

RIS: Omnibus Directive

Part I: RECITALS

Deadline for comments: 16 August 2024 COB

	Commission Proposal	EP Mandate	Council Mandate	MS comments
1	2023/0167 (COD)	2023/0167 (COD)	2023/0167 (COD)	
2	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 (Text with EEA relevance)	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 (Text with EEA relevance)	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 (Text with EEA relevance)	
3	THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,	THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,	THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,	
4	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 Treaty on the Functioning of the European Union, and in particular Article 53(1) and Article 62 thereof,	Having regard to the Treaty on the Functioning of the European Union, and in particular Article 53(1) and Article 62 thereof,	

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5	Having regard to the proposal from the European Commission,	Having regard to the proposal from the European Commission,	Having regard to the proposal from the European Commission,	
6	After transmission of the draft legislative act to the national parliaments,	After transmission of the draft legislative act to the national parliaments,	After transmission of the draft legislative act to the national parliaments,	
7	Having regard to the opinion of the European Economic and Social Committee ¹ , <u>1. OJ C , , p. .</u>	Having regard to the opinion of the European Economic and Social Committee ¹ , <u>1. OJ C , , p. .</u>	Having regard to the opinion of the European Economic and Social Committee ¹ , <u>1. OJ C , , p. .</u>	
8	Acting in accordance with the ordinary legislative procedure,	Acting in accordance with the ordinary legislative procedure,	Acting in accordance with the ordinary legislative procedure,	
9	Whereas:	Whereas:	Whereas:	
10	(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	(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	(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	

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	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.	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.	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.	
11	(2) Directives (EU) 2009/65/EC¹, 2009/138/EC², 2011/61/EU³, 2014/65/EU⁴ and (EU) 2016/97⁵ 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	(2) Directives (EU) 2009/65/EC¹, 2009/138/EC², 2011/61/EU³, 2014/65/EU⁴ and (EU) 2016/97⁵ 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	(2) Directives (EU) 2009/65/EC¹, 2009/138/EC², 2011/61/EU³, 2014/65/EU⁴ and (EU) 2016/97⁵ 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	

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	investment advice process. 1. 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). 2. 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). 3. 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). 4. 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). 5. 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).	investment advice process. 1. 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). 2. 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). 3. 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). 4. 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). 5. 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).	investment advice process. 1. 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). 2. 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). 3. 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). 4. 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). 5. 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).	
12	(3) Third party payments, such as fees, commissions or any monetary or non-monetary benefits paid to or received by investment firms and insurance undertakings and intermediaries by or from persons other than the client or customer,	(3) Third party payments, such as fees, commissions or any monetary or non-monetary benefits paid to or received by investment firms and insurance undertakings and intermediaries by or from persons other than the client or customer,	(3) ~~Third party~~ <u>Third-party</u> payments, such as fees, commissions or any monetary or non-monetary benefits paid, <u>provided to</u> or received by investment firms and insurance undertakings and intermediaries, <u>to</u>	

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	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. 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, and propose alternative measures in line with Better Regulation rules, including a potential ban on inducements, if appropriate.	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~~<u>2014/65/EU</u> 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. 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~~<u>introduce rules that better frame the current advice environment by ensuring that financial intermediaries provide more transparent, understandable and tailored advice to clients and consumers. This should</u> ensure ~~better protection of retail investors and, at a second stage, to review the~~	~~by~~ or from persons other than the client or customer, <u>which in the case of insurance-based investment products also includes payments between the insurance undertaking and the insurance distributor</u>, 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. 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, ~~and propose~~	

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		~~effectiveness of the framework, and propose alternative measures in line with~~ <u>that clients and consumers are being offered products suitable to their needs and that they</u> better ~~Regulation rules, including a potential ban on inducements, if appropriate~~ <u>understand the advice they receive.</u>	~~alternative measures in line with Better Regulation rules, including a potential ban on inducements, if appropriate.~~	
13	(4) In order to remove any consumer detriment as a consequence of the payment and receipt of inducements for non-advised sales, it is appropriate to prohibit the payment and receipt of such inducements. In the case of Directive (EU) 2014/65, such prohibition would cover the execution or reception and transmission of orders and in the case of Directive (EU) 2016/97, non-advised sales. To avoid restricting issuers' ability to raise funding, that prohibition should not apply to payments in relation to underwriting and placement services provided to an issuer, where the investment firm also provides an execution of order or reception and transmission of order service to an end-investor. Furthermore, investment advice is often combined with the provision of an execution or reception and	deleted	(4) ~~In order to remove any consumer detriment as a consequence of the payment and receipt of inducements for non-advised sales, it is appropriate to prohibit the payment and receipt of such inducements. In the case of Directive (EU) 2014/65, such prohibition would cover the execution or reception and transmission of orders and in the case of Directive (EU) 2016/97, non-advised sales. To avoid restricting issuers' ability to raise funding, that prohibition~~ <u>Minor non-monetary benefits of a total value below EUR 100 per annum per third party should qualify as acceptable benefits and</u> should ~~not~~ ~~apply to payments in relation to underwriting and placement services provided to an issuer~~ <u>be allowed without any further assessment,</u> ~~where the investment firm also provides an execution of~~	

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	transmission of order service. In such cases, the main service being investment advice, the prohibition should not apply to the execution or reception and transmission of order service relating to one or more transactions of that client covered by that advice. Minor non-monetary benefits which do not exceed 100 euros or 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 be allowed, to the extent that they are clearly disclosed.		~~order or reception and transmission of order service to an end investor. Furthermore, investment advice is often combined with the provision of an execution or reception and transmission of order service. In such cases, the main service being investment advice, the prohibition should not apply to the execution or reception and transmission of order service relating to one or more transactions of that client covered by that advice~~ <u>extent that they are clearly disclosed</u> . Minor non-monetary benefits <u>exceeding EUR 100</u> , which ~~do not exceed 100 euros~~ ~~or~~ 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 <u>also</u> be allowed, to the extent that they are clearly disclosed.	
14	(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	(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~~ <u>assess a sufficiently large number of insurance products</u>	(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	

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	customers from accepting inducements, provided that the advice is not presented as independent, customers are informed of the inducements in line with applicable transparency requirements and that other legal requirements, including the requirement to act in the best interest of the customer, are complied with.	<u>available on the market</u> . This rule should not prevent insurance intermediaries offering advice to customers from accepting inducements, provided that the advice is not presented as independent, customers are informed of the inducements in line with applicable transparency requirements and that other legal requirements, including the requirement to act in the best interest of the customer, are complied with. <u>In view of the diversity of insurance distribution structures in Member States, it should also not prevent insurance intermediaries whose legal status qualifies them as independent, from presenting themselves as not contractually tied to a specific insurance undertaking if they indicate that they receive inducements.</u>	customers from accepting inducements, provided that the advice is not presented as independent, <u>that</u> customers are informed of the inducements in line with applicable transparency requirements and that other legal requirements, including the ~~requirement~~ <u>safeguards</u> to act in the best interest of the customer, are complied with.	
15	(6) 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 customer, have not	(6) The existing safeguards conditioning the payment or receipt of inducements, which under Directive ~~(EU) 2014/65~~ <u>2014/65/EU</u> 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	(6) 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 <u>client or</u> customer,	

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	been sufficiently effective in mitigating conflicts of interest. It is therefore appropriate to remove those criteria and introduce a new, common test, both in Directive (EU) 2014/65 and Directive (EU) 2016/97, that further clarifies how financial advisors should apply the principle of acting in the best interest of the client. Financial advisors should base their advice on an appropriate range of financial products. After having identified suitable instruments for their clients, they should recommend the most cost-efficient of similar products to their clients. Furthermore, financial advisors should also systematically recommend at least one product without features that may not be necessary for the achievement of the client's investment objective, so that retail investors are presented also with alternative and possibly cheaper options to consider. Such features may include, as an example, funds with an investment strategy which implies higher costs, a capital guarantee and structured products with hedging elements. If advisors choose to also recommend a product that carries additional features which carry extra costs to the client or customer, they should explicitly provide the reason for such a recommendation and disclose the extra costs incurred. In the case	customer, have not been sufficiently effective in mitigating conflicts of interest. It is therefore ~~appropriate~~<u>proposed</u> to remove those criteria and introduce a new, common test, both in Directive ~~(EU) 2014/65~~<u>2014/65/EU</u> and Directive (EU) 2016/97, that further clarifies how financial advisors should apply the principle of acting in the best interest of the client <u>or customer</u>. Financial advisors should base their advice on an appropriate range of financial products. ~~After having identified suitable instruments for their clients, they should recommend the most cost-efficient of similar~~ <u>suited to the client's or customer's needs. The range of financial products to their offered should take into account the business model of the firm and the investment objectives of the client or customer. The best interest of clients. Furthermore and customers is broader than costs. Therefore,</u> financial advisors should ~~also systematically,~~ <u>after having identified instruments suited to their clients' or customers' needs,</u> recommend ~~at least one~~<u>the most efficient</u> product ~~without~~<u>among products offering similar</u> features ~~that may not be necessary for the achievement of the client's investment objective, so that retail investors are presented also with~~	have not <u>always</u> been sufficiently effective in mitigating conflicts of interest. It is therefore appropriate to ~~remove those criteria and~~ introduce <u>some general overarching principles to be respected at all times and</u> a new, common <u>"inducements"</u> test, both in Directive (EU) 2014/65 and Directive (EU) 2016/97, that further clarifies ~~how financial advisors should apply the principle of acting in the criteria for inducements~~ <u>(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</u> the best interest of ~~the client. Financial advisors should base their advice on an appropriate range of financial products. After having identified suitable instruments for their clients, they should recommend the most cost-efficient of similar products to their clients. Furthermore, financial advisors should also systematically recommend at least one product without features that may not be necessary for the achievement~~ <u>The words "where applicable" included with regard to the criteria</u> of the ~~client's investment objective, so that retail investors are presented also~~	

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	of insurance-based investment products, advisors should also ensure that the insurance cover included in the product is consistent with the customer's insurance demands and needs.	~~alternative and possibly cheaper options to consider. Such features may include, as an example, funds with an investment strategy which implies higher costs, a capital guarantee and structured products with hedging~~ <u>to their clients and customers, taking into consideration its performance, level of risk, qualitative elements, costs and charges reported pursuant to Article 16-a.</u> If advisors choose to ~~also~~ recommend ~~aan~~ <u>equivalent</u> product ~~that carries additional features which carry extra~~ <u>with higher</u> costs to the client or customer, they should ~~explicitly~~ provide ~~the reason~~ <u>an objective justification</u> for such ~~a~~ recommendation and ~~disclose the extra costs incurred~~ <u>keep the record of that justification. Financial advisors should not place the interest of their firm ahead of the interest of their clients and customers.</u> In the case of insurance-based investment products, advisors should also ensure that the insurance cover included in the product is consistent with the <u>client's or</u> customer's insurance demands and needs. <u>In case that none of the products is in the best interest of the client or customer, financial advisors should refrain from giving advice or making a recommendation.</u>	~~with alternative and possibly cheaper options to consider. Such features may include, as an example, funds with~~ <u>an "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 strategy which implies higher costs, a capital guarantee and structured products with hedging elements. If advisors choose to also recommend a product that carries additional features which carry extra costs to the client or customer, they should explicitly provide the reason for such a recommendation and disclose the extra costs incurred <u>firm, insurance undertaking or insurance intermediary to its competent authority. In the case of insurance-based Investment products, advisors</u> <u>firms, insurance undertakings and insurance intermediaries</u> should ~~also~~ <u>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</u> ensure that <u>they comply with the overarching principles.</u></u>	

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			<u>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 insurance cover included in the product is consistent 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 customer's insurance demands and needs 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.</u>	

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 (Text with EEA relevance) 2023/0167(COD) 28-06-2024 at 13h45 11/74

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15a			<u>(6a) 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</u>	

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			<u>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.</u> <u>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</u>	

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			<u>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.</u>	
16	(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.	(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.	(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.	
17	(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	<i>deleted</i>	(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	

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	cost-efficient products based on a more limited set of data collected for the suitability assessment. 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.		cost-efficient products based on a more limited set of data collected for the suitability assessment. <u>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.</u> 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.	
18	(9) In order to assess the effectiveness of these measures, three 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 third-party payments on retail investments which, where necessary, should be accompanied by proposals to further	(9) In order to assess the effectiveness of these measures, ~~three~~ <u>five</u> years after the ~~date of entry into force of this~~ <u>adoption of the regulatory technical standards referred to in Article 16(12) of Directive 2014/65/EU and in Article 25(10) of Directive (EU) 2016/97</u> , and after having consulted the European Securities and Markets Authority ('ESMA') and European Insurance and Occupational Pensions Authority ('EIOPA'), the Commission should	(9) In order to assess the effectiveness of these measures, ~~three~~ <u>five</u> 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 ~~third-party payments~~ <u>inducements</u> on retail investments which, where necessary, should be accompanied	

