/61/EU, 2014/65/EU and (EU) 2016/97 as regards the Union retail investor protection rules

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 53(1) and Article 62 thereof,
Having regard to the proposal from the European Commission,
After transmission of the draft legislative act to the national parliaments,
Having regard to the opinion of the European Economic and Social Committee[1],
Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) A core objective of the Capital Markets Union is to ensure that consumers can fully benefit from the investment opportunities offered by capital markets. To be able to do so, they must be supported by a regulatory framework that enables them to take investment decisions that correspond to their needs and aims and adequately protects them in the single market. The package of measures under the EU Retail investment strategy seeks to address the identified shortcomings.

[1] OJ C , , p. .

(2) Directives (EU) 2009/65/EC[2], 2009/138/EC[3], 2011/61/EU[4], 2014/65/EU[5] and (EU) 2016/97[6] of the European Parliament and of the Council are designed to protect retail investors and seek to increase the confidence and ability of retail investors as they make important financial decisions. The Commission's work to evaluate and assess this framework has identified a number of important problems, including difficulties for retail investors to understand and compare investment offers on the basis of disclosure documentation which is not sufficiently relevant and engaging to help their decision-making. In addition, the Commission's work pointed to the growing risks related to misleading marketing information and practices provided via digital channels and shortcomings in the way products are manufactured and distributed that may result in unjustifiably high levels of costs for retail investors. The Commission's work also pointed to risks of bias in the investment advice process.

(3) Third-party payments, such as fees, commissions or any monetary or non-monetary benefits paid, provided or received by investment firms and insurance undertakings and intermediaries, to or from persons other than the client or customer, which in the case of insurance-based investment products also includes payments between the insurance undertaking and the insurance distributor, also termed as 'inducements', play a significant role in the distribution of retail investment products in the Union. The existing rules designed to manage conflicts of interests in Directives (EU) 2014/65 and (EU) 2016/97, including restrictions on and transparency around the payments of inducements, have not proven sufficiently effective in mitigating consumer detriment and have led to different levels of retail investor protection across product segments and distribution channels.

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2 Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (OJ L 302, 17.11.2009, p. 32).

3 Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 335, 17.12.2009, p. 1).

4 Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (OJ L 174, 1.7.2011, p. 1).

5 Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).

6 Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution (OJ L 26, 2.2.2016, p.19).

It is therefore necessary to further strengthen the investor protection framework to ensure that retail clients' best interests are protected uniformly across the Union. In light of the potential disruptive impact caused by the introduction of a full prohibition of inducements, it is appropriate to have a staged approach and first strengthen the requirements around the payment and receipt of inducements to address the potential conflicts of interest and ensure better protection of retail investors and, at a second stage, to review the effectiveness of the framework.

(4) Minor non-monetary benefits of a total value below EUR 100 per annum per third party should qualify as acceptable benefits and should be allowed without any further assessment, to the extent that they are clearly disclosed. Minor non-monetary benefits exceeding EUR 100, which are of a scale and nature that they could not be judged to impair compliance with the duty to act in the best interest of the retail investor should also be allowed, to the extent that they are clearly disclosed.

(5) In order to ensure that retail customers are not misled, it is important to stipulate in Directive (EU) 2016/97 that, in line with existing rules in Directive (EU) 2014/65, insurance intermediaries that indicate to their customers that they provide advice on an independent basis, should not accept inducements for such advice. This rule should not prevent insurance intermediaries offering advice to customers from accepting inducements, provided that the advice is not presented as independent, that customers are informed of the inducements in line with applicable transparency requirements and that other legal requirements, including the safeguards to act in the best interest of the customer, are complied with.

(6a) The existing safeguards conditioning the payment or receipt of inducements, which under Directive (EU) 2014/65 require that the inducement is designed to enhance the quality of the service to the client, or under Directive (EU) 2016/97 should not have a detrimental effect on the quality of the service to the client or customer, have not always been sufficiently effective in mitigating conflicts of interest. It is therefore appropriate to introduce some general overarching principles to be respected at all times and a new, common "inducements" test, both in Directive (EU) 2014/65 and Directive (EU) 2016/97, that further clarifies the criteria for inducements (including inducement schemes) which are considered not to impair compliance with the duty of investment firms, insurance undertakings and insurance intermediaries to act honestly, fairly and professionally in accordance with the best interest of their clients. The words "where applicable" included with regard to the criteria of the "inducements" test are there to acknowledge that not all criteria could be relevant in both Directive 2014/65/EU and Directive (EU) 2016/97 in all circumstances. If a criteria is not taken into account, this should be explained by the investment firm, insurance undertaking or insurance intermediary to its competent authority. Investment firms, insurance undertakings and insurance intermediaries should be able to demonstrate to competent authorities that the overarching principles are taken into account and should explain in their inducement policy or procedures how they ensure that they comply with the overarching principles.

The inducements test should, where applicable, be performed when setting up the inducement (including inducements schemes) between the payer and the receiver of the inducement and in case of changes to the existing inducement. The inducements test should – where linked to a product - be part of the product approval process. The analysis of the inducement should in any case be performed before any payment has been made or received. In case of ongoing inducements, firms must fulfil the requirements of the inducements test on an ongoing basis as long as they continue to pay or accept and retain the inducement. This does not change however the timing of the inducements test. Possible examples of qualitative criteria reflecting compliance with applicable regulations could be the number of legitimate complaints, the results of internal controls or inspections or compliance with the target market. As regards transparency requirements in relation to research fees, the specific rules of the [*include reference to the Listing Act when adopted*] should apply.

(6b) In order to ensure that financial advisors act in the best interest of the client or customer, the existing requirements on suitability should be further strengthened by means of additional safeguards. The best interest test and the suitability test are designed to provide a higher quality advice. They can be achieved through a single client or customer assessment in order to simplify the implementation of these successive requirements for the industry and to keep them easily understandable for the clients or customers. Financial advisors should consider an appropriate range of suitable products, which in the case of insurance-based investment products should also meet the demands and needs of the customer. The requirement to provide advice on the basis of an appropriate range of products can be met by providing advice on products from one or more manufacturers. The appropriate range of products can also be met by tied insurance intermediaries through products from one manufacturer. The requirement can furthermore be met by providing advice on the basis of a single insurance-based investment product, such as multi-option products, if the product offers an appropriate range of underlying investment assets. Investment firms, insurance undertakings and insurance intermediaries that provide advice on an independent basis are already under an obligation to assess a sufficient range of financial instruments, or a sufficiently large number of insurance-based investment products, in accordance with Directive 2014/65/EU and Directive (EU) 2016/97. They should therefore be considered to comply with the requirement to base their assessment on an appropriate range of products.

When comparing products identified as suitable to the client and offering similar features, including ESG characteristics, financial advisors should recommend the most-cost efficient product. The assessment of cost-efficiency should take into account the performance and the costs, associated charges and inducements linked to the products, as well as other factors of the products relevant to the client or customer, such as performance and expected return. The assessment of cost-efficiency should be distinguished from the Value for Money assessment, which as part of the product approval process, will aim to establish whether a specific product should offer value to the identified target market. The cost-efficiency assessment should aim to establish, at the advice stage, which product(s), among the range of suitable products with similar features that, are expected to offer value to the particular client or customer, would be the most cost-efficient.

(7) The existing requirements on disclosure of inducements should be further strengthened to ensure that retail investors understand the general concept of inducements, the potential for conflict of interest, as well as the impact of inducements on the overall costs and expected returns.

(8) In order to enable the development of independent advice at a reasonable cost, independent advisors should be allowed to provide advice to retail investors on well-diversified, non-complex and cost-efficient products based on a more limited set of data collected for the suitability assessment. Cost-efficient products are those that carry lower costs in relation to their performance. Well-diversified products are products that allow for the diversification of the risks for the client due to their underlying asset composition. The scope of such advice should be clearly disclosed to retail investors in good time before the provision of the advice. Given the diversified nature of the advised products, independent financial advisors should not be required to obtain and assess information from the clients relating to their knowledge and experience or existing portfolios.

(9) In order to assess the effectiveness of these measures, five years after the date of entry into force of this Directive and after having consulted the European Securities and Markets Authority ('ESMA') and European Insurance and Occupational Pensions Authority ('EIOPA'), the Commission should prepare a report on the effects of inducements on retail investments which, where necessary, should be accompanied by proposals to further strengthen the framework.

(10) The level of costs and charges associated with investment and insurance-based investment products intended for distribution to retail investors can have a significant impact on investment returns, something that may not always be evident for retail investors. To ensure that products offer value-for-money for retail investors, Member States should ensure that economic operators entitled under Directive 2009/138/EC, Directive 2014/65/EU or Directive (EU) 2016/97 to manufacture or distribute packaged retail investment products have clear value-for-money assessment processes that enable a clear identification and quantification of all costs charged to retail investors and of their performance and that also include a clear identification and, where possible, quantification of the other benefits of the product, such as an insurance risk coverage. Member States should ensure that the value-for-money assessment processes are designed to ensure that the costs and charges that are included in investment products or that are linked to their distribution are justified and proportionate in respect of the characteristics, objectives, strategy, the performance and the other benefits of the product.

(11) Since the charging structure of the packaged retail investment product is designed by the manufacturer, it is for the manufacturer to assess whether the costs and charges that are included in investment products are justified and proportionate, in relation to the performance and other benefits and characteristics of investment products covered by the packaged retail investment product. Building on those assessments, distributors should make their own assessments, so that the costs of distribution and other costs not already included in the manufacturer's assessment are additionally taken into account.

(12) The value-for-money assessment process, conducted at both the level of manufacturer and distributor should, as part of the product governance framework, enhance the existing concept that investment products aimed at a particular target market should be designed to bring value to that target market.

(12a) Product governance obligations should be strengthened by obliging manufacturers and, where appropriate, distributors to have robust value-for-money assessment processes, where value for money of investment products should be established through appropriate testing and assessments, taking into account the specificities of the investment products. The value-for-money process should include, subject to data availability, a market comparison to similar investment products in the Union, by comparing costs and charges and performance of investment products to costs and charges and performance of a peer group of investment products in the Union with similar characteristics. The peer-group comparison should assess whether the investment product is an outlier compared to the peer group. Outliers should be investment products that are at a significant distance from the average of the peer group to the detriment of the client and thereby have an increased risk of poor value for money. At the same time, ESMA and EIOPA should develop Union supervisory benchmarks as a tool for competent authorities to help them efficiently identify products with an increased risk of poor value for money, and which consequently merit a more in-depth analysis of compliance with value for money processes. Union supervisory benchmarks should assist competent authorities to detect outliers in the market according to a common methodology and to facilitate a coherent application of binding value-for-money rules based on the supervisory powers laid down by Directive 2014/65/EU and Directive (EU) 2016/97. The peer-group comparison and the Union supervisory benchmarks should be built using data sourced as much as possible from existing Union law disclosure and reporting obligations. Union supervisory benchmarks should be made public and should be applicable after a test has demonstrated their relevance. Competent authorities should be closely and thoroughly involved during the entire development and testing process. The publication should be accompanied by a statement on the indicative nature of the benchmarks and their purpose as a supervisory tool. The relevant data to build the peer groups should be made available to manufacturers and distributors by ESMA and EIOPA at a limited cost.

This should facilitate communication between competent authorities and manufacturers and distributors. Where appropriate, data that is not publicly available should be anonymized or aggregated. Member States should be authorised to provide that manufacturers and distributors may opt to compare their investment products with Union supervisory benchmarks for product clusters that are applicable to their investment products instead of performing a peer-group comparison once relevant Union supervisory benchmarks have been published. This option is aimed at strengthening the proportionality of the value-for-money exercise, and should be targeted to smaller players. When Union supervisory benchmarks are not yet public, those manufacturers and distributors should establish value for money through appropriate product testing and assessments, including peer-group comparison. ESMA and EIOPA should, to the extent feasible, publish relevant Union supervisory benchmarks at the same time as they make available the data to build the peer groups. A positive outcome of a peer-group comparison or of the comparison with the relevant Union supervisory benchmark where a manufacturer or distributor opts to compare its product to that benchmark, should be an indication of value for money that is complementary to the product testing and assessments undertaken as part of the product governance activities and the value-for-money assessment process.

(12b) A distributor should be able to rely on the value-for-money assessment of the manufacturer if the manufacturer's assessment takes into account all costs and charges related to the distribution. In this case, the distributor should assess whether the investment product is appropriate taking into account the target market's objectives and needs.

(12c) The value-for-money assessment process should include a comparison of the costs and charges and the performance of the investment product to a peer group of other investment products in the Union with similar characteristics. Investment products with similar characteristics should be selected on the basis of relevant and objective criteria. The selection process, including the dataset that is the starting point for the selection and the selection filters, should be adequately documented. Where the investment product is at a significant distance from the average of the peer group to the detriment of the client or falls outside the relevant Union supervisory benchmark when a manufacturer or distributor opts to compare its product to that benchmark, value for money should be substantiated through additional testings and further assessments. Where necessary, the manufacturer or the distributor should take appropriate actions to ensure value for money and the conclusions should be adequately documented and described in the compliance report to the management body. Additional testings and further assessments could for example establish that a product offers value for money if it contains additional special features such as niche investment strategies that would be considered relevant for a particular group of investors with identified needs and objectives, but which are not reflected in the description of the group of investment products in the peer group. Appropriate actions to ensure value for money could for instance include a significant adjustment of the investment strategy or an adjustment of the contract of a service provider resulting in a reduction of costs and charges for the client. Manufacturers and distributors should retain flexibility on the actions to be taken, taking into account the features of the investment product and the interest of retail investors, provided that these actions can reasonably be considered to ensure that the investment product offers value for money. Competent authorities should, as part of their general supervisory mandate and taking into account their supervisory policy, their risk-based approach and the supervisory tools at their disposal, supervise the appropriateness of the value-for-money process.

(13) To equip competent authorities with a tool allowing for an efficient identification of investment products with increased risk of poor value for money, both ESMA and EIOPA should develop Union supervisory benchmarks, based on data related to the cost and performance of investment products. Those benchmarks should serve as a supervisory tool for competent authorities and should contribute to a consistent risk-based supervisory approach across different sectors, by identifying outliers in the market according to a common methodology. Those benchmarks should identify investment products that are at a significant distance from the average of the relevant product cluster to the detriment of the client. Falling outside the benchmark should be an indication for competent authorities that the investment product has an increased risk of poor value for money. Competent authorities of Member States where national benchmarks have been implemented with respect to insurance-based investment products before 1 July 2024, should be allowed to continue to use these benchmarks in relation to insurance-based investment products with national specificities only distributed in their Member State. It should however be ensured that the methodology for such national benchmarks is comparable to the methodology for Union supervisory benchmarks and that any methodological differences are limited to those that are needed to appropriately take into account the national specificities in order to protect the clients. Competent authorities should substantiate this appropriately to EIOPA and should review this periodically and inform EIOPA thereof. National benchmarks should be made public in a similar manner as Union supervisory benchmarks. Such national benchmarks should not be used to impede the distribution of underlying investment products from other Member States. When developing the methodology for the relevant Union supervisory benchmarks, EIOPA should consider whether and how insurance-based investment products covered by national benchmarks should be reflected in those Union supervisory benchmarks. When developing the Union supervisory benchmarks, ESMA and EIOPA should ensure that they allow for a fair identification of investment products with increased risk of poor value for money. In particular, the Union supervisory benchmarks should account for the fact that distribution costs or part thereof are sometimes charged as part of the product cost, while in other cases distribution costs are paid separately by the retail investor to the distributor.

(13a) Neither the peer-group comparisons nor the Union supervisory benchmarks should amount to price regulation. The development of Union supervisory benchmarks and the comparison with other products should not lead to a standardisation of products or limit innovation in the market. The benchmarks should serve as a tool for competent authorities to identify outliers in the process of supervising the value for money assessments, while respecting the diversity of products and business models. Peer-group comparisons should strengthen the value-for-money assessment processes of manufacturers and distributors. If a product is assessed to be at a significant distance from the average of the peer group to the detriment of the client, additional testing and further assessment should be conducted and, where necessary, appropriate actions taken to ensure value for money. Manufacturers and distributors should be able to demonstrate value for money on objective grounds, even when investment products are at a significant distance from the average of the peer group to the detriment of the client. The purpose of Union supervisory benchmarks should be to provide competent authorities with a reference point for the supervision of value-for-money of investment products by identifying outliers in the market and not to govern prices. Prices of investment products should be determined on the basis of competition and supply and demand in the various investment product markets. At the same time, manufacturers and distributors should ensure that investment products offer value for money relative to their costs and charges, their performance and other benefits and characteristics.

(13b) To enable ESMA and EIOPA to develop reliable Union supervisory benchmarks, based on reliable data, and to increase the objectivity and the comparability of peer groups, manufacturers and distributors of investment products should be required to report necessary data to competent authorities, for onward transmission to ESMA and EIOPA. To limit, to the greatest extent possible, costs related to the new reporting obligations and to avoid unnecessary duplication, data sets should as far as possible be based on existing disclosure and reporting obligations under Union law. ESMA and EIOPA should develop draft regulatory technical standards to determine the data sets, data standards and methods and formats for the information to be reported. In particular, due consideration should be given to the technical regulatory and implementing standards on reporting to be adopted under Directives 2009/65/EC, 2009/138/EC and 2011/61/EU. Where possible, necessary data should be added to these existing reporting frameworks. Standardization or specification of key information on investment products, including in relation to product categorization and, where relevant, distribution costs, should also be pursued to the extent feasible, with a view to achieving the overall objective to limit the extra reporting burden on manufacturers and distributors, when the standardization or specification at the same time contributes to the proper understanding by retail investors of the key features of investment products or allows retail investors to better compare investment products.

(14) In order to assist manufacturers and distributors in their assessments, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of the specification of the methodology to be used by manufacturers and distributors to perform the comparison with investment products with similar characteristics. This should increase the objectivity and the comparability of the peer-group comparison. In developing the methodology for peer grouping, a fair and balanced comparison across products of their total costs and different components, as incurred by the retail investor, should be ensured. In particular, that methodology should account for the fact that distribution costs or part thereof are sometimes charged as part of the product cost, while in other cases distribution costs are paid separately by the retail investor to the distributor. Peer groups should be established on the basis of mandatory information to be published according to Union law, such as key information documents, and on the basis of common data to be made available to manufacturers and distributors by ESMA and EIOPA. This should also enhance the comparability and the objectivity of the peer-group comparison and should reduce the costs for manufacturers and distributors. This common data should be based on the data ESMA and EIOPA use for the purpose of the development of Union supervisory benchmarks and, to the extent that they are not publicly available, should be anonymised or aggregated where appropriate. ESMA and EIOPA should perform a cost-benefit analysis before deciding whether or not to charge fees to manufacturers and distributors for the service of making available the data for the peer-group comparison. The fee structure should in any case not exceed the direct costs incurred and should, to the greatest extent possible, be proportionate to the volumes of each user.

(15) For derivatives and specific types of transferable securities with characteristics that are similar to derivatives, where the performance replicates the performance of the underlying assets or values on the basis of a formula, peer-group comparison should be performed with respect to costs and charges only. This should also apply to the Union supervisory benchmarks. The Commission should be empowered to adopt a delegated act to specify for which specific types of transferable securities the peer-group comparison should only be performed in relation to costs and charges.

(16) Certain manufacturers of financial instruments that fall under the definition of packaged retail investment products in accordance with Article 4(1) of Regulation (EU) No 1286/2014 may not be subject to the reporting obligation laid down in art. 16-a(2), or any other equivalent reporting obligation. In such cases, an investment firm that offers or recommends such financial instruments should report to their home competent authorities details of costs and charges and characteristics of these products. The reporting obligations covering the above data, established in UCITSD and AIFMD regulatory package, should be considered equivalent.

(17) In view of the extent of diversity of retail investment product offerings, the development of Union supervisory benchmarks by ESMA and EIOPA should be an evolutionary process, beginning with the investment products most commonly purchased by retail investors and progressively building on the experience gathered over time in order to broaden coverage and refine their quality.

(18) Directives 2009/65/EC and 2011/61/EU require alternative investment funds (AIFs) and undertakings for the collective investment in transferable securities (UCITS) management companies to act with due skill, care and diligence in the best interests of the investment fund they manage and of their investors. AIFs and UCITS management companies should therefore prevent undue costs from being charged to investment funds and their investors. AIFs and UCITS management companies should be required to establish a sound undue costs process which should comprise the identification, analysis and review of costs charged, directly or indirectly, to investment funds or their unit holders, and thus borne by investors. Costs should be considered to be due if they comply with UCITS and AIFs pre-contractual documents, are necessary to their functioning, and are borne by investors in a fair way.

(19) UCITS and AIFs management companies should compensate investors where undue costs have been charged, including where costs have been miscalculated to the detriment of investors, and inform the competent authorities, financial auditors of the investment funds and their managers, and the depositary of those funds thereof. To promote better enforcement and achieve concrete results for retail investors, harmonisation of Member States' administrative and sanctioning powers is necessary. The obligation to compensate investors should be added as a possible administrative measure and sanction**,** so that this possibility exists in all Member States.

(20) The value-for-money assessment process under Directives 2009/65/EC and 2011/61/EU should ensure that costs borne by retail investors are justified and proportionate to the characteristics of the product, and in particular to the investment objective and strategy, level of risk, performance and the other benefits of the funds, so that UCITS and AIFs deliver value for money to investors. UCITS and AIFs management companies should remain responsible for the quality of their value-for-money assessment process. They should establish value for money through appropriate product testing and assessments, taking into account the specificities of the funds. As part of those product testings and assessments, they should include a market comparison to other funds in the Union with similar characteristics, subject to data availability, by comparing the costs and charges and the performance of the funds to the costs and charges of a peer group of funds in the Union with similar characteristics. This peer-group comparison should establish whether the funds offer value for money. Where the UCITS or the AIF is at a significant distance from the average of the peer group to the detriment of the client, value for money should be substantiated through additional testings and further assessments, and where necessary, appropriate actions to ensure value for money should be taken by the management company and their conclusions should be adequately documented and described in the compliance report to the management body. However, to equip competent authorities with a tool to help them efficiently identify products with an increased risk of poor value for money, and which consequently merit a more in-depth analysis of compliance with value for money processes, ESMA should develop Union supervisory benchmarks, which should assist competent authorities to detect outliers in the market according to a common methodology and facilitate a coherent application of binding value for money rules based on the supervisory powers laid down in Directive 2009/65/EC and Directive 2011/61/EU. The peer-group comparison and the Union supervisory benchmarks should be based on data related to the cost and performance of funds that ESMA receives as part of the supervisory reporting.

Considering the Commission's priority to avoid unnecessary administrative burdens and to simplify reporting requirements, those benchmarks should build on existing data from public disclosures and supervisory reporting, unless additional data are exceptionally necessary. Member States should be authorised to provide that UCITS and AIFs management companies may opt to compare their funds with Union supervisory benchmarks for product clusters that are applicable to their funds instead of performing a peer-group comparison.

(21) The Commission should be empowered to adopt delegated acts specifying the minimum requirements for the undue costs and value-for-money assessment processes to prevent undue costs from being charged to the UCITS, AIFs and their unit-holders, and for carrying out the value-for-money assessment.

(21a) After 5 years of application of the value-for-money assessment, the framework should be evaluated. Competent authorities should submit their reports to ESMA and EIOPA on the impact and the added value of the peer-group comparison and the Union supervisory and, where relevant, national benchmarks on the value-for-money assessment process of investment products and their supervision. These reports should include the opinion of competent authorities on the application of the benchmarks in the value-for-money assessment process of manufacturers and distributors and on any national specific issue that should be taken into account. By … [OJ: insert date of application of this amending Directive referred to in Article 6(2) + 6 years] ESMA and EIOPA should submit to the Commission their report analysing the impact and the added value of the peer-group comparison and the Union supervisory benchmarks on the value-for-money assessment process of investment products and on the consistency and efficiency of their supervision in the Union. ESMA and EIOPA should also evaluate the application of those benchmarks in the value-for-money assessment process of manufacturers and distributors, any national specific issues that should be taken into account and whether and how the approach to the data that should be made available to manufacturers and distributors for the peer-group comparison should be modified. By … [OJ: insert date of application of this amending Directive referred to in Article 6(2) + 7 years], the Commission should submit a report to the Council and the European Parliament presenting the conclusions of the review. If appropriate, the report should be accompanied by legislative proposals.

(22) Knowledge and competence of staff are key to ensuring good quality advice. The standards of what is considered necessary vary significantly between advisors operating under Directive 2014/65/EU, Directive (EU) 2016/97 and under non-harmonised national law. To improve the quality of advice and to ensure a level playing field across the EU, strengthened minimum common standards on the necessary knowledge and competence requirements should be laid down. That is particularly relevant given the increased complexity and continuous innovation in the design of financial instruments and insurance based investment products, and the increasing importance of sustainability related considerations. Member States should also be allowed to lay down additional requirements where necessary. Member States should require investment firms, and insurance and reinsurance distributors, to ensure that natural persons giving investment advice on behalf of the investment firm or as insurance intermediaries, and the employees concerned of insurance undertakings and insurance intermediaries, possess the knowledge and competence that is necessary to fulfil their obligations. To provide assurance to clients, customers and competent authorities that the level of knowledge and competence of such natural persons and insurance intermediaries and the employees of insurance undertakings and insurance intermediaries meet the required standards, such knowledge and competence should be proven by a certificate or comparable form of evidence. Comparable forms of evidence of knowledge and competence may, for example, include academic degrees or professional certifications. Regular professional development and training are important to ensure that the knowledge and competence of staff advising on or selling investment products to clients, or insurance based investment products to customers, is maintained and updated. To that end, it is necessary to require that natural persons giving investment advice follow a minimum number of hours per year of professional training and development and that they prove the successful completion of such training and development by a certificate or equivalent proof of completion of such training and development.

(22a) Member States should have in place mechanisms to effectively assess compliance with the knowledge and competence requirements and with the regular professional development requirements. In this context, Member States should determine, and publish all relevant information on, the types of certificates and comparable forms of evidence that they consider acceptable. This relevant information should include the practical modalities of demonstrating compliance with these requirements. Thus, Member States are not required to develop or issue such evidence of compliance themselves, as these could also be issued, for example, by third parties, including universities and other professional bodies, based on objective criteria determined by the Member States. Member States may also define the modalities and frequency of their supervisory actions, for example the frequency with which compliance is to be demonstrated.

(23) The increasing provision of investment services via digital means creates new opportunities for retail investors. At the same time, those services enable investment firms and insurance distributors to distribute investment products and services faster and to a wider group of retail investors, which can entail additional risks. Competent authorities should therefore be equipped with powers and procedures that are adequate to promptly address any non-compliance with existing rules, including when provided via digital means and by unauthorised entities. It is therefore appropriate that competent authorities are able to take the necessary actions when they have well-founded reasons to believe that a natural or legal person is providing investment services without being duly authorised or an insurance intermediary or insurance undertaking is distributing insurance-based investment products without being registered or authorised. When those actions concern a natural person, the publication of the decision made by the competent authority should remain subject to the case-by-case assessment of the proportionality of the publication of personal data provided under Article 71(1).

The competent authorities should inform ESMA and EIOPA about such behaviour, and ESMA and EIOPA should consolidate and publish all related decisions issued by competent authorities so that such information is available to retail investors for them to be able to identify potential frauds. As regards natural persons, in order to avoid the disclosure of personal information deemed disproportionate by a competent authority when publishing the consolidated list of all decisions issued by competent authorities, ESMA and EIOPA should abstain from disclosing any additional information compared to that disclosed by the competent authority itself.