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	strengthen the framework.	prepare a report ~~on the effects of third-party payments on~~ <u>assessing strengthened product governance requirements, the potential conflict of interests associated with inducements, the evolution of costs, the overall level of</u> retail-investments which, where <u>investment in capital markets, consumer protection, the relevance of distribution rules and the implementation of financial literacy measures. If the Commission's assessment does not show that the new provisions have led to positive change for consumers, the Commission may propose amendments to this Directive, if necessary, should be accompanied by proposals to further strengthen the framework.</u>	by proposals to further strengthen the framework.	
19	(10) The level of costs and charges associated with investment and insurance-based investment products 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 firms authorised under Directive (EU) 2014/65 or Directive (EU) 2016/97 to manufacture or distribute	(10) <u>Both quantitative and qualitative elements, which may include sustainability factors and financial guarantees, and</u> the level of costs and charges ~~associated with~~ <u>that are related to</u> investment and insurance-based investment products, 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	(10) The level of costs and charges associated with investment and insurance-based investment products <u>intended for distribution to retail investors</u> 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~~ <u>value-for-money</u> for retail investors, Member States should ensure that ~~firms authorised~~ <u>economic operators</u>	

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	investment products have clear pricing processes that enable a clear identification and quantification of all costs charged to retail investors and 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 and expected performance of the product.	States should ensure that firms authorised under Directive ~~(EU) 2014/65~~ <u>2014/65/EU</u> or Directive (EU) 2016/97 to manufacture or distribute investment products have clear pricing processes that enable a clear identification and quantification of all costs charged to retail investors and 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~~ <u>having regard to the target market's objectives and needs, and the product's</u> characteristics, objectives, strategy and ~~expected performance of the product~~ .	<u>entitled</u> under Directive ~~(EU) 2014/65~~ <u>2009/138/EC, Directive 2014/65/EU</u> or Directive (EU) 2016/97 to manufacture or distribute <u>packaged retail</u> investment products have clear ~~pricing~~ <u>value-for-money assessment</u> processes that enable a clear identification and quantification of all costs charged to retail investors and <u>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</u> 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 ~~and expected~~ <u>the performance and the other benefits</u> of the product.	
19a		<u>(10a) The access to, use of and expenses for financial and non-financial market data necessary to provide investment services and to manufacture and distribute financial products are an important portion of the costs borne by investment firms.</u>		

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		<u>representing therefore a significant proportion of the total charges paid by retail investors. This is why the Commission should be mandated to prepare a report five years after the entry into force of this Directive, after consulting ESMA and national competent authorities, to assess whether providers of financial and non-financial market data should be included in the scope of this Directive.</u>		
20	(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. Building on those assessments, distributors should make similar assessments, so that the costs of distribution and other costs not already included in the manufacturer's assessment are additionally taken into account.	(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 <u>in the context of the overall value delivered.</u> – Building on those assessments, distributors should make similar assessments, so that the costs of distribution and other costs not already included in the manufacturer's assessment are additionally taken into account.	(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, <u>in relation to the performance and other benefits and characteristics of investment products covered by the packaged retail investment product.</u> – Building on those assessments, distributors should make ~~similar~~ <u>their own</u> assessments, so that the costs of distribution and other costs not already included in the manufacturer's assessment are additionally taken into account.	
21				

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	(12) The pricing 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.	(12) The pricing 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.	(12) The ~~pricing~~ <u>value-for-money assessment</u> 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.	
21a			<u>(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</u>	

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			<u>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</u>	

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			<u>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.</u> <u>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</u>	

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			<u>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.</u>	
21b			<u>(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.</u>	

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21c			<u>(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</u>	

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			<u>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-</u>	

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22	(13) To make the pricing process more objective and to equip manufacturers, distributors and competent authorities with a tool allowing for an efficient comparison of costs among investment products from the same product type, both ESMA and EIOPA should develop benchmarks, based on data related to the cost and performance of investment products, which should be taken into consideration by manufacturers and distributors in their pricing processes. If the result of the comparison with a relevant benchmark indicates that the costs and performance for investors are not aligned to the benchmark, the product should not be marketed to retail investors, unless additional testing and further assessments have established that the product nevertheless offers Value for Money to the target market, for example in the case of a product containing additional special features that would be considered relevant for a particular group of investors with identified specific needs and objectives, but which are not reflected in the description of the group of investment products for which the benchmark was	(13) To make the pricing process more objective and to equip manufacturers, distributors and competent authorities with a tool allowing for an efficient comparison of costs among investment products from the same product type, both ESMA and EIOPA should, <u>after consulting the national competent authorities and on the basis of industry testing</u>, develop <u>common European</u> benchmarks, ~~based on data related to the cost and performance of~~ <u>for products manufactured and distributed in more than one Member State. The benchmarks should be used solely by national competent authorities as a supervisory tool to perform the assessment of the qualitative and quantitative features of the products and to identify potential outliers on the market. As a supervisory tool, those benchmarks should not be disclosed publicly and should take into account the qualitative and quantitative features of financial instruments and insurance-based</u> investment products. <u>However, in order to ensure that the supervisory process is transparent and to facilitate insurance manufacturers' value-</u>	<u>money process.</u> (13) ~~To make the pricing process more objective and~~ To equip ~~manufacturers, distributors and~~ competent authorities with a tool allowing for an efficient ~~comparison of costs among~~ <u>identification of investment products from the same product type with increased risk of poor value for money</u>, both ESMA and EIOPA should develop <u>Union supervisory</u> benchmarks, based on data related to the cost and performance of investment products, ~~which. Those benchmarks should be taken into consideration by manufacturers and distributors in their pricing processes. If the result~~ <u>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</u> of the ~~comparison with a relevant benchmark indicates that the costs and performance for investors are not aligned to product cluster to the detriment of the client. Falling outside~~ the	

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	developed.	<u>for-money assessment, national competent authorities are allowed to share with insurance</u>, ~~which should be taken into consideration by manufacturers and distributors in their pricing processes~~ <u>the relevant benchmarks for that market</u>. If the ~~result of the comparison with~~ <u>product deviates from</u> a relevant benchmark ~~indicates that the costs and performance for investors are not aligned to the benchmark~~, <u>national competent authorities should have the power to take the necessary corrective actions, including requiring the firm to provide a justification for such deviation, requiring the firm to correct its approach to comply with</u> the product ~~should not be marketed to retail investors, unless additional testing and further assessments have established~~ <u>governance requirements and, as a last resort measure, requiring</u> that the product ~~nevertheless offers Value for Money to the target~~ <u>be removed from the</u> market, ~~for example in the case of a product containing additional special features that would be considered relevant for a particular group of investors with identified specific needs and objectives, but which are not reflected in the description of the group of investment products for which the~~	benchmark, ~~the product~~ should ~~not be marketed to retail investors, unless additional testing and further assessments have established~~ <u>be an indication for competent authorities</u> that the <u>investment product nevertheless offers</u> <u>has an increased risk of poor</u> value for money. <u>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</u> to the ~~target market, for example in the case of a product containing additional special features that would be considered~~ <u>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</u>	

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		<i>benchmark was developed if necessary.</i>	<u>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</u> ~~for a particular group of investors with identified specific needs and objectives, but which are not~~ <u>Union supervisory benchmarks, EIOPA should consider whether and how insurance-based investment products covered by national benchmarks should be reflected in</u> ~~the description of the group~~ <u>those Union supervisory benchmarks. When developing the Union supervisory benchmarks, ESMA and EIOPA should ensure that they allow for a fair identification</u> of investment products <u>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</u> ~~for which the benchmark was developed.~~	
22a				

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		<u>(13a) Products that are manufactured and distributed in just one Member State should be subject to national benchmarks developed by national competent authorities, following the Union regulatory technical standards, adopted on the basis of drafts developed by ESMA and EIOPA.</u>	<u>(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</u>	

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			<u>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.</u>	
22b		<u>(13aa) Benchmarks should not, in any way, lead to a price regulation but should allow for better supervision of the products on the market, with the aim to identify potential outliers and ensure the rectification for the benefit of customers and clients.</u>		
22c		<u>(13ab) As part of the product governance requirements, manufacturers and distributors of packaged retail investment products should perform peer-grouping evaluation of their financial instruments, based on a peer group defined by the</u>		

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		<u>investment firm and by the insurance undertaking or intermediary respectively, in accordance with the criteria defined in guidelines to be developed by ESMA and EIOPA. In this assessment, distributors may rely on the manufacturer's peer grouping analysis. Additionally, manufacturers should also perform a peer analysis of past performance of their products, and distributors should also perform a peer analysis of services costs.</u>		
22d		<u>(13b) To ensure that product governance processes deliver fair value relative to costs and meet the objectives, needs and characteristics of the target market, the product approval process should consider benefits expected to be provided by the investment, when considering the risk profile and the total costs to the clients or customers as defined in Article 50 and Annex II of Commission Delegated Regulation (EU) 2017/565. The benefits should be reasonable, relevant and of a qualitative and quantitative nature, and should not solely be a return expectation after costs but could also be other services provided by</u>	<u>(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</u>	

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		<u>the investment firm.</u>	<u>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.</u>	
23	(14) To assist manufacturers and distributors in their assessments, the	(14) To assist manufacturers and distributors in their assessments, ~~the~~	(14) <u>In order</u> to assist manufacturers and distributors in	

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	Commission should be empowered to adopt delegated acts to specify the criteria to be used in determining whether costs and performance are justified and proportionate.	~~Commission~~ <u>ESMA and EIOPA, after having consulted national competent authorities and after industry testing,</u> should ~~be empowered to adopt delegated acts~~ <u>develop guidelines</u> to specify the criteria to be used in determining whether costs and performance are justified and proportionate.	their assessments, the ~~Commission~~ <u>power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union</u> should be ~~empowered to adopt~~ delegated ~~acts to specify the criteria~~ <u>to the Commission in respect of the specification of the methodology</u> to be used <u>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</u> ~~in determining whether~~ costs and ~~performance are justified~~ <u>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</u>	

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			<u>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.</u>	
24	(15) To enable ESMA and EIOPA to develop reliable benchmarks, based on reliable data, manufacturers and distributors of investment products should be required to report necessary data to	(15) To enable ESMA and EIOPA to develop reliable benchmarks, based on reliable data, manufacturers and distributors of investment products should be required to report necessary data to	(15) ~~To enable ESMA and EIOPA to develop reliable benchmarks, based on reliable data, manufacturers and distributors of investment products~~ <u>For derivatives and specific types of transferable</u>	

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	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 disclosure and reporting obligations stemming from EU law. ESMA and EIOPA should develop regulatory technical standards to determine the data sets, data standards and methods and formats for the information to be reported.	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 disclosure and reporting obligations stemming from EU law. ESMA and EIOPA should develop regulatory technical standards to determine the ~~data sets, data standards and methods and~~ formats, <u>frequency and starting date</u> for the information to be reported.	<u>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</u> should be ~~required to report necessary data to competent authorities, for onward transmission to ESMA and EIOPA. To limit,~~ <u>performed with respect to costs and charges only. This should also apply</u> to the ~~greatest extent possible, costs related to the new reporting obligations and to avoid unnecessary duplication, data sets~~ <u>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</u> should ~~as far as possible be based on disclosure and reporting obligations stemming from EU law~~ <u>only be performed in relation to costs and charges.- ESMA and EIOPA should develop regulatory technical standards to determine the data sets, data standards and methods and formats for the information to be reported.</u>	
25	(16) Certain manufacturers of financial instruments that fall under the definition of packaged retail	<i>deleted</i>	(16) Certain manufacturers of financial instruments that fall under the definition of packaged retail.	

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	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.		<u>investment</u> 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.	
26	(17) In view of the extent of diversity of retail investment product offerings, the development of 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.	(17) In view of the extent of diversity of retail investment product offerings, the development of 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. - <u>Benchmarks should be regularly updated, taking into account market developments.</u>	(17) In view of the extent of diversity of retail investment product offerings, the development of <u>Union supervisory</u> 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.	

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27	(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 pricing 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.	(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~~ <u>maintain a pricing process that ensures that investors are not charged any costs that are undue, and that any costs that are borne by investors are justified and proportionate in the context of the overall value delivered to unit-holders.</u> ~~pricing 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.~~	(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 ~~pricing~~ <u>undue costs</u> 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.	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
28	(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.	(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~~ <u>procedure to determine the level of compensation where undue costs have been charged</u> should be ~~added as a possible administrative measure and sanction so that this possibility exists in all Member States~~ <u>established on the basis of the national competent authorities' existing guidelines on indemnification procedures</u>.	(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.	
29	(20) The pricing 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	(20) The pricing process under Directives 2009/65/EC and 2011/61/EU should ensure that costs borne by retail investors are justified and proportionate <u>in the context of the overall value delivered to unit-holders and</u>	(20) The ~~pricing~~ <u>value-for-money assessment</u> 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	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
	objective and strategy, level of risk and expected returns 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 pricing process. In particular, they should ensure that costs are comparable to market standards, including by comparing the costs of funds with similar investment strategies and characteristics available on publicly available databases. However, to make the pricing process more objective and to equip UCITS and AIFs management companies, and competent authorities with a tool allowing for an efficient comparison of costs among investment products from the same product type, ESMA should develop benchmarks, based on data related to the cost and performance of investment products that ESMA receives as part of the supervisory reporting, against which an assessment of Value for Money can be carried out, in addition to the other criteria included in the pricing process of UCITS and AIFs management companies. Considering the Commission's priority to avoid unnecessary administrative burdens and to simplify reporting requirements, those benchmarks should build on	<u>having regard</u> to the characteristics of the product, and in particular to the investment objective, <u>policy</u> and strategy, level of risk and expected returns 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 pricing process. In particular, they should ensure that costs are comparable to <u>similar</u> market ~~standards~~ <u>products</u>, including by comparing the costs of funds with similar <u>characteristics in terms of</u> investment strategies, <u>objectives, level of risk and other-and</u> characteristics ~~available on publicly available databases. However, to make the pricing process more objective and to equip UCITS and AIFs management companies, and~~ <u>National</u> competent authorities ~~with a tool allowing for an efficient comparison of costs among investment products from the same product type, ESMA should develop~~ <u>have supervisory powers to carry out regular checks on the alignment of UCITS and AIFs falling under Directive 2014/65/EU with the relevant</u> benchmarks, ~~based on data related to the cost and performance of investment products that ESMA receives as part of the supervisory reporting, against which an assessment of~~	particular to the investment objective and strategy, level of risk, <u>performance and the other benefits and expected returns</u> 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 ~~pricing~~ <u>value-for-money assessment</u> process. ~~In particular~~ <u>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,</u> they should ~~ensure that costs are comparable to~~ <u>include</u> ~~a~~ market ~~standards,~~ <u>including comparison to other funds in the Union with similar characteristics, subject to data availability,</u> by comparing the costs <u>and charges and the performance of the funds to the costs and charges of a peer group</u> of funds <u>in the Union</u> with similar ~~investment strategies and~~ characteristics ~~available on publicly available databases. 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~~	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
	existing data from public disclosures and supervisory reporting, unless additional data are exceptionally necessary. Investment funds offering poor Value for Money or deviating from ESMA's benchmarks should not be marketed to retail investors unless further assessment has established that the product nevertheless offers Value for Money. The assessment and the measures taken should be documented and provided to competent authorities upon their request.	<i>Value for Money can be carried out, in addition to the other criteria included in the pricing process of UCITS and AIFs management companies. 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. - Investment funds offering poor Value for Money or deviating from ESMA's benchmarks should not be marketed to retail investors unless further assessment has established that the product nevertheless offers Value for Money. The assessment and the measures taken should be documented and provided to competent authorities upon their request.</i>	<u>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.</u> However, to ~~make the pricing process more objective and to~~ equip UCITS and AIFs management companies, and competent authorities with a tool ~~allowing for an efficient comparison of costs among investment~~ <u>to help them efficiently identify</u> products ~~from the same product type~~ <u>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.</u> ESMA should ~~develop~~ <u>Union supervisory</u> benchmarks, <u>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</u> based on data related to the cost and performance of ~~investment products~~ <u>funds</u> that ESMA receives	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
			as part of the supervisory reporting, ~~against which an assessment of Value for Money can be carried out, in addition to the other criteria included in the pricing process of UCITS and AIFs management companies~~. 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. ~~Investment~~ <u>Member States should be authorised to provide that UCITS and AIFs management companies may opt to compare their funds offering poor Value for Money or deviating from ESMA's</u> <u>with Union supervisory benchmarks</u> ~~should not be marketed to retail investors unless further assessment has established that the~~ <u>for</u> ~~product nevertheless offers Value for Money. The assessment and the measures taken should be documented and provided to competent authorities upon~~ <u>clusters that are applicable to</u> ~~their request~~ <u>funds instead of performing a peer-group comparison.</u>	
30	(21) The Commission should be	(21) The Commission should be	(21) The Commission should be	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
	empowered to adopt delegated acts specifying the minimum requirements for the pricing process to prevent undue costs from being charged to the UCITS, AIFs and their unit-holders, and for carrying out the Value for Money assessment and, where needed, for taking corrective measures where costs are not justified or proportionate to the expected returns of the UCITS and AIFs where available, their level of risk, investment objective and strategy, and for documenting such assessment and measures.	empowered to adopt delegated acts specifying the minimum requirements for the pricing process to prevent undue costs from being charged to the UCITS, AIFs and their unit-holders, and for carrying out the Value for Money assessment and, where needed, for taking corrective measures where costs <u>borne by investors</u> are not justified or proportionate ~~to the expected returns~~ <u>in the context</u> of the ~~UCITS and AIFs where available, their level of risk, investment objective and strategy, and for documenting such assessment and measures~~ <u>overall value delivered to unit-holders</u> .	empowered to adopt delegated acts specifying the minimum requirements for the ~~pricing process~~ <u>undue costs and value-for-money assessment processes</u> to prevent undue costs from being charged to the UCITS, AIFs and their unit-holders, and for carrying out the ~~Value for Money~~ <u>value-for-money</u> assessment ~~and, where needed, for taking corrective measures where costs are not justified or proportionate to the expected returns of the UCITS and AIFs where available, their level of risk, investment objective and strategy, and for documenting such assessment and measures.~~	
30a			<u>(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-</u>	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
			<u>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</u>	

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 (Text with EEA relevance) 2023/0167(COD) 28-06-2024 at 13h45 42/74

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			<u>accompanied by legislative proposals.</u>	
31	(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 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	(22) <u>Enhancing the quality of the advice given by financial advisors is one of the main objectives of this Directive.</u> Knowledge and competence of staff are key to ~~ensuring good~~ <u>better ensure the</u> quality <u>of</u> advice <u>given to</u> <u>consumers in the Union</u>. 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 require investment firms, and insurance and reinsurance distributors, to ensure that natural persons giving investment advice on	(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~~ <u>insurance based</u> investment products, and the increasing importance of ~~sustainability-related~~ <u>sustainability related</u> considerations. <u>Member States should also be allowed to lay down additional requirements where necessary.</u> 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	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
	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. 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.	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 <u>or any other document recognised by the Union or by Member States</u>. 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, <u>part of which should be dedicated to sustainability issues</u>, and that they prove the successful completion of such training and development by a	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 <u>or comparable form of evidence. Comparable forms of evidence of knowledge and competence may, for example, include academic degrees or professional certifications</u>. 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~~ <u>insurance based</u> 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	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
		certificate.	development by a certificate <u>or equivalent proof of completion of such training and development.</u>	
31a			<u>(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.</u>	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
32	(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	(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	(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	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
	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.	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.	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.	
33	(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	(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	(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	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
	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.	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.	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.	
33a		<u>(24a) The Capital Markets Union enables undertakings established in the Union to exercise their rights under the freedom to provide services and the freedom of establishment, provided that they comply with certain conditions. To</u>		

	Commission Proposal	EP Mandate	Council Mandate	MS comments
		<u><i>avoid abuses of those principles. rules should be introduced to establish an anti-forum shopping principle in Directives 2014/65/EU and (EU) 2016/97.</i></u>		
33b		<u><i>(24b) Recital 46 of Directive 2014/65/EU clarifies that Member States' competent authorities should not grant or should withdraw authorisation where factors such as the content of programmes of operations, the geographical distribution or the activities actually carried out clearly indicate that an investment firm has opted for the legal system of one Member State for the purpose of avoiding the stricter standards or supervisory enforcement in another Member State within the territory of which it intends to carry out or does carry out the greater part of its activities.</i></u>		
34	(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-	(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-	(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-	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
	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 firms serving fewer than fifty 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.	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 firms serving fewer than fifty 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.	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 <u>investment</u> firms serving fewer than fifty <u>clients on a cross-border basis or insurance intermediaries serving fewer than five hundred</u> 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.	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
35	(26) To foster supervisory convergence and facilitate cooperation between competent authorities, ESMA should be able to set up cooperation platforms on its own initiative, or at the initiative of one or more 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. EIOPA, which already has the power to set up collaboration platforms under Article 152b of Directive 2009/138/EC, should have the same power with regard to insurance distribution activities under Directive (EU) 2016/97 since similar cross border supervision issues may occur in insurance distribution. 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 Council¹ and Regulation (EU) No 1094/2010 of	(26) To foster supervisory convergence and facilitate cooperation between competent authorities, ESMA should be able to set up cooperation platforms on its own initiative, or at the initiative of one or more 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. EIOPA, which already has the power to set up collaboration platforms under Article 152b of Directive 2009/138/EC, should have the same power with regard to insurance distribution activities under Directive (EU) 2016/97 since similar cross border supervision issues may occur in insurance distribution. – <u>Where personal data is to be processed under the collaboration platforms, competent authorities, ESMA and EIOPA are to comply with Regulation (EU) 2016/679.</u> 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	(26) To foster supervisory convergence and facilitate cooperation between competent authorities, ESMA should be able to set up cooperation platforms ~~on its own initiative, or~~ at the initiative of ~~one or more~~ <u>at least two</u> 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. ~~EIOPA, which already has the power to set up collaboration platforms under Article 152b of Directive 2009/138/EC, should have the same power with regard to insurance distribution activities under Directive (EU) 2016/97 since similar cross border supervision issues may occur in insurance distribution.~~ 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 Council¹ and	

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	the European Parliament and of the Council², 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. 1. 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). 2. 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).	EIOPA may in accordance with Article 16 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council¹ and Regulation (EU) No 1094/2010 of the European Parliament and of the Council², 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. 1. 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). 2. 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).	Regulation (EU) No 1094/2010 of the European Parliament and of the Council², 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. 1. 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). 2. 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).	
36	(27) Costs, associated charges and third-party payments linked to investment products can have a great impact on expected returns. The disclosure of such costs associated charges and third-party	(27) Costs, associated charges and third-party payments linked to investment products can have a great impact on expected returns. The disclosure of such costs associated charges and third-party	(27) Costs, associated charges and ~~third-party payments~~<u>inducements</u> linked to investment products can have a ~~great~~<u>substantial</u> impact on ~~expected~~ returns. The disclosure of such costs associated charges and	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
	payments are a key aspect of investor protection. Retail investors should be presented with clear information on costs, associated charges and third-party payments, in good time prior to taking an investment decision. To enhance comparability of such costs, associated charges and third-party payments, such information should be provided in a standardised manner. Regulatory technical standards should specify and harmonise the content and format of disclosures relating to such costs, associated charges and third-party payments including explanations that investment firms should provide to retail clients, in particular as regards the third-party payments.	payments are a key aspect of investor protection. Retail investors should be presented with clear information on costs, associated charges and third-party payments, in good time prior to taking an investment decision. To enhance comparability of such costs, associated charges and third-party payments, such information should be provided in a standardised manner <u>and in comprehensible language</u>. Regulatory technical standards should specify and harmonise the content and format of disclosures relating to such costs, associated charges and third-party payments including <u>the standard terminology and brief and concise explanations, and the methodology to calculate the percentage of overall costs</u>, that investment firms should provide to retail clients, in particular as regards the third-party payments.	~~third-party payments~~<u>inducements</u> are a key aspect of investor protection. Retail investors should be presented with clear information on costs, associated charges and ~~third-party payments~~<u>inducements</u>, in good time prior to taking an investment decision. <u>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</u>. To enhance comparability of such costs, associated charges and ~~third-party payments~~<u>inducements</u>, such information should be provided in a standardised manner. Regulatory technical standards should specify and ~~harmonise~~<u>harmonize</u> the content and format of disclosures relating to such costs, associated charges and ~~third-party payments~~<u>inducements</u>, including explanations that investment firms should provide to retail clients <u>and customers</u>, in particular as regards the ~~third-party payments~~<u>inducements</u>.	
37	(28) To further increase transparency, retail clients and customers should receive a periodic overview of their investments. For that reason, firms that provide	(28) To further increase transparency, retail clients and customers should receive a periodic overview of their investments. For that reason, firms that provide	(28) To further increase transparency, retail clients and customers should receive a periodic overview of their investments. For that reason, firms that provide	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
	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 third-party payments, 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 third-party payments 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 payments received by	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 third-party payments, 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~~<u>the client's or customer's portfolio</u>. 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 third-party payments 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	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 ~~third-party payments~~<u>inducements</u>, 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 ~~third-party payments~~<u>inducements</u> 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	

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	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.	charges and payments 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.	charges and ~~payments~~ <u>inducements</u> 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.	
38	(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	(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	(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	

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	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.	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.	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.	
39	(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, promotions, branding, campaigning, product placement and reward schemes.	(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, promotions, branding, campaigning, product placement and reward schemes.	(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	

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	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 and effectiveness, or the perception of their relatability, reliability, or comparability. 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.	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 and effectiveness, or the perception of their relatability, reliability, or comparability. 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.	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 ~~and~~<u>or</u> effectiveness, or the perception of their relatability, reliability, or comparability. <u>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.</u> 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.	