(24) The provision of cross-border investment services is essential for the development of the Capital Markets Union and proper enforcement of the rules is a key element of the single market. While the home Member State is responsible for the supervision of an investment firm in cases of cross-border provision of services, the single market relies on trust that stems from the adequate supervision of investment firms by the home competent authorities. The principle of mutual recognition requires efficient cooperation between home and host Member States to ensure that a sufficient level of investor protection is maintained. Directive (EU) 2014/65 already provides for a mechanism that allows, under strict conditions and where the home Member State does not take appropriate action, competent authorities of host Member States to take precautionary measures to protect investors. To facilitate cooperation between competent authorities, and to further strengthen the supervisory efforts, that mechanism should be simplified and those competent authorities that observe highly similar or identical behaviours on their territory to those already signalled by another authority should be able to refer to the findings of that initiating authority to initiate a procedure under Article 86 of Directive (EU) 2014/65.

(25) Passport notifications under Directives (EU) 2014/65 and (EU) 2016/97 do not require that information on the scale of the cross-border services is provided. To provide ESMA, EIOPA and competent authorities with a proper understanding of the extent of cross-border services and to enable them to adapt their supervisory activities to those cross-border services, competent authorities should collect information on the provision of such services. Where an investment firm or an insurance intermediary provides services to clients located in another Member State, the investment firm or insurance intermediary should provide its competent authority with basic information on those services. For proportionality purposes, this reporting requirement should not apply to investment firms serving fewer than fifty clients on a cross-border basis or insurance intermediaries serving fewer than five hundred clients on a cross-border basis. Competent authorities should make that information available to ESMA and EIOPA, who should in turn make the information accessible to all competent authorities and publish an annual statistical report on cross-border services. To limit, to the greatest extent possible, costs related to the reporting obligations related to cross-border activities and to avoid unnecessary duplication, information should as far as possible be based on existing disclosure and reporting obligations.

(26) To foster supervisory convergence and facilitate cooperation between competent authorities, ESMA should be able to set up cooperation platforms at the initiative of at least two competent authorities, where justified concerns exist about investor detriment related to the provision of cross-border investment services, and where such activities are significant with respect to the market of the host Member State. Where there are serious concerns about potential investor detriment and where the supervisory authorities involved in the collaboration platforms cannot reach an agreement on issues related to an investment firm or insurance distributor which is operating on a cross-border basis, ESMA and EIOPA may in accordance with Article 16 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council[7] and Regulation (EU) No 1094/2010 of the European Parliament and of the Council[8], respectively, issue a recommendation to the competent authority of the home Member State to consider the concerns of the other relevant competent authorities, and to launch a joint on-site inspection together with other competent authorities concerned.

(27) Costs, associated charges and inducements linked to investment products can have a substantial impact on returns. The disclosure of such costs associated charges and inducements are a key aspect of investor protection. Retail investors should be presented with clear information on costs, associated charges and inducements, in good time prior to taking an investment decision. This should also include implicit costs, such as costs included in the spread or the turnover costs, that are not easy to identify by retail clients and customers. To enhance comparability of such costs, associated charges and inducements, such information should be provided in a standardised manner. Regulatory technical standards should specify and harmonize the content and format of disclosures relating to such costs, associated charges and inducements, including explanations that investment firms should provide to retail clients and customers, in particular as regards the inducements.

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7 Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC (OJ L 331, 15.12.2010, p.48).

8 Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331 15.12.2010, p.84).

(28) To further increase transparency, retail clients and customers should receive a periodic overview of their investments. For that reason, firms that provide investment services together with a service of safekeeping and administration of financial instruments, or insurance intermediaries and insurance undertakings distributing insurance-based investment products, should provide an annual statement to their retail clients and customers which should include an overview of the products those clients and customers hold, of all costs, associated charges and inducements, and of all payments, including dividends and the interests paid and received by the client and customer over a period of one year, together with an overview of the performance of those financial products. That annual statement should enable retail investors to get a better understanding of the impact of those elements on the performance of their portfolio. For investment services that only consist of the reception, transmission and execution of orders, the annual statement should contain all costs, associated charges and inducements paid in connection with the services and the financial instruments. For services that only consist of safekeeping and administration of financial instruments, the annual statement should contain all costs, associated charges and inducements received by the client in relation to the services and the financial instruments. For all those services, the service provider should provide the retail client upon request with a detailed breakdown of that information per financial instrument. In view of the long-term characteristics of insurance-based investment products which are often used for retirement purposes, the annual statement for such products should contain additional elements, including adjusted individual projections of the expected outcome at the end of the contract, or recommended holding period and a summary of the insurance cover.

(29) Diverging or overlapping disclosure requirements for the distribution of insurance products across different legal acts is a cause for legal uncertainty and unnecessary cost for insurance undertakings and insurance intermediaries. It is therefore appropriate to set out all disclosure requirements in one legal act by removing such requirements from Directive 2009/138/EC and by amending Directive (EU) 2016/97. At the same time, building on the experiences gained in the supervision of these requirements, it is appropriate to adapt them so that they are effective and comprehensive. Complementing the already well-established insurance product information document for non-life insurance products, an insurance product information document should also be in place for life insurance products other than insurance-based investment products to provide standardised information. For insurance-based investment products, standard information should be provided by the PRIIPs key information document under Regulation (EU) No 1286/2014.

(30) Changes in the manner by which investment firms, insurance undertakings and insurance intermediaries advertise financial products and services, including the use of influencers, social media and the use of behavioural biases, increasingly affect retail investors' behaviour. It is therefore appropriate to introduce requirements for marketing communication and practices, which may also include third-party content, design, online interface, promotions, branding, campaigning, product placement and reward schemes. Those requirements should in particular specify what the requirement to be fair, clear and not misleading entails in the context of marketing communications and practices. Requirements for a balanced presentation of risks and benefits, and suitability for the intended target audience, should also help to improve the application of investor protection principles. Those requirements should extend to marketing practices, where those practices are used to enhance marketing communications' reach or effectiveness, or the perception of their relatability, reliability, or comparability. The notion of "effectiveness" concerns aspects such as increasing the effect that marketing has on people, while the notion of "reach" covers aspects such as how many people may receive marketing communications. However, to ensure that providers of investment products are not discouraged or prevented from providing financial educational material and from promoting and improving the financial literacy of investors, it should be specified that such materials and activities do not fall under the definition of marketing communication and marketing practice.

The present Directive should not prevent the Member States from allowing their competent authorities to require prior notification of marketing communications for the purpose of ex-ante verification of compliance. This Directive is without prejudice to existing Union law provisions – such as Regulation 2017/1129 or Directive 2009/138/EC – assigning the power to exercise control over the compliance of marketing communications to the Member State where they are disseminated.

(31) To address developments in marketing practices, including the use of third parties for indirect promotion of products or services, and to ensure an appropriate level of investor protection, it is necessary to strengthen the requirements regarding marketing communications. It is therefore necessary to require that marketing communications should enable the easy identification of the investment firm, insurance undertaking or insurance intermediary on whose behalf the marketing communications are made. For retail clients, such marketing communications should also contain essential information presented in a clear and balanced manner on the products and services on offer. The same should apply also in case of character-limited media and short-form contents. To ensure that investor protection obligations are properly applied in practice, investment firms should have a policy on marketing communications and practices and adequate internal controls and reporting procedures to the investment firms' management body to ensure compliance with such policy. When developing marketing communications and practices, investment firms, insurance intermediaries and insurance undertakings should take into account the target audience. The target audience, which is a more generic notion than the target market, is based on the target market assessment and the distribution strategy of the product in the context of the product oversight and governance requirements.

(32) The rapid pace at which marketing communications and practices can be provided and changed, in particular through the use of digital tools and channels, should not prevent the adequate enforcement of applicable regulatory requirements. It is therefore necessary that Member States ensure that national competent authorities have the necessary powers to supervise and where necessary intervene in a timely manner. In addition, competent authorities should have access to the necessary information related to marketing communications and practices to perform their supervisory and enforcement duties and ensure consumer protection. For that purpose, investment firms and insurance undertakings should keep records of marketing communications provided or made accessible to retail clients or potential retail client and any related elements relevant for competent authorities. To capture marketing communications disseminated by third parties, such as for instance influencers and advertisement agencies, it is necessary that details on such third parties' identity are also recorded. As issues with financial products and services may arise several years after the investment, investment firms, insurance undertakings and insurance intermediaries should keep records of the above information for a period of five years and, where requested by the competent authority, for a period of up to seven years.

(33) The suitability and appropriateness assessments are an essential element of investor protection. Investment firms, insurance undertakings and insurance intermediaries should assess the suitability or appropriateness of investment products and services recommended to or requested by the client, respectively, on the basis of information obtained from the client. Where necessary, the investment firm, insurance undertaking or insurance intermediary, may also use information that they may have obtained on the basis of other legitimate reasons, including existing relationships with the client or customer. The investment firms, insurance undertakings and insurance intermediaries should explain to their clients and customers the purpose of these assessments and the importance of providing accurate and complete information.

They should inform their clients and customers, through standardised warnings, that providing inaccurate or incomplete information may have negative consequences on the quality of the assessment or will prevent them from determining whether the product or service envisaged is suitable or appropriate for the client or customer and, in case of advice, from proceeding with the recommendation. To ensure harmonisation and efficiency of the different warnings, ESMA and EIOPA should develop regulatory technical standards to specify the content and format of such warnings.

(34) To ensure that, in the context of advised services, due consideration is given to portfolio diversification, financial advisors should be required to consider, where possible, the needs of such diversification for their clients or customers, as part of the suitability assessments, including on the basis of information provided by those clients or customers on their existing portfolio of financial and non-financial assets. If the client or customer, following a request by the investment firm, insurance intermediary or insurance undertaking, is not willing to provide information on their existing portfolio held with other investment firms or insurance undertakings, the financial advisor should base the assessment of the need for portfolio diversification on the information that is available to them. The level of consideration of the need for portfolio diversification may be more limited in specific cases where, for instance, a client or customer asks for specific advice on how to invest a given amount of money that represents a relatively small part of their overall portfolio or where the client or customer requires advice on a specific asset class to meet a particular need of the client or customer.

(35) To ensure that appropriateness tests enable investment firms, insurance undertakings and insurance intermediaries to more effectively assess if a financial product or service is appropriate for their clients and customers, those investment firms, insurance undertakings and insurance intermediaries should obtain from them information not only about their knowledge and experience with such financial instruments or services, but for retail clients or customers also about their capacity to bear full or partial losses and their risk tolerance. In the case of a negative appropriateness assessment, an investment firm, insurance undertaking or insurance intermediary distributor should, in addition to having to provide a warning to the client or customer, only be allowed to proceed with the transaction where the client or customer concerned explicitly request so.

(36) A wide diversity of insurance-based investment products and financial instruments can be offered to customers and retail clients. Each insurance-based investment product or, where applicable, underlying investment asset, and each financial instrument entails different levels of risks of potential losses. Customers and retail clients should therefore be able to easily identify insurance-based investment products and financial instruments that are particularly risky. It is therefore appropriate to require that insurance undertakings, insurance intermediaries and investment firms identify those insurance-based investment products and financial instruments that are particularly risky and include warnings on those risks in information materials, including marketing communications, provided to customers and retail clients. To assist insurance undertakings, insurance intermediaries and investment firms in identifying such particularly risky products, ESMA and EIOPA should develop draft regulatory technical standards on how to identify such products and submit those regulatory technical standards to the Commission, taking due account of the specificities of different types of existing insurance-based investment products and financial instruments and the different types of communication media and without prejudice to any national regimes in relation to particularly complex investment products.

The specificities of the products may in particular relate to specific market risks, credit risks or liquidity risks of a financial instrument or insurance-based investment product or, where applicable, an underlying investment asset. Indicative examples of specificities of particularly risky financial products could be the presence of high leverage, the necessity of a margin or a significant risk of loss of a substantial part of the investment. Not every product that may involve losses should be considered as a particularly risky product. To harmonise such risk warnings across the EU, ESMA and EIOPA should submit draft regulatory technical standards as regards the content and format of such risk warnings. Member States should empower competent authorities to impose the use of risk warnings for specific insurance-based investment products and financial instruments. In case of concerns regarding the use or the absence of use or the supervision of the use of those risk warnings in one or more Member States, that would create a material impact in terms of investor protection , ESMA and EIOPA may, after having consulted the competent authorities concerned, issue a recommendation addressed to the relevant competent authorities to impose the use of risk warnings for specific insurance-based investment products and financial instruments.

(37) Increasing the level of financial literacy of retail clients and customers, and of prospective retail clients and potential customers, is key to providing those retail clients and customers with a better understanding of how to invest responsibly, to adequately balance the risks and benefits involved with investing. Member States should therefore promote formal and informal learning measures that support the financial literacy of retail clients and customers, and of prospective retail clients and potential customers in relation to responsible investing. Investing responsibly refers to retail investors' ability to make informed investment decisions in line with their personal and financial objectives, provided that they are aware of the range of available investment products and services, their key features, and the risks and benefits involved with investing, and provided that they understand the investment advice they receive and are able to react to it appropriately.

Prospective retail investors should be able to access educational material that supports their financial literacy at all times, and the material should in particular take account of differences in age, education levels and the technological capabilities of retail investors. That is in particular relevant for retail clients and customers that access financial instruments, investment services, and insurance-based investment products for the first time, and those using digital tools.

(38) It is necessary to ensure that the criteria for determining whether a client possesses the necessary experience, knowledge and expertise to be treated as a professional client where such client requests such treatment, are appropriate and fit for purpose. The identification criteria should therefore also take into account relevant experience gathered outside the financial services sector and certified training and education that the client has completed. The relevance of the certified training or education can be assessed by the investment firm on a case-by-case basis, depending on the transactions or services envisaged. Specialised higher education degrees as well as certified courses and accreditations that are relevant when working in the field of finance could be considered examples of relevant education and training. Investment firms should be able to demonstrate why they consider the certified training and education courses and accreditations to be relevant. The criterion on the number of transactions should reflect an ongoing experience over the last three years. Monthly transactions in an investment plan should generally be considered as only one transaction (instead of twelve transactions), unless it can be demonstrated that the monthly amounts are of significant size. The identification criteria should also be proportionate and not discriminatory with respect to the Member State of residence of the client. The criteria based on wealth and size of a legal entity should therefore be amended and the threshold lowered to EUR 250,000 to account for clients residing in Member States with lower average GDP per capita. In order to assess the average value of the client's financial instrument portfolio over the last three years, the investment firm may use the last three annual statements that include the client's relevant information at the end of each of the last three calendar years preceding that client's request to be classified as professional.

Where such annual statements are not available or if any other more recent statement is available, the investment firm may use such other periodic statements containing information on the client's financial instrument portfolio over the last three years. In the case of natural persons, in the absence of annual statements, the size of the client's portfolio could be determined based on periodic portfolio statements or bank statements or any other overview that gives an indication of the client's cash deposits and financial instruments.

(38a) Member States shall apply the national provisions transposing this Directive from [OJ: please insert date 36 months after the entry into force of this Directive]. Notwithstanding the foregoing, the provisions on requirements relating to the risk warnings concerning particularly risky investment products cannot practically be applied before the delegated acts provided in those provisions have entered into force as the concept of particularly risky investment product will be further specified in the said delegated acts. Member States should therefore not apply those provisions until 12 months after the entry into force of those delegated acts.

(39) The European Data Protection Supervisor was consulted in accordance with Article 42(1) of Regulation (EU) 2018/1725 of the European Parliament and of the Council and delivered an opinion on [XX XX 2023].

(40) Regulation (EU) 2016/679 of the European Parliament and of the Council applies to the processing of personal data for the purposes of this Directive. Regulation (EU) 2018/1725 of the European Parliament and of the Council applies to the processing of personal data by the Union institutions and bodies for the purposes of this Directive. Member States should ensure that processing of data carried out in application of this Directive fully respects Directive 2002/58/EC of the European Parliament and of the Council where that Directive is applicable.

(41) Directives (EU) 2009/65/EC, 2009/138/EC, 2011/61/EU, 2014/65/EU and (EU) 2016/97 should therefore be amended accordingly.

(42) The objective of this Directive, namely (XXX), can only be achieved by setting a common regulatory framework that ensures the same level of retail investor protection across Member States. By reason of the scale and effects of this Directive, the objective cannot be achieved by the Member States alone, but would rather be better achieved at Union level, and the Union may thus adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.

HAVE ADOPTED THIS DIRECTIVE:

ARTICLE 1

Amendments to Directive 2014/65/EU

Directive 2014/65/EU is amended as follows:

(1) in Article 1(4), point (a) is replaced by the following:

‘(a) Article 9(3), Article 14, and Article 16(2), (3) and (6), Article 16-a (1), first, second, tenth and eleventh subparagraph, Article 16-a(3), Article 16-a(4), first and second subparagraph, Article 16-a(7), (8) and (10) and Article 16-a(11);’;

(2) in Article 3(2), points (a), (b) and (c) are replaced by the following:

‘(a) conditions and procedures for authorisation and on-going supervision as established inArticle 5(1) and (3), Articles 7 to 10, 21(1) and (2), 22 and 23 and the corresponding delegated acts adopted by the Commission in accordance with Article 89;

(b) conduct of business obligations as established in Article 24(1), (1a), Article 24(3), (4), (5), (7) and (10), Article 25(2), (4), (5) and (6), and, where the national regime allows those persons to appoint tied agents, Article 29, and the respective implementing measures;

(c) organisational requirements as laid down in the Article 16(3), (6), (7), Article 16-a (1), subparagraphs 1, 2 and 5, Article 16-a(3), Article 16-a(4), subparagraphs 1 and 2, Article 16-a(7) point (c), (8), (10) and Article 16-a(11), point (b), and the corresponding delegated acts adopted by the Commission in accordance with Article 89.’;

(3) in Article 4(1), the following points (66), (67), (68), (69) and (70) are added:

‘(66) ‘marketing communication’ means any disclosure of information other than a disclosure required by Union or national law, or other than the financial education material referred to in Article 88b, or other than investment research that meet the conditions to be treated as such, that directly or indirectly promotes investments in one or several financial instruments or categories of financial instruments or the use of investment or ancillary services provided by an investment firm that is made:

(a) by an investment firm or a third party that is remunerated or incentivised through non-monetary compensation by such investment firm;
(b) to natural or legal persons;
(c) in any form and by any means;

(67) ‘marketing practice’ means any strategy, use of a tool or technique, including online targeting of customers, applied by an investment firm, or by any third party that is remunerated or incentivised through non-monetary compensation by such investment firm to:

(a) directly or indirectly disseminate marketing communications; or
(b) accelerate or improve the reach or effectiveness of the marketing communications; or
(c) promote in any way investment firms, financial instruments or investment services, including the online choice architecture;

(68) ‘online interface’ means any software, including a website or a part thereof, and applications, including mobile applications;

(69) ‘inducement’ means any fee, commission, monetary or non-monetary benefit paid, provided or received by an investment firm, to or from any party other than the client or a person acting on behalf of the client, in relation to the provision of an investment service or an ancillary service to the client;

(70) ‘inducement scheme’ means a set of arrangements governing the payment, provision and receipt of inducements, including the conditions under which the inducements are paid or received.’;

(4) the following Article 5a is inserted:

‘Article 5a

Procedure to address unauthorised activities offered through digital means

1. Member States shall ensure that where a natural or legal person provides investment services or activities online targeting clients within its territory without being authorised under Article 5(1) or national law or where a competent authority has reasonable grounds to suspect that such natural or legal person provides such services without being authorised under Article 5(1) or national law, the competent authority takes all appropriate and proportionate measures to prevent the offering of the unauthorised investment services or activities, including related to marketing communication, by resorting to the supervisory powers referred to in Article 69(2) or any equivalent power. Any such steps shall respect the principles of cooperation between Member States set out in Chapter II.

2. Member States shall provide that competent authorities publish any decision imposing a measure taken pursuant to paragraph 1, in accordance with Article 71.

Competent authorities shall inform ESMA of any such decision without undue delay. ESMA shall establish an electronic database containing the decisions submitted by competent authorities, which shall be accessible to all competent authorities. ESMA shall publish a list of all existing decisions, describing the natural or legal persons concerned and the types of services or products provided. The list shall be accessible to the public through a link on ESMA's website. As regards natural persons, this list shall not lead to the publication of more personal data of those natural persons than that published by the competent authority pursuant to the first subparagraph, and in accordance with Article 71(1).';

(5) Article 9(3) is amended as follows:

(a) the first subparagraph is replaced by the following:

'Member States shall ensure that the management body of an investment firm defines, oversees and is accountable for the implementation of the governance arrangements that ensure effective and prudent management of the investment firm including the segregation of duties in the investment firm, the prevention of conflicts of interest and the protection of investors, and in a manner that promotes the integrity of the market and the best interest of clients.';

(b) in the second subparagraph, the following point (d) is added:

‘(d) a policy on marketing communications and practices, to ensure compliance with obligations set out in Article 24c.’;

(6) Article 16 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. The home Member State shall require that investment firms comply with the organisational requirements laid down in paragraphs 2 to 10 of this Article, Article 16a and in Article 17.’;

(b) in paragraph 3, subparagraphs 2 to 7 are deleted;

(c) the following paragraph 3a is inserted:

‘3a. An investment firm shall maintain and operate effective organisational and administrative arrangements with a view to taking all reasonable steps designed to ensure that marketing communications and practices comply with the obligations set out in Article 24c.’;

(d) the following paragraph 7a is inserted:

‘7a. Member States shall ensure that investment firms establish appropriate procedures and arrangements, including electronic communication channels, to ensure that client’s rights under this Directive can be exercised without restriction and that client’s complaints, as referred to in Article 75, are dealt with properly. Those procedures shall allow investors to register complaints in any language in which communication material or services were provided or in the language as agreed between the firm and its clients prior to entering into any transaction.

In all cases, investment firms shall register the complaints and shall communicate their decision on a complaint to the complainant in a timely manner, taking into account the subject matter of the complaint and, in any event, no later than 40 working days from the date on which the complaint was received by the investment firm.

Where, in exceptional situations, the decision on a complaint cannot be provided within the period referred to in the previous subparagraph, investment firms shall inform the complainant of the reasons for the delay and indicate a reasonable timeframe in which the decision will be provided. Any communication made by the investment firms under this paragraph, that is addressed to a complainant, shall be made in the language in which the complainant filed its complaint, provided that the language used by the complainant is one of the languages referred to in the first subparagraph.';

(7) the following Article 16-a is inserted after Article 16:

'Article 16-a

Product governance requirements

1. Member States shall ensure that investment firms which manufacture financial instruments for sale to clients establish, maintain, operate and review a process for the approval of each financial instrument and significant adaptations of existing financial instruments before it is marketed or distributed to clients (the product approval process).

The product approval process shall contain all of the following:

(a) a specification of an identified target market of end-clients within the relevant category of clients for each financial instrument and of the intended distribution strategy;

(b) a clear identification of the target market's objectives and needs;

(c) an assessment of whether the financial instrument is designed appropriately to meet the target market's objectives and needs;

(d) an assessment of all risks relevant to the identified target market and arising from the distribution strategy and an assessment of whether the intended distribution strategy is consistent with the identified target market;

(e) in relation to financial instruments falling under the definition of packaged retail investment products in accordance with Article 4(1) of Regulation (EU) No 1286/2014 of the European Parliament and of the Council(*), a clear identification and quantification of all costs and charges and the performance related to the financial instrument, a clear identification of their other benefits and an assessment of whether the financial instrument offers value for money, by evaluating whether those costs and charges are justified and proportionate, having regard to the performance, the other benefits and the characteristics, objectives and, if relevant, strategy of the financial instrument ('value-for-money assessment process').

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* Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (OJ L 352, 9.12.2014, p. 1).

The assessment that the financial instrument can be expected to offer value for money referred to in point (e) shall be established through appropriate product testing and assessments, taking into account the specificities of the financial instrument including a market comparison with similar financial instruments in the Union, subject to data availability, by comparing the costs and charges as well as the performance of the financial instrument to the costs and charges and the performance of a peer group consisting of other financial instruments with similar characteristics including, where relevant, the product type, similar levels of risk, strategy, objectives, range of recommended holding periods and sustainability features. The compliance report to the management body shall systematically include information on product testing and assessments.

The peer-group comparison shall be performed using data made available according to paragraph 9a and included in information to be published according to Union law.

The peer-group comparison shall only be made in relation to costs and charges for each of the following types of financial instruments:

(a) financial instruments that fall within one of the categories referred to in points 4 to 10 of Section C of Annex I; and

(b) specific types of transferable securities designated by the Commission by delegated act in accordance with Article 89.

When the financial instrument is at a significant distance from the average of the peer group to the detriment of the client, the value for money shall be substantiated through additional testing and further assessments. Where necessary, the manufacturer shall take appropriate actions to ensure value for money. The content of appropriate actions shall be determined by the manufacturer while taking into account the relevant features of the financial instrument and the interest of the client. The compliance report to the management body shall systematically include information on these additional testings and further assessments and their conclusions when financial instruments are at a significant distance from the average of the peer group, including on any actions to ensure value for money.

The peer-group comparison, including the selection of financial instruments with similar characteristics, shall be based on relevant and objective criteria.

Member States may provide for a possibility for an investment firm manufacturing financial instruments to opt, for the purpose of the market comparison in its value-for-money assessment processes, to compare a financial instrument with the relevant Union supervisory benchmark as referred to in paragraph 9, instead of a peer group.

If the investment firm opted to compare a financial instrument with the relevant Union supervisory benchmark, the investment firm shall, when the financial instrument falls outside the Union supervisory benchmark, substantiate the value for money through additional testing and further assessments. Where necessary, the manufacturer shall take appropriate actions to ensure value for money. The content of appropriate actions shall be determined by the manufacturer while taking into account the relevant features of the financial instrument and the interest of the client. The compliance report to the management body shall systematically include information on these additional testings and further assessments and their conclusions, including on any actions to ensure value for money.

An investment firm which manufactures financial instruments shall make available to distributors all information on the financial instrument and the product approval process that is needed to fully understand that instrument and the elements taken into consideration during the product approval process, including complete and accurate details on the value-for-money assessment of the financial instrument.

An investment firm shall regularly review financial instruments it manufactures, taking into account any event or risk that could materially affect the identified target market, to assess whether the financial instrument remains consistent with the objectives and needs of the identified target market and whether the intended distribution strategy remains appropriate.

2. An investment firm which manufactures financial instruments falling under the definition of packaged retail products in accordance with Article 4(1) of Regulation (EU) No 1286/2014 shall report to its home competent authorities the following:

(a) details of costs and charges of the financial instrument, including any distribution costs that are incorporated into costs of financial instrument, including inducements;

(b) data on the characteristics of the financial instrument, in particular its performance and any additional benefits;

(c) the Member State(s) where it will directly or indirectly distribute the financial instrument.

The data referred to in points (a), (b) and (c) shall only be reported when it is not yet included in a sufficiently detailed and standardized form in the key information document in accordance with Regulation (EU) No 1286/2014 or in reporting obligations towards competent authorities on the basis of Union law, and when it is demonstrated that the specific data is necessary for the development of meaningful Union supervisory benchmarks or peer-group comparisons, and that the additional burden on manufacturers and distributors is not disproportionate to the added value for clients. The reporting of these data shall be further specified according to paragraph 12.