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			<u>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.</u>	
40	(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	(31) To address developments in marketing practices, including the use of third parties, <u>such as so-called finfluencers</u>, 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	(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	

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	essential information presented in a clear and balanced manner, on the products and services on offer. 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 of the target market concerned.	communications should also contain essential information presented in a clear and balanced manner, on the products and services on offer. 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 of the target market concerned.	essential information presented in a clear and balanced manner, on the products and services on offer. <u>The same should apply also in case of character-limited media and short-form contents.</u> 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. <u>The target audience, which is a more generic notion than the target market, is based on-</u> of the target market ~~concerned~~ <u>assessment and the distribution strategy of the product in the context of the product oversight and governance requirements.</u>	
40a		<u>(31a) Younger generations are the most vulnerable to digital mis-selling. Although the rise of influencers can be positive in terms of promoting financial</u>		

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		<u><i>education to a wider audience, it is essential to ensure sufficient safeguards so as to create a safe investment environment for each Union citizen. Trust in Union financial markets is a key factor in encouraging potential investors to invest in them.</i></u>		
41	(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	(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	(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	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
	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.	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~~ <u>at least the duration of their relationship with the client or customer.</u>	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.	
41a		<u>(32a) Investment firms, insurance undertakings and insurance intermediaries which make use of influencers to carry out their marketing communication should establish a written agreement with the influencers laying out the content of their contractual relationship, namely the scope and nature of the activities carried out. They should also provide the competent authority upon request with the identity and contact details</u>		

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		<u><i>of the finfluencers whose services they rely on, and should regularly operate controls over the activities carried out by the finfluencers to ensure the finfluencers' compliance with this Directive.</i></u>		
42	(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 demanded 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	(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 demanded 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	(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 ~~demanded~~ <u>requested</u> 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	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
	their clients and customers, through standardised warnings, that providing inaccurate and incomplete information may have negative consequences on the quality of the assessment. 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.	their clients and customers, through standardised warnings, that providing inaccurate and incomplete information may have negative consequences on the quality of the assessment. 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.	their clients and customers, through standardised warnings, that providing inaccurate ~~and/or~~ incomplete information may have negative consequences on the quality of the assessment <u>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</u>. 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.	
43	(34) To ensure that, in the context of advised services, due consideration is given to portfolio diversification, financial advisors should be systematically required to consider 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.	(34) To ensure that, in the context of advised services, due consideration is given to portfolio diversification, financial advisors should be systematically required to consider 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 <u>to the extent that the client or customer discloses its existing portfolio at the request of the firm of financial and non-financial assets</u>.	(34) To ensure that, in the context of advised services, due consideration is given to portfolio diversification, financial advisors should be ~~systematically~~ required to consider, <u>where possible</u>, 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. <u>If the client or customer, following a request by the investment firm, insurance intermediary or insurance</u>	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
			<u>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.</u>	
44	(35) To ensure that appropriateness tests enable investment firms, insurance undertakings and insurance intermediaries to effectively assess if a financial product or service is appropriate for their clients and customers, those firms, insurance undertakings and insurance intermediaries should obtain from them information not only about their knowledge and experience on such financial instruments or services, but for	(35) To ensure that appropriateness tests enable investment firms, insurance undertakings and insurance intermediaries to effectively assess if a financial product or service is appropriate for their clients and customers, those firms, insurance undertakings and insurance intermediaries should obtain from them information not only about their knowledge and experience on such financial instruments or services, but for	(35) To ensure that appropriateness tests enable investment firms, insurance undertakings and insurance intermediaries to <u>more</u> effectively assess if a financial product or service is appropriate for their clients and customers, those <u>investment</u> firms, insurance undertakings and insurance intermediaries should obtain from them information not only about their knowledge and experience ~~on~~<u>with</u> such financial instruments or	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
	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 the obligation 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.	retail clients or customers also about their capacity to bear full or partial losses ~~and~~ their risk tolerance. <u>investment needs and objectives, including sustainability preferences.</u> In the case of a negative appropriateness assessment, an investment firm, insurance undertaking or insurance intermediary distributor should, in addition to the obligation 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.	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 ~~the obligation~~ <u>having</u> 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.	
45	(36) A wide diversity of financial instruments can be offered to retail investors, with each financial instrument entailing different levels of risks of potential losses. Retail investors should therefore be able to easily identify investment products that are particularly risky. It is therefore appropriate to require that investment firms, insurance undertakings and insurance intermediaries identify those investment products that are particularly risky and include, in information transmitted to retail clients and customers, including marketing communications, warnings on those risks. To assist	(36) A wide diversity of financial instruments can be offered to retail investors, with each financial instrument entailing different levels of risks of potential losses. Retail investors should therefore be able to easily identify investment products that are particularly risky <u>or complex</u> . It is therefore appropriate to require that investment firms, insurance undertakings and insurance intermediaries identify those investment products that are particularly risky <u>or complex</u> and include, in information transmitted to retail clients and customers, including marketing communications, warnings on those	(36) A wide diversity of <u>insurance-based investment products and</u> financial instruments can be offered to <u>customers and</u> retail ~~investors,~~ <u>with clients.</u> <u>Each insurance-based investment product or, where applicable, underlying investment asset, and</u> each financial instrument ~~entailing entails~~ different levels of risks of potential losses. <u>Customers and</u> retail ~~investors~~ <u>clients</u> should therefore be able to easily identify <u>insurance-based</u> investment products <u>and financial instruments</u> that are particularly risky. It is therefore appropriate to require that ~~investment firms,~~ insurance undertakings ~~and,~~ insurance	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
	investment firms, insurance undertakings and insurance intermediaries in identifying such particularly risky products, ESMA and EIOPA should issue guidelines on how to identify such products, taking due account of the different types of existing investment products and insurance-based investment products. To harmonise such risk warnings across the EU, ESMA and EIOPA should submit 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 investment products and, where the use or absence of use of those risk warnings throughout the EU would be inconsistent or would create a material impact in terms of investor protection, ESMA and EIOPA should have the power to impose the use of such warnings by investment firms throughout the EU.	risks. To assist investment firms, insurance undertakings and insurance intermediaries in identifying such particularly risky ~~or complex~~ products, ESMA and EIOPA should ~~issue~~ <u>guidelines</u> <u>develop draft regulatory technical standards</u> on how to identify such products, taking due account of the different types of existing investment products and insurance-based investment products. To harmonise such risk warnings across the EU, ESMA and EIOPA should submit 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 investment products and, where the use or absence of use of those risk warnings throughout the EU would be inconsistent or would create a material impact in terms of investor protection, ESMA and EIOPA should have the power to impose the use of such warnings by investment firms throughout the EU.	intermediaries <u>and investment firms</u> identify those <u>insurance-based investment products</u> <u>and financial instruments</u> that are particularly risky and include: ~~warnings on those risks~~ <u>transmitted to retail clients and customers</u> <u>materials</u>, including marketing communications, ~~warnings on those risks~~ <u>provided to customers and retail clients</u>. To assist ~~investment firms~~, insurance undertakings ~~and~~, insurance intermediaries <u>and investment firms</u> in identifying such particularly risky products, ESMA and EIOPA should ~~issue guidelines~~ <u>develop draft regulatory technical standards</u> on how to identify such products <u>and submit those regulatory technical standards to the Commission</u>, taking due account of the <u>specificities of</u> different types of existing ~~investment products and~~ insurance-based investment products <u>and financial instruments</u> <u>and the different types of communication media and without prejudice to any national regimes in relation to particularly complex investment products</u>. <u>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</u>	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
			<u>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.</u> To harmonise such risk warnings across the EU, ESMA and EIOPA should submit <u>draft regulatory</u> 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 <u>insurance-based</u> investment products and, ~~where~~ <u>financial instruments. In case of concerns regarding</u> the use or <u>the</u> absence of <u>use or the supervision of the</u> use of those risk warnings ~~throughout the EU would be inconsistent or~~ <u>in one or more Member States, that</u> would create a material impact in terms of investor protection., ESMA and EIOPA ~~should have the power~~ <u>may, after having consulted the competent authorities concerned, issue a recommendation addressed to the relevant competent authorities</u> to impose the use of ~~such~~ <u>risk</u> warnings	

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 (Text with EEA relevance) 2023/0167(COD) 28-06-2024 at 13h45 67/74

	Commission Proposal	EP Mandate	Council Mandate	MS comments
			~~by~~ <u>for specific insurance-based investment firms throughout the EU products and financial instruments.</u>	
45a		<u>(36a) Financial literacy is of key importance in addressing the current deficiencies in the Capital Markets Union (CMU) and in ensuring the adequate fulfilment of the CMU goals. Trust in Union financial markets is intrinsically linked to the level of participation in those markets by retail clients. Education and knowledge are tools to empower each citizen to make informed investment decisions. However, the level of financial literacy differs significantly across Member States. This Directive should lay the ground for increasing the level of financial education in each Member State. In view of the limited competences conferred upon the Union in that area, it is the responsibility of each Member State to ensure that proper adjustments are made, particularly in their education systems, to comply with this Directive. Member States should take ambitious steps to fulfil the obligations laid down in this Directive.</u>		

	Commission Proposal	EP Mandate	Council Mandate	MS comments
46	(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	(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	(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	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
	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.	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.	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.	
47	(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 experience gathered outside the financial services sector and certified training and education that the client has completed. 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 to account for clients residing in Member States with lower average GDP per capita.	(38) It is necessary to ensure that the criteria for determining whether a client <u>or customer</u> 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 experience gathered ~~outside~~<u>in</u> the financial services ~~sector~~ <u>or in another relevant</u> sector and certified training and education that the client has completed. <u>That experience, training and education should not be combined only with the size of the client's financial portfolio.</u> 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 to account for clients residing in Member States	(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 <u>relevant</u> experience gathered outside the financial services sector and certified training and education that the client has completed. <u>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</u>	

Commission Proposal	EP Mandate	Council Mandate	MS comments
		with lower average GDP per capita. <u>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.</u> 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 <u>and the threshold lowered to EUR 250,000</u> to account for clients residing in Member States with lower average GDP per capita. <u>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.</u> <u>Where such annual statements are</u>	

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			<u>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.</u>	
47a			<u>(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</u>	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
			<u>months after the entry into force of those delegated acts.</u>	
48	(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].	(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].	(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].	
49	(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.	(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.	(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.	
50	(41) Directives (EU) 2009/65/EC, 2009/138/EC, 2011/61/EU,	(41) Directives (EU) 2009/65/EC, 2009/138/EC, 2011/61/EU,	(41) Directives (EU) 2009/65/EC, 2009/138/EC, 2011/61/EU,	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
	2014/65/EU and (EU) 2016/97 should therefore be amended accordingly.	2014/65/EU and (EU) 2016/97 should therefore be amended accordingly.	2014/65/EU and (EU) 2016/97 should therefore be amended accordingly.	
50a			<u>(41a) 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.</u>	
51	HAVE ADOPTED THIS DIRECTIVE:	HAVE ADOPTED THIS DIRECTIVE:	HAVE ADOPTED THIS DIRECTIVE:	