The competent authorities shall transmit data referred to in point (a), (b) and (c) to ESMA.

3. An investment firm that offers or recommends financial instruments which it does not manufacture, shall have in place adequate arrangements to obtain the information referred to in paragraph 1 and to understand the characteristics and identified target market of each financial instrument.

4. An investment firm shall regularly review financial instruments it offers or recommends, taking into account any event or risk that could materially affect the identified target market, to assess whether the financial instrument remains consistent with the objectives and needs of the identified target market and whether the intended distribution strategy remains appropriate.

An investment firm which offers or recommends financial instruments falling under the definition of packaged retail investment products in accordance with Article 4(1) of Regulation (EU) No 1286/2014, shall ensure the following:

(a) identify and quantify the costs of distribution and any further costs and charges not already taken into account by the manufacturer;

(b) assess whether the financial instrument offers value for money, by evaluating whether the total costs and charges are justified and proportionate, having regard to the performance, the other benefits and the characteristics, objectives and, if relevant, strategy of the financial instrument and the target market's objectives and needs (value-for-money assessment process).

The assessment that the financial instrument can be expected to offer value for money, as referred to in points (a) and (b), shall be established through appropriate product testing and assessments, taking into account the specificities of the financial instrument, including a market comparison with similar financial instruments in the Union, subject to data availability, by comparing the costs and charges as well as the performance of the financial instrument to the costs and charges and the performance of a peer group consisting of other financial instruments with similar characteristics including, where relevant, the product type, similar levels of risk, strategy, objectives, range of recommended holding periods and sustainability features. The compliance report to the management body shall systematically include information on product testing and assessments.

The peer-group comparison shall be performed using data made available according to paragraph 9a and included in information to be published according to Union law.

The fifth subparagraph of paragraph 1 applies.

When the financial instrument is at a significant distance from the average of the peer group to the detriment of the client, the value for money shall be substantiated through additional testing and further assessments. Where necessary, the distributor shall take appropriate actions to ensure value for money. The content of appropriate actions shall be determined by the distributor while taking into account the relevant features of the financial instrument and the interest of the client. The compliance report to the management body shall systematically include information on these additional testings and further assessments and their conclusions, including on any actions to ensure value for money.

The peer-group comparison, including the selection of financial instruments with similar characteristics, shall be based on relevant and objective criteria.

Except when offering or recommending financial instruments manufactured by entities that are not subject to Directive 2009/65/EC, Directive 2011/61/EU or Directive 2014/65/EU, an investment firm which offers or recommends financial instruments which it does not manufacture, may rely on the manufacturer's value-for-money assessment if it takes into account all costs and charges related to the distribution.

In such a case, the investment firm shall assess whether the financial instrument meets the target market's objectives and needs.

Member States may provide for a possibility for an investment firm offering or recommending financial instruments which it does not manufacture to opt, for the purpose of the market comparison in its value-for-money assessment process, to compare a financial instrument with the relevant Union supervisory benchmark as referred to in paragraph 9, instead of a peer group.

In this case, the investment firm shall, when the financial instrument falls outside the Union supervisory benchmark, substantiate the value for money through additional testing and further assessments. Where necessary, the investment firm shall take appropriate actions to ensure value for money. The content of appropriate actions shall be determined by the distributor while taking into account the relevant features of the financial instrument and the interest of the client. The compliance report to the management body shall systematically include information on these additional testings and further assessments and their conclusions, including on any actions to ensure value for money.

5. An investment firm which offers or recommends financial instruments falling under the definition of packaged retail products in accordance with Article 4(1) of Regulation (EU) No 1286/2014 shall report to its home competent authorities details of the costs of distribution, including any costs related to the provision of advice or any connected inducements and the Member State(s) where it will distribute the financial instrument.

These costs shall only be reported when they are not yet included in a sufficiently detailed and standardized form in the key information document in accordance with Regulation (EU) No 1286/2014 or in reporting obligations towards competent authorities on the basis of Union law, and when it is demonstrated that the specific data is necessary for the development of meaningful Union supervisory benchmarks or peer-group comparisons, and that the additional burden on manufacturers and distributors is not disproportionate to the added value for clients. The reporting of these costs shall be further specified according to paragraph 12.

The competent authorities shall transmit such data to ESMA.

6. An investment firm which offers or recommends financial instruments falling under the definition of packaged retail products in accordance with Article 4(1) of Regulation (EU) No 1286/2014, manufactured by a manufacturer that is not subject to the reporting obligation laid down in paragraph 2 or any other equivalent reporting obligation, shall report to their home competent authorities the following:

(a) details of costs and charges of any financial instrument destined for retail investors, including any distribution costs that are incorporated into costs of financial instrument, including inducements;

(b) data on the characteristics of the financial instruments, in particular its performance, and any additional benefits;

(c) the Member State(s) where it will distribute the financial instrument.

The data referred to in points (a), (b) and (c) shall only be reported when it is not yet included in a sufficiently detailed and standardized form in the key information document in accordance with Regulation (EU) No 1286/2014 or in reporting obligations towards competent authorities on the basis of Union law, and when it is demonstrated that the specific data is necessary for the development of meaningful Union supervisory benchmarks or peer-group comparisons, and that the additional burden on manufacturers and distributors is not disproportionate to the added value for clients. The reporting of these data shall be further specified according to paragraph 12.

The competent authorities shall transmit such data to ESMA.

7. An investment firm shall document the product testing and all assessments made and shall, upon request, provide such assessments to a relevant competent authority, including the following:

(a) where applicable, the dataset and the criteria used to select the peer group and the results of the comparison of the financial instrument to the peer group or, where the investment firm has opted to compare the financial instrument with the Union supervisory benchmark, the results of that comparison;

(b) where applicable, the reasons justifying that the financial instrument offers value for money when it is at a significant distance from the average of the peer group to the detriment of the client or, where the investment firm has opted to compare the financial instrument with the Union supervisory benchmark, when it falls outside the Union supervisory benchmark;

(c) where applicable, the reasons why the data for the peer-group comparison is not available for the financial instrument and how the value for money has been assessed.

8. An investment firm which manufactures and offers or recommends the financial instrument may establish one value-for-money assessment process relating to both manufacturing and distribution stages.

9. In consultation with EIOPA and relevant stakeholders and in close and thorough cooperation with the competent authorities throughout the entire development and testing process, ESMA shall, where appropriate and feasible, develop and make publicly available Union supervisory benchmarks. Those benchmarks shall be developed per product cluster that contains a significant number of financial instruments that present similar characteristics including, where relevant, the product type, similar levels of risk, strategy, objectives, range of recommended holding periods and sustainability features. Union supervisory benchmarks shall only be made public and be applicable after a test demonstrating their relevance. The publication shall include the methodology and shall state the indicative nature of the benchmarks and their purpose as a supervisory tool. The purpose of those benchmarks shall be to provide competent authorities with a reference point for the supervision of the value-for-money of financial instruments falling under the definition of packaged retail investment products, both at the manufacturing and the distribution stage, by identifying outliers in the market.

Competent authorities shall verify that the value-for-money assessment process of investment firms complies with the product governance requirements under paragraphs 1 to 8 and 11.

The costs used for the development of Union supervisory benchmarks for investment firms manufacturing financial instruments shall, in addition to the total product cost, allow comparison to individual cost components. The costs used for the development of those benchmarks for distributors shall, in addition to the total cost of the product, refer to the distribution cost.

Union supervisory benchmarks shall allow to identify financial instruments that are at a significant distance from the average of the relevant product cluster to the detriment of the client with respect to costs and performance and thereby have an increased risk of poor value for money.

With regard to financial instruments as referred to in subparagraph five of paragraph 1, Union supervisory benchmarks shall, where appropriate and feasible, only be made with respect to costs.

ESMA shall regularly update the Union supervisory benchmarks.

9a. Taking into account the methodology to perform the peer-group comparison as referred to in paragraph 11, ESMA shall make available data for the purpose of the peer-group comparison. Where appropriate, data that is not publicly available shall be anonymized or aggregated. ESMA shall regularly review the data.

The data shall be sourced from disclosure and reporting under Union law, including the reporting referred to in paragraph 12.

ESMA shall provide access to the data on a non-discriminatory basis to manufacturers and distributors. ESMA may charge fees to manufacturers and distributors for this service that shall not exceed direct costs incurred by ESMA for the provision of this service. The fee structure shall, to the greatest extent possible, be proportionate to the volumes of data provided. ESMA shall provide access to this data to the extent necessary to fulfil their respective responsibilities, mandates and obligations:

(a) any Union institution, body, office or agency;

(b) any competent authority designated by a Member State pursuant to a Union legislative act;

(c) any member of the European Statistical System as defined in Article 4 of Regulation (EC) No 223/2009 of the European Parliament and of the Council;

(d) any governmental institution, body or agency of a Member State;

(e) any educational and training establishment for the sole purpose of research, academia, news organisations and non-governmental organisations insofar as access to the information is necessary in the performance of their tasks.

The entities referred to in point (b) shall have unrestricted access to the data on a non-anonymous and non-aggregated basis, to the extent necessary to fulfil their mandates. ESMA shall provide access to the data to the entities referred to in points (a) to (d) free of charge.

After having consulted EIOPA, the competent authorities and relevant stakeholders, ESMA shall develop draft regulatory technical standards to specify the data that is to be made available, how it is to be made available, the modalities of access and the fee structure.

ESMA shall submit those draft regulatory technical standards to the Commission by [OJ: insert date of entry into force of the amending Directive + 24 months].

Power is conferred on the Commission to adopt those regulatory technical standards in accordance with Article 10 of Regulation (EU) No 1095/2010.

ESMA shall publish and make easily accessible on its website the fee structure and the rates. ESMA shall review the fee structure and the rates on an annual basis.

9b. By [OJ: insert date of application of this amending Directive referred to in Article 6(2) + 5 years], the competent authorities shall report to ESMA on:

(a) the impact and added value of the peer-group comparison on the value for money of financial instruments;

(b) the impact and added value of Union supervisory benchmarks on the supervision of the value-for-money assessment process;

(c) the application of Union supervisory benchmarks in the value-for-money assessment process of investment firms; and

(d) whether and how any national specific issues should be taken into account in order for all clients within the Union to be fairly and sufficiently protected, including concrete proposals how this should be done.

By [OJ: insert date of application of this amending Directive referred to in Article 6(2) + 6 years], ESMA shall submit to the Commission a report analysing:

(a) the impact and the added value of the peer-group comparison and of the Union supervisory benchmarks on the value for money of financial instruments and the supervision of the value-for-money assessment process, including the need to revise the framework;

(b) the application of Union supervisory benchmarks in the value-for-money assessment process of investment firms;

(c) whether and how any national specific issues should be taken into account in order for all clients within the Union to be fairly and sufficiently protected; and

(d) whether and how to modify the approach to the data that is made available in accordance with paragraph 9a.

When drafting the report, ESMA shall coordinate with EIOPA.

By [OJ: insert date of application of this amending Directive referred to in Article 6(2) +7 years], the Commission shall submit a report to the Council and the European Parliament presenting the conclusions of the review. If appropriate, the report shall be accompanied by legislative proposals.

10. The policies, processes and arrangements referred to in paragraph 1 to 9 shall be without prejudice to all other requirements under this Directive and Regulation (EU) No 600/2014, including those relating to disclosure, suitability or appropriateness, identification and management of conflicts of interests, and inducements.

11. The Commission is empowered to supplement this Directive by adopting delegated acts in accordance with Article 89 to further specify the principles set out in this Article, including the methodology for the peer-group comparison.

12. ESMA, after having consulted EIOPA and the competent authorities, after industry testing and taking into consideration the methodologies referred to in paragraph 9 and 11, shall develop draft regulatory technical standards specifying the following:

(a) the content and type of data and details of costs and charges to be reported to the competent authorities in accordance with paragraph 2, 5 and 6;

(b) the data standards and formats, methods and arrangements, frequency and starting date for the information to be reported in accordance with paragraph 2, 5 and 6.

ESMA shall submit those draft regulatory technical standards to the Commission by [OJ: insert date of entry into force of the amending Directive + 24 months].

When developing the draft regulatory technical standards, ESMA shall only include specific data when it is not yet included in a sufficiently detailed and standardized form in the key information document in accordance with Regulation (EU) No 1286/2014 or in reporting obligations towards competent authorities on the basis of Union law, and when it is demonstrated that the specific data is necessary for the development of meaningful benchmarks or peer-group comparisons, and that the additional burden on manufacturers and distributors is not disproportionate to the added value for clients.

ESMA shall ensure that the reporting standards and formats, methods and arrangements and frequency remain proportionate and are aggregated to the extent feasible.

Power is delegated to the Commission to adopt the regulatory technical standards in accordance with Article 10 of Regulation (EU) No 1095/2010.';

(8) Article 16a is replaced by the following:

‘Article 16a

Exemptions from product governance requirements

An investment firm shall be exempted from the requirements set out in the Article 16-a(1) and in Article 24(2), where the investment service it provides relates to bonds with no other embedded derivative than a make-whole clause or where the financial instruments are marketed or distributed exclusively to eligible counterparties.’;

(9) in Article 21, the following paragraphs 3 and 4 are added:

‘3. The competent authority of any host Member State on the territory of which an investment firm is active may request, only in the case of material investor protection concerns, that the competent authority of the home Member State examines whether that investment firm still meets particular requirements for authorisation as established in Chapter I, and shall provide an explanation of the reasons for the request, specifying those requirements for authorisation that should be examined.

ESMA shall be made aware of such request. The competent authority of the home Member State shall communicate its findings to the competent authority of the host Member State and ESMA within two months following the request. The home and the host Member States may agree to extend or reduce that deadline.

4. In the case of justified concerns about potential threats to investor protection, ESMA may, at the request of two or more competent authorities, set up and coordinate a collaboration platform under the conditions set out in Article 87b.';

(10) Article 24 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. Member States shall require that, when providing investment services or, where appropriate, ancillary services to clients, an investment firm act honestly, fairly and professionally in accordance with the best interests of its clients and comply, in particular, with the principles set out in this Article and Articles 24a to Article 25.';

(b) the following paragraph 1a is inserted:

'1a. Member States shall ensure that, in order to act in the best interest of the client, when providing investment advice to retail clients, investment firms comply with the following requirements:

(a) to provide advice on the basis of an assessment of an appropriate range of financial instruments identified as suitable for the client pursuant to Article 25(2), from one or more manufacturers which must be sufficiently diversified with regard to their type, characteristics and underlying investment assets to ensure that the client's investment objectives can be met;

(b) to recommend the most cost-efficient financial instruments among financial instruments identified as suitable to the client pursuant to Article 25(2) and offering similar features. The assessment of cost-efficiency shall take into accounts the costs and associated charges of these products as well as other factors of the financial instruments relevant to the client, such as the performance and the expected return.';

(c) in paragraph 2, the first subparagraph is replaced by the following:

'Member States shall ensure that investment firms which manufacture financial instruments for sale to clients:

(a) design those financial instruments to meet the needs of an identified target market of end clients within the relevant category of clients;

(b) design their strategy for the distribution of the financial instruments, including in terms of marketing communication and marketing practices, in a way that is compatible with the identified target market;

(c) take reasonable steps to ensure that the financial instruments are distributed to the identified target market.';

(d) paragraph 3 is replaced by the following:

‘All information, addressed by the investment firm to clients or potential clients shall be fair, clear and not misleading.’;

(e) paragraph 4 is amended as follows:

(i) the first subparagraph is amended as follows:

- the introductory wording is replaced by the following:

‘Appropriate information shall be provided in good time prior to the provision of any service to retail clients or potential clients with regard to the investment firm and its services, the financial instruments and proposed investment strategies, execution venues and all costs and related charges. That information shall include the following:’;

- in point (a), the following points (iv) and (v) are added:

‘(iv) where the investment firm provides independent advice to a retail client, whether the range of financial instruments that is recommended is restricted or not to well-diversified, non-complex as referred to in article 25(4)(a) and cost-efficient financial instruments only;

(v) how the recommended financial instruments take into account the diversification of the client’s portfolio;’;

- points (b) and (c) are replaced by the following:

‘(b) the information on financial instruments and proposed investment strategies (including for diversification purpose) must include appropriate guidance on and warnings of the risks associated with investments in those instruments or in respect of particular investment strategies and whether the financial instrument is intended for retail or professional clients, taking account of the identified target market in accordance with paragraph 2;

(c) the information on costs and charges as referred to in Article 24b;’;

- the following point (d) is added:

‘(d) where the services are provided under the right of establishment or the freedom to provide services:

(i) the Member State in which the head office of the investment firm and, where appropriate, the branch offering the service is/are located;

(ii) the relevant national competent authority of such investment firm or where relevant, of such branch.’;

(ii) the second, third and fourth subparagraphs are deleted;

(f) paragraph 5 is replaced by the following:

‘5. The information referred to in paragraph 4 shall be provided in a comprehensible form in such a manner that clients or potential clients are reasonably able to understand the nature and risks of the investment service and of the specific type of financial instrument that is being offered and, consequently, to take investment decisions on an informed basis. Where this Directive does not require the use of a standardised format for the provision of that information, Member States may require that information to be provided in a standardised format.’;

(g) the following paragraphs 5b and 5c are inserted:

‘5b. ESMA shall, by [2 years after the entry into force of th**is** amending Directive], where necessary on the basis of prior consumer and industry testing, and after consulting EIOPA, develop, and update periodically, guidelines to assist investment firms that provide any information to retail clients in an electronic format to design such disclosures in a suitable way for the average member of the group to whom they are directed.

The guidelines referred to in the first subparagraph shall specify the following:

(a) the presentation and format of the disclosures in electronic format, considering the various designs and channels that investment firms may use to inform their clients or potential clients;

(b) necessary safeguards to ensure ease of navigability and accessibility of the information, regardless of the device used by the client;

(c) necessary safeguards to ensure easy retrievability of the information and facilitate the storing of information by clients in a durable medium.

5c. Member States shall ensure that investment firms display appropriate warnings in information materials, including marketing communications, concerning particularly risky financial instruments, provided to retail clients or potential retail clients, to highlight the specific risks of potential losses associated with such financial instruments.

ESMA shall develop draft regulatory technical standards to further specify the concept of particularly risky financial instruments and, after conducting consumer testing, the format and content of the risk warnings mentioned in the previous subparagraph, taking due account of the specificities of the different types of financial instruments.

The specificities of the financial instruments may, in particular, relate to specific market risks, credit risks and liquidity risks.

The format and content of the risk warnings shall take into account the different types of communication media.

ESMA shall submit those draft regulatory technical standards to the Commission by [OJ: insert date 18 months after the date of entry into force].

Power is delegated to the Commission to adopt those regulatory technical standards in accordance with Article 10 of Regulation (EU) No 1095/2010.

ESMA shall monitor the consistent application of risk warnings throughout the Union. In case of concerns regarding the use, or the absence of use or the supervision of the use of such risk warnings in one or more Member States, that may have a material impact on the investor protection, ESMA, after having consulted the competent authorities concerned, may issue a recommendation addressed to the relevant competent authorities, to impose on investment firms the use of risk warnings for specific financial instruments.';

(ga) The following subparagraph is added in paragraph 7:

'The first subparagraph shall not apply to minor non-monetary benefits of a total value below EUR 100 per annum per third party or of a scale and nature such that they could not be judged to impair compliance with the investment firm's duty to act in the best interest of the client, provided that they have been clearly disclosed to the client.';

(h) the following paragraph 7a is inserted:

‘7a. When providing investment advice to retail clients on an independent basis, the investment firm may limit the assessment in relation to the type of financial instruments mentioned in paragraph 7, point (a), to well-diversified, cost-efficient and non-complex financial instruments as referred to in Article 25(4)(a). Before accepting such service, the retail client shall be duly informed about the possibility and conditions to get access to standard independent investment advice and the associated benefits and constraints.’;

(i) paragraphs 8 and 9 are deleted;

(ia) paragraph 12 is replaced by the following:

‘12. Member States may, in exceptional cases, impose additional requirements on investment firms in respect of the matters covered by this Article and Articles 24b and 24c. Such requirements must be objectively justified and proportionate so as to address specific risks to investor protection or to market integrity which are of particular importance in the circumstances of the market structure of that Member State.

Member States shall notify the Commission of any requirement which they intend to impose in accordance with this paragraph without undue delay and at least two months before the date on which such requirement will enter into force. The notification shall include a justification for the requirement. Any such additional requirements shall not restrict or otherwise affect the rights of investment firms under Articles 34 and 35 of this Directive.’;

(j) in paragraph 13, the first subparagraph is amended as follows:

(i) the introductory wording is replaced by the following:

'The Commission shall be empowered to adopt delegated acts in accordance with Article 89 to ensure that investment firms comply with the principles set out in this Article, Article 24a and Article 24b when providing investment or ancillary services to their clients, including:';

(ii) point (d) is replaced by the following:

'(d) the criteria to assess compliance of firms providing investment advice to retail clients, notably those receiving inducement, with the obligation to act in the best interest of their clients as set out in paragraphs 1 and 1a.';

(11) the following Articles 24a, 24b, 24c and 24d are inserted:

'Article 24a

Inducements

1. Member States shall ensure that investment firms, when providing portfolio management, do not accept and retain any inducement, in relation to the provision of such service, to or by any party except the client or a person on behalf of the client.

2. Member States shall ensure that investment firms paying or receiving inducements comply with the following overarching principles:

(a) Inducements do not provide an incentive to the investment firm to offer or recommend a particular financial instrument or service over others to the client;

(b) The level of inducements paid or accepted and retained is proportional to the value of the financial instrument and the level of service provided to the relevant client;

(c) Inducements paid to or accepted and retained by entities belonging to the same group are treated in the same way as inducements paid to or accepted and retained from other entities;

(d) Inducements accepted and retained do not directly benefit the recipient firm, its shareholders or employees without tangible benefit to the client.

Investment firms shall explain in their inducements policy or procedures how they comply with the overarching principles.

3. Where the investment firm is not prohibited from paying or accepting and retaining inducements, in relation to services provided to its clients, it shall ensure that the reception or payment of such inducements does not impair compliance with the investment firm's duty to act honestly, fairly and professionally in accordance with the best interest of its clients.

Investment firms shall be considered not to comply with their duty to act honestly, fairly and professionally in accordance with the best interest of their clients if their inducements or inducements schemes do not meet at least the following criteria, where applicable:

(a) the inducement takes into account qualitative criteria, such as compliance with applicable regulations;

(b) the inducement is designed to enhance the quality of the relevant service to the client;

(c) the investment firm can demonstrate that, where linked to a financial instrument, the inducement was taken into account in the context of the product governance requirements when assessing the cost structure of the financial instrument;

(d) an appropriate mechanism exists for reclaiming the inducement in nominal value in case the interests of the clients have been harmed as a result of non-compliance of the investment firm with investor protection requirements set forth in this Directive;

(e) the inducement does not contain any form of variable or contingent threshold or any other kind of value accelerator which is unlocked by attaining a target based on volume or value of sales;

(f) the inducement is based on a clear, comprehensible and transparent calculation method;

(g) the inducement can be identified separately from other fees, commissions or non-monetary benefits (such as fees relating to services for other clients) and payments or benefits which are necessary for the provision of services.

For the purposes of point (b), an inducement or inducement scheme shall be considered to be designed to enhance the quality of the relevant service to the client if it is justified by the provision of an on-going benefit to the relevant client in relation to an on-going inducement and it is justified by the provision of an additional or higher-level service to the relevant client, proportional to the level of inducements received, such as:

(i) the provision of non-independent investment advice on and access to a wide range of suitable financial instruments including an appropriate number of instruments from third-party product providers having no close links with the investment firm;

(ii) the provision of non-independent investment advice combined with either: an offer to the client, at least on an annual basis, to assess the continuing suitability of the financial instruments in which the client has invested; or with another on-going service that is likely to be of value to the client such as advice about the suggested optimal asset allocation of the client; or

(iii) the provision of access, at a competitive price, to a wide range of financial instruments that are likely to meet the needs of the client, including an appropriate number of instruments from third-party product providers having no close links with the investment firm, together with either the provision of added-value tools, such as objective information tools helping the relevant client to take investment decisions or enabling the relevant client to monitor, model and adjust the range of financial instruments in which they have invested, or providing periodic reports of the performance and costs and charges associated with the financial instruments.

Investment firms shall fulfil the requirements set out above on an ongoing basis as long as they continue to pay or accept and retain the inducement.

4. Investment firms shall keep an internal list of all inducements paid or accepted and retained in relation to the provision of investment services or ancillary services and keep records of the inducements test performed in accordance with paragraph 3.

5. Paragraphs 1, 2 and 3 shall not apply to the minor non-monetary benefits of a total value below EUR 100 per annum per third party or of a scale and nature such that they could not be judged to impair compliance with the investment firm's duty to act in the best interest of the client, provided that they have been clearly disclosed to the client.

6. The existence, nature and amount of inducements shall be disclosed separately from other costs and charges in accordance with Article 24b(1).

Where applicable, the investment firm shall also inform the client on mechanisms for transferring to the client the inducement received in relation to the provision of the investment or ancillary service.

The payment or benefit which enables or is necessary for the provision of investment services, such as custody costs, settlement and exchange fees, regulatory levies or legal fees, and which by its nature cannot give rise to conflicts with the investment firm's duties to act honestly, fairly and professionally in accordance with the best interests of its clients, is not subject to the requirements set out in the paragraphs 2 and 3.

7. Member States shall ensure that an investment firm that provides reception and transmission of orders or execution of orders to or on behalf of retail clients in relation to financial instruments through digital means without advice, using a filtering tool to make it possible for retail clients to select financial instruments on the basis of various criteria, includes an option that allows its clients to easily identify financial instruments for which the investment firm does not pay or receive inducements. If the investment firm does not offer such products to retail clients, it shall prominently state this in the filtering tool.

8. Five years after the date of entry into force of Directive (EU) [OP Please introduce the number of the amending Directive] and after having consulted ESMA and EIOPA, the Commission shall assess the effects of inducements on retail clients, in particular in view of potential conflicts of interest and as regards the availability of independent advice, and shall evaluate the impact of the relevant provisions of this Directive on retail clients. If necessary to prevent consumer detriment, the Commission shall propose legislative amendments to the European Parliament and the Council.

9. Without prejudice to paragraph 1 of this Article and Article 24(7), Member States may prohibit entirely or restrict to certain financial instruments or types of financial instruments or investment services the payment or acceptance by investment firms of inducements. Member States may additionally impose stricter requirements in respect of the matters covered by paragraph 3 of this Article. Such stricter requirements have to be complied with by all investment firms active on the territory of the Member State imposing stricter requirements, including those operating under the freedom to provide services or the freedom of establishment. Member States shall notify the Commission and ESMA without undue delay after their adoption of any prohibition or restriction.

Article 24b

Information on costs, associated charges and inducements

1. Member States shall ensure that investment firms provide clients or potential clients in good time prior to the provision of any investment services or ancillary services, and in good time prior to the conclusion of any transaction on financial instruments with information, in the required format, on all costs, associated charges and inducements related to those services, financial instruments or transactions.

The information on those costs, associated charges and inducements shall include all of the following:

(a) all explicit and implicit, and associated charges, charged by the investment firms or other parties where the client has been directed to such other parties, for the investment services and/or ancillary services provided to the client or potential client;

(b) all costs and associated charges associated with the manufacturing and managing of any financial instrument recommended or marketed to the client or potential client;

(c) any inducements paid or accepted and retained by the firm in relation to the investment or ancillary services provided to the client or potential client;

(d) how the client may pay for them.

Member States shall ensure that investment firms aggregate the information on all costs, associated charges and inducements as mentioned under sub-paragraphs a, b and c to enable the retail client to understand the overall cost linked to the financial instruments, investment services and inducements and their cumulative effect on return on investment. Member States shall ensure that investment firms express the overall cost in monetary terms and percentages calculated up to the maturity date of the financial instrument or for financial instruments without a maturity date, the holding period recommended by the investment firm, or in the absence thereof, holding periods of 1 and 5 years. Where the client so requests, investment firms shall provide an itemised breakdown.

Investment firms shall inform their retail clients or potential retail clients that they have the option of receiving an itemised breakdown of the cost data.

The inducements paid or accepted and retained by the investment firm in relation to the investment service provided to the client shall be itemised separately. The investment firm shall disclose the cumulative impact of such inducements, including any recurring inducements, on the net return over the holding period as mentioned in the preceding subparagraph. The purpose of the inducements and their impact on the net return shall be explained in a standardised way and using language that is plain and intelligible for an average retail client. When paying or accepting and retaining inducements in relation to the investment service provided to the client, the investment firm shall explicitly inform the client on the existence of such inducements.

Where the amount of any costs, associated charges or inducements cannot be ascertained prior to the provision of the relevant investment or ancillary service, the method of calculating the amount shall be clearly disclosed to the client in a manner that is comprehensible, accurate and understandable for an average retail client.

2. After having conducted consumer and industry testing and after having consulted EIOPA, ESMA shall develop draft regulatory technical standards to specify all of the following:

(a) the relevant format for the provision of any costs, associated charges and inducements, by the investment firm to its retail client or potential retail client, prior to the provision of any investment services, ancillary services and the conclusion of any transaction in financial instruments;

(b) the standard terminology, calculation method and related explanations to be used by investment firms for the disclosure and calculation of any costs, including implicit costs, associated charges and inducements charged directly or indirectly by firms to the client or potential client in relation to the provision of any investment service(s) or ancillary service(s) and the manufacturing and managing of financial instruments to be recommended or marketed to the client or potential client. Explanations related to those costs, associated charges and inducements and their impact on the returns, shall ensure that they are likely to be understood by any average retail client without specific knowledge on investments in financial instruments.

ESMA shall submit those draft regulatory technical standards to the Commission by [OJ: 18 months after the date of entry into force].

Power is delegated to the Commission to adopt those regulatory technical standards in accordance with Article 10 of Regulation. (EU) No 1095/2010.

3. Where the agreement to buy or sell a financial instrument is concluded using a means of distance communication which prevents the prior delivery of the information on costs and charges, the investment firm may provide the information on costs and charges either in electronic format or on paper, where requested by a retail client, without undue delay after the conclusion of the transaction, provided that the following conditions are met:

(a) the client has consented to receiving the information without undue delay after the conclusion of the transaction;

(b) the investment firm has given the client the option of delaying the conclusion of the transaction until the client has received the information.

The investment firm shall be required to give the client the option of receiving the information on costs and charges over the phone prior to the conclusion of the transaction.

4. Without prejudice to other requirements associated to portfolio management services, when providing any investment service to a retail client together with a service of safekeeping and administration of financial instruments for the account of the retail client, the investment firm shall, in relation to those instruments, provide its retail client with an annual statement with the following information expressed in monetary terms and percentages:

(a) all implicit and explicit costs and associated charges paid or borne annually by the retail client for the total portfolio, with a split between:

(i) the costs associated with the provision of any investment or ancillary service, as applicable, by the investment firm to the retail client;

(ii) the costs associated to the manufacturing and managing of the financial instruments held by the retail client;

(iii) if any, the payments received by the firm from, or paid to, third parties in relation to the investment or ancillary services provided to the retail client;

(b) the total amount of dividends, interest and other payments received annually by the retail client for the total portfolio;

(c) the total taxes, including any stamp duty, transactions tax, withholding tax and any other taxes where levied by the investment firm, borne by the retail client for the total portfolio;

(d) the annual market value, or estimated value, when the market value is not available, of each financial instrument included in the retail client's portfolio;

(e) the net annual performance, at the end of the reporting period, of the whole portfolio the retail client holds with the investment firm during the reporting period and the net annual performance of each of the financial instruments included in this portfolio at the end of the reporting period.

Where providing an investment service without a service of safekeeping and administration of financial instruments for the account of the retail client, the investment firm shall provide an annual statement including applicable information on point (a). However, where the investment firm provides only reception and transmission of orders or execution of orders on behalf of clients, the information required under paragraph 4(a)(ii) may be limited to the information to which the firm has access, after having attempted to obtain this information on a best-effort.

Where providing exclusively a service of safekeeping and administration of financial instruments for the account of the retail client, the investment firm shall provide an annual statement including applicable information on points (a)(i) and (iii), (b), (c) and (d).

The inducements paid or accepted and retained by the investment firm in relation to the investment service provided to the client shall be itemised separately. The investment firm shall disclose the cumulative impact of such inducements, including any recurring inducements, on the net return over the period covered by the annual statement and on a cumulative basis since the acquisition of the financial instruments in the portfolio by the retail client.

Upon its request, the retail client shall be entitled to receive each year a detailed breakdown of the information referred to under point (a) to (c) above, including in relation to inducements, per financial instrument owned during the relevant period as well as for each tax borne by the retail client. Investment firms shall inform their clients of their right to request the provision of such detailed breakdowns.

The annual statement on costs and performance for retail clients shall be presented in an easy-to-understand way for an average retail client. It shall be provided to the client as soon as possible and no later than 4 months after the end of the reporting period, based on the calendar year or the fiscal year. Information on costs, associated charges and any inducements shall be presented using the terminology, explanations, format and calculation method specified in the regulatory technical standards referred in paragraph 2 of this Article for the costs, associated charges and third-party payments prior to the provision of any investment services, ancillary services and the conclusion of any transaction in financial instruments.

5. The annual statement referred to in paragraph 4 shall not be provided where the investment firm provides its retail clients with access to an online system, which qualifies as a durable medium, where up-to-date statements with the relevant disclosure per instrument as required under paragraph 4 can be easily accessed by the retail client and the firm has evidence that the client has accessed those statements at least once per year.

Article 24c

Marketing communications and practices

1. Member States shall ensure that marketing communications are clearly identifiable as such and clearly identify the investment firms responsible for their content and distribution, regardless of whether the communication is made directly or indirectly by the investment firm.

2. Member States shall ensure that marketing communications are developed, designed and provided in a manner that is fair, clear, not misleading, balanced in terms of presentation of benefits and risks, and appropriate in terms of content and distribution channels for the target audience and where related to a specific financial instrument to the target market identified pursuant to Article 24(2).

All marketing communications shall present in a prominent and concise way, the essential characteristics of the financial instruments or the investment services and related ancillary services to which they refer.

The presentation of the essential characteristics of the financial instruments and services included in the marketing communications provided or made accessible to retail or potential retail clients, shall ensure that they can easily understand the key features of the financial instruments or services as well as the main risks associated with them.

3. Member States shall ensure that marketing practices are developed and used in a manner that is fair, clear and not misleading, and shall be appropriate for the target audience based on the target market assessment and the distribution strategy of the product in the context of the product oversight and governance requirements.

4. Where a manufacturer of a financial instrument prepares and provides a marketing communication to be used by the distributor, the manufacturer shall be responsible for the content of such marketing communication and its update. The distributor shall be responsible for the use of this marketing communication and shall ensure that it is used for the identified target market only and in line with the distribution strategy identified for the target market.

Where an investment firm offers or recommends financial instruments which it does not manufacture, organises its own marketing communication, it shall be fully responsible for its appropriate content, update and use, in line with the identified target market and in particular in line with the identified client categorisation.

5. Member States shall ensure, investment firms make annual reports to the firm's management body on the use of marketing communications and strategies aimed at marketing practices, the compliance with relevant obligations on marketing communications and practices under this Directive and on any signalled irregularities and proposed solutions.

6. Member States shall ensure that national competent authorities can take timely and effective action in relation to any marketing communication or marketing practice that do not comply with requirements under paragraphs 1 to 3.

7. Records to be kept by the investment firm according to Article 16(6) shall include all marketing communications provided or made accessible to retail clients or potential retail clients, by the investment firm or any third party remunerated or incentivised through nonmonetary compensation by the investment firm.

Such records shall be kept for a period of five years and, where requested by the competent authority, for a period of up to seven years. Those records shall be retrievable by the investment firm upon request of the competent authority.

The records referred to in the first subparagraph shall contain all of the following:

(a) the content of the marketing communication;

(b) details about the medium used for the marketing communication;

(c) the date and duration of the marketing communication;

(d) the targeted retail client segments or profiling determinants;

(e) the Member States where the marketing communication is made available;

(f) the identity of any third party involved in the dissemination of the marketing communication.

Records of such identity referred to in point (f) shall contain the legal names, registered addresses, contact details and where relevant social media handle of the natural or legal persons concerned.

8. The Commission is empowered to adopt a delegated act in accordance with Article 89 to supplement this Directive by specifying the following:

(a) the essential characteristics of financial instrument(s) or investment and ancillary service(s) to be disclosed in all marketing communications targeting retail clients or potential retail clients and any other relevant criteria to ensure that those essential characteristics appear in a prominent way and are easily accessible by an average retail client, regardless of the means of communication;

(b) the conditions with which marketing communications and marketing practices should comply in order to be fair, clear, not misleading, balanced in terms of presentation of advantages and risks, and appropriate in terms of content and media, including character-limited media and short-form content, for the target audience or, where applicable, the target market based on the target market assessment and the distribution strategy of the product in the context of the product oversight and governance requirements.

Article 24d

Professional requirements

1. Member States shall require investment firms to ensure and demonstrate to competent authorities on request that natural persons giving investment advice or information about financial instruments, investment services or ancillary services to clients on behalf of the investment firm possess the necessary knowledge and competence to fulfil their obligations under Articles 24, 24a, 24b, 24c and Article 25 and maintain and update that knowledge and competence by undertaking regular professional development and training including specific training where new financial instruments and investment services are being offered by the firm. Member States shall have in place and publish all relevant information about the criteria to be used for assessing effectively such knowledge and competence.

2. For the purpose of paragraph 1, Member States shall require investment firms to ensure and demonstrate to competent authorities on request that natural persons giving investment advice to clients on behalf of the investment firm, possess and maintain at least the knowledge and competence set out in Annex V and undertake at least 15 hours of professional training and development per year.

For the purpose of the first subparagraph, Member States shall have in place mechanisms, as determined and published by their national competent authority, to assess compliance by the persons referred to in the first subparagraph for which they are the home Member State, with the criteria set out in Annex V in the form of a certificate or comparable form of evidence, as well as with the yearly successful completion of the continuing professional training and development, which shall be proven by a certificate or equivalent proof of completion of such training and development.

The Commission is empowered to amend this Directive by adopting a delegated act in accordance with Article 89, to review, where necessary, the requirements set out in Annex V.';

(12) Article 25 is amended as follows:

(a) paragraphs 1, 2 and 3 are replaced by the following:

'1. The investment firm shall assess the appropriateness of the relevant financial instrument(s) or investment service offered to or requested by its retail client or potential client in good time before the execution or reception and transmission of the order.

The investment firm shall assess the suitability of the relevant financial instrument(s) or investment service to be recommended to, or requested by, its retail client or potential client in good time before the provision of the investment advice or portfolio management.

Each of these assessments shall be carried out on the basis of proportionate and necessary information about the client or potential client as obtained by the investment firm, in accordance with the requirements set out in this Article.

The investment firm shall ensure that the purpose of the suitability or appropriateness assessment is explained to the client or potential client before the information necessary for this assessment is requested from him or her. The clients and potential clients shall be warned of the following consequences:

(a) the provision of inaccurate information may impact negatively the quality of the assessment to be made by the investment firm;

(b) the absence of the necessary information, including the provision of incomplete information, prevents the firm from determining whether the investment service or financial instrument envisaged is suitable or appropriate for them and, in case of investment advice, from proceeding with the recommendation.

Such warning shall be provided in a standardised format. The investment firm shall keep a record of the warning provided to its client for at least the duration of its relationship with the client.

The investment firm shall keep a record of the information collected from the retail client for the purpose of the suitability or appropriateness assessment. The investment firm shall, upon request of the retail client, provide them with a report on the information collected for the purpose of the suitability or appropriateness assessment.

ESMA shall develop draft regulatory technical standards to determine the warning referred to in paragraph 1, second subparagraph.

ESMA shall submit the draft regulatory technical standards to the Commission by [OJ: insert date 18 months after the date of entry into force].

Power is delegated to the Commission to adopt those regulatory technical standards in accordance with Article 10 of Regulation (EU) No 1095/2010.

2. Subject to the second subparagraph, when providing investment advice or portfolio management services, the investment firm shall obtain the necessary information regarding the retail client's or potential client's knowledge and experience in the investment field relevant to the specific type of financial instrument or investment service, the client's financial situation, including, to the extent possible, the composition of any existing portfolios, the client's ability to bear full or partial losses, investment needs and objectives including sustainability preferences, if any, and risk tolerance, so as to enable the investment firm to recommend to the client or potential client, or to undertake on the client's behalf, the transactions in financial instruments that are suitable for that client, and, in particular, are in accordance with its risk tolerance, ability to bear losses and, to the extent applicable, need for portfolio diversification. Where the client is not willing to provide information on existing portfolios held with third parties, the investment firm shall base the assessment of portfolio diversification on the information available to it.

Member States shall ensure that investment firms cannot consider a product to be suitable where it contains features which are not necessary to the achievement of the client's investment objectives and that give rise to extra costs.

When providing independent investment advice to retail clients restricted to well-diversified, non-complex and cost-efficient financial instruments, the investment firm shall be under no obligation to obtain information on the retail client or potential retail client's knowledge and experience about the considered financial instruments or investment services or on the retail client's existing portfolio composition.

Member States shall ensure that where an investment firm provides investment advice recommending a package of services or products bundled pursuant to Article 24(11), the overall bundled package is suitable.

When providing either investment advice or portfolio management that involves the switching of financial instruments, investment firms shall obtain the necessary information on the client's investment and shall analyse the costs and benefits of the switching of financial instruments. When providing investment advice, investment firms shall inform the client whether or not the benefits of the switching of financial instruments are greater than the costs involved in such switching.

3. Member States shall ensure that investment firms, when providing investment services other than those referred to in paragraph 2, ask the retail client or potential retail client to provide information regarding their knowledge and experience in the investment field relevant to the specific type of product or service offered or requested and for the retail client or potential retail client, the capacity to bear full or partial losses and risks tolerance so as to enable the investment firm to assess whether the investment service(s) or financial instrument(s) envisaged are appropriate for the client.

Where a bundle of services or products is envisaged pursuant to Article 24(11), the assessment shall consider whether the overall bundled package is appropriate.

Where the investment firm assesses, on the basis of the information received under the first subparagraph, that the financial instrument or investment service is not appropriate to the retail client or potential retail client, the investment firm shall warn the retail client or potential retail client. That warning shall be provided in a standardised format. The investment firm shall keep a record of such warnings.

The investment firm shall not proceed with a transaction subject to a warning indicating that the financial instrument or investment service is not appropriate or a warning indicating that the investment firm cannot assess the appropriateness of the financial instrument or investment service, unless the retail client asks to proceed with it despite such warning. The investment firm shall keep a record of both the request of the retail client and the acceptance of the firm.

ESMA shall develop draft regulatory technical standards to determine the format and content of the warning referred to in subparagraph 3.

ESMA shall submit the draft regulatory technical standards to the Commission by [OJ: insert date 18 months after the date of entry into force].

Power is delegated to the Commission to adopt those regulatory technical standards in accordance with Article 10 of Regulation (EU) No 1095/2010.';

(b) in paragraph 4, the following subparagraphs are added:

'ESMA shall develop draft regulatory technical standards to determine the format and content of warning referred to in the first subparagraph, point (c).

ESMA shall submit the draft regulatory technical standards to the Commission by [OJ: insert date 18 months after the date of entry into force].

Power is delegated to the Commission to adopt those regulatory technical standards as referred to above in accordance with Articles 10 of Regulation. (EU) No 1095/2010.';

(c) in paragraph 6, second subparagraph, the following sentence is added:

'The provision of such statement shall be made sufficiently in advance before the conclusion of the transaction to ensure, except if otherwise instructed, that the client gets enough time to review it, and where necessary, obtain additional information or clarifications from the investment firm.';

(d) paragraph 8 is replaced by the following:

'8. The Commission is empowered to supplement this Directive by adopting delegated acts in accordance with Article 89 to ensure that investment firms comply with the principles set out in paragraphs 1 to 6 of this Article when providing investment or ancillary services to their clients, including information to obtain when assessing the suitability or appropriateness of the services and financial instruments for their clients, criteria to assess non-complex financial instruments for the purposes of paragraph 4, point (a)(vi), of this Article, the criteria and conditions for the provision of investment advice pursuant to paragraph 2, second subparagraph, the content and the format of records and agreements for the provision of services to clients and of periodic reports to clients on the services provided. Those delegated acts shall take into account:

(a) the nature of the services offered or provided to the client or potential client, having regard to the type, object, size, costs, risks, complexity, price and frequency of the transactions;

(b) the nature of the products being offered or considered, including different types of financial instruments;

(c) the retail or professional nature of the client or potential clients or, in the case of paragraph 6, their classification as eligible counterparties.';

(13) Article 29a is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. The requirements laid down in point (c) of Article 24(4) and in Article 24b shall not apply to services provided to professional clients, except for investment advice and portfolio management.';

(14) Article 30 is amended as follows:

(a) in paragraph 1, the first subparagraph is replaced by the following:

'Member States shall ensure that investment firms authorised to execute orders on behalf of clients, and/or to deal on own account, and/or to receive and transmit orders have the possibility of bringing about or entering into transactions with eligible counterparties without being obliged to comply with Article 16(3a), Article 24 , Article 24a, Article 24b, Article 24c, Article 25, Article 27 and Article 28(1), in respect of those transactions or in respect of any ancillary service directly relating to those transactions.';

(b) in paragraph 2, the second subparagraph is replaced by the following:

'Classification as an eligible counterparty under the first subparagraph shall be without prejudice to the right of such entities to request, either on a general form or on a trade-by-trade basis, treatment as clients whose business with the investment firm is subject to Articles 24, 24a, 24b, 24c, 25, 27 and 28.';

(15) the following Article 35a is inserted:

'Article 35a

Reporting of cross-border activities

1. Member States shall require that investment firms and credit institutions providing investment services or activities report the following information annually to the competent authority of its home Member State when they provide investment services to more than 50 clients on a cross-border basis:

(a) the list of host Member States in which the investment firm is active through the freedom to provide services and activities following a notification pursuant to Article 34(2);

(b) the type, scope and scale of services provided and activities carried out in each host Member State through the freedom to provide investment services and activities and ancillary services;

(c) for each host Member State, the total number and the categories of clients corresponding to the services and activities referred to in point (b), and provided during the relevant period ending on the 31 December and a breakdown between professional and non-professional clients;

(d) the number of complaints referred to under Article 75 received from clients and interested parties in each host Member State;

(e) the type of marketing communications used in host Member States.

Competent authorities shall communicate to ESMA all the information collected from investment firms.

2. ESMA shall establish an electronic database containing the information collected pursuant to paragraph 1, which shall be made accessible to all competent authorities.

3. ESMA shall develop draft regulatory technical standards on the details of the information referred to in paragraph 1 that is to be reported by investment firms to competent authorities.

ESMA shall submit those draft regulatory technical standards to the Commission by [OJ: insert date 18 months after the date of entry into force].

Power is delegated to the Commission to adopt those regulatory technical standards in accordance with Article 10 of Regulation (EU) No 1095/2010.

4. ESMA shall develop draft implementing technical standards specifying the data standards and formats, methods and transfer arrangements, frequency and starting date for the information to be reported.

ESMA shall submit those draft implementing technical standards to the Commission by [OJ: insert date 18 months after the date of entry into force].

Power is conferred on the Commission to adopt the implementing technical standards in accordance with Article 15 of Regulation (EU) No 1095/2010.

5. Based on the information communicated pursuant to paragraph 2, ESMA shall publish every year a report containing anonymized and aggregated statistics on the investment services provided and the activities carried out in the Union through the freedom to provide investment services and activities, as well as an analysis of trends.';

(16) Article 69(2) is amended as follows:

(a-1) the introductory wording is replaced by the following:

'The powers referred to in paragraph 1 shall include, at least, the powers to:';

(a) the following point (ca) is inserted:

'(ca) carry out mystery shopping activities;';

(b) the following point (ka) is inserted:

'(ka) suspend, for a maximum duration of 1 year, renewable for further periods not exceeding one year at a time if the grounds for the temporary suspension continue to be applicable, marketing communications or practices used by an investment firm in their Member State, where there are reasonable grounds to believe that this Directive or Regulation (EU) No 600/2014 have been infringed.';

(c) the following points (v), (w) and (wa) are inserted:

‘(v) to the extent permitted by national law, take all necessary measures, including by requesting a third party or other public authority to implement such measures, whether on a temporary or permanent basis, to:

(i) remove content or restrict access to an online interface or order the explicit display of a warning to clients when they access an online interface;

(ii) order a hosting service provider to remove, disable or restrict access to an online interface;

(iii) order domain registries or registrars to delete a fully qualified domain name and to allow the competent authority concerned to register it.

(w) impose the use of risk warnings on investment firms in information materials, including marketing communications, provided to retail investors concerning particularly risky financial instruments.

(wa) require the investment firms to cease from using risk warnings in information materials, including marketing communications, provided to retail investors concerning financial instruments that are not considered as particularly risky.’;

(d) the following subparagraphs are added:

‘When making use of the powers referred to in point (ka), the competent authority shall notify ESMA. Where such practices or communications are used in more than one Member State, ESMA shall, upon request of at least one competent authority, coordinate actions taken by competent authorities pursuant to point (ka).

The implementation and the exercise of powers set out in this paragraph shall be proportionate and shall comply with Union and national law, including with applicable procedural safeguards and with the applicable principles of the Charter of Fundamental Rights of the European Union. The investigation and enforcement measures adopted pursuant to this Directive shall be appropriate to the nature and the overall actual or potential harm of the infringement.';

(e) point (t) is replaced by the following:

'(t) suspend the marketing or sale of financial instruments or structured deposits where the investment firm has not developed or applied an effective product approval process or otherwise failed to comply with Article 16(3) or Article 16-a of this Directive.';

(17) in Article 70(3), point (a), the following points (xxxvii) to (xxxxii) are added:

'(xxxvii) Article 16-a(1) to (8);
'(xxxviii) Article 24(5a) and (5c) and (11);
'(xxxix) Article 24a(1) to (2) and (6) to (7);
'(xxxx) Article 24b(1), (3) and (4);
'(xxxxi) Article 24c(1) to (5) and (7);
'(xxxxii) Article 35a(1);';

(18) in Article 70(6), point d is replaced by the following:

‘(d) a temporary ban or, in case of repeated serious infringements, a ban of at least 10 years, against any member of the investment firm’s management body or any other natural person, who is held responsible, to exercise management functions in investment firms;’;

(19) Article 73(1) is amended as follows:

(a) the first subparagraph is replaced by the following:

‘Member States shall ensure that competent authorities establish effective mechanisms to enable reporting of potential or actual infringements of Regulation (EU) No 600/2014 and of the national provisions adopted in the implementation of this Directive to competent authorities, including by firms not duly authorised under this Directive.’;

(b) in the second subparagraph, point (a) is replaced by the following:

‘(a) specific procedures for the receipt of reports on potential or actual infringements and their follow-up, including the establishment of secure communication channels for such reports. Those procedures shall also include the creation, on the front page of each competent authority’s website, of a link to a simple reporting form allowing any person to report potential or actual infringements to Union Law or national law. Member States shall require competent authorities to analyse, without undue delay, all reports submitted via this reporting form;’;

(20) Article 86 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. Where the competent authority of the host Member State (for the purposes of this Article the ‘initiating authority’) has reasonable grounds for believing that an investment firm acting within its territory under the freedom to provide services infringes the obligations arising from the provisions adopted pursuant to this Directive or that an investment firm that has a branch within its territory infringes the obligations arising from the provisions adopted pursuant to this Directive which do not confer powers on the competent authority of the host Member State, it shall refer those findings to the competent authority of the home Member State.

Information that such referral is made shall be transmitted to ESMA. ESMA shall transmit such information to the competent authorities of all other host Member States where the investment firm provides investment services or performing activities.

The competent authority of the home Member State shall, without undue delay and at the latest 60 working days after the initiating authority has referred its findings, take the necessary measures or begin the necessary administrative process aimed at taking such measures. The competent authority of the home Member State shall communicate all necessary information on any measure taken to the initiating authority, as well as to ESMA and to the competent authorities of all other Member States on the territory of which the investment firm is active.

If, despite the measures taken by the competent authority of the home Member State or because such measures prove inadequate or if no measure has been taken, the investment firm persists in acting in a manner that is clearly prejudicial to the interests of host Member State investors or the orderly functioning of markets, the following shall apply:

(a) after informing the competent authority of the home Member State, the competent authority of the host Member State shall take all the appropriate measures needed in order to protect investors and the proper functioning of the markets, which shall include the possibility of preventing the offending investment firms from initiating any further transactions within their territories. The Commission and ESMA shall be informed of such measures without undue delay, as well as all competent authorities of the host Member States where the offending investment firm is active; and

(b) the competent authority of the host Member State may refer the matter to ESMA, which may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No 1095/2010.';

(b) the following paragraphs 1a and 1b are inserted:

'1a. Where the initiating authority has taken precautionary measures against an offending investment firm pursuant to paragraph 1, the competent authority of any other host Member State may, where the same investment firm causes concerns or infringements highly similar or identical to those referred to in the findings of the initiating authority, adopt highly similar or identical measures with respect to that firm, provided that that competent authority also has reasonable grounds for believing that a similar infringement has occurred in its territory.

The competent authority of that other host Member State may do so without first referring findings to the competent authority of the host Member State, but shall inform the competent authority of the home Member State at least ten working days before taking such precautionary measures.

The Commission, ESMA and all competent authorities of the host Member States where the offending investment firm is active shall be informed of such measures without undue delay.

1b. Where, within 12 months, one or more competent authorities of host Member States have taken measures pursuant to paragraph 1, fourth subparagraph, point (a), with respect to one or more investment firms having the same home Member State, or if a home Member States disagrees with the findings of a host Member State, ESMA may, at the request of an NCA, set up a cooperation platform in accordance with Article 87b.';

(21) the following Article 87b is inserted:

'Article 87b

Collaboration platforms

1. ESMA may, in the case of justified concerns about negative effects on investors, at the request of two or more competent authorities, set up and coordinate a collaboration platform, to strengthen the exchange of information and to enhance collaboration between the relevant supervisory authorities where an investment firm carries out, or intends to carry out, activities which are based on the freedom to provide services or the freedom of establishment and where such activities are of relevance with respect to the host Member State's market. If a collaboration platform is set up at the request of competent authorities, those competent authorities shall notify the competent authority of the home Member State of their justified concerns about negative effects on investors.

2. Paragraph 1 shall be without prejudice to the right of the relevant supervisory authorities to set up a collaboration platform where they all agree to do so.