RIS: Omnibus Directive

Part II: MIFID

Deadline for comments: 16 August 2024 COB

	Commission Proposal	EP Mandate	Council Mandate	MS comments
52	Article 1 Amendments to Directive 2014/65/EU	Article 1 Amendments to Directive 2014/65/EU	Article 1 Amendments to Directive 2014/65/EU	
53	Directive 2014/65/EU is amended as follows:	Directive 2014/65/EU is amended as follows:	Directive 2014/65/EU is amended as follows:	
54	(1) in Article 1(4), point (a) is replaced by the following:	(1) in Article 1(4), point (a) is replaced by the following:	(1) in Article 1(4), point (a) is replaced by the following:	
55	(a) Article 9(3), Article 14, and Article 16(2), (3) and (6), Article 16-a (1), first, second and fifth subparagraph, Article 16-a(3), Article 16-a(4), first and second subparagraph, Article 16-a(7), (8), (10) and Article 16-a(11), point (b);;	(a) Article 9(3), Article 14, and Article 16(2), (3) and (6), Article 16-a (1), first, second and fifth subparagraph, Article 16-a(3), Article 16-a(4), first and second subparagraph, Article 16-a(7), (8), (10) and Article 16-a(11), point (b);;	(a) Article 9(3), Article 14, and Article 16(2), (3) and (6), Article 16-a (1), first, second, <u>tenth and eleventh</u> ~~and fifth~~ subparagraph, Article 16-a(3), Article 16-a(4), first and second subparagraph, Article 16-a(7), (8), <u>and</u> (10) and Article 16-a(11), ~~point (b);;~~	
56	(2) in Article 3(2), points (b) and	(2) in Article 3(2), points (b) and	(2) in Article 3(2), points <u>(a)</u> , (b)	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
	(c) are replaced by the following:	(c) are replaced by the following:	and (c) are replaced by the following:	
56a			‘ <u>'(a) conditions and procedures for authorisation and on-going supervision as established in Article 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;</u>	
57	‘ (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;	‘ (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;	(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;	
58	(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(11), point (b), and the corresponding delegated acts	(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(11), point (b), and the corresponding delegated acts	(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	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
	adopted by the Commission in accordance with Article 89.;	adopted by the Commission in accordance with Article 89.;	adopted by the Commission in accordance with Article 89.;	
59	(3) in Article 4(1), the following points (66), (67) and (68) are added:	(3) in Article 4(1), the following points (66), (67) and (68) are added:	(3) in Article 4(1), the following points (66), (67), ~~(68)~~ , ~~(69)~~ and ~~(6870)~~ are added:	
60	(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 or entices 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:	(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 or entices 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:	(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 ~~or entices~~ 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:	
61	(a) by an investment firm or a third party that is remunerated or incentivised through non-monetary compensation by such investment firm;	(a) by an investment firm or a third party that is remunerated or incentivised through non-monetary compensation by such investment firm;	(a) by an investment firm or a third party that is remunerated or incentivised through non-monetary compensation by such investment firm;	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
62	(b) to natural or legal persons;	(b) to natural or legal persons;	(b) to natural or legal persons;	
63	(c) in any form and by any means;	(c) in any form and by any means;	(c) in any form and by any means;	
64	(67) 'marketing practice' means any strategy, use of a tool or technique applied by an investment firm, or by any third party that is remunerated or incentivised through non-monetary compensation by such investment firm to:	(67) 'marketing practice' means any strategy, use of a tool or technique applied by an investment firm, or by any third party that is remunerated or incentivised through non-monetary compensation by such investment firm to:	(67) 'marketing practice' means any strategy, use of a tool or technique, <u>including online targeting of customers</u> , applied by an investment firm, or by any third party that is remunerated or incentivised through non-monetary compensation by such investment firm to:	
65	(a) directly or indirectly disseminate marketing communications;	(a) directly or indirectly disseminate marketing communications;	(a) directly or indirectly disseminate marketing communications; <u>or</u>	
66	(b) accelerate or improve the reach and effectiveness of the marketing communications;	(b) accelerate or improve the reach and effectiveness of the marketing communications;	(b) accelerate or improve the reach ~~and~~ <u>or</u> effectiveness of the marketing communications; <u>or</u>	
67	(c) promote in any way investment firms, financial instruments or investment services;	(c) promote in any way investment firms, financial instruments or investment services;	(c) promote in any way investment firms, financial instruments or investment services, <u>including the online choice architecture</u> ;	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
68	(68) ‘online interface’ means any software, including a website, part of a website or an application;;	(68) ‘online interface’ means any software, including a website, part of a website or an application; <u>including a mobile application;</u>	(68) ‘online interface’ means any software, including a website, ~~part of a website or an application;~~ <u>or a part thereof, and applications, including mobile applications;</u>	
68a		<u>(68a) ‘finfluencer’ means a natural or legal person carrying out a commercial influence activity by mobilising their popularity to communicate to the public, by electronic means and for any sort of remuneration as defined in Article 2, point (5), of Delegated Regulation (EU) 2017/565, content aimed at promoting, directly or indirectly, financial products or contracts;’;</u>	<u>68a. ‘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;</u>	
68b			<u>68b. ‘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.’;</u>	
68c				

	Commission Proposal	EP Mandate	Council Mandate	MS comments
		<u>(3a) Article 5(4), point (a) is replaced by the following:</u>		
68d		<u>‘ (a) any investment firm which is a legal person has its head office in the same Member State as its registered office, in which it carries out its business, operates fully within the single market and utilises the freedom to provide services. The Member State shall ensure that the investment firm has sufficient understanding of the risk and legal requirements to which it or its clients are subject, and acts in a manner consistent with Union law and the principles of the single market;’;</u>		
69	(4) the following Article 5a is inserted:	(4) the following Article 5a is inserted:	(4) the following Article 5a is inserted:	
70	‘ Article 5a	‘ Article 5a	‘ Article 5a	
71	Procedure to address unauthorised activities offered through digital	Procedure to address unauthorised activities offered through digital	Procedure to address unauthorised activities offered through digital	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
	means	means	means	
72	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 that entity 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). Any such steps shall respect the principles of cooperation between Member States set out in Chapter II.	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 that entity 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). Any such steps shall respect the principles of cooperation between Member States set out in Chapter II.	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 ~~that entity~~ <u>such natural or legal person</u> 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) <u>or any equivalent power</u>. Any such steps shall respect the principles of cooperation between Member States set out in Chapter II.	
72a		<u>The first subparagraph of this paragraph shall also apply to influencers that are remunerated or incentivised through non-monetary compensation by a firm</u>		

	Commission Proposal	EP Mandate	Council Mandate	MS comments
		<u><i>which is not authorised under Article 5(1) or national law, where such finfluencer promotes through public social media platforms services or financial instruments on behalf of such a firm.</i></u>		
73	2. Member States shall provide that competent authorities publish any decision imposing a measure taken pursuant to paragraph 1, in accordance with Article 71.	2. Member States shall provide that competent authorities publish any decision imposing a measure taken pursuant to paragraph 1, in accordance with Article 71.	2. Member States shall provide that competent authorities publish any decision imposing a measure taken pursuant to paragraph 1, in accordance with Article 71.	
74	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	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	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	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
	accordance with Article 71(1).;	accordance with Article 71(1).;	accordance with Article 71(1).;	
75	(5) Article 7 is amended as follows:	(5) Article 7 is amended as follows:	<i>deleted</i>	
76	(a) in paragraph 3, the following subparagraph is added:	(a) in paragraph 3, the following subparagraph is added:	<i>deleted</i>	
77	Where the authorisation has not been granted, the competent authority shall inform ESMA about the reasons for not granting the authorisation.;	Where the authorisation has not been granted, the competent authority shall inform ESMA about the reasons for not granting the authorisation <u>without undue delay</u> .;	<i>deleted</i>	
78	(b) the following paragraph 3a is inserted:	(b) the following paragraph 3a is inserted:	<i>deleted</i>	
79	3a. ESMA shall establish and make available to competent authorities a list of all entities that have been refused authorisation.	3a. ESMA shall establish and make available to competent authorities a list of all entities that have been refused authorisation.	<i>deleted</i>	
80				

	Commission Proposal	EP Mandate	Council Mandate	MS comments
	The list shall contain information on the services or activities for which each investment firm has sought authorisation, as well as the reasons for the refusal to grant the authorisation and shall be updated on a regular basis.;	The list shall contain information on the services or activities for which each investment firm has sought authorisation, as well as the reasons for the refusal to grant the authorisation and shall be updated on a regular basis.;	<i>deleted</i>	
81	(6) Article 8 is amended as follows:	(6) Article 8 is amended as follows:	<i>deleted</i>	
82	(a) the second paragraph is replaced by the following:	(a) the second paragraph is replaced by the following:	<i>deleted</i>	
83	Every withdrawal of authorisation shall be notified to ESMA. The competent authority shall inform ESMA about the reasons for withdrawing the authorisation.;	Every withdrawal of authorisation shall be notified to ESMA, <u>without undue delay</u> . The competent authority shall inform ESMA about the reasons for withdrawing the authorisation.;	<i>deleted</i>	
84	(b) the following paragraph is added:	(b) the following paragraph is added:	<i>deleted</i>	
85				

	Commission Proposal	EP Mandate	Council Mandate	MS comments
	The list referred to in Article 7(3a) shall also contain all entities from which authorisation has been withdrawn, as well as information on the services or activities for which each investment firm has been withdrawn authorisation, and the reasons to withdraw the authorisation.;	The list referred to in Article 7(3a) shall also contain all entities from which authorisation has been withdrawn, as well as information on the services or activities for which each investment firm has been withdrawn authorisation, and the reasons to withdraw the authorisation.;	<i>deleted</i>	
86	(7) Article 9(3) is amended as follows:	(7) Article 9(3) is amended as follows:	(7) Article 9(3) is amended as follows:	
87	(a) the first subparagraph is replaced by the following:	(a) the first subparagraph is replaced by the following:	(a) the first subparagraph is replaced by the following:	
88	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	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	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	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
	integrity of the market and the best interest of clients.;	integrity of the market and the best interest of clients.;	integrity of the market and the best interest of clients.;	
88a		<u>(aa) in the second subparagraph, point (a) is replaced by the following:</u>		
88b		<u>(a) the organisation of the firm for the provision of investment services and activities and ancillary services, including the skills, knowledge and expertise required by personnel, the resources, the procedures and the arrangements for the provision of services and activities, taking into account the nature, scale and complexity of its business and all the requirements the firm has to comply with. The policy shall ensure that the monetary and non-monetary benefits to the clients are taken into consideration.;</u>		
89	(b) in the second subparagraph, the following point (d) is added:	(b) in the second subparagraph, the following point (d) is added:	(b) in the second subparagraph, the following point (d) is added:	

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90	‘ (d) a policy on marketing communications and practices, aiming to ensure compliance with obligations set out in Article 24c.;	‘ (d) a policy on marketing communications and practices, aiming to ensure compliance with obligations set out in Article 24c.;	‘ (d) a policy on marketing communications and practices, - ~~aiming~~ to ensure compliance with obligations set out in Article 24c.;	
91	(8) Article 16 is amended as follows:	(8) Article 16 is amended as follows:	(8) Article 16 is amended as follows:	
92	(a) paragraph 1 is replaced by the following:	(a) paragraph 1 is replaced by the following:	(a) paragraph 1 is replaced by the following:	
93	‘ 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.;	‘ 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.;	‘ 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.;	
94	(b) in paragraph 3, subparagraphs 2 to 7 are deleted;	(b) in paragraph 3, subparagraphs 2 to 7 are deleted;	(b) in paragraph 3, subparagraphs 2 to 7 are deleted;	
95	(c) the following paragraph 3a is	(c) the following paragraph 3a is	(c) the following paragraph 3a is	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
	inserted:	inserted:	inserted:	
96	‘ 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.; ’,	<i>deleted</i>	‘ 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.; ’,	
97	(d) the following paragraph 7a is inserted:	(d) the following paragraph 7a is inserted:	(d) the following paragraph 7a is inserted:	
98	‘ 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	‘ 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 <u>and without undue delay</u>. Those procedures shall allow investors to register complaints in any language	‘ 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	

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	services were provided or in the language as agreed between the firm and its clients prior to entering into any transaction.	in which communication material or services were provided ~~or in the~~ . <u>In addition to such</u> language ~~as agreed between~~ , the firm and its clients ~~may~~ , prior to entering into any transaction, <u>agree on the use of an additional language for the purpose of registering complaints</u> .	services were provided or in the language as agreed between the firm and its clients prior to entering into any transaction.	
99	In all cases, complaints shall be registered and complainants shall receive replies within 40 working days.;	In all cases, complaints shall be registered and complainants shall receive replies within ~~40~~ <u>a delay proportionate to the subject matter of the complaint, and in any case no later than 30</u> working days <u>after a complaint is registered. Any final response shall be made in paper form or through another durable medium, in the language in which the complaints were registered</u> .;	In all cases, <u>investment firms shall register the</u> complaints ~~shall be registered and complainants and~~ shall ~~receive replies~~ <u>within</u> <u>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</u> 40 working days <u>from the date on which the complaint was received by the investment firm</u> . <u>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</u>	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
			<u>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.</u> ’;	
100	(9) the following Article 16-a is inserted after Article 16:	(9) the following Article 16-a is inserted after Article 16:	(9) the following Article 16-a is inserted after Article 16:	
101	‘ Article 16-a	‘ Article 16-a	‘ Article 16-a	
102	Product governance requirements	Product governance requirements	Product governance requirements	
103	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).	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).	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).	