3. The setting up of a collaboration platform pursuant to paragraphs 1 and 2 is without prejudice to the supervisory mandate of the supervisory authorities of the home Member State and host Member State provided for in this Directive.

4. Without prejudice to Article 35 of Regulation (EU) No 1095/2010, at the request of ESMA, the relevant competent authorities shall provide all necessary information in a timely manner.

5. Where two or more competent authorities of a collaboration platform disagree about the procedure or content of an action to be taken, or inaction, ESMA may, at the request of any relevant competent authority or on its own initiative, assist the competent authorities in reaching an agreement in accordance with Article 19(1) of Regulation (EU) No 1095/2010.

6. In the event of disagreement within the platform and where there are serious concerns about negative effects on investors or about the content of an action or inaction to be taken in relation to an investment firm, ESMA may, in accordance with Article 16 of Regulation (EU) No 1095/2010, issue a recommendation to shall invite the competent authority of the home Member State to consider the concerns of other competent authorities concerned and to launch a joint on-site inspection together with other competent authorities concerned.';

(22) the following Title VIa is inserted:

‘TITLE VIa

FINANCIAL EDUCATION

Article 88a

Financial education of retail clients and prospective retail clients

1. Member States shall promote measures that support the education of retail clients and prospective retail clients in relation to responsible investment when accessing investment services or ancillary services. Where appropriate, the measures shall target the needs of specific age groups and of other specific target groups and take into account the joint EU/OECD-INFE financial competence frameworks.

2. Member States shall designate one or more competent authorities or one or more public bodies to achieve the objective set out in paragraph 1.

Article 88b

Financial education and marketing communication

Financial education material that aims to support individuals’ financial literacy by enabling them to acquire financial competences, and that does not directly promote investment in one or several financial instruments, or categories thereof, or specific investment services, shall not be deemed to constitute a marketing communication for the purposes of this Directive.’;

(23) Article 89, is replaced by the following:

‘1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The delegation of power referred to in Article 2(3), Article 2(4), Article 4(1)(2), second subparagraph, Article 4(2), Article 13(1), Article 16(12), Article 16-a(1), Article 16-a(11), Article 16-a(12) Article 23(4), Article 24(5c), Article 24(13), Article24b(2), Article 24c(8), Article24d(2), Article 25(8), Article 27(9), Article 28(3), Article 30(5), Article 31(4), Article 32(4), Article 33(8), Article 35a(3), Article 35a(4), Article 52(4), Article 54(4), Article 58(6), Article 64(7), Article 65(7) and Article 79(8) shall be conferred on the Commission for an indeterminate period of time from 2 July 2014.

3. The delegation of power referred to in Article 2(3), Article 2(4), second subparagraph of Article 4(1)(2), Article 4(2), Article 13(1), Article 16(12), Article 16-a(11), Article 16-a(12), Article 23(4), Article 24(5c), Article 24(13), Article24b(2), Article 24c(8), Article24d(2), Article 25(8), Article 27(9), Article 28(3), Article 30(5), Article 31(4), Article 32(4), Article 33(8), Article 35a(3), Article 35a(4), Article 52(4), Article 54(4), Article 58(6), Article 64(7), Article 65(7) and Article 79(8) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016.

5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

6. A delegated act adopted pursuant to Article 2(3), Article 2(4), second subparagraph of Article 4(1)(2), Article 4(2), Article 13(1), Article 16(12), Article 16-a(11), Article 16-a(12), Article 23(4), Article 24(5c), Article 24(13), Article24b(2), Article 24c(8), Article24d(2), Article 25(8), Article 27(9), Article 28(3), Article 30(5), Article 31(4), Article 32(4), Article 33(8), Article 35a(3), Article 35a(4), Article 52(4), Article 54(4), Article 58(6), Article 64(7), Article 65(7) and Article 79(8)) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of three months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by three months at the initiative of the European Parliament or of the Council.';

(24) Annex II is amended as set out in Annex I to this Directive.

(25) Annex V is added as set out in Annex II to this Directive.

ARTICLE 2

Amendments to Directive (EU) 2016/97

Directive (EU) 2016/97 is amended as follows:

(1) Article 2(1) is amended as follows:

(a) in point (4), point (c) is replaced by the following:

'(c) the insurance products concerned do not cover life insurance or liability risks, except for cover of liability risks complementing a good or service which the intermediary provides as its principal professional activity;';

(b) point (8) is replaced by the following:

'(8) 'insurance distributor' means any insurance intermediary, ancillary insurance intermediary or any insurance undertaking engaging in insurance distribution activities;';

(c) in point (17), the following point (f) is added:

'(f) pension products that consist of immediate annuities, as referred to in Article 2(3), subparagraph a, point (ii) of Directive 2009/138/EC, and do not have an accumulation phase;';

(d) the following points (19) to (24) are added:

‘(19) ‘electronic format’ means any durable medium other than paper;

(20) ‘marketing communication’ means any disclosure of information other than a disclosure required by Union or national law or other than the financial education material referred to in Article 16b, that directly or indirectly promotes insurance products or directly or indirectly promotes investments in insurance-based investment products and that is made:

(a) by an insurance undertaking or insurance intermediary, or by a third party that is remunerated, or incentivised through non-monetary compensation, by such insurance undertaking or insurance intermediary;

(b) to natural or legal persons;

(c) in any form and by any means.

(21) ‘marketing practice’ means any strategy, use of a tool or technique, including online targeting of customers, applied by an insurance undertaking or insurance intermediary, or by any third party that is remunerated or incentivised through non-monetary compensation by such insurance undertaking or insurance intermediary to:

(a) directly or indirectly disseminate marketing communications; or

(b) accelerate or improve the reach or effectiveness of marketing communications; or

(c) promote in any way the insurance undertakings, insurance intermediaries or insurance products, including the online choice architecture.

(22) ‘online interface’ means any software, including a website or a part thereof , and an application, including mobile applications;

(23) ‘inducement’ means any fee, commission, monetary or non-monetary benefit, provided or received by an insurance intermediary or an insurance undertaking in relation to the provision to the customer of an insurance-based investment product, to or from any party except the customer involved in the transaction in question or a person acting on behalf of that customer;

(24) ‘inducement scheme’ means a set of arrangements governing the payment, provision and receipt of inducements, including the conditions under which the inducements are paid or received;’;

(2) Article 3 is amended as follows:

(a) in paragraph 4, in the sixth subparagraph, the second sentence is replaced by the following:

‘Where applicable, the home Member State shall inform the host Member State of such removal immediately.’;

(3) Article 5 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. A competent authority of the host Member State that has reasonable grounds to consider that an insurance, reinsurance or ancillary insurance intermediary acting within its territory under the freedom to provide services infringes the obligations arising from the provisions adopted pursuant to this Directive, shall inform the competent authority of the home Member State thereof.

The competent authority of the host Member State shall inform EIOPA about the fact that it has informed the home Member State of its considerations. EIOPA shall forward such information to the competent authorities of all other host Member States where the insurance, reinsurance or ancillary insurance intermediary is acting under the freedom to provide services.

After having assessed the information received pursuant to the first subparagraph, the competent authority of the home Member State shall, where applicable, take appropriate measures to remedy the situation at the earliest opportunity, and at the latest 60 working days after having received the communication from the competent authority of the host Member State. The competent authority of the home Member State shall inform the competent authority of the host Member State of any such measures taken. The competent authority of the home Member State shall communicate to the competent authority of the host Member State, and to the competent authorities of all other Member States on the territory of which the insurance, reinsurance or ancillary insurance intermediary is acting under the freedom to provide services, all relevant information on the measure taken.

Where, despite the measures taken by the competent authority of the home Member State or because those measures prove to be inadequate or are lacking, the insurance, reinsurance or ancillary insurance intermediary persists in acting in a manner that is clearly detrimental to the interests of host Member State consumers on a large scale, or to the orderly functioning of insurance and reinsurance markets, the competent authority of the host Member State may, after having informed the competent authority of the home Member State, take appropriate measures to prevent further irregularities, including, in so far as is strictly necessary, preventing that intermediary from continuing to carry on new business within its territory.';

(b) paragraph 3 is replaced by the following:

'3. The competent authorities of the host Member State shall communicate to the insurance, reinsurance or ancillary insurance intermediary concerned any measure adopted under paragraphs 1 and 2 in a well-reasoned document and notify those measures to the competent authority of the home Member State without undue delay. The competent authority of the host Member State shall also notify those measures to the Commission, EIOPA and to the competent authorities of the host Member States where the insurance, reinsurance or ancillary insurance intermediary is acting under the freedom to provide services.';

(c) the following paragraph 4 is added:

‘4. Where, within 12 months, two or more competent authorities of host Member States have taken measures pursuant to paragraph 1 with respect to one or more insurance, reinsurance or ancillary insurance intermediaries having the same home Member State, or if a home Member State disagrees with the findings of a host Member State, EIOPA, at the request of two or more competent authorities, may set up a collaboration platform in accordance with Article 12b.’;

(4) the following Article 9a is inserted:

‘Article 9a

Reporting of cross-border activities

1. Member States shall require that insurance distributors report the following information annually to the competent authority of their home Member State where they pursue insurance distribution activities with more than 500 customers on a cross-border basis:

(a) the list of host Member States in which the insurance distributor is acting under the freedom to provide services or the freedom of establishment;

(b) the scale and scope of the insurance distribution activities carried out in each host Member State;

(c) the type of insurance products distributed in each host Member State;

(d) for each host Member State, the total number of customers, for the relevant period ending on the 31 December;

(e) the number of complaints received from customers and interested parties in each host Member State.

Competent authorities shall communicate to EIOPA all information reported by insurance distributors pursuant to the first subparagraph.

2. EIOPA shall establish an electronic database containing the information reported pursuant to paragraph 1, second subparagraph. That database shall be made accessible to all competent authorities.

3. EIOPA shall develop draft regulatory technical standards regarding the details of the information referred to in paragraph 1.

EIOPA shall submit those draft regulatory technical standards to the Commission by [OJ: insert date 18 months after the date of entry into force of this Directive].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Article 10 of Regulation (EU) No 1094/2010.

4. EIOPA shall develop draft implementing technical standards specifying the data standards and formats, methods and transfer arrangements, frequency and starting date for the information to be reported and communicated pursuant to paragraph 1.

EIOPA shall submit those draft implementing technical standards to the Commission by [OJ: insert date 18 months after the date of entry into force of this Directive].

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1094/2010.

5. Based on the information communicated pursuant to paragraph 2, EIOPA shall publish every year a report containing anonymised and aggregated statistics on the insurance distribution activities carried out in the Union through the freedom to provide services, as well as an analysis of trends.';

(5) Article 10 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. Home Member States shall ensure that insurance and reinsurance intermediaries, employees of insurance and reinsurance undertakings carrying out insurance or reinsurance distribution activities, and employees of insurance and reinsurance intermediaries directly involved in insurance or reinsurance distribution activities possess the necessary knowledge and competence in order to complete their tasks and perform their duties adequately.

For the purpose of the first subparagraph, home Member States shall have in place mechanisms and publish all relevant information about these mechanisms, to control effectively and assess the knowledge and competence, as set out in Annex I, of insurance and reinsurance intermediaries, employees of insurance and reinsurance undertakings carrying out insurance or reinsurance distribution activities, and employees of insurance and reinsurance intermediaries directly involved in insurance or reinsurance distribution activities, by requiring a certificate or comparable form of evidence.';

(b) paragraph 2 is amended as follows:

(i) the first, second and third subparagraphs are replaced by the following:

‘Home Member States shall ensure that insurance and reinsurance intermediaries, employees of insurance and reinsurance undertakings carrying out insurance or reinsurance distribution activities, and employees of insurance and reinsurance intermediaries directly involved in insurance or reinsurance distribution activities maintain and update their knowledge and competence, as set out in Annex I, by undertaking regular professional development and training, including specific training where new insurance products or services are being offered by the insurance or reinsurance undertakings and intermediaries.

For the purpose of the first subparagraph, home Member States shall have in place mechanisms and publish all relevant information about these mechanisms to control effectively and assess the successful completion by insurance and reinsurance intermediaries, employees of insurance and reinsurance undertakings carrying out insurance or reinsurance distribution activities, and employees of insurance and reinsurance intermediaries directly involved in insurance or reinsurance distribution activities, of at least 15 hours of professional training or development per year, taking into account the nature of the products sold, the type of distributor, the role they perform, and the activity carried out within the insurance or reinsurance distributor.

To that end, home Member States shall require that the yearly successful completion of continuous professional training and development is proven by a certificate or equivalent proof of completion of such training and development.’;

(ii) the following subparagraph is added:

'The Commission shall be empowered to amend this Directive by adopting delegated acts in accordance with Article 38 to review, where necessary, the requirements set out in Annex I.';

(6) in Article 12(3), the following subparagraphs are added:

'The powers referred to in the first subparagraph, first sentence, shall include at least the power to:

(a) have access to any document or other data in any form which the competent authority considers could be relevant and necessary for the performance of its duties and receive or take a copy of that document or those data;

(b) require or demand the provision of information from any person and if necessary to summon and question a person to obtain information;

(c) carry out on-site inspections or investigations;

(d) carry out mystery shopping activities;

(e) require the freezing or the sequestration of assets, or both;

(f) require the temporary prohibition of professional activity;

(g) require the auditors of insurance or reinsurance distributors to provide information;

(h) refer matters for criminal prosecution;

(i) allow auditors or experts to carry out verifications or investigations;

(j) suspend, for a maximum duration of one year, renewable for further periods not exceeding one year at a time if the grounds for the temporary suspension continue to be applicable, marketing communications or practices used in their Member State, where there are reasonable grounds for believing that this Directive has been infringed;

(k) require the temporary or permanent cessation of any practice or conduct that the competent authority considers to be contrary to the provisions adopted in the implementation of this Directive and prevent repetition of that practice or conduct;

(l) adopt any other type of measure to ensure that insurance or reinsurance distributors continue to comply with legal requirements;

(m) suspend or prohibit the distribution of an insurance-based investment product;

(n) suspend the distribution of an insurance-based investment product where the insurance undertaking or insurance distributor has failed to comply with Article 25;

(o) require the removal of a natural person from the management board of an insurance or reinsurance distributor;

(p) to the extent permitted by national law, take all the necessary measures, including by requesting a third party or other public authority to implement such measures, whether on a temporary or permanent basis, to:

(i) remove content or to restrict access to an online interface or to order the explicit display of a warning to customers when they access an online interface;

(ii) order a hosting service provider to remove, disable or restrict access to an online interface;

(iii) order domain registries or registrars to delete a fully qualified domain name and to allow the competent authority concerned to register it;

(q) impose the use of risk warnings for insurance-based investment products on insurance undertakings or insurance intermediaries in information materials, including marketing communications, provided to customers concerning particularly risky insurance-based investment products and, where applicable, underlying investment assets;

(qa) require insurance undertakings or insurance intermediaries to cease from using risk warnings in information materials, including marketing communications, provided to consumers concerning insurance-based investment products that are not considered as particularly risky.

When making use of the powers referred to in point (j), the competent authority shall notify EIOPA. Where such practices or communications are used in more than one Member State, EIOPA shall, upon request of at least one competent authority, coordinate actions taken by competent authorities pursuant to point (j).

The implementation and the exercise of powers set out in this paragraph shall be proportionate and shall comply with Union and national law, including with applicable procedural safeguards and with the principles of the Charter of Fundamental Rights of the European Union. The investigation and enforcement measures adopted pursuant to this Directive shall be appropriate to the nature and the overall actual or potential harm of the infringement.';

(7) the following Articles 12a and 12b are inserted:

‘Article 12a

Cooperation and exchange of information with EIOPA

1. The competent authorities shall cooperate with EIOPA for the purposes of this Directive.

2. The competent authorities shall, without undue delay, provide EIOPA with all information EIOPA needs to carry out its duties under this Directive.

Article 12b

Collaboration platforms

1. EIOPA may, in the case of justified concerns about negative effects on customers, at the request of two or more competent authorities, set up and coordinate a collaboration platform, to strengthen the exchange of information and to enhance collaboration between the relevant supervisory authorities where an insurance or reinsurance distributor carries out, or intends to carry out, insurance distribution activities which are based on the freedom to provide services or the freedom of establishment and where such activities are of relevance with respect to the host Member State’s market. If a collaboration platform is set up at the request of competent authorities, those competent authorities shall notify the competent authority of the home Member State of their justified concerns about negative effects on customers.

2. Paragraph 1 shall be without prejudice to the right of the relevant supervisory authorities to set up a collaboration platform where they all agree to do so.

3. The setting up of a collaboration platform pursuant to paragraphs 1 and 2 is without prejudice to the supervisory mandate of the supervisory authorities of the home Member State and host Member State provided for in this Directive.

4. Without prejudice to Article 35 of Regulation (EU) No 1094/2010, at the request of EIOPA, the relevant competent authorities shall provide all necessary information in a timely manner.

5. Where two or more competent authorities of a collaboration platform disagree about the procedure or content of an action to be taken, or inaction, EIOPA may, at the request of any relevant competent authority or on its own initiative, assist the competent authorities in reaching an agreement in accordance with Article 19(1) of Regulation (EU) No 1094/2010.

6. In the event of disagreement within the platform and where there are serious concerns about negative effects on customers or about the content of an action or inaction to be taken in relation to an insurance or reinsurance distributor, EIOPA may, in accordance with Article 16 of Regulation (EU) No 1094/2010, issue a recommendation to the competent authority of the home Member State to consider the concerns of other competent authorities concerned and to launch a joint on-site inspection together with other competent authorities concerned.';

(8) Article 14 is replaced by the following:

'Article 14

Complaints

Member States shall ensure that insurance and reinsurance distributors establish appropriate procedures and arrangements, including electronic communication channels, to ensure that complaints from customers and other interested parties, especially consumer associations, are dealt with properly and that there are no restrictions on customers and other interested parties exercising their rights under this Directive. Those procedures and arrangements shall allow customers and other interested parties to register complaints in the same language in which the communication material or any contractual documents were provided. In all cases, insurance and reinsurance distributors shall communicate their decision on a complaint to the complainant in a timely manner, taking into account the subject matter of the complaint and, in any event, no later than 40 working days from the date on which the complaint was received by the insurance and reinsurance distributor.

Where, in exceptional situations, the decision on a complaint cannot be communicated within the period referred to in the previous subparagraph, insurance and reinsurance distributors shall inform the complainant of the reasons for the delay and indicate a reasonable timeframe in which the decision will be communicated.

Any communication made by the insurance and reinsurance distributors under this paragraph, that is addressed to a complainant, shall be made in the language in which the complainant filed its complaint, provided that the language used by the complainant is one of the languages referred to in the first subparagraph.';

(9) the following Articles 16a and 16b are inserted:

'Article 16a

Financial education of customers

1. Member States shall promote measures that support the education of customers in relation to the responsible purchase of insurance products when accessing insurance distribution activities. Where appropriate, the measures shall target the needs of specific age groups and of other specific target groups and take into account the joint EU/OECD-INFE financial competence frameworks.

2. Member States shall designate one or more competent authorities or one or more public bodies to achieve the objective set out in paragraph 1.

Article 16b

Financial education of customers and marketing communication

Financial education material that aims to support individuals' financial literacy by enabling them to acquire financial competences, and that does not directly promote investment in one or several insurance products, or categories thereof, or specific insurance services, shall not be deemed to constitute a marketing communication for the purposes of this Directive.';

(10) in Article 17, paragraph 2 is replaced by the following:

'2. Member States shall ensure that all information related to the subject of this Directive, including marketing communications, shall be fair, clear and not misleading.

Marketing communications shall be clearly identifiable as such and shall clearly identify the insurance undertaking or insurance intermediary responsible for their content and distribution, regardless of whether the communication is made directly or indirectly by that insurance undertaking or insurance distributor.';

(11) Article 18 is replaced by the following:

‘Article 18

General information to be provided to the customer

1. Member States shall ensure that in good time before the customer is bound by an insurance contract or offer, the following information about the insurance undertaking which is party to the proposed contract shall be provided to the customer:

(a) the name of the insurance undertaking, its legal form and the address of its head office;

(b) where the insurance contract is proposed under the right of establishment , , the address of the branch proposing the insurance contract;

(c) where the insurance contract is proposed under the freedom to provide services, the Member State in which the head office of the insurance undertaking is located and, where appropriate, the address of the branch proposing the insurance contract;

(d) information that the insurance undertaking is authorised pursuant to Article 14 of Directive 2009/138/EC, the national competent authority which granted the authorisation and the means for verifying the authorisation;

(e) a concrete reference to the report on solvency and financial condition as laid down in Article 51 of Directive 2009/138/EC. allowing the customer easy access to this information.

2. Where the insurance contract is proposed by an insurance intermediary, that insurance intermediary shall, in good time before the customer is bound by the contract or offer, provide, in addition to the information indicated in paragraph 1, the following information to the customer:

(a) the name of the insurance intermediary, its legal form and address and the fact that it is an insurance intermediary;

(b) where the insurance intermediary is acting under the right of establishment, the address of the branch proposing the insurance contract ;

(ba) where the insurance intermediary is acting under the freedom to provide services, the Member State in which the head office of the insurance intermediary is located and, where appropriate, the address of the branch proposing the insurance contract;

(c) whether the insurance intermediary provides advice about the proposed insurance contract;

(d) the procedures referred to in Article 14 enabling customers and other interested parties to register complaints about insurance intermediaries and about the out-of-court complaint and redress procedures referred to in Article 15;

(e) the register in which the insurance intermediary has been included and the means for verifying that it has been registered;

(f) whether the insurance intermediary is representing the customer or is acting for and on behalf of the insurance undertaking.

3. Where the insurance contract is proposed by an insurance undertaking, that insurance undertaking shall, in good time before the customer is bound by the contract or offer, provide, in addition to the information indicated in paragraph 1, the following information to the customer:

(a) the name of the insurance undertaking, its legal form and address, and the fact that it is an insurance undertaking, insofar as this has not already been communicated in accordance with paragraph 1, point (a);

(b) whether it provides advice about the proposed insurance contract;

(c) the procedures referred to in Article 14 enabling customers and other interested parties to register complaints about insurance undertakings and about the out-of-court complaint and redress procedures referred to in Article 15;

(d) information that the insurance undertaking is authorised pursuant to Article 14 of Directive 2009/138/EC, the national competent authority which granted the authorisation and the means for verifying the authorisation, unless this has already been communicated in accordance with paragraph 1, point (d);

(e) whether the insurance undertaking is the manufacturer of the proposed contract or, where applicable, whether it is distributing the proposed contract on behalf of another insurance undertaking.';

(12) Article 19 is amended as follows:

(a) the title is replaced by the following: 'Disclosures';

(b) paragraph 1 is amended as follows:

(i) the introductory wording is replaced by the following:

'Member States shall ensure that in good time before the customer is bound by an insurance contract or offer, an insurance intermediary provides the customer with at least the following information:';

(ii) in point (c), the introductory wording is replaced by the following:

'in relation to insurance products other than insurance-based investment products, whether:';

(iii) point (d) is replaced by the following:

'(d) the nature of the remuneration received in relation to the insurance contract, in particular whether it works:

(i) on the basis of a fee, that is the remuneration paid directly by the customer;

(ii) on the basis of a commission of any kind, that is the remuneration included in the insurance premium;

(iii) on the basis of any other type of remuneration, including an economic benefit of any kind offered or given in connection with the insurance contract; or

(iv) on the basis of a combination of any type of remuneration set out at points (i), (ii) and (iii).';

(iv) point (e) is deleted;

(c) paragraph 4 is replaced by the following:

'4. Member States shall ensure that in good time before the customer is bound by an insurance contract or offer, an insurance undertaking communicates to its customer the nature of the remuneration received by its employees in relation to the insurance contract.';

(13) Article 20 is amended as follows:

(a) in paragraph 1, the first subparagraph is replaced by the following:

‘1. In good time before the customer is bound by an insurance contract or offer, the insurance distributor shall specify, on the basis of information obtained from the customer, the demands and the needs of that customer and shall provide the customer with objective information about the insurance product in a comprehensible form to allow that customer to make an informed decision.’;

(b) paragraphs 3, 4, and 5 are replaced by the following:

‘3. Where an insurance intermediary distributing insurance products other than insurance-based investment products informs the customer that it gives its advice on the basis of a fair and personal analysis, it shall give that advice on the basis of an analysis of a sufficiently large number of insurance contracts available on the market to enable it to make a personal recommendation, in accordance with professional criteria, regarding which insurance contract would be adequate to meet the customer’s needs.

4. In good time before the customer is bound by an insurance contract or offer, whether or not advice is given and irrespective of whether the insurance product is part of a package pursuant to Article 24 of this Directive, the insurance distributor shall provide the customer with the relevant information about the insurance product in a comprehensible form to allow the customer to make an informed decision, while taking into account the complexity of the insurance product and the type of customer.

5. In relation to the distribution of non-life insurance products as listed in Annex I to Directive 2009/138/EC and to life insurance products as listed in Annex II to Directive 2009/138/EC other than insurance-based investment products, the information referred to in paragraph 4 of this Article shall be provided to customers by way of a standardised insurance product information document.';

(c) paragraph 8 is amended as follows:

(i) the introductory wording is replaced by the following:

'For non-life insurance products, the insurance product information document shall contain the following information:';

(ii) the following point (j) is added:

'(j) the law applicable to the insurance contract; where the insurance undertaking proposes a choice of law, the law that the insurance undertaking proposes to choose.';

(ca) paragraph 6 is replaced by the following:

'(6) The manufacturer of the insurance product shall draw up the insurance product information document referred to in paragraph 5 in accordance with the requirements set out in paragraphs 7, 8, 8a and 9 and shall publish the document on its website.';

(d) the following paragraph 8a is inserted:

‘8a. For life insurance products other than insurance-based investment products, the insurance product information document shall contain the following:

(a) information about the type of insurance;

(b) a summary of the insurance cover, including details of the insurance benefits and options and the circumstances that would trigger them, and, where applicable, a summary of the excluded risks;

(c) the means of payment of premiums and the duration of payments;

(d) information on the premiums for each benefit, both main benefits and supplementary benefits, where applicable;

(e) where applicable, the means of calculation and distribution of bonuses;

(f) main exclusions where claims cannot be made;

(g) obligations at the start of the contract;

(h) obligations during the term of the contract;

i) obligations in the event that a claim is made;

(j) an indication of surrender and paid-up values and the extent to which they are guaranteed;

(k) information on the right of cancellation pursuant to Article 186 of Directive 2009/138/EC, in particular details on the time-limitations and conditions for the exercise of that right;

(l) general information on the tax rules applicable to the type of insurance policy;

(m) the term of the insurance contract, including the start and end dates of the contract;

(n) the means of terminating the contract;

(o) the law applicable to the contract; where the insurance undertaking proposes a choice of law, the law that the insurance undertaking proposes to choose.’;

(e) paragraph 9 is amended as follows:

(i) in the first subparagraph, ‘paragraph 8’ is replaced by ‘paragraphs 8 and 8a’;

(ii) in the second subparagraph, ’23 February 2017’ is replaced by [OJ: insert date one year after the date of entry into force of this Directive]

(14) in Article 22(1), the first subparagraph is replaced by the following:

‘The information referred to in Articles 18, 19 and 20 need not be provided when the insurance distributor carries out distribution activities in relation to the insurance of large risks or with customers meeting the criteria for professional clients as defined in Article 4(1), point (10), of Directive 2014/65/EU of the European Parliament and of the Council(*).

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* Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).’;

(15) Article 23 is replaced by the following:

‘Article 23

Electronic distribution, telephone selling and other durable means

1. Insurance distributors shall provide all information required by this Directive to customers in electronic format.

By way of derogation from the first subparagraph, insurance distributors shall provide, upon request from the customer, the information referred to in the first subparagraph, free of charge on paper.

2. Insurance distributors shall inform their customers, in good time before they are bound by the contract or offer, that they have the option of receiving the information free of charge on paper.

3. Insurance distributors shall inform their existing customers who receive the information in paper format that they have the choice either to continue receiving the information free of charge on paper or to receive the information only in electronic format. Insurance distributors shall inform existing customers who receive the information on paper format, that if they do not indicate a choice, the paper format will remain until the customer consents to an electronic format.

4. EIOPA shall, after consulting ESMA and after conducting consumer testing and industry testing, by [2 years after the entry into force of the amending Directive] develop, and update periodically, guidelines specifying the presentation of information provided in an electronic format in a suitable way for the average customer to whom the information is directed.

The guidelines referred to in the first subparagraph shall specify:

(a) the presentation and format of the digital disclosures, considering the various designs and channels that insurance distributors may use to inform their customers;

(b) the necessary safeguards to ensure ease of navigability and accessibility of the information, regardless of the device used by the customer;

(c) the necessary safeguards to ensure easy retrievability of the information and facilitate the storing of information by customers in a durable medium.

5. Where the insurance contract is concluded using a means of distance communication which prevents the prior delivery of the information in good time before the conclusion of the contract on a durable medium in accordance with paragraph 1 to 4, the insurance distributor may provide the information without undue delay after the conclusion of the contract, provided all of the following conditions are met:

(a) the customer has consented to receiving the information without undue delay after the conclusion of the contract;

(b) the insurance distributor has given the customer the option of delaying the conclusion of the contract until the customer has received the information.

In such case, the insurance distributor shall provide at least the following information through the means of distance communication used, prior to the conclusion of the contract:

(a) the name of the insurance distributor, and where the insurance contract is proposed by an insurance intermediary, the name of the insurance undertaking;

(b) a description of the main characteristics of the insurance product, including information about the type of insurance, a summary of the insurance cover and main exclusions and the main risks of the product;

(c) information on the total price, including information on the premium, costs and charges;

(d) whether the insurance distributor provides advice about the proposed insurance contract;

(e) the existence or absence of a right of withdrawal and, where a right of withdrawal exists, information on the withdrawal period and the conditions for exercising that right, including information on the amount which the customer may be required to pay, as well as the consequences of non-exercise of that right.

As regards compliance with the requirements laid down in this paragraph, the burden of proof shall be on the insurance distributor.';

(16) Article 25 is replaced by the following:

'Article 25

Product oversight and governance requirements

1. The home Member State of the manufacturer shall require that insurance undertakings and insurance intermediaries which manufacture any insurance product for sale to customers, establish, maintain, operate and review a process for the approval of each insurance product and for significant adaptations of existing insurance products, before they are marketed or distributed to customers ('the product approval process').

The product approval process shall be proportionate and appropriate to the nature of the insurance product. The product approval process shall contain all of the following:

(a) a specification of an identified target market for each insurance product and of the intended distribution strategy;

(b) a clear identification of target market's objectives and needs;

(c) an assessment of whether the insurance product is designed appropriately to meet the target market's objectives and needs;

(d) an assessment of all risks relevant to the identified target market and arising from the distribution strategy and whether the intended distribution strategy is consistent with the identified target market;

(e) reasonable steps to ensure that the insurance product is distributed to the identified target market;

(f) in relation to insurance-based investment products, a clear identification and quantification of all costs and charges and the performance related to the product, a clear identification and, where possible, quantification of its other benefits and an assessment of whether the product offers value for money, by evaluating whether these costs and charges are justified and proportionate, having regard to the performance, the other benefits and the characteristics, objectives and strategy of the product, as well as the guarantees and insurance coverage of biometric and other risks (value-for-money assessment process);

(g) in relation to insurance-based investment products, an assessment of the risk of misunderstanding of the main features, costs and risks of the insurance-based investment product by the customers belonging to the target market.

The assessment that the insurance-based investment product can be expected to offer value for money referred to in point (f) shall, when it relates to insurance-based investment products intended for distribution to retail clients as defined in Article 4(1), point (11) of Directive 2014/65/EU, be established through appropriate testing and assessments, taking into account the specificities of the insurance-based investment product including a market comparison with similar insurance-based investment products in the Union, subject to data availability, by comparing costs and charges as well as performance of the product to the costs and charges and the performance of a peer-group consisting of other insurance-based investment products with similar characteristics including, where relevant, the product type, similar levels of risk, guarantees, strategy, objectives, range of recommended holding periods, sustainability features, premium frequency and biometric risk coverage. The compliance report to the management body shall systematically include information on product testing and assessments.

The peer-group comparison shall be performed using data made available according to paragraph 8a and included in information to be published according to Union law.

When the insurance-based investment product is at a significant distance from the average of the peer group to the detriment of the client, the value for money shall be substantiated through additional testing and further assessments. Where necessary, the manufacturer shall take appropriate actions to ensure value for money. The content of appropriate actions shall be determined by the manufacturer while taking into account the relevant features of the insurance-based investment product and the interest of the client. The compliance report to the management body shall systematically include information on these additional testings and further assessments and their conclusions, including on any actions to ensure value for money.

The peer-group comparison, including the selection of insurance-based investment products with similar characteristics, shall be based on relevant and objective criteria.

2. The value-for-money assessment process of insurance-based investment products offering a range of underlying investment assets shall include an assessment of the value for money of the combination of the insurance-based investment contract and the underlying investment assets.

Member States may provide for a possibility for insurance undertakings or insurance intermediaries manufacturing insurance-based investment products to opt, for the purpose of the market comparison in their value-for-money process, to compare an insurance-based investment product with the relevant Union supervisory benchmark as referred to in paragraph 7 instead of a peer group.

If the insurance undertaking or insurance intermediary opted to compare an insurance-based investment product with the relevant Union benchmark, the insurance undertaking or the insurance intermediary shall, when the insurance-based investment product falls outside the Union supervisory benchmark, substantiate the value for money through additional testing and further assessments. Where necessary, the manufacturer shall take appropriate actions to ensure value for money. The content of appropriate actions shall be determined by the manufacturer while taking into account the relevant features of the insurance-based investment product and the interest of the client. The compliance report to the management body shall systematically include information on these additional testings and further assessments and their conclusions, including on any actions to ensure value for money.

3. Insurance undertakings and insurance intermediaries which manufacture insurance products, shall understand and regularly review the insurance products they offer, taking into account any event or risk that could materially affect the identified target market, and assess whether the product remains consistent with the objectives and needs of the identified target market and whether the intended distribution strategy remains appropriate.

Insurance undertakings and insurance intermediaries which manufacture insurance products, shall make available to distributors all information on the insurance product and the product approval process that is needed to fully understand that product and the elements taken into consideration during the product approval process, including complete and accurate details on the value-for-money assessment.

In the case of insurance-based investment products, the information made available to distributors shall contain all the elements referred to in paragraph 1, third subparagraph, points (f) and (g), any further relevant data and an explanation showing that the product offers value for money and meets the objectives and needs of the customers belonging to the target market.

4. Insurance undertakings and insurance intermediaries which manufacture insurance-based investment products shall report to their home authorities all of the following:

(a) complete and accurate details of costs and charges of the insurance-based investment product, including distribution costs incorporated into the costs of the product, inclusive of inducements;

(b) data on the characteristics of the insurance-based investment product, in particular its performance and any additional benefits.

(c) the Member State(s) where they distribute the insurance-based investment product.

The data referred to in points (a), (b) and (c) shall only be reported when it is not yet included in a sufficiently detailed and standardized form in the key information document in accordance with Regulation (EU) No 1286/2014 or in reporting obligations towards competent authorities on the basis of Union law, and when it is demonstrated that the specific data is necessary for the

development of meaningful Union supervisory benchmarks or peer-group comparisons, and that the additional burden on manufacturers and distributors is not disproportionate to the added value for clients. The reporting of these data shall be further specified according to paragraph 10.

The competent authorities shall transmit the data referred to in point (a), (b) and (c) to EIOPA.

5. An insurance distributor that advises on or proposes insurance products which it does not manufacture, shall have in place adequate arrangements to obtain the information referred to in paragraph 3, second subparagraph, and to understand the characteristics and identified target market of each insurance product.

Insurance intermediaries or insurance undertakings distributing insurance-based investment products shall:

(a) make sure that they obtain and fully understand the information referred to in paragraph 3, third subparagraph;

(b) identify and quantify any further costs and charges, in particular distribution costs, that are not already taken into account in the calculation of total costs and charges by the manufacturer;

(c) assess whether the product meets the target market's objectives and needs.

Where the distributor finds that there are costs and charges, in particular distribution costs, that have not been fully taken into account in the manufacturer's value-for-money assessment process, it shall immediately inform the manufacturer. The manufacturer shall take these costs and charges into account in its value-for-money assessment process.

6. An insurance intermediary or insurance undertaking which manufactures insurance-based investment products shall document the product testing and all assessments made, including the following:

(a) the dataset and the criteria used to select the peer group and the results of the comparison of the insurance-based investment product to the peer group, or, where the insurance intermediary or insurance undertaking has opted to compare the

insurance-based investment product with the Union supervisory benchmark, the results of that comparison;

(b) where applicable, the reasons justifying that the insurance-based investment product offers value for money when it is at a significant distance from the average of the peer group to the detriment of the client or, where the insurance intermediary or insurance undertaking has opted to compare the insurance-based investment product with the Union supervisory benchmark, when it falls outside the Union supervisory.

(c) where applicable, the reasons why the data for the peer-group comparison is not available for the financial instrument and how the value for money has been assessed.

7. In consultation with ESMA and relevant stakeholders and in close and thorough cooperation with the competent authorities throughout the entire development and testing process, EIOPA shall, where appropriate and feasible, develop and make publicly available Union supervisory benchmarks. Those benchmarks shall be developed per product cluster that contains a significant number of insurance-based investment products including, where applicable, underlying investment assets, that present similar characteristics including, where relevant, similar levels of risk, guarantee, strategy, objectives, range of recommended holding periods, early terminations in particular with regard to long recommended holding periods, sustainability features, premium frequency and biometric risk coverage. Union supervisory benchmarks shall only be made public and be applicable after a test demonstrating their relevance. The publication shall include the methodology and shall state the indicative nature of the benchmarks and their purpose as a supervisory tool. The purpose of those benchmarks shall be to provide competent authorities with a reference point for the supervision of the value for money of insurance-based investment products, by identifying outliers in the market.

Competent authorities shall verify that the value-for-money assessment process of insurance companies or insurance intermediaries manufacturing insurance-based investment products complies with the product governance requirements under paragraphs 1 to 4, 6 and 9.

Union supervisory benchmarks shall allow to identify insurance-based investment products including, where applicable, underlying investment assets, that are at a significant distance from the average of the cluster to the detriment of the client with respect to costs and performance and thereby have an increased risk of poor value for money.

The costs used for the development of Union supervisory benchmarks shall, in addition to the total product cost, also include all costs of distribution, including inducements. They shall allow comparison with individual cost components.

EIOPA shall regularly update the Union supervisory benchmarks.

8a. Taking into account the methodology to perform the peer-group comparison as referred to in paragraph 9, EIOPA shall make available data for the purpose of the peer-group comparison. Where appropriate, data that is not publicly available shall be anonymised or aggregated. EIOPA shall regularly review the data.

The data shall be sourced from disclosure and reporting under Union law, including the reporting referred to in paragraph 10.

EIOPA shall provide access to the data on a non-discriminatory basis to manufacturers and distributors. EIOPA may charge fees to manufacturers and distributors for this service that shall not exceed direct costs incurred by EIOPA for the provision of this service. The fee structure shall, to the greatest extent possible, be proportionate to the volumes of data provided. EIOPA shall provide access to this data to the following entities, to the extent necessary to fulfil their respective responsibilities, mandates and obligations:

(a) any Union institution, body, office or agency;

(b) any competent authority designated by a Member State pursuant to a Union legislative act;

(c) any member of the European Statistical System as defined in Article 4 of Regulation (EC) No 223/2009 of the European Parliament and of the Council;

(d) any governmental institution, body or agency of a Member State;

(e) any educational and training establishment for the sole purpose of research, academia, news organisations and non-governmental organisations insofar as access to the information is necessary in the performance of their tasks.

The entities referred to in point (b) shall have unrestricted access to the data on a non-anonymous and non-aggregated basis, to the extent necessary to fulfil their mandates. EIOPA shall provide access to the data to the entities referred to in points (a) to (d) free of charge.

After having consulted ESMA, the competent authorities and relevant stakeholders, EIOPA shall develop draft regulatory technical standards to specify the data that is to be made available, how it is to be made available, the modalities of access and the fee structure.

EIOPA shall submit those draft regulatory technical standards to the Commission by [OJ: insert date of entry into force of the amending Directive + 24 months].

Power is conferred on the Commission to adopt those regulatory technical standards in accordance with Article 10 of Regulation (EU) No 1094/2010.

EIOPA shall publish and make easily accessible on its website the fee structure and the rates.

EIOPA shall review the fee structure and the rates on an annual basis.

8b. In Member States where competent authorities have developed national benchmarks on costs and performance to detect outliers before 1 July 2024 competent authorities may decide to continue to use these national benchmarks in relation to insurance-based investment products, including, where applicable, underlying options, that refer to specificities of products only distributed in their Member State provided that:

(a) the methodology for the national benchmark is comparable with the methodology for the Union supervisory benchmark and any differences between the methodology for the national benchmark and the methodology for the Union supervisory benchmark are limited to differences that are needed to appropriately take into account national specificities specifically related to the insurance-based investment products with a view to protecting clients;

(b) the competent authorities substantiate to EIOPA which are those national specificities, why the national benchmarks are needed for the protection of clients and why the Union supervisory benchmarks are not appropriate;

(c) the differences in methodologies do not increase over time, except when needed to take into account national specificities with a view to protecting clients;

(d) the competent authorities shall assess periodically whether the methodological differences are still needed to protect clients due to national specificities and shall report to EIOPA; and

(e) the national benchmark is made public.

8ba. Member States whose competent authorities continue to use national benchmarks shall notify the Commission and EIOPA of it within six months of the publication of the relevant Union supervisory benchmark and its methodology.

By [date of application of this amending Directive referred to in Article 6(2)], EIOPA, after having consulted ESMA, competent authorities and other stakeholders, may issue guidelines on the methodology to be used for such benchmarks.

8c. By [OJ: insert date of application of this amending Directive referred to in Article 6(2) + 5 years], the competent authorities shall report to EIOPA on:

(a) the impact and the added value of the peer-group comparison on the value for money of insurance-based investment products;

(b) the impact and the added value of Union supervisory benchmarks and benchmarks as referred to in paragraph 8b on the supervision of the value-for-money assessment process;

(c) the application of Union supervisory benchmarks in the value-for-money assessment process of insurance undertakings and insurance intermediaries manufacturing insurance-based investment products ; and

(d) whether and how any national specific issues have been or should be taken into account in order for all clients within the Union to be fairly and sufficiently protected, including concrete proposals how this should be done.

By [OJ: insert date of application of this amending Directive referred to in Article 6(2) + 6 years], EIOPA shall submit to the Commission a report analysing:

(a) the impact and the added value of the peer-group comparison and of the Union supervisory benchmarks on the value for money of insurance-based investment products and on the supervision of the value-for-money assessment process, including the need to revise the framework;

(b) the application of Union supervisory benchmarks in the value-for-money assessment process of insurance-based insurance products;

(c) whether and how any national specific issues have been or should be taken into account in order for all clients within the Union to be fairly and sufficiently protected; and

(d) whether and how to modify the approach to the data that is made available in accordance with paragraph 8a.

When drafting the report, EIOPA shall coordinate with ESMA.

By [OJ insert date of application of this amending Directive referred to in Article 6(2) + 7 years], the Commission shall submit a report to the Council and the European Parliament presenting the conclusions of the review. If appropriate, the report shall be accompanied by legislative proposals.

9. The Commission shall be empowered to supplement this Directive by adopting delegated acts in accordance with Article 38 to further specify the principles set out in this Article, including, with regard to insurance-based investment products, the methodology to be used by insurance undertakings and insurance intermediaries manufacturing insurance-based investment products to perform the peer-group comparison.

Those delegated acts shall take into account in a proportionate way the activities performed, the nature of the insurance products sold and the nature of the distributor.

10. EIOPA, after having consulted ESMA and the competent authorities and after industry testing, and taking into consideration the methodologies referred to in paragraph 7 and 9, shall develop draft regulatory technical standards to determine the following;

(a) content and type of data to be reported to the home authorities in accordance with paragraph 4;

(b) the data standards and formats, methods and arrangements, frequency and starting date for the information to be reported in accordance with paragraph 4.

EIOPA shall submit those draft regulatory technical standards to the Commission by [OJ: insert date of entry into force of the amending Directive + 24 months].

When developing the draft regulatory technical standards, EIOPA shall only include specific data when it is not yet included in a sufficiently detailed and standardized form in the key information document in accordance with Regulation (EU) No 1286/2014 or in reporting obligations towards competent authorities on the basis of Union law, and when it is demonstrated that the specific

data is necessary for the development of meaningful benchmarks or peer-group comparisons, and that the additional burden on insurance undertakings or insurance intermediaries is not disproportionate to the added value for customers.

EIOPA shall ensure that the reporting standards and formats, methods and arrangements and frequency remain proportionate and are aggregated to the extent feasible.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Article 10 of Regulation (EU) No 1094/2010.

11. The policies, processes and arrangements referred to in this Article shall be without prejudice to all other requirements under this Directive including those relating to disclosure, suitability or appropriateness, identification and management of conflicts of interest, and inducements.

12. This Article shall not apply to insurance products which consist of the insurance of large risks.';

(17) Article 26 is replaced by the following:

'Article 26

Scope of additional requirements

This Chapter establishes requirements additional to those applicable to insurance distribution, where the insurance distribution is carried out in relation to the sale of insurance-based investment products.

Insurance-based investment products may only be distributed by:

(a) an insurance intermediary;

(b) an insurance undertaking.';

(18) the following Article 26a is inserted:

‘Article 26a

Marketing communications and practices

1. By derogation from Article 17(2), Member States shall ensure that marketing communications of insurance-based investment products are clearly identifiable as such and clearly identify the insurance intermediary or insurance undertaking responsible for their content and distribution, regardless of whether the communication is made directly or indirectly by the insurance intermediary or insurance undertaking.

2. Member States shall ensure that marketing communications of insurance-based investment products are developed, designed and provided in a manner that is fair, clear, not misleading, balanced in terms of presentation of benefits and risks, and appropriate in terms of content and distribution channels for the target audience and where related to a specific insurance-based investment product to the target market identified pursuant to Article 25(1).

All marketing communications of insurance-based investment products shall present, in a prominent and concise way, the essential characteristics of the insurance-based investment products to which they refer.

The presentation of the essential characteristics of marketing communications of insurance-based investment products shall ensure that customers can easily understand the key features of the insurance-based investment product as well as the main risks associated with them.

3. Member States shall ensure that marketing practices are developed and used in a manner that is fair, clear and not misleading, and shall be appropriate for the target audience based on the target market assessment and the distribution strategy of the product in the context of the product oversight and governance requirements

4. Where a manufacturer of an insurance-based investment product prepares and provides a marketing communication to be used by a distributor, the manufacturer shall be responsible for the content of such marketing communication and its update. The distributor shall be responsible

for the use of this marketing communication and shall ensure that it is used for the identified target market only and in line with the distribution strategy identified for that target market.

Where an insurance undertaking or an insurance intermediary that offers or recommends insurance-based investment products which it does not manufacture, organises its own marketing communication, it shall be fully responsible for its appropriate content, update and use, in line with the identified target market.

5. Member States shall ensure that insurance undertakings and insurance intermediaries make annual reports to their management body on the use of marketing communications and strategies aimed at marketing practices, the compliance with relevant obligations on marketing communications and practices under this Directive and on any signalled irregularities and proposed solutions.

6. Member States shall ensure that national competent authorities can take timely and effective action in relation to any marketing communication or marketing practice that do not comply with the requirements laid down in paragraphs 1 to 3.

7. Member States shall ensure that insurance undertakings and insurance intermediaries keep records of all their marketing communications of insurance-based investment products, or their marketing communications made by any third party remunerated or incentivised through non-monetary compensation.

Such records shall be kept for a period of five years and, where requested by the competent authority, for a period of up to seven years. Those records shall be retrievable by the insurance undertaking or insurance intermediary upon request by the competent authority.

The records referred to in the first subparagraph shall contain all of the following:

(a) the content of the marketing communication;

(b) details about the medium used for the marketing communication;

(c) the date and duration of the marketing communication;

(d) the targeted customer segments or profiling determinants;

(e) the Member States where the marketing communication was made available;

(f) the identity of any third party involved in the dissemination of the marketing communication.

Records of such identity referred to in point (f) shall contain the legal names, registered addresses, contact details and, where relevant, social media handle of the natural or legal persons involved.

8. The Commission shall be empowered to adopt a delegated act in accordance with Article 38 to supplement this Directive by specifying:

(a) the essential characteristics of insurance-based investment products to be disclosed in all marketing communications and any other relevant criteria to ensure that those essential characteristics appear in a prominent way and are easily accessible by an average customer, regardless of the means of communication

(b) the conditions with which marketing communications and marketing practices of insurance-based investment products should comply in order to be fair, clear, not misleading, balanced in terms of the presentation of the advantages and risks, and appropriate in terms of content and media, including character-limited media and short form content for the target audience or, where applicable, the target market based on the target market assessment and the distribution strategy of the product in the context of the product oversight and governance requirements.';

(19) in Article 28, paragraph 2 is replaced by the following:

'2. Where organisational or administrative arrangements made by the insurance intermediary or insurance undertaking in accordance with Article 27 to manage conflicts of interest are not sufficient to ensure, with reasonable confidence, that risks of damage to customer interests will be prevented, the insurance intermediary or insurance undertaking shall clearly disclose to the customer the general nature or sources of the conflicts of interest, in good time before the customer is bound by an insurance contract or offer.';

(20) Article 29 is replaced by the following:

‘Article 29

Information to customers and policyholders

1. Without prejudice to Article 18 and Article 19(1) and (2), Member States shall ensure that insurance intermediaries and insurance undertakings distributing insurance-based investment products provide customers in good time before they are bound by an insurance contract or offer, with appropriate information in personalised form about the insurance-based investment products proposed to those customers. That information shall contain at least all of the following:

(a) where advice is provided;

(i) whether or not the advice is provided on an independent basis;

(ii) whether the advice is based on a broad or on a more restricted analysis of different types of insurance-based investment products and, where applicable, underlying investment assets, and in particular, whether or not the range is limited to products and assets, manufactured or provided by entities having close links with the insurance intermediary or insurance undertaking, or any other legal or economic relationships, such as contractual relationships, so close as to pose a risk of impairing the independent basis of the advice provided;

(iii) whether the insurance intermediary or insurance undertaking will provide the customer with a periodic assessment of the suitability of the insurance-based investment product recommended to that customer;

(iv) where the insurance intermediary provides advice on an independent basis to a customer, whether the range of insurance-based investment products that are recommended is restricted or not to well-diversified, non-complex as referred to in Article 30(5c) and cost-efficient insurance-based investment products only;

(v) how the recommended insurance-based investment products take into account the diversification of the customer's portfolio.

(b) a description of the main features of the proposed insurance-based investment product and, where applicable, any recommended underlying investment assets and investment strategies;

(ba) appropriate guidance on the risks associated with the insurance-based investment product and, where applicable, the recommended underlying investment assets or the particular investment strategies followed by that product, including, for particularly risky insurance-based investment products, the risk warnings mentioned in paragraph 5;

(c) information on the proposed insurance cover, including details of the insurance benefits and options and the circumstances that would trigger them, and, where applicable, a summary of the excluded risks and exclusions, where claims cannot be made;

(d) information on all explicit and implicit costs, charges and inducements, including all costs and charges relating to the distribution of the insurance-based investment product, and the cost of advice, where relevant, how the customer may pay for it and the duration of payments;

(e) the law applicable to the insurance contract; where the insurance undertaking proposes a choice of law, the law that the insurance undertaking proposes to choose;

(f) general information on the tax rules applicable to the type of insurance-based investment product;

(g) information on the right of cancellation pursuant to Article 186 of Directive 2009/138/EC, in particular details on the time-limitations and conditions for the exercise of that right.

The information referred to in the first subparagraph, point (d), shall be accompanied by an appropriate explanation, in a standardised and comprehensible language for an average customer, on the impact of the costs, charges and any inducements on the returns.

Member States shall ensure that insurance intermediaries and insurance undertakings present the information on all costs, charges and inducements referred to in the first subparagraph, point (d) in aggregated form to enable the customer to understand the overall cost and the cumulative effect on the return of the investment. The overall cost shall be expressed in monetary terms and percentages calculated over the term of the insurance based investment product. Where the customer so requests, insurance intermediaries and insurance undertakings shall provide an itemised breakdown of that information.

Insurance undertakings and insurance intermediaries shall inform their customers that they have the option of receiving an itemised breakdown of the cost data.

By way of derogation from the third subparagraph, the inducements paid or accepted and retained by the insurance intermediary or insurance undertaking in relation to the provision or distribution of the insurance-based investment product shall be itemised separately. The insurance intermediary or insurance undertaking shall disclose the cumulative impact of such inducements, including any recurring inducements on the net return over the term of the insurance-based investment product. The purpose of the inducements and their impact on the net return shall be explained in a standardised way and in a comprehensible language for an average customer.

Where the amount of any costs, charges or inducements cannot be ascertained at the pre-contractual stage, the method of calculating the amount shall be clearly disclosed to the customer in a manner that is transparent, comprehensible, accurate and understandable for an average customer.

When paying or accepting and retaining inducements in relation to the provision or distribution of insurance-based investment products, the insurance intermediary or insurance undertaking shall explicitly inform the customer on the existence of such inducements.

2. Member States shall ensure that insurance undertakings or, where applicable, insurance intermediaries manufacturing insurance-based investment products, draw up a concise personalised document containing key information to be provided annually to each policyholder holding an insurance-based investment product (‘annual statement’).

The exact date to which the information in the annual statement refers shall be stated prominently.

The information in the annual statement shall be accurate and up to date. The annual statement shall be provided to the policyholder as soon as possible and no later than 4 months after the end of the reporting period.

By way of derogation from Article 23 (1), (2) and (3), the annual statement does not need to be provided where the insurance undertaking or, where applicable, insurance intermediary manufacturing insurance-based investment products, provides its policyholders with access to an online system, which qualifies as an electronic format, where up-to-date statements with the relevant information set out in paragraph 3 can be easily accessed and the insurance undertaking or, where applicable, insurance intermediary manufacturing insurance-based investment products, has evidence that the policyholder has accessed those statements at least once during the previous 12 months.