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104	The product approval process shall contain all of the following:	The product approval process shall contain all of the following:	The product approval process shall contain all of the following:	
105	(a) a specification of an identified target market of end-clients within the relevant category of clients for each financial instrument;	(a) a specification of an identified target market of end-clients within the relevant category of clients for each financial instrument;	(a) a specification of an identified target market of end-clients within the relevant category of clients for each financial instrument <u>and of the intended distribution strategy</u> ;	
106	(b) a clear identification of the target market's objectives and needs;	(b) a clear identification of the target market's objectives and needs;	(b) a clear identification of the target market's objectives and needs;	
107	(c) an assessment of whether the financial instrument is designed appropriately to meet 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;	(c) an assessment of whether the financial instrument is designed appropriately to meet the target market's objectives and needs;	
108	(d) an assessment of all relevant risks to the identified target market and that the intended distribution strategy is consistent with the identified target market;	(d) an assessment of all relevant risks to the identified target market and that the intended distribution strategy is consistent with the identified target market;	(d) an assessment of all <u>risks</u> relevant ~~risks~~ to the identified target market and ~~that arising from the~~ <u>distribution strategy and an assessment of whether</u> the intended distribution strategy is consistent with the identified target market;	
109				

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	(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 related to the financial instrument and an assessment of whether those costs and charges are justified and proportionate, having regard to the characteristics, objectives and, if relevant, strategy of the financial instrument, and its performance ('pricing process').	(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*, <u>and which are made available to retail clients,</u> a clear ~~identification and quantification of all costs and charges related to the financial instrument and an~~ assessment <u>and description of both quantitative and qualitative features</u> ~~of whether those costs and charges are justified and proportionate, having regard to the characteristics, objectives and, if relevant, strategy of the financial instrument, and its performance ('pricing process').~~ <u>product, including:</u>	(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 <u>and the performance</u> related to the financial instrument, <u>a clear identification of their other benefits</u> and an assessment of <u>whether the financial instrument offers value for money, by evaluating</u> whether those costs and charges are justified and proportionate, having regard to the <u>performance, the other benefits and the</u> characteristics, objectives and, if relevant, strategy of the financial instrument, ~~and its performance ('pricing ('value-for-money assessment~~ process'). * <u>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).</u>	
109a		<u>(i) all costs and charges related to</u>		

	Commission Proposal	EP Mandate	Council Mandate	MS comments
		<u><i>the financial instrument.</i></u>		
109b		<u><i>(ii) whether those costs and charges are justified and proportionate, having regard to the target market's objectives and needs, and the product's characteristics, objectives, strategy and performance ('pricing process').</i></u>		
109c		<u><i>(iii) additional product features and services that could impact the value and benefits provided to investors.</i></u>		
109d		<u><i>For the purposes of the second subparagraph, point (a), the manufacturer shall, as part of the target market definition, assess the type of clients to whom the product is targeted, the knowledge and experience level needed to understand the product, the ability to bear losses, the risk tolerance and whether the product allows the target market to:</i></u>		
109e		<u><i>(a) smoothly manage short-term</i></u>		

	Commission Proposal	EP Mandate	Council Mandate	MS comments
		<u>finances to meet short-term needs;</u>		
109f		<u>(b) absorb economic shocks; or</u>		
109g		<u>(c) reach future long term goals.</u>		
109h		<u>The product approval process shall ensure that the investment firm takes the clients' best interest into consideration in the manufacturing of the financial instruments and takes into account the intended monetary and non-monetary benefits to the customer.</u>		
109i		<u>An investment firm shall regularly review the 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, needs and characteristics of the target market.</u>		
110	The pricing process referred to in		The ~~pricing process~~ <u>assessment that</u>	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
	point (e) shall include a comparison with the relevant benchmark, where available, on costs and performance published by ESMA in accordance with paragraph 9.	<i>deleted</i>	<u>the financial instrument can be expected to offer value for money</u> referred to in point (e) shall ~~include~~ ~~be established through~~ <u>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 relevant benchmark, where available, on costs and charges as well as the performance published by ESMA in accordance with 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.</u> <u>The peer-group comparison shall be performed using data made available according to</u> paragraph ~~9~~<u>9a and included in information to be published according to Union law.</u> <u>The peer-group comparison shall</u>	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
			<u>only be made in relation to costs and charges for each of the following types of financial instruments:</u>	
110a			<u>(a) financial instruments that fall within one of the categories referred to in points 4 to 10 of Section C of Annex I; and</u>	
110b			<u>(b) specific types of transferable securities designated by the Commission by delegated act in accordance with Article 89.</u>	
111	When a financial instrument deviates from the relevant benchmark referred to in paragraph 9, the investment firm shall perform additional testing and further assessments and establish whether costs and charges are nevertheless justified and proportionate. If justification and proportionality of costs and charges cannot be demonstrated, the financial instrument shall not be approved by the investment firm.	deleted	When ~~at the~~ financial instrument ~~deviates~~ <u>is at a significant distance</u> from the ~~relevant benchmark referred to in paragraph 9, the investment firm~~ <u>average of the peer group to the detriment of the client, the value for money</u> shall ~~perform~~ <u>be substantiated through</u> additional testing and further assessments ~~and establish whether costs and charges are nevertheless justified and proportionate. If justification and proportionality of costs and charges cannot be demonstrated.~~ <u>Where necessary, the manufacturer shall take</u>	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
			<u>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 ~~not be approved by~~ 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.</u> <u>The peer-group comparison, including the selection of financial instruments with similar characteristics, shall be based on relevant and objective criteria.</u> <u>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.</u>	

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 (Text with EEA relevance) 2023/0167(COD) 28-06-2024 at 13h45 23/165

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			<i><u>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.</u></i>	
112	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,	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,	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,	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
	including complete and accurate details on any costs and charges of the financial instrument.	including complete and accurate details on any costs and charges, <u>features, objectives, strategy and performance</u> of the financial instrument.	including complete and accurate details on ~~any costs and charges~~ <u>the value-for-money assessment</u> of the financial instrument. <u>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.</u>	
112a		<u>Ia. Investment firms shall ensure that compliance reports to the management body systematically include information about the financial instruments manufactured by the firm, including information on the distribution strategy and the intended monetary and non-monetary benefits to the clients related to the financial instruments. Investment firms shall make the reports available to their competent authority upon request.</u>		
113				

	Commission Proposal	EP Mandate	Council Mandate	MS comments
	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:	<i>deleted</i>	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:	
114	(a) details of costs and charges of the financial instrument, including any distribution costs that are incorporated into costs of financial instrument, including third-party payments;	<i>deleted</i>	(a) details of costs and charges of the financial instrument, including any distribution costs that are incorporated into costs of financial instrument, including ~~third-party payments;~~ <u>inducements;</u>	
115	(b) data on the characteristics of the financial instrument, in particular its performance and the level of risk.	<i>deleted</i>	(b) data on the characteristics of the financial instrument, in particular its performance and ~~the level of risk.~~ <u>any additional benefits;</u>	
115a			<u>(ba) the Member State(s) where it will directly or indirectly distribute the financial instrument.</u>	
115b			<u>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</u>	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
			<u>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.</u>	
116	The competent authorities shall transmit data referred to in point (a) and (b) to ESMA without undue delay.	<i>deleted</i>	The competent authorities shall transmit data referred to in point (a), ~~(b) and (c) and (b)~~ to ESMA- ~~without undue delay.~~	
117	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.	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.	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.	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
118	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.	4. An investment firm <u>that offers or recommends financial instruments</u> shall regularly review ~~financial instruments it offers or recommends~~ <u>them</u> , 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 <u>monetary and non-monetary benefits are still relevant for the identified target market and reasonable compared to the costs and charges. The firm shall also consider whether the</u> intended distribution strategy remains appropriate.	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.	
119	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:	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~~ :	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:	
120	(a) identify and quantify the costs of distribution and any further costs and charges not already taken into account by the manufacturer;	(a) identify and quantify ~~the costs of distribution and~~ any further costs and charges <u>related to the distribution</u> not already taken into	(a) identify and quantify the costs of distribution and any further costs and charges not already taken into account by the manufacturer;	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
		account by the manufacturer, <u>including entry costs, exit costs and third-party payments received and retained by the distributor;</u>		
121	(b) assess whether the total costs and charges are justified and proportionate, having regard to the target market's objectives and needs (pricing process).	(b) assess whether the total costs and charges <u>incurred for the distribution of the product, including those associated with the investment advice provided to the client,</u> are justified and proportionate, having regard to <u>the characteristics of the instrument, to the service provided and</u> the target market's objectives and needs (pricing process).	(b) assess <u>whether the financial instrument offers value for money, by evaluating</u> whether the total costs and charges are justified and proportionate, having regard to the <u>performance, the other benefits and the characteristics, objectives and, if relevant, strategy of the financial instrument and the</u> target market's objectives and needs (~~pricing~~ <u>value-for-money assessment</u> process).	
121a		<u>(ba) assess additional product features and services that could impact the value and benefits provided to investors.</u>		
122	The pricing process, as referred to in points (a) and (b), shall include a comparison with the relevant benchmark, when available, on costs and performance published by ESMA in accordance with paragraph 9.	deleted	The ~~pricing process~~ <u>assessment that the financial instrument can be expected to offer value for money,</u> as referred to in points (a) and (b), shall ~~include a~~ <u>be established through appropriate product testing and assessments, taking into account the specificities of the</u>	

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			<u>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.</u> <u>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.</u> <u>The fifth subparagraph of paragraph 1 applies.</u> <u>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</u>	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
			<u>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.</u> <u>The peer-group comparison, including the selection of financial instruments with similar characteristics, shall be based on relevant and objective criteria.</u> <u>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</u>	

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			<u>distribution.</u> <u>In such a case, the investment firm shall assess whether the financial instrument meets the target market's objectives and needs.</u> <u>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, ~~when available, on costs and performance published by ESMA in accordance with~~ as referred to in paragraph 9, instead of a peer group.</u> <u>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</u>	

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			<u>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.</u>	
123	When a financial instrument, together with costs of services incurred by the client in order to purchase that instrument, deviates from the relevant benchmark referred to in paragraph 9, the investment firm which offers or recommends a financial instrument shall perform additional testing and further assessments and establish whether costs and charges are nevertheless justified and proportionate. If justification and proportionality of costs and charges cannot be demonstrated, the financial instrument shall not be offered or recommended by the investment firm.	<i>deleted</i>	<i>deleted</i>	
123a		<u>(4a) Member States shall ensure that investment firms consider, when complying with the product governance requirements, that the</u>		

	Commission Proposal	EP Mandate	Council Mandate	MS comments
		<u><i>financial instrument's costs and charges are compatible with the objectives, needs and characteristics of the target market.</i></u>		
123b		<u><i>Where an investment firm manufactures or distributes financial instruments falling under the definition of packaged retail investment products in Article 4, point (1), of Regulation (EU) No 1286/2014, it shall perform a peer grouping analysis in accordance with this paragraph. In their assessment, distributors may rely on the manufacturer's peer grouping analysis.</i></u>		
123c		<u><i>An investment firm which manufactures financial instruments shall in addition perform a peer analysis of historical performance when performing a product review of packaged retail investment products as defined in Article 4, point (1), of Regulation (EU) No 1286/2014.</i></u>		
123d		<u><i>An investment firm that offers or recommends financial instruments</i></u>		