3. The annual statement shall include, at least, the following key information:

(a) the total costs, charges and inducements, expressed in an itemised way in monetary terms and percentages, paid or borne, directly or indirectly, by the policyholder over the previous 12 months and on a cumulative basis since the start of the contract term in relation to the insurance-based investment product. The information on inducements paid or accepted and retained by the insurance intermediary or insurance undertaking in relation to the provision or distribution of the insurance-based investment product shall also disclose the cumulative impact of such inducements, including any recurring inducements, on the net return since the start of the contract term in relation to the insurance-based investment product;

(b) the annual performance of, where applicable, each of the underlying investment assets of the insurance-based investment product held by the policyholder and the annual global performance of the policy holder's portfolio, each compared with past performance, where applicable, of previous years' investment assets;

(c) the total taxes including stamp duty, transactions tax, withholding tax and any other taxes where levied by the insurance undertaking, with a split per tax, borne by the policyholder in relation to the insurance-based investment product;

(d) where applicable, the market or estimated value when the market value is not available of each of the underlying investment assets of the insurance-based investment product held by the policyholder;

(e) payments made by the policyholder with regard to the insurance-based investment product including investments, deposits, contributions, premiums and fees, over the previous 12 months, after deducting any withdrawals made. The insurance undertaking shall inform the policyholder that fees charged directly by insurance intermediaries to the policyholder are not included in this annual statement;

(f) adjusted individual projections of the expected outcome at the end of the contractual or recommended holding period, based on the current value of the investment and its performance development so far and linked to the pre-contractual performance scenarios in the key information document provided for in Regulation No 1286/2014, and a disclaimer that those projections may differ from the actual final value of the investment;

(g) information on the conditions and financial consequences of an early termination of the investment or switching of providers, including the surrender value and conditions for surrendering the insurance policy;

(h) a short summary on the insurance cover, in particular the insurance benefits and any options and information on what happens when the insured person dies or another insured event occurs;

(i) in the case of insurance-based investment products for which the policy terms and conditions provide for periodic premium reviews, the projected premiums required to maintain existing protection benefits until the ages of 55, 65, 75 and 85;

(j) the nature of the insurance distribution activities undertaken by the insurance undertaking for the policyholder during the reporting period;

(k) if costs for insurance distribution activities of an insurance intermediary are included in the annual report: the nature of the insurance distribution activities undertaken by the insurance intermediary for the policyholder during the reporting period.

4. The information described in paragraph 1 and the annual statement referred to in paragraphs 2 and 3 shall be provided to customers and policyholders by using a Union standardised terminology and format.

EIOPA shall, after having consulted ESMA and after conducting consumer testing and industry testing, develop draft regulatory technical standards to specify:

(a) the relevant format for the provision of the information listed in paragraphs 1 and 3, including the form and the length of the document, and the content of each of the elements of information;

(b) the Union standardised terminology, calculation method and related explanations to be used for the provision of the information listed in paragraphs 1 and 3, including information on implicit costs. The explanations shall ensure that they are likely to be understood by any customer without specific knowledge on insurance-based investment products.

EIOPA shall submit those draft regulatory technical standards to the Commission by [OJ: insert date 18 months after the date of entry into force].

Power is delegated to the Commission to supplement this Directive by adopting the regulatory technical standards referred to in the third subparagraph in accordance with Article 10 of Regulation (EU) No 1094/2010.

5. Member States shall ensure that insurance intermediaries and insurance undertakings distributing insurance-based investment products display appropriate warnings in information materials, including marketing communications, concerning particularly risky insurance-based investment products provided to customers to highlight the specific risks of potential losses associated with such insurance-based investment products and, where applicable underlying investment assets.

EIOPA shall develop regulatory technical standards to further specify the concept of particularly risky insurance-based investment products and, after conducting consumer testing, the format and content of the risk warnings mentioned in the previous subparagraph, taking due account of the specificities of the different types of insurance-based investment products.

The specificities of the insurance-based investment products or, where applicable, the underlying investment assets may, in particular, relate to specific market risks, credit risks or liquidity risks.

The format and content of the risk warnings shall take into account the different types of communication media.

EIOPA shall submit those regulatory technical standards to the Commission by [OJ: insert date 18 months after the date of entry into force].

Power is delegated to the Commission to adopt those regulatory technical standards in accordance with Article 10 of Regulation (EU) No 1094/2010.

EIOPA shall monitor the consistent application of risk warnings throughout the Union. In case of concerns regarding the use, or the absence of use or the supervision of the use of such risk warnings in one or more Member States, that may have a material impact on the investor protection, EIOPA, after having consulted the competent authorities concerned, may issue a recommendation addressed to the relevant competent authorities, to impose on insurance intermediaries and insurance undertakings the use of risk warnings for specific insurance-based investment products.';

(21) the following Articles 29a and 29b are inserted:

‘Article 29a

Inducements

1. Member States shall ensure that insurance intermediaries and insurance undertakings paying or receiving inducements comply with the following overarching principles:

(a) Inducements do not provide an incentive to the insurance intermediary or insurance undertakings to offer or recommend a particular insurance-based investment product or service over others to the customer;

(b) The level of inducements paid or accepted and retained is proportional to the value of the insurance-based investment product and the level of service provided to the relevant customer;

(c) Inducements paid to or accepted and retained by entities belonging to the same group are treated in the same way as inducements paid to or accepted and retained from other entities;

(d) Inducements accepted and retained do not directly benefit the insurance intermediary or insurance undertaking, and where relevant, its shareholders or employees without tangible benefit to the customer.

Insurance intermediaries and insurance undertakings shall explain in their inducements policy or procedures how they comply with the overarching principles.

2a. Member States shall ensure that insurance intermediaries or insurance undertakings, when distributing insurance-based investment products in accordance with Article 30(1), shall only pay or accept and retain inducements on the condition that those insurance intermediaries or insurance undertakings ensure that the reception or payment of such inducements does not impair compliance with their duty to act honestly, fairly and professionally in accordance with the best interests of their customers.

Insurance intermediaries and insurance undertakings shall be considered not to comply with their duty to act honestly, fairly and professionally in accordance with the best interest of their customers if their inducements or inducement schemes do not meet at least the following criteria, where applicable:

(a) the inducement takes into account qualitative criteria, such as compliance with applicable regulations and the quality of services provided to customers;

(b) the insurance intermediary or insurance undertaking can demonstrate that the inducement was taken into account in the context of the product governance requirements when assessing the cost structure of the insurance product;

(c) an appropriate mechanism exists for reclaiming the inducement in nominal value in case the product lapses or is surrendered at an early stage or in case the interests of the customers have been harmed as a result of non-compliance of the insurance intermediary or insurance undertaking with investor protection requirements set forth in this Directive;

(d) the inducement does not contain any form of variable or contingent threshold or any other kind of value accelerator which is unlocked by attaining a target based on volume or value of sales;

(e) the inducement is based on a clear, comprehensible and transparent calculation method;

(f) the inducement can be identified separately from other fees, commissions or non-monetary benefits (such as fees relating to services for other customers) and payments or benefits which are necessary for the provision of services.

Insurance intermediaries and insurance undertakings shall fulfil the requirements set out above on an ongoing basis as long as they continue to pay or accept and retain the inducement.

Insurance intermediaries and insurance undertakings shall keep an internal list of all inducements paid or accepted and retained in relation to the provision of manufacturing and/or distribution of IBIPs, and keep records of the inducements test performed in accordance with paragraph 2 and the results of those tests for each inducement or inducement scheme.

2b. Insurance intermediaries and insurance undertakings shall disclose the existence, nature and amount of inducements separately from other costs and charges in accordance with Article 29(1).

2c. The overarching principles and the inducements test shall not apply to minor non-monetary benefits of a total value below EUR 100 per annum per third party or of a scale and nature such that those benefits do not impair compliance with the insurance intermediary's or insurance undertaking's duty to act in the best interests of their customer provided those benefits have been clearly disclosed to the customer.

2d. Any payment or benefit which enables or is necessary for the provision of services, including regulatory levies or legal fees, and which by its nature cannot give rise to conflicts with the insurance intermediary's or insurance undertaking's duty to act honestly, fairly and professionally in accordance with the best interests of their customers, shall not be subject to the requirements of the overarching principles and the inducements test.

2e. Member States shall ensure that insurance intermediaries and insurance undertakings that distribute insurance-based investment products in accordance with Articles 30(2) and 30(3) through digital means without advice, using a filtering tool to make it possible for customers to select such products on the basis of various criteria, include an option that allows their customers to easily identify insurance-based investment products for which the insurance intermediaries or insurance undertakings do not pay or receive inducements. If the insurance intermediary or insurance undertaking do not offer such products to customers, they shall prominently state this in the filtering tool.

3. Member States shall ensure that insurance intermediaries and insurance undertakings shall, where applicable, inform the customer on mechanisms for transferring to the customer any inducement received in relation to the distribution of the insurance-based product.

4. Member States may impose stricter requirements on insurance intermediaries and insurance undertakings in respect of the matters covered by this Article. In particular, Member States may additionally prohibit or further restrict the offer or acceptance of inducements in relation to the distribution of insurance-based investment products.

Stricter requirements may include requiring any inducements to be returned to the customers or offset against fees paid by the customer.

The stricter requirements of a Member State referred to in this paragraph shall be complied with by all insurance intermediaries or insurance undertakings, including those operating under the freedom to provide services or the freedom of establishment, when concluding insurance contracts with customers having their habitual residence or establishment in that Member State.

5. The Commission shall be empowered to supplement this Directive by adopting delegated acts in accordance with Article 38 to further specify:

(a) how insurance intermediaries and insurance undertakings are to comply with the principles set out in this Article;

(b) the criteria for assessing compliance of insurance intermediaries and insurance undertakings paying or receiving inducements with the obligation to act honestly, fairly and professionally in accordance with the best interests of the customer.

6. Five years after the date of entry into force of Directive (EU) [Please introduce the number of the amending Directive] and after having consulted ESMA and EIOPA, the Commission shall assess the effects of inducements on customers, in particular in view of potential conflicts of interest and as regards the availability of advice on an independent basis; and shall evaluate the impact of the relevant provisions of this Directive (EU) on customers. If necessary to prevent consumer detriment, the Commission shall propose legislative amendments to the European Parliament and the Council.

Article 29b

Best interest of customers

1. Member States shall ensure that in order to act in the best interest of the customer in accordance with Article 17(1), when providing advice to customers on insurance-based investment products, insurance undertakings and insurance intermediaries comply with the following requirements:

(a) to provide advice on the basis of an assessment of an appropriate range of insurance-based investment products identified as suitable for the customer pursuant to Article 30(1), from one or more manufacturers which must be sufficiently diversified with regard to their type, characteristics and underlying investment assets to ensure that the customer's investment objectives and demands and needs can be met. This requirement can also be met by offering a single insurance-based investment product with an appropriate range of underlying investment assets;

(b) to recommend the most cost-efficient insurance-based investment product and, where applicable, underlying investment assets, among the insurance-based investment products identified as suitable for the customer pursuant to Article 30(1) and offering similar features. The assessment of cost-efficiency shall take into account the costs and associated charges of those insurance-based investment products as well as other factors of the insurance-based investment product relevant to the customer, such as the performance and expected return;

(c) to recommend insurance-based investment products which insurance cover is consistent with the customer's insurance demands and needs.';

(22) Article 30 is amended as follows:

(a) the following paragraph -1 is inserted:

'-1. Member States shall require that insurance intermediaries and insurance undertakings distributing insurance-based investment products assess the suitability or appropriateness of insurance-based investment products and, where applicable, underlying investment assets to be recommended to or requested by customers in good time before the customers are bound by an insurance contract or offer. Each of these assessments shall be carried out on the basis of proportionate and necessary information about the customer as obtained by the insurance intermediary or insurance undertaking in accordance with the requirements set out in this Article.

Member States shall ensure that insurance intermediaries and insurance undertakings distributing insurance-based investment products explain to customers the purpose of the suitability or appropriateness assessment before the information necessary for this assessment is requested from them. Member States shall ensure that insurance intermediaries and insurance undertakings distributing insurance-based investment products warn customers, of the following consequences:

(a) the provision of inaccurate information may impact negatively the quality of the assessment to be made by the insurance intermediary or insurance undertaking;

(b) the absence of the necessary information, including the provision of incomplete information, prevents the insurance intermediaries and insurance undertakings distributing insurance-based investment products from determining whether the insurance-based investment product envisaged is suitable or appropriate for the customer and from providing advice. Such warning shall be provided in a standardised format. Insurance intermediaries and insurance undertakings distributing insurance-based investment products shall keep a record of the warning provided to its customer.

Member States shall ensure that insurance intermediaries and insurance undertakings distributing insurance-based investment products keep a record of the information collected from the customer for the purpose of the suitability or appropriateness assessment.

Member States shall ensure that insurance intermediaries and insurance undertakings distributing insurance-based investment products provide customers, upon their request, with a report on the information collected for the purpose of the suitability or appropriateness assessment.

EIOPA shall develop draft regulatory technical standards to determine the warning referred to in the second subparagraph.

EIOPA shall submit those draft regulatory technical standards to the Commission by [OJ: insert date 18 months after the date of entry into force].

Power is delegated to the Commission to adopt those regulatory technical standards in accordance with Article 10 of Regulation (EU) No 1094/2010.';

(b) paragraphs 1, 2 and 3 are replaced by the following:

1. Without prejudice to Article 20(1), when providing advice on insurance-based investment products, the insurance intermediary or insurance undertaking shall obtain the necessary information regarding the customer's knowledge and experience in the investment field relevant to the specific type of insurance-based investment product or, where applicable, underlying investment assets, the customer's financial situation, including, to the extent possible, the composition of any existing portfolios, its ability to bear full or partial losses, investment needs and objectives, including any sustainability preferences , and risk tolerance, so as to enable the insurance intermediary or the insurance undertaking to recommend to the customer the insurance-based investment products that are suitable for that customer and that, in particular, are in accordance with its risk tolerance, ability to bear losses and, to the extent applicable, need for portfolio diversification. Where the customer is not willing to provide information on existing portfolios held with third parties, the insurance intermediary or insurance undertaking shall base the assessment of portfolio diversification on the information available to it.

Member States shall ensure that insurance intermediary or insurance undertaking cannot consider a product to be suitable where it contains features which are not necessary to the achievement of the customer's objectives and that give rise to extra costs.

When providing advice on an independent basis to customers restricted to well-diversified, non-complex and cost-efficient insurance-based investment products, the insurance intermediary shall be under no obligation to obtain information on the customer's knowledge and experience about the considered insurance-based investment products or on the customer's portfolio composition.

When providing advice that involves switching between underlying investment assets, insurance intermediaries and insurance undertakings shall obtain the necessary information on the customer's existing underlying investment assets and the recommended new investment assets and shall analyse the expected costs and benefits of the switch, so that they are reasonably able to demonstrate that the benefits of switching are expected to be greater than the costs.

2. Without prejudice to Article 20(1), Member States shall ensure that, where no advice is given in relation to insurance-based investment products, the insurance intermediary or insurance undertaking shall ask the customer to provide information regarding that person's knowledge and experience in the investment field relevant to the specific type of insurance-based investment product or, where applicable, underlying investment assets, offered or requested and the person's capacity to bear full or partial losses and risk tolerance so as to enable the insurance intermediary or the insurance undertaking to assess whether the insurance-based investment product or products envisaged are appropriate for the customer.

Where the insurance intermediary or insurance undertaking considers, on the basis of the information received under the first subparagraph, that the product is not appropriate for the customer, the insurance intermediary or insurance undertaking shall warn the customer. That warning shall be provided in a standardised format . The insurance intermediary or the insurance undertaking shall keep a record of such warnings.

The insurance intermediary or insurance undertaking shall not proceed with the distribution of an insurance-based investment product subject to a warning indicating that the product or service is not appropriate or a warning indicating that the insurance intermediary or insurance undertaking cannot assess the appropriateness of the product or service, unless the customer asks to proceed with it despite such warning and the insurance undertaking accepts to conclude the contract at the demand of the customer. The insurance intermediary and the insurance undertaking distributing insurance-based investment products shall keep a record of both the demand of the customer and the acceptance by the insurance undertaking.

EIOPA shall develop draft regulatory technical standards to determine the format and content of the warning referred to in the second subparagraph.

EIOPA shall submit the draft regulatory technical standards to the Commission by [OJ: insert date 18 months after the date of entry into force].

Power is conferred on the Commission to adopt those regulatory technical standards in accordance with Article 10 of Regulation (EU) No 1094/2010.

3. Without prejudice to Article 20(1), where no advice is given in relation to insurance-based investment products, Member States may derogate from the obligations referred to in paragraph 2 of this Article, allowing insurance intermediaries or insurance undertakings to carry out insurance distribution activities in relation to insurance-based investment products within their territories without the need to obtain the information or make the determination provided for in paragraph 2 of this Article where all of the following conditions are met:

(a) the insurance distribution activities relate to either of the following:

(i) insurance-based investment products which only provide investment exposure to the financial instruments deemed non-complex under Directive 2014/65/EU and do not incorporate a structure which makes it difficult for the customer to understand the risks involved;

(ii) other non-complex insurance-based investment products for the purpose of this paragraph;

(b) the insurance distribution activity is carried out at the initiative of the customer;

(c) the customer has been clearly informed that, in the provision of the insurance distribution activity, the insurance intermediary or the insurance undertaking is not required to assess the appropriateness of the insurance-based investment product or insurance distribution activity provided or offered and that the customer does not benefit from the corresponding protection of the relevant conduct of business rules. Such a warning shall be provided in a standardised format;

(d) the insurance intermediary or insurance undertaking complies with its obligations under Articles 27 and 28.

All insurance intermediaries or insurance undertakings, including those operating under the freedom to provide services or the freedom of establishment, when distributing insurance-based investment products to customers having their habitual residence or establishment in a Member State which does not make use of the derogation referred to in this paragraph shall comply with the applicable provisions in that Member State.

EIOPA shall develop draft regulatory technical standards to determine the format and content of warning referred to in the first subparagraph, point (c).

EIOPA shall submit the draft regulatory technical standards to the Commission by [OJ: insert date 18 months after the date of entry into force].

Power is conferred on the Commission to adopt those regulatory technical standards in accordance with 10 of Regulation (EU) No 1094/201039.';

(c) paragraph 5 is replaced by the following:

'5. Member States shall ensure that insurance intermediaries provide the policyholder with adequate reports on the insurance distribution activities . Those reports shall contain periodic communications to policyholders, taking into account the type and the complexity of insurance-based investment products involved and the nature of the insurance distribution activities undertaken for the policyholder and shall contain, if not already provided for in the annual statement referred to in Article 29, paragraphs 2 and 3, the fees associated with those insurance distribution activities.

Insurance intermediaries that directly charge fees to the policyholder shall provide adequate reports on the insurance distribution activities undertaken for the policyholder. Such a report shall include the nature of the insurance distribution activities undertaken by the insurance intermediary for the policyholder during the reporting period and the fees associated with those insurance distribution activities.

Member States shall ensure that insurance intermediaries or insurance undertakings, when providing advice on insurance-based investment products, provide the customer sufficiently before the conclusion of the contract and on a durable medium, with a suitability statement specifying the advice given and how that advice meets the preferences, objectives and other characteristics of the customer. The provision of such statement shall be made sufficiently in advance before the customer is bound by an insurance contract or offer to ensure that the customer gets enough time to review it, and where necessary, obtain additional information or clarifications from the insurance intermediary or insurance undertaking.

Member States shall ensure that where the insurance contract is concluded by means of distance communication which prevents the prior delivery of the suitability statement, the insurance intermediary or the insurance undertaking may provide the suitability statement on a durable medium immediately after the customer is bound by an insurance contract, provided that both of the following conditions are met:

(a) the customer has consented to receiving the suitability statement without undue delay after the conclusion of the contract;

(b) the insurance intermediary or insurance undertaking has given the customer the option of delaying the conclusion of the contract to receive the suitability statement in advance of such conclusion.

Member States shall ensure that where an insurance intermediary or an insurance undertaking has informed the customer that it will carry out a periodic assessment of suitability, the periodic report shall contain an updated statement of how the insurance-based investment product meets the customer's preferences, objectives and other characteristics of the customer.';

(d) the following paragraphs 5a, 5b and 5c are inserted:

'5a. Member States may impose stricter requirements on distributors in respect of the matters covered by this Article. In particular, Member States may make the provision of advice referred to in Article 30 mandatory for the sales of any insurance-based investment products, or for certain types of them.

Member States shall ensure that their stricter requirements referred to in the first subparagraph are complied with by all insurance intermediaries or insurance undertakings, including those operating under the freedom to provide services or the freedom of establishment, when concluding insurance contracts with customers having their habitual residence or establishment in that Member State.

5b. Member States shall require that, where an insurance intermediary distributing insurance-based investment products informs the customer that advice is given on an independent basis, the insurance intermediary:

(a) assesses a sufficiently large number of insurance products available on the market which are sufficiently diversified with regard to their type and product providers to ensure that the customer's objectives can be suitably met and shall not be limited to insurance products issued or provided by entities having close links with the insurance intermediary;

(b) not accept and retain inducements paid or provided by any third party or a person acting on behalf of a third party in relation to the provision of the service to customers.

This paragraph shall not prevent insurance intermediaries that are not employed by or contractually tied to an insurance undertaking, but receive inducements from the insurance undertaking and that fall within the scope of Article 29a, from presenting themselves as not contractually tied to a specific insurance undertaking.

5c. When providing investment advice to customers on an independent basis, the insurance intermediary may limit the assessment in relation to the type of insurance-based investment products mentioned in paragraph 5b, point (a), to well-diversified, cost-efficient and non-complex insurance-based investment products. Before accepting such service, the customer shall be duly informed about the possibility and conditions to get access to standard independent advice and the associated benefits and constraints.';

(e) paragraph 6 is replaced by the following:

‘6. The Commission shall be empowered to supplement this Directive by adopting delegated acts in accordance with Article 38 to further specify how insurance intermediaries and insurance undertakings are to comply with the principles set out in this Article when carrying out insurance distribution activities in relation to insurance-based investment products, including with regard to:

(a) the information to be obtained when assessing the suitability and appropriateness of insurance-based investment products for their customers;

(b) the criteria to assess non-complex insurance-based investment products for the purposes of paragraph 3, point (a)(ii), of this Article;

(c) the content and format of records and agreements in relation to the insurance distribution activities undertaken for the customers and of periodic reports to customers on those insurance distribution activities.

Those delegated acts shall take into account the nature of the services offered or provided to the customer, the nature of the products being offered or considered, including different types of insurance-based investment products and the retail or professional nature of the customer.’;

(23) Article 35(2) is amended as follows:

(a) point (a) is replaced by the following:

‘(a) specific procedures for the receipt of reports on potential or actual infringements and their follow-up, including the establishment of secure communication channels for such reports.’ ’;

(b) the following subparagraph is added:

‘The specific procedures referred to in point (a) shall also include the creation, on the front page of each competent authority’s website, of a link to a simple reporting form allowing any person to report potential or actual infringements to Union law. Member States shall require competent authorities to analyse, without undue delay, all reports submitted via that reporting form;’;

(24) the following Article 35a is inserted:

‘Article 35a

Procedure to address activities offered through digital means without authorisation or registration

1. Member States shall ensure that where a natural or legal person is pursuing insurance distribution activities online targeting customers within its territory without being registered in accordance with Article 3 of this Directive or authorised in accordance with Article 14 of Directive 2009/138/EC, or where a competent authority has reasonable grounds to suspect that such natural or legal person pursues such activities without being registered in accordance with Article 3 of this Directive or authorised in accordance with Article 14 of Directive 2009/138/EC, the competent authority takes all appropriate and proportionate measures to prevent the pursuit of these distribution activities, including related marketing communication, by resorting to the supervisory powers referred to in Article 12(3). Any such measures shall respect the principles of cooperation between Member States set out in this Directive.

2. Member States shall provide that competent authorities publish any decision imposing a measure pursuant to paragraph 1 in compliance with Article 32.

Competent authorities shall inform EIOPA of any decision referred to in paragraph 2 without undue delay. EIOPA shall establish an electronic database containing the decisions submitted by competent authorities, which shall be accessible to all competent authorities. EIOPA shall publish a list of all existing decisions, describing the natural or legal persons concerned and the types of services or products provided. The list shall be accessible to the public through a link on EIOPA's website. As regards natural persons, this list shall not lead to the publication of more personal data of those natural persons than that published by the competent authority pursuant to the first subparagraph, and in accordance with Article 32.';

(25) Article 38 is replaced by the following:

'Article 38

Delegated acts

The Commission shall be empowered to adopt delegated acts in accordance with Article 39 concerning Articles 10, 25, 26a, 28, 29a and 30.';

(26) Article 39 is amended as follows:

(a) the paragraphs 2 and 3 are replaced by the following:

‘2. The power to adopt delegated acts referred to in Articles 10, 25, 26a, 28, 29a and 30 shall be conferred on the Commission for an indeterminate period of time from 22 February 2016.

3. The delegation of power referred to in Articles 10, 25, 26a, 28, 29a and 30 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.’;

(b) the following paragraph 3a is inserted:

‘3a. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016.’;

(c) paragraph 5 is replaced by the following:

‘5. A delegated act adopted pursuant to Articles 10, 25, 26a, 28, 29a, 29b and 30 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of three months of notification of that act to the European Parliament and to the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by three months at the initiative of the European Parliament or of the Council.’;

(27) Annex I is amended in accordance with Annex III to this Directive.

ARTICLE 3

Amendments to Directive 2009/138/EC

Section 5 of Title II, Chapter 1, of Directive (EU) 2009/138 is amended as follows:

(1) the heading is replaced by the following:

‘Section 5

Cancelation right’;

(2) the following text is deleted:

‘Subsection 2

Non-life insurance’;

(3) Articles 183 and 184 are deleted;

(4) the following text is deleted:

‘Subsection 1

Life insurance’;

(5) Article 185 is deleted.

ARTICLE 4

Amendments to Directive 2009/65/EC

Directive 2009/65/EC is amended as follows:

(1) Article 14 is amended as follows:

(a) the following paragraphs 1a to 1g are inserted:

‘1a. For the purpose of paragraph 1, Member States shall require management companies to act in such a way as to prevent undue costs from being charged to the UCITS and its unit-holders.

The costs which comply with the following conditions shall be regarded as due:

(a) The costs are in line with disclosures in the prospectus referred to in Article 69 and the key investor information referred to in Article 78;

(b) The costs are necessary for the UCITS to operate in line with its investment strategy and objective or to fulfil regulatory requirements;

(c) The costs are borne by investors in a way that ensures fair treatment of investors.

1b. Member States shall require management companies to identify and quantify all costs borne by the UCITS or its unit-holders and to maintain, operate and review effective undue costs and value-for-money processes. Before the authorisation of the UCITS and throughout its life, management companies shall ensure that the following conditions are fulfilled:

(a) the costs are not undue;

(b) the UCITS offers value for money, by ensuring that the costs borne by retail investors are justified and proportionate, having regard to the characteristics of the UCITS, including its investment objective, strategy, performance , level of risks and other benefits.

1c. Member States shall ensure that management companies are responsible for the effectiveness and quality of their value-for-money assessment and undue costs processes. The value-for-money assessment and undue costs processes shall be clearly documented, shall clearly set out the responsibilities of the management bodies of the management company in determining and reviewing the costs borne by investors, and shall be subject to periodic review. The assessment of costs and value for money shall be based on objective criteria and methodology.

1d. Member States shall require management companies to assess at least annually whether undue costs have been charged to the UCITS or its unit-holders.