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		<u>shall in addition perform a peer analysis of service costs based on an internal analysis of relevant peers in the market.</u>		
123e		<u>The peer grouping evaluation shall be performed on the basis of a peer group defined by the investment firm. The investment firm shall substantiate and document the choice and definition of the peer group. If the product falls under the definition of a UCITS in Article 1(2) of Directive 2009/65/EC of the European Parliament and of the Council, or of an AIF in Article 4(1), point (a), of Directive 2011/61/EU of the European Parliament and of the Council, the peer group may be based on the relevant European fund classification system in accordance with Directive 2009/65/EC of the European Parliament and of the Council or Directive 2011/61/EU of the European Parliament and of the Council.</u>		
123f		<u>ESMA shall by ... [12 months after the entry into force of this amending Directive], develop guidelines on the process and</u>		

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		<u><i>criteria used by investment firms to carry out their peer grouping evaluation, and shall periodically update those guidelines.</i></u>		
124	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 third-party payments.	<i>deleted</i>	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 ~~third-party payments~~ <u>inducements and the Member State(s) where it will distribute the financial instrument.</u>	
124a			<u><i>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</i></u>	

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			<u>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.</u>	
125	The competent authorities shall transmit such details of costs of distribution to ESMA without undue delay.	<i>deleted</i>	The competent authorities shall transmit such ~~details of costs of distribution~~ <u>data</u> to ESMA ~~without undue delay~~ .	
126	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:	<i>deleted</i>	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:	
127	(a) details of costs and charges of any financial instrument destined for retail investors, including any	<i>deleted</i>	(a) details of costs and charges of any financial instrument destined for retail investors, including any	

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	distribution costs that are incorporated into costs of financial instrument, including third-party payments;		distribution costs that are incorporated into costs of financial instrument, including ~~third-party payments;~~ <u>inducements;</u>	
128	(b) data on the characteristics of the financial instruments, in particular its performance and the level of risk.	<i>deleted</i>	(b) data on the characteristics of the financial instruments, in particular its performance, <u>and any additional benefits;</u> ~~and the level of risk.~~	
128a			<u>(ba) the Member State(s) where it will distribute the financial instrument.</u>	
129	The competent authorities shall transmit such data without undue delay to ESMA.	<i>deleted</i>	<u>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</u>	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
			<u>not disproportionate to the added value for clients. The reporting of these data shall be further specified according to paragraph 12.</u> The competent authorities shall transmit such data ~~without undue delay~~ to ESMA.	
130	7. An investment firm shall document all assessments made and shall, upon request, provide such assessments to a relevant competent authority, including the following:	7. An investment firm shall document all assessments made and shall, upon request, provide such assessments to a relevant competent authority, including the ~~following:~~ <u>justification and demonstration of the proportionality of costs and charges of the financial instrument.</u>	7. An investment firm shall document <u>the product testing and</u> all assessments made and shall, upon request, provide such assessments to a relevant competent authority, including the following:	
131	(a) where relevant, the results of the comparison of the financial instrument to the relevant benchmark;	<i>deleted</i>	(a) where ~~relevant~~ <u>applicable, the dataset and the criteria used to select the peer group and</u> the results of the comparison of the financial instrument to the ~~relevant~~ <u>peer group or, where the investment firm has opted to compare the financial instrument with the Union supervisory benchmark, the results of that comparison;</u>	
132	(b) where applicable, the reasons		(b) where applicable, the reasons	

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	justifying a deviation from the benchmark;	<i>deleted</i>	justifying <u>that the financial instrument offers value for money when it is at a significant distance~~a~~ deviation</u> from the <u>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</u> ;	
133	(c) the justification and demonstration of the proportionality of costs and charges of the financial instrument.	<i>deleted</i>	(c) <u>where applicable, the reasons why the data for the peer-group comparison is not available for the justification and demonstration of the proportionality of costs and charges of the financial instrument, and how the value for money has been assessed.</u>	
133a		<u>In accordance with the information to be disclosed under Article 24b of this Directive, an investment firm which manufactures, 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 report to the competent authorities details of</u>		

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		<u>costs and charges of any financial instrument destined for retail investors, including where relevant, distribution costs incorporated in the costs of the financial instrument and costs related to the distribution of advice. The competent authorities shall transmit such data without undue delay to ESMA.</u>		
133b		<u>ESMA, after having consulted EIOPA and the competent authorities and after industry testing, shall develop draft regulatory technical standards for the application of the requirements in this paragraph to specify the following:</u>		
133c		<u>(a) in accordance with the information to be disclosed under Article 24b, the content and type of data to be reported to the competent authorities, based on existing disclosure and reporting obligations;</u>		
133d		<u>(b) the formats, frequency and starting date for the information to be reported in accordance with the</u>		

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		<u>information to be disclosed under Article 24b.</u>		
133e		<u>ESMA shall submit those draft regulatory technical standards to the Commission by ... [18 months after the date of entry into force of this amending Directive].</u>		
133f		<u>Power is delegated to the Commission to adopt the regulatory technical standards in accordance with Article 10 of Regulation (EU) No 1095/2010.</u>		
134	8. An investment firm which manufactures and offers or recommends the financial instrument may establish one pricing process relating to both manufacturing and distribution stages.	8. An investment firm which manufactures and offers or recommends the financial instrument may establish one pricing process relating to both manufacturing and distribution stages.	8. An investment firm which manufactures and offers or recommends the financial instrument may establish one ~~pricing~~ <u>value-for-money assessment</u> process relating to both manufacturing and distribution stages.	
135	9. After having consulted EIOPA and the competent authorities, ESMA shall, where appropriate, develop and make publicly available common benchmarks for financial	<i>deleted</i>	9. ~~After having consulted~~ <u>In consultation with</u> EIOPA and <u>relevant stakeholders and in close and thorough cooperation with</u> the competent authorities <u>throughout</u>	

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	instruments that present similar levels of performance, risk, strategy, objectives, or other characteristics, to help investment firms to perform the comparative assessment of the cost and performance of financial instruments, falling under the definition of packaged retail investment products, both at the manufacturing and distribution stages.		<u>the entire development and testing process</u>, ESMA shall, where appropriate <u>and feasible</u>, develop and make publicly available ~~common~~ <u>Union supervisory benchmarks</u>. <u>Those</u> benchmarks ~~for~~ <u>shall be developed per product cluster that contains a significant number of</u> financial instruments that present similar <u>characteristics including, where relevant, the product type, similar</u> levels of ~~performance~~, risk, strategy, objectives, ~~or other characteristics, to help investment firms to perform the comparative assessment~~ <u>range of recommended holding periods and sustainability features</u>. <u>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</u> of the ~~cost and performance~~ <u>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</u> of financial instruments, falling under the definition of packaged retail investment products, both at the manufacturing and <u>the</u> distribution ~~stages~~ <u>stage, by identifying outliers in the market</u>.	

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			<u>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.</u> <u>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.</u> <u>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.</u> <u>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</u>	

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			<u>to costs.</u> <u>ESMA shall regularly update the Union supervisory benchmarks.</u>	
135a			<u>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.</u> <u>The data shall be sourced from disclosure and reporting under Union law, including the reporting referred to in paragraph 12.</u> <u>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.</u>	

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			<u><i>mandates and obligations:</i></u>	
135b			<u><i>(a) any Union institution, body, office or agency;</i></u> <u><i>(b) any competent authority designated by a Member State pursuant to a Union legislative act;</i></u> <u><i>(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;</i></u> <u><i>(d) any governmental institution, body or agency of a Member State;</i></u> <u><i>(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.</i></u>	
135c			<u><i>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.</i></u>	

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			<u>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.</u> <u>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].</u> <u>Power is conferred on the Commission to adopt those regulatory technical standards in accordance with Article 10 of Regulation (EU) No 1095/2010.</u> <u>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.</u>	
135d			<u>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:</u>	

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135e			<u>(a) the impact and added value of the peer-group comparison on the value for money of financial instruments;</u> <u>(b) the impact and added value of Union supervisory benchmarks on the supervision of the value-for-money assessment process;</u> <u>(c) the application of Union supervisory benchmarks in the value-for-money assessment process of investment firms; and</u> <u>(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.</u>	
135f			<u>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:</u>	
135g			<u>(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</u>	

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			<u>the value-for-money assessment process, including the need to revise the framework;</u> <u>(b) the application of Union supervisory benchmarks in the value-for-money assessment process of investment firms;</u> <u>(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</u> <u>(d) whether and how to modify the approach to the data that is made available in accordance with paragraph 9a.</u>	
135h			<u>When drafting the report, ESMA shall coordinate with EIOPA.</u> <u>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.</u>	
136	The benchmarks shall display a range of costs and performance, in	deleted	deleted	

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	order to facilitate identification of financial instruments whose costs and performance depart significantly from the average.			
137	The costs used for the development of 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 benchmarks for distributors shall, in addition to the total cost of the product, refer to the distribution cost.	<i>deleted</i>	<i>deleted</i>	
138	ESMA shall regularly update the benchmarks.	<i>deleted</i>	<i>deleted</i>	
139	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 third-party payments.	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 third-party payments.	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 ~~third-party payments~~ <u>inducements</u> .	

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140	11. The Commission is empowered to supplement this Directive by adopting delegated acts in accordance with Article 89 to specify the following:	11. <u>ESMA shall, by ... [12 months after the entry into force of the amending]</u> ~~The Commission is empowered to supplement this Directive by adopting delegated acts in accordance with Article 89]~~ <u>develop guidelines</u> to specify ~~the following:~~ <u>criteria to determine whether costs and charges are justified and proportionate, and it shall periodically update those guidelines.</u>	11. The Commission is empowered to supplement this Directive by adopting delegated acts in accordance with Article 89 to <u>further</u> specify the ~~following:~~ <u>principles set out in this Article, including the methodology for the peer-group comparison.</u>	
141	(a) the methodology used by ESMA to develop benchmarks referred to in paragraph 9;	<i>deleted</i>	<i>deleted</i>	
142	(b) the criteria to determine whether costs and charges are justified and proportionate.	<i>deleted</i>	<i>deleted</i>	
143	12. ESMA, after having consulted EIOPA and the competent authorities and taking into consideration the methodology referred to in paragraph 11, point (a), shall develop draft regulatory technical standards specifying the following:	<i>deleted</i>	12. ESMA, after having consulted EIOPA and the competent authorities, <u>after industry testing</u> and taking into consideration the ~~methodology~~ <u>methodologies</u> referred to in paragraph <u>9 and 11</u> , ~~point (a)~~ , shall develop draft regulatory technical standards specifying the following:	

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144	(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, based on disclosure and reporting obligations, unless additional data is exceptionally necessary;	<i>deleted</i>	(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, ~~based on disclosure and reporting obligations, unless additional data is exceptionally necessary;~~	
145	(b) the data standards and formats, methods and arrangements, frequency and starting date for the information to be reported in accordance paragraph 2, 5 and 6.	<i>deleted</i>	(b) the data standards and formats, methods and arrangements, frequency and starting date for the information to be reported in accordance <u>with</u> paragraph 2, 5 and 6.	
146	ESMA shall submit those draft regulatory technical standards to the Commission by [18 months] after adoption of the delegated act referred to in paragraph 11.	<i>deleted</i>	ESMA shall submit those draft regulatory technical standards to the Commission by [~~18 months~~] ~~after adoption~~ <u>OJ: insert date of entry into force</u> of the ~~delegated act referred to in paragraph~~ <u>amending Directive + 24 months</u> .	
146a			<u>When developing the draft regulatory technical standards, ESMA shall only include specific</u>	

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			<u>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.</u> <u>ESMA shall ensure that the reporting standards and formats, methods and arrangements and frequency remain proportionate and are aggregated to the extent feasible.</u>	
147	Power is delegated to the Commission to adopt the regulatory technical standards in accordance with Article 10 of Regulation (EU) No 1095/2010.'	<i>deleted</i>	Power is delegated to the Commission to adopt the regulatory technical standards in accordance with Article 10 of Regulation (EU) No 1095/2010.'	
148				

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		<i>deleted</i>	<i>deleted</i>	
149	* 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).;	<i>deleted</i>	<i>deleted</i>	
149a		<u>13. By ... [five years after the date of application of this amending Directive], Member States shall communicate to the Commission and ESMA all relevant information concerning the implementation of this Article. The Commission and ESMA may request additional information from national competent authorities.</u>		
149b		<u>On the basis of this information provided by Member States, the Commission, in consultation with ESMA and EIOPA, shall carry out an evaluation of the effective implementation of this Article and assess in particular:</u>		