Member States shall require management companies to reimburse investors without undue delay where undue costs have been charged to the UCITS or its unit-holders.

Member States shall require management companies to report to the competent authorities of their home Member State and to the competent authorities of the home Member State of the UCITS, to the depositary and to the financial auditors of the UCITS, situations where undue costs have been charged to the UCITS or its unit-holders.

1e. Member States shall require management companies to assess at least annually the conditions mentioned in paragraph 1b, point (b). The assessment shall take into account the criteria set out in the value-for-money assessment process and shall be established through appropriate product testing and assessments, taking into account the specificities of the UCITS, including a market comparison with similar UCITS in the Union, subject to data availability, by comparing the costs and charges as well as the performance of the UCITS with the costs and charges and the performance of a peer group that consists of other UCITS with similar characteristics including, where relevant, the product type, similar levels of risk, strategy, objectives, range of recommended holding periods and sustainability features. The peer-group comparison, including the selection of UCITS with similar characteristics, shall be based on relevant and objective criteria and shall be documented. The compliance report to the management body shall systematically include information on product testing and assessments.

The peer-group comparison shall be performed using data made available according to paragraph 1g and included in information to be published according to Union law.

When a UCITS or its share classes, when they have different cost structures, is at a significant distance from the average of the peer group to the detriment of the client, the value for money shall be substantiated through additional testing and further assessments. Where necessary, the management company shall take appropriate actions to ensure value for money. The content of appropriate actions shall be determined by the management company while taking into account the relevant features of the UCITS or its share classes, when they have different cost structures, and the interest of the investor. The compliance report to the management body shall systematically include information on these additional testings and further assessments and their conclusions, including any actions to ensure value for money.

Member States may provide for a possibility for a management company to opt, for the purpose of the market comparison in its value-for-money assessment process, to compare a UCITS or its share classes, when they have different cost structures, with the relevant Union supervisory benchmark as referred to in paragraph 1f instead of a peer group.

If the management company opted to compare a UCITS or its share classes, when they have different cost structures, with the relevant Union supervisory benchmark, the management company shall, when a UCITS or its share classes, when they have different cost structures, falls outside the Union supervisory benchmark, substantiate the value for money through additional testing and further assessments. Where necessary, the management company shall take appropriate actions to ensure value for money. The content of appropriate actions shall be determined by the management company while taking into account the relevant features of the UCITS or its share classes, when they have different cost structures, and the interest of the investor. The compliance report to the management body shall systematically include information on these additional testings and further assessments and their conclusions, including on any actions to ensure value for money.

1f. In consultation with EIOPA and relevant stakeholders and in close and thorough cooperation with the competent authorities throughout the entire development and testing process, ESMA shall, where appropriate and feasible, develop Union supervisory benchmarks. Those benchmarks shall be developed per product cluster that contains a significant number of UCITS, or their share classes where they have different cost structures, that present similar characteristics including, where relevant, the product type, similar levels of risk, strategy, objectives, range of recommended holding periods and sustainability features. Union supervisory benchmarks shall only be made public and be applicable after a test demonstrating their relevance. The publication shall include the methodology and shall state the indicative nature of the benchmarks and their purpose as a supervisory tool. The purpose of those benchmarks shall be to provide competent authorities with a reference point for the supervision of the value for money of UCITS, or their share classes where they have different costs structures, by identifying outliers in the market.

Competent authorities shall verify that the value-for-money assessment process of management companies complies with the product governance requirements under paragraphs 1b, 1c, 1e and 2(e).

Union supervisory benchmarks shall allow to identify UCITS, or their share classes where they have different cost structures, that are at a significant distance from the average of the relevant product cluster to the detriment of the client with respect to costs and performance and thereby have an increased risk of poor value for money.

ESMA shall regularly update the Union supervisory benchmarks.

1g. Taking into account the methodology to perform the peer-group comparison as referred to in paragraph 2, point (e), ESMA shall make available data needed for the purpose of the peer-group comparison. Where appropriate, data that is not publicly available shall be anonymised or aggregated. ESMA shall regularly review the data.

The data shall be sourced from disclosure and reporting under Union law, including the reporting referred to in Article 20a.

ESMA shall provide access to the data on a non-discriminatory basis to manufacturers and distributors. ESMA may charge fees to manufacturers and distributors for this service that shall not exceed direct costs incurred by ESMA for the provision of this service. The fee structure shall, to the greatest extent possible, be proportionate to the volumes of data provided. ESMA shall provide access to this data to the following entities, to the extent necessary to fulfil their respective responsibilities, mandates and obligations:

(a) any Union institution, body, office or agency;

(b) any competent authority designated by a Member State pursuant to a Union legislative act;

(c) any member of the European Statistical System as defined in Article 4 of Regulation (EC) No 223/2009 of the European Parliament and of the Council;

(d) any governmental institution, body or agency of a Member State;

(e) any educational and training establishment for the sole purpose of research, academia, news organisations and non-governmental organisations insofar as access to the information is necessary in the performance of their tasks.

The entities referred to in point (b) shall have unrestricted access to the data on a non-anonymous and non-aggregated basis, to the extent necessary to fulfil their mandates. ESMA shall provide access to the data to the entities referred to in points (a) to (d) free of charge.

After having consulted EIOPA, the competent authorities and relevant stakeholders, ESMA shall develop draft regulatory technical standards to specify the data that is to be made available, how it is to be made available, the modalities of access and the fee structure. ESMA shall submit those draft regulatory technical standards to the Commission by [OJ: insert date of entry into force of the amending Directive + 24 months].

Power is conferred on the Commission to adopt those regulatory technical standards in accordance with Article 10 of Regulation (EU) No 1095/2010.

ESMA shall publish and make easily accessible on its website the fee structure and the rates. ESMA shall review the fee structure and the rates on an annual basis.'

(b) paragraph 2 is amended as follows:

(i) The introductory wording is replaced by the following:

‘Without prejudice to Article 116, the Commission shall adopt, by means of delegated acts in accordance with Article 112a, measures to ensure that the management company complies with the duties set out in paragraphs 1 to 1e in particular to:’;

(ii) point (b) is replaced by the following:

‘(b) specify the principles required to ensure that management companies employ effectively the resources and procedures that are necessary for the proper performance of their business activities;’

(iii) the following points (d) and (e) are added:

'(d) specify the minimum requirements for the undue costs process to prevent undue costs from being charged to the UCITS and its unit-holders, in particular, by:

(i) ensuring that costs are correctly identified and quantified, and comply with the requirements set out in paragraph 1a, point (a);

(ii) identifying which costs can be charged to the UCITS and its unit-holders taking into account the level of the costs and the nature of the costs by reference to a list of eligible costs that meet the conditions set out in paragraph 1a, points (b) and (c) , and the conditions under which competent authorities may authorise on a case-by-case basis costs which are not included in the list of eligible costs but that meet the conditions set out in paragraph 1a, points (b) and (c);

(iii) identifying potential conflict of interests and measures to mitigate the occurrence of conflicts of interest;

(iv) establishing a procedure to determine the level of compensation where undue costs have been charged to investors.

(e) specify the methodology to be used by management companies to perform the peer-group comparison.';

(c) the following paragraph 4 is added:

4. By [OJ: insert date of application of this amending Directive referred to in Article 6(2) + 5 years], competent authorities shall report to ESMA on:

(a) the impact and the added value of the peer-group comparison on the value for money of UCITS;

(b) the impact and the added value of Union supervisory benchmarks on the supervision of the value-for-money assessment process;

(c) the application of Union supervisory benchmarks in the value-for-money assessment process of management companies; and

(d) whether and how any national specific issues should be taken into account in order for all investors within the Union to be fairly and sufficiently protected, including concrete proposals how this should be done.

By [OJ: insert date date of application of this amending Directive referred to in Article 6(2) + 6 years], ESMA shall submit to the Commission a report analysing:

(a) the impact and the added value of the peer-group comparison and the Union supervisory benchmarks on the value for money of UCITS and on the supervision of the value-for-money assessment process in the Union, including the need to revise the framework;

(b) the application of Union supervisory benchmarks in the value-for-money assessment process of management companies;

(c) whether and how any national specific issues should be taken into account in order for all investors within the Union to be fairly and sufficiently protected; and

(d) whether and how to modify the approach to the data that is made available in accordance with paragraph 1g.

When drafting the report, ESMA shall coordinate with EIOPA.

By [OJ: insert date of application of this amending Directive referred to in Article 6(2) + 7 years], the Commission shall submit a report to the Council and the European Parliament presenting the conclusions of the review. If appropriate, the report shall be accompanied by legislative proposals.';

(2) the following point (f) is added to the second paragraph of Article 20a:

'(f) Information on the costs borne by investors and data on other characteristics, in particular the performance of the UCITS, at the level of each fund, or at the level of the UCITS share classes where those share classes have different cost structures.';

(3) In Article 20a, the fifth paragraph, point (a) is replaced by the following:

'(a) the details of the information to be reported in accordance with paragraph 1, paragraph 2, points (a), (b), (c), (e) and (f), and paragraph 4;';

(4) in Article 30, the second paragraph is replaced by the following:

'For the purpose of the Articles referred to in the first paragraph, 'management company' means 'investment company', with the exception of the second paragraph of Article 14(1d).';

(5) in Article 90, the following paragraph is added:

'This Article applies without prejudice to the application of Article 14.';

(6) in Article 98(2), the following point (n) is added:
'(n) require compensation to investors where undue costs have been charged to UCITS or its unit-holders.';

(7) in Article 99(6), the following point (n) is added:

'(n) require compensation to investors where undue costs have been charged to UCITS or its unit-holders.';

(8) in Article 112a(2), the following subparagraph is inserted after the fourth subparagraph:

'The power to adopt the delegated acts referred to in Article 14 shall be conferred on the Commission for a period of four years from [OJ: insert date of entry into force of this amending Directive].'

ARTICLE 5

Amendments to Directive 2011/61/EU

Directive 2011/61/EU is amended as follows:

(1) Article 12 is amended as follows:

(a) the following paragraphs 1a to 1g are inserted:

‘1a. For the purposes of paragraph 1, Member States shall require AIFMs to act in such a way as to prevent undue costs from being charged to the AIFs and their unitholders.

The costs which comply with the following conditions shall be regarded as due:

(a) The costs are in line with disclosures in the prospectus referred to in Article 23(3), the fund rules or instruments of incorporation as referred to in Article 23(1) and the key information document referred to in Article 5(1) of Regulation (EU) No 1286/2014;

(b) The costs are necessary for the AIF to operate in line with its investment strategy and objective or to fulfil regulatory requirements;

(c) The costs are borne by investors in a way that ensures fair treatment of investors, except for cases mentioned in Article 12 (1) where AIF rules or instruments of incorporation provide for a preferential treatment.

1b. Member States shall require AIFMs to identify and quantify all costs borne by the AIF or its unit-holders, and to maintain, operate and review effective undue costs and value-for-money processes. AIFMs shall ensure that the following conditions are fulfilled:

(a) the costs are not undue;

(b) the AIF offers value for money, by ensuring that the costs borne by retail investors are justified and proportionate, having regard to the characteristics of the AIF, including its investment objective, strategy, performance , level of risks and other benefits.

1c. Member States shall ensure that AIFMs are responsible for the effectiveness and quality of their value-for-money assessment and undue costs processes. The value-for-money assessment and undue costs processes shall be clearly documented, shall clearly set out the responsibilities of the management bodies of the AIFM in determining and reviewing the costs borne by investors, and shall be subject to periodic review. The assessment of costs and value for money shall be based on objective criteria and methodology.

1d. Member States shall require AIFMs to assess at least annually whether undue costs have been charged to AIF or its unit holders.

Member States shall require AIFMs to reimburse investors without undue delay where undue costs have been charged to the or its AIF unit-holders.

Member States shall require AIFMs to report to the competent authorities, of their home Member State, to the competent authority of the home Member State of the AIF, where applicable, to the depositary and to the financial auditors of the AIFMs and the AIF, where applicable, situations where undue costs have been charged to the AIF or its unit-holders.

1e. Member States shall require AIFMs to assess at least annually the conditions mentioned in paragraph 1b, point (b). The assessment shall take into account the criteria set out in the value-for-money assessment process and, for AIFs marketed to retail investors, shall be established through appropriate testing, taking into account the specificities of the AIF, including a market comparison with similar AIFs in the Union, subject to data availability, by comparing the costs and charges as well as the performance of the AIF with the costs and charges and the performance of a peer group that consists of other AIFs with similar characteristics including, where relevant, product type, similar levels of risk, strategy, objectives, range of recommended holding periods and sustainability features. The peer-group comparison, including the selection of AIFs with similar characteristics, shall be based on relevant and objective criteria and shall be documented. The compliance report to the management body shall systematically include information on product testing and assessments.

The peer-group comparison shall be performed using data made available according to paragraph 1g and included in information to be published according to Union law.

When an AIF or its share classes, when they have different cost structures, is at a significant distance from the average of the peer group to the detriment of the client, the value for money shall be substantiated through additional testing and further assessments. Where necessary, the management company shall take appropriate actions to ensure value for money. The content of appropriate actions shall be determined by the AIFM while taking into account the relevant features of the AIF or its share classes, when they have different cost structures, and the interest of the investor. The compliance report to the management body shall systematically include information on these additional testings and further assessments and their conclusions, including on any actions to ensure value for money.

Member States may provide for a possibility for an AIFM to opt, for the purpose of the market comparison in its value-for-money assessment process, to compare an AIF or its share classes, when they have different cost structures, with the relevant Union supervisory benchmark as referred to in paragraph 1f instead of a peer-group.

If the AIFM opted to compare an AIF or its share classes, when they have different cost structures, with the relevant Union supervisory benchmark, the AIFM shall, when an AIF or its share classes, when they have different cost structures, falls outside the Union supervisory benchmark, substantiate the value for money through additional testing and further assessments. Where necessary, the AIFM shall take appropriate actions to ensure value for money. The content of appropriate actions shall be determined by the AIFM while taking into account the relevant features of the AIF or its share classes, when they have different cost structures, and the interest of the investor. The compliance report to the management body shall systematically include information on these additional testings and further assessments and their conclusions, including on any actions to ensure value for money.

1f. In consultation with EIOPA and relevant stakeholders and in close and thorough cooperation with the competent authorities throughout the entire development and testing process, ESMA shall, where appropriate and feasible, develop Union supervisory benchmarks for AIFs marketed to retail investors, or their share classes where they have different cost structures. Those benchmarks shall be developed per product cluster that contains a significant number of AIFs, or their share classes where they have different cost structures, that present similar characteristics including, where relevant, the product type, similar levels of risk, strategy, objectives, range of recommended holding periods and sustainability features. Union supervisory benchmarks shall only be made public and be applicable after a test demonstrating their relevance. The publication shall include the methodology and shall state the indicative nature of the benchmarks and their purpose as a supervisory tool. The purpose of those benchmarks shall be to provide competent authorities with a reference point for the supervision of the value for money of AIFs, or their share classes where they have different cost structures, by identifying outliers in the market.

Competent authorities shall verify that the value-for-money assessment process of AIFMs complies with the product governance requirements under paragraphs 1b, 1c, 1e and 3(b).

Union supervisory benchmarks shall allow to identify AIFs, or their share classes where they have different cost structures, that are at a significant distance from the average of the relevant product cluster to the detriment of the client with respect to costs and performance and thereby have an increased risk of poor value for money.

ESMA shall regularly update the Union supervisory benchmarks.

1g. Taking into account the methodology to perform the peer-group comparison as referred to in paragraph 3, point (b), ESMA shall make available data for the purpose of the peer-group comparison. Where appropriate, data that is not publicly available shall be anonymised or aggregated. ESMA shall regularly review the data.

The data shall be sourced from disclosure and reporting under Union law, including the reporting referred to in Article 24.

ESMA shall provide access to the data on a non-discriminatory basis to manufacturers and distributors. ESMA may charge fees to manufacturers and distributors for this service that shall not exceed direct costs incurred by ESMA for the provision of this service. The fee structure shall, to the greatest extent possible, be proportionate to the volumes of data provided. ESMA shall provide access to this data to the following entities, to the extent necessary to fulfil their respective responsibilities, mandates and obligations:

(a) any Union institution, body, office or agency;

(b) any competent authority designated by a Member State pursuant to a Union legislative act;

(c) any member of the European Statistical System as defined in Article 4 of Regulation (EC) No 223/2009 of the European Parliament and of the Council;

(d) any governmental institution, body or agency of a Member State;

(e) any educational and training establishment for the sole purpose of research, academia, news organisations and non-governmental organisations insofar as access to the information is necessary in the performance of their tasks.

The entities referred to in point (b) shall have unrestricted access to the data on a non-anonymous and non-aggregated basis, to the extent necessary to fulfil their mandates. ESMA shall provide access to the data to the entities referred to in points (a) to (d) free of charge.

After having consulted EIOPA, the competent authorities and relevant stakeholders, ESMA shall develop draft regulatory technical standards to specify the data that is to be made available, how it is to be made available, the modalities of access and the fee structure.

ESMA shall submit those draft regulatory technical standards to the Commission by [OJ: insert date of entry into force of the amending Directive + 24 months].

Power is conferred on the Commission to adopt those regulatory technical standards in accordance with Article 10 of Regulation (EU) No 1095/2010.

ESMA shall publish and make easily accessible on its website the fee structure and the rates. ESMA shall review the fee structure and the rates on an annual basis.';

(b) paragraph 3 is replaced by the following:

'3. The Commission shall adopt, by means of delegated acts in accordance with Article 56 and subject to the conditions of Articles 57 and 58, measures specifying the criteria to be used by the relevant competent authorities to assess whether AIFMs comply with their obligations under paragraph 1 of this Article and measures to ensure that the AIFM complies with the duties set out in paragraphs 1 to 1e of this Article, in particular to:

(a) specify the minimum requirements for the undue costs process to prevent undue costs from being charged to the AIF and its unit-holders, in particular, by:

(i) ensuring that costs are correctly identified and quantified, and comply with the condition set out in paragraph 1a, point (a);

(ii) identifying which costs can be charged to the AIF and its unit-holders taking into account the level of the costs and the nature of the costs by reference to a list of eligible costs that meet the conditions set out in paragraph 1a, points (b) and (c), and the conditions under which competent authorities may authorise on a case-by-case basis costs which are not included in the list of eligible costs but that meet the conditions set out in paragraph 1a, points (b) and (c);

(iii) identifying potential conflict of interests and measures to mitigate the occurrence of conflicts of interest;

(iv) establishing a procedure to determine the level of compensation in case undue costs have been charged to investors.

(b) specify the methodology to be used by AIFMs to perform the peer-group comparison.';

(c) the following paragraph 4 is added:

'4. By [OJ: insert date of application of this amending Directive referred to in Article 6(2) + 5 years], competent authorities shall report to ESMA on:

(a) the impact and the added value of the peer-group comparison on the value for money of AIFs;

(b) the impact and the added value of Union supervisory benchmarks on the supervision of the value-for-money assessment process;

(c) the application of Union supervisory benchmarks in the value-for-money assessment process of AIFMs; and

(d) whether and how any national specific issues should be taken into account in order for all investors within the Union to be fairly and sufficiently protected, including concrete proposals how this should be done.

By … [date of application of this amending Directive referred to in Article 6(2) + 6 years], ESMA shall submit to the Commission a report analysing:

(a) the impact and the added value of the peer-group comparison and the Union supervisory benchmarks on the value for money of AIFs and on supervision of the value-for-money assessment process in the Union, including the need to revise the framework;

(b) the application of Union supervisory benchmarks in the value-for-money assessment process of AIFMs;

(c) whether and how any national specific issues should be taken into account in order for all investors within the Union to be fairly and sufficiently protected; and

(d) whether and how to modify the approach to the data that is made available in accordance with paragraph 1g.

When drafting the report, ESMA shall coordinate with EIOPA.

By [OJ: insert date of application of this amending Directive referred to in Article 6(2) + 7 years], the Commission shall submit a report to the Council and the European Parliament presenting the conclusions of the review. If appropriate, the report shall be accompanied by legislative proposals.';

(2) in Article 24(2), the following point(g) is added:

‘(g) information on the costs borne by investors and data on other characteristics, in particular the performance of the AIF, at the level of each AIF or at the level the AIF’s share classes where those share classes have different cost structures.’;

(3) In Article 24(5a), point (a) is replaced by the following:

‘(a) the details of the information to be reported in accordance with paragraph 1 and with paragraph 2, points (a), (b), (c), (e), (f) and (g);’;

(4) in Article 46(2), the following point (n) is added:

‘(n) require to compensate investors where undue costs have been charged to the AIF or its unit-holders.’;

(5) in Article 56(1), the following sentence is inserted after the first sentence:

‘The powers to adopt delegated acts referred to in Article 12 shall be conferred on the Commission for a period of 4 years from [OJ: insert date of entry into force of the amending Directive].’.

ARTICLE 6

Transposition

1. Member States shall adopt and publish, by [OJ please insert the date = 30 months after the date of entry into force of this Directive] at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.

2. They shall apply those provisions from [OJ please insert the date = 36 months after the date of entry into force of this Directive].

Notwithstanding the previous subparagraph, they shall not apply the laws, regulations and administrative provisions transposing (i) Article 24(5c) of Directive 2014/65/EU, as inserted by Article 1(12)(g) of this Directive, and (ii) Article 29(5) of Directive 2016/97 EU, as inserted by Article 2(44) of this Directive, until 12 months after the entry into force of the delegated acts referred to in the said provisions.

3. When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

4. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

ARTICLE 7

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union.*

ARTICLE 8

Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President

ANNEX I

In Annex II to Directive 2014/65/EU, the third subparagraph of section I is replaced by the following:

‘The entities referred to above are considered to be professionals. They must however be allowed to request non-professional treatment and investment firms may agree to provide a higher level of protection. Where the client of an investment firm is an undertaking referred to above, the investment firm must inform it prior to any provision of services that, on the basis of the information available to the investment firm, the client is deemed to be a professional client, and will be treated as such unless the investment firm and the client agree otherwise. In case of an ongoing relationship, the client should be clearly informed of any change in the categorisation during the relationship and the consequences thereof, including, when the client is considered to be a professional client, their right to request non-professional treatment.’;

In Annex II to Directive 2014/65/EU, Section II.1 is amended as follows:

(1) the fourth paragraph is replaced by the following:

‘The fitness test applied to managers and directors of entities authorised under the present Directive or other EU Directives in the financial field could be regarded as an example of the assessment of expertise and knowledge.’;

(2) the fifth paragraph is amended as follows:

(1) the first, second and third indents are replaced by the following:

‘- the client has carried out, in significant size, on the relevant market at least 15 transactions per year over the last three years. Monthly transactions in an investment plan are considered as only one transaction, unless they are of significant size;

- the size of the client’s financial instrument portfolio, defined as including cash deposits and financial instruments, has on average over the last three years, preceding that client's request to be classified as professional client, exceeded EUR 250 000, as demonstrated by annual statements or, where not available, other periodic statements of financial position;
- the client works or has worked in the financial sector or undertaken capital market activities requiring them to buy and sell financial instruments and/or to manage a portfolio of financial instruments for at least one year in a professional position which requires knowledge of the transactions or services envisaged, or the client can provide the firm with proof of recognised education or training that evidences an understanding of the relevant transactions or services envisaged and the ability to evaluate the risks adequately.’;

(3) the following paragraphs are inserted after the fifth paragraph:

‘Where the client is a legal entity, as a minimum, two of the following criteria shall be met:

- balance sheet total: EUR 10 000 000
- net turnover: EUR 20 000 000
- own funds: EUR 1 000 000

The investment firm shall assess whether the natural persons which represent the legal entity understand the relevant transactions and investment services , are authorised and capable of making investment decisions in line with the legal entity's objectives, corporate purposes, needs and financial capacity and are able to evaluate the risks adequately. The investment firm shall establish and implement a policy as to how the initial assessment and, where needed, subsequent assessments in case of changes in the natural persons representing the legal entity, will be done in practice, including, from whom information about knowledge and experience should be collected and, to the extent possible, taking into account, amongst others, the activities and the organisation of the legal entity. The investment firm shall keep a record of this policy.'.

ANNEX II

'Annex V

Minimum professional knowledge and competence requirements

(as referred to in Article 24d(2))

(a) understand the key characteristics, risks and features of the financial instruments being offered or recommended, including any general tax implications to be incurred by the client in the context of transactions;

(b) understand the total costs and charges to be incurred by the client in the context of the type of investment product being offered or recommended and the costs related to the provision of the advice and any other related services being provided;

(c) understand how the type of investment product provided by the firm may not be suitable for the client, having assessed the relevant information provided by the client against changes that have occurred since the relevant information was gathered;

(d) understand how financial markets function and how they affect the value and pricing of financial instruments offered or recommended to clients;

(e) understand the impact of macro-economic developments, national/regional/global events on financial markets and on the value of financial instruments being offered or recommended to clients;

(f) understand the difference between past performance and future performance scenarios as well as the limits of forecasting;

(g) understand the general implications of the main elements of the financial regulatory framework;

(h) assess data relevant to financial instruments offered or recommended to clients such as key information documents, prospectuses, financial statements, or financial data;

(i) understand specific market structures for the type of financial instruments offered or recommended to clients;

(j) understand the valuation principles for the type of financial instruments offered or recommended to clients;

(k) understand the fundamentals of managing a portfolio, including being able to understand the implications of diversification regarding individual investment alternatives;

(l) understand the concept of sustainable investment and how to consider and integrate sustainability factors and client's sustainability preferences into the advisory processes.'

ANNEX III

(1) Part II of Annex I to Directive (EU) 2016/97 is amended as follows: point (a) is replaced by the following:

‘(a) minimum necessary knowledge of the key characteristics, risks and features of insurance-based investment products, including terms and conditions and net premiums and, where applicable, guaranteed and non-guaranteed benefits as well as the financial risks borne by policyholders and any general tax implications to be incurred by the client;’;

(2) the following point (aa) is inserted:

‘(aa) minimum necessary knowledge of the total costs and charges to be incurred by the client in the context of the type of insurance-based investment product being offered or recommended and the costs related to the provision of the advice and any other related services being provided;’;

(3) point (c) is replaced by the following:

‘(c) minimum necessary financial competency, including:

(i) understanding how financial markets function and how they affect the value and pricing of financial instruments offered or recommended to clients;

(ii) understanding the impact of macro-economic developments, national/regional/global events on financial markets and on the value of financial instruments being offered or recommended to clients;

(iii) understanding of the difference between past performance and future performance scenarios as well as the limits of forecasting;

(iv) understanding of specific market structures for the type of financial instruments offered or recommended to clients;

(v) understanding of the valuation principles for the type of financial instruments offered or recommended to clients;';

(4) the following points (fa) and (fb) are inserted:

'(fa) minimum necessary knowledge to assess data relevant to the insurance-based investment products offered or recommended to clients such as key information documents, prospectuses, financial statements, or financial data;

(fb) minimum necessary knowledge of the general implications of the main elements of the financial regulatory framework;';

(5) point (i) is replaced by the following:

‘(i) minimum necessary knowledge of assessing customer needs, including understanding of how the type of insurance-based investment product provided by the firm may not be suitable for the client, having assessed the relevant information provided by the client against changes that have occurred since the relevant information was gathered;’;

(6) the following point (ia) is inserted:

‘(ia) understanding the concept of sustainable investment and how to consider and integrate sustainability factors and customer’s sustainability preferences into the advisory processes;’

(7) point (l) is deleted.