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149c		<u>(a) whether the effects of strengthened product governance requirements set out in this article have led to better value for money for citizens;</u>		
149d		<u>(b) the impact of the relevant provisions of this Directive on potential conflicts of interest associated with inducements, the evolution of costs, the overall level of retail investment in capital markets, consumer protection and the relevance of distribution rules;</u>		
149e		<u>(c) the implementation of financial literacy measures.</u>		
149f		<u>If the evaluation carried out by the Commission proves that the implementation of the new product governance requirements set out in this Article provides no positive change for consumers, the Commission shall accompany its report by a legislative proposal to amend this Directive, if appropriate.</u>		

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150	(10) Article 16a is replaced by the following:	(10) Article 16a is replaced by the following:	(10) Article 16a is replaced by the following:	
151	Article 16a	Article 16a	Article 16a	
152	Exemptions from product governance requirements	Exemptions from product governance requirements	Exemptions from product governance requirements	
153	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.;	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.;	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.;	
154	(11) in Article 21, the following paragraphs 3 and 4 are added:	(11) in Article 21, the following paragraphs 3 and 4 are added:	(11) in Article 21, the following paragraphs 3 and 4 are added:	
155				

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	3. ESMA or the competent authority of any host Member State on the territory of which a firm is active may request that the competent authority of the home Member State examines whether that firm still meets the conditions for authorisation as established in Chapter I.	3. ESMA or the competent authority of any host Member State on the territory of which a firm is active may request that the competent authority of the home Member State examines whether that firm still meets the conditions for authorisation as established in Chapter I.	3. ~~ESMA or~~ The competent authority of any host Member State on the territory of which ~~an~~ <u>investment</u> firm is active may request, <u>only in the case of material investor protection concerns</u>, that the competent authority of the home Member State examines whether that <u>investment</u> firm still meets ~~the conditions~~ <u>particular requirements</u> for authorisation as established in Chapter I, <u>and shall provide an explanation of the reasons for the request, specifying those requirements for authorisation that should be examined.</u>	
156	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.	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.	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. <u>The home and the host Member States may agree to extend or reduce that deadline.</u>	
157	4. In the case of justified concerns about potential threats to investor protection, ESMA may, on its own initiative or at the request of one or	4. In the case of justified concerns about potential threats to investor protection, ESMA may, on its own initiative or at the request of one or	4. In the case of justified concerns about potential threats to investor protection, ESMA may, ~~on its own initiative or~~ at the request of ~~one~~ <u>two</u>	

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	more of the competent authorities, set up and coordinate a collaboration platform under the conditions set out in Article 87a.;	more of the competent authorities, set up and coordinate a collaboration platform under the conditions set out in Article 87a.;	or more ~~of the~~ competent authorities, set up and coordinate a collaboration platform under the conditions set out in Article ~~87a~~ <u>87b</u> .;	
158	(12) Article 24 is amended as follows:	(12) Article 24 is amended as follows:	(12) Article 24 is amended as follows:	
159	(a) paragraph 1 is replaced by the following :	(a) paragraph 1 is replaced by the following :	(a) paragraph 1 is replaced by the following :	
160	‘ 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.;	‘ 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.;	‘ 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.;	
161	(b) the following paragraph 1a is inserted:	(b) the following paragraph 1a is inserted:	(b) the following paragraph 1a is inserted:	

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162	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 are under the obligation of the following:	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 are under ~~the~~ <u>an</u> obligation ~~of the~~ ~~following~~ ;	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 ~~are~~ ~~under the obligation of~~ <u>comply with</u> the following <u>requirements</u> :	
163	(a) to provide advice on the basis of an assessment of an appropriate range of financial instruments;	(a) <u>to inform the client of the range of financial instruments assessed by the investment firm,</u> and to provide advice on the basis of an assessment of an appropriate range of financial instruments <u>suited to the clients's needs, whereby the range of financial instruments is adapted to the business model of the investment firm;</u>	(a) to provide advice on the basis of an assessment of an appropriate range of financial instruments <u>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;</u>	
164	(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;	(b) to recommend the most ~~cost-efficient~~ <u>efficient</u> financial instruments among financial instruments identified as suitable to the client pursuant to Article 25(2) and offering similar features, <u>taking into consideration its performance, level of risk, qualitative elements, costs and charges reported pursuant to Article 16-a, and, if an equivalent product with higher</u>	(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; <u>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</u>	

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		<u>costs is recommended, to justify this on objective grounds and keep records of that justification;</u>	<u>to the client, such as the performance and the expected return.</u>	
165	(c) to recommend, among the range of financial instruments identified as suitable to the client pursuant to Article 25(2), a product or products without additional features that are not necessary to the achievement of the client's investment objectives and that give rise to extra costs.;	deleted	deleted	
165a		<u>(ca) not to place the investment firm's financial or other interests ahead of the client's interests.</u>		
165b		<u>1b. Where investment firms are subject to an inducement ban, the conditions of this Article shall be presumed to be fulfilled. The national competent authority may reverse this presumption if an investment firm does not comply with the provisions in this Article.</u>		
165c		<u>ESMA may organise and conduct a</u>		

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		<u><i>mandatory peer review in cooperation with national competent authorities regarding the implementation of the obligations described in this Article.</i></u>		
165d		<u><i>1c. Where none of the financial instruments offered by the investment firm is in the best interest of the client, the investment firm shall refrain from giving any advice or making any recommendation.</i></u>		
166	(c) in paragraph 2, the first subparagraph is replaced by the following:	(c) in paragraph 2, the first subparagraph is replaced by the following:	(c) in paragraph 2, the first subparagraph is replaced by the following:	
167	Member States shall ensure that investment firms which manufacture financial instruments for sale to clients:	Member States shall ensure that investment firms which manufacture financial instruments for sale to clients:	Member States shall ensure that investment firms which manufacture financial instruments for sale to clients:	
168	(a) design those financial instruments to meet the needs of an identified target market of end	(a) design those financial instruments to meet the needs of an identified target market of end	(a) design those financial instruments to meet the needs of an identified target market of end	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
	clients within the relevant category of clients;	clients within the relevant category of clients;	clients within the relevant category of clients;	
169	(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;	(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;	(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;	
170	(c) take reasonable steps to ensure that the financial instruments are distributed to the identified target market.;	(c) take reasonable steps to ensure that the financial instruments are distributed to the identified target market.;	(c) take reasonable steps to ensure that the financial instruments are distributed to the identified target market.;	
171	(d) paragraph 3 is replaced by the following:	(d) paragraph 3 is replaced by the following:	(d) paragraph 3 is replaced by the following:	
172	‘ All information, addressed by the investment firm to clients or potential clients shall be fair, clear and not misleading.;	‘ All information, addressed by the investment firm to clients or potential clients shall be fair, clear and not misleading.;	‘ All information, addressed by the investment firm to clients or potential clients shall be fair, clear and not misleading.;	
173				

	Commission Proposal	EP Mandate	Council Mandate	MS comments
	(e) paragraph 4 is amended as follows:	(e) paragraph 4 is amended as follows:	(e) paragraph 4 is amended as follows:	
174	(i) the first subparagraph is amended as follows:	(i) the first subparagraph is amended as follows:	(i) the first subparagraph is amended as follows:	
175	- the introductory wording is replaced by the following:	- the introductory wording is replaced by the following:	- the introductory wording is replaced by the following:	
176	‘ Appropriate information shall be provided in good time prior to the provision of any service or the conclusion of any transaction to 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;; ,	‘ Appropriate information shall be provided in good time prior to the provision of any service or the conclusion of any transaction to 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;; ,	‘ Appropriate information shall be provided in good time prior to the provision of any service ~~or the conclusion of any transaction to~~ <u>retail</u> 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:÷ ,	
177	- in point (a), the following points (iv) and (v) are added:	- in point (a), the following points (iv) and (v) are added:	- in point (a), the following points (iv) and (v) are added:	
178				

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	(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;	(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;	(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;	
179	(v) how the recommended financial instruments take into account the diversification of the client's portfolio;	(v) how the recommended financial instruments take into account the diversification of the <u>retail</u> client's portfolio;	(v) how the recommended financial instruments take into account the diversification of the client's portfolio;	
180	- points (b) and (c) are replaced by the following:	- points (b) and (c) are replaced by the following:	- points (b) and (c) are replaced by the following:	
181	(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	(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	(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	

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	intended for retail or professional clients, taking account of the identified target market in accordance with paragraph 2;'	intended for retail or professional clients, taking account of the identified target market in accordance with paragraph 2;'	intended for retail or professional clients, taking account of the identified target market in accordance with paragraph 2;'	
182	(c) the information on costs and charges as referred to in Article 24b;;	(c) the information on costs and charges as referred to in Article 24b;;	(c) the information on costs and charges as referred to in Article 24b;;	
183	- the following point (d) is added:	- the following point (d) is added:	- the following point (d) is added:	
184	(d) where the services are provided under the right of establishment or the freedom to provide services:	(d) where the services are provided under the right of establishment or the freedom to provide services:	(d) where the services are provided under the right of establishment or the freedom to provide services:	
185	(i) the Member State in which the head office of the investment firm and, where appropriate, the branch offering the service is/are located;	(i) the Member State in which the head office of the investment firm and, where appropriate, the branch offering the service is/are located;	(i) the Member State in which the head office of the investment firm and, where appropriate, the branch offering the service is/are located;	
186	(ii) the relevant national competent authority of such investment firm or where relevant, of such branch.;	(ii) the relevant national competent ~~authority~~ <u>authorities</u> of such investment firm or where relevant, of such branch.;	(ii) the relevant national competent authority of such investment firm or where relevant, of such branch.;	

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187	(ii) the second, third and fourth subparagraphs are deleted;	(ii) the second, third and fourth subparagraphs are deleted;	(ii) the second, third and fourth subparagraphs are deleted;	
188	(f) paragraph 5 is replaced by the following:	(f) paragraph 5 is replaced by the following:	(f) paragraph 5 is replaced by the following:	
189	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.;	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.;	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.;	
190	(g) the following paragraphs 5b and 5c are inserted:	(g) the following paragraphs 5b and 5c are inserted:	(g) the following paragraphs 5b and 5c are inserted:	

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191	5b. ESMA shall, by [2 years after the entry into force of the 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.	5b. ESMA shall, by [2 years after the entry into force of the amending Directive], where necessary on the basis of prior consumer and industry testing, and after consulting EIOPA, develop, ~~and update periodically,~~ <u>guidelines draft regulatory technical standards</u> 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, <u>and shall update those standards periodically.</u>	5b. ESMA shall, by [2 years after the entry into force of ~~the~~<u>this</u> 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.	
192	The guidelines referred to in the first subparagraph shall specify the following:	The <u>guidelines draft regulatory technical standards</u> referred to in the first subparagraph shall specify the following:	The guidelines referred to in the first subparagraph shall specify the following:	
193	(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;	(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;	(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;	

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194	(b) necessary safeguards to ensure ease of navigability and accessibility of the information, regardless of the device used by the client;	(b) necessary safeguards to ensure ease of navigability and accessibility of the information, regardless of the device used by the client;	(b) necessary safeguards to ensure ease of navigability and accessibility of the information, regardless of the device used by the client;	
195	(c) necessary safeguards to ensure easy retrievability of the information and facilitate the storing of information by clients in a durable medium.'	(c) necessary safeguards to ensure easy retrievability of the information and facilitate the storing of information by clients in a durable medium.'	(c) necessary safeguards to ensure easy retrievability of the information and facilitate the storing of information by clients in a durable medium.'	
195a		<u>ESMA shall submit those draft regulatory technical standards to the Commission by ... [two years after the date of entry into force of this amending directive].</u>		
195b		<u>Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Article 10 to 14 of Regulation (EU) No 1095/2010.</u>		
196	5c. Member States shall ensure that investment firms display	5c. Member States shall ensure that investment firms display	5c. Member States shall ensure that investment firms display	

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	appropriate warnings in information materials, including marketing communications, provided to retail clients or potential retail clients, to alert on the specific risks of potential losses carried by particularly risky financial instruments.	appropriate warnings in information materials, including marketing communications, provided to retail clients or potential retail clients, to alert on the specific risks of potential losses carried by particularly risky <u>or complex</u> financial instruments.	appropriate warnings in information materials, including marketing communications, <u>concerning particularly risky financial instruments</u> , provided to retail clients or potential retail clients, to ~~alert on~~ <u>highlight</u> the specific risks of potential losses ~~carried by particularly risky~~ <u>associated with such</u> financial instruments.	
197	ESMA shall, by [18 months after the entry into force of the amending Directive], develop, and update periodically, guidelines on the concept of particularly risky financial instruments taking due account of the specificities of the different types of instruments.	ESMA shall, <u>after consulting the competent authorities and stakeholders</u> by [18 months after the entry into force of the amending Directive], develop, ~~and update periodically, guidelines~~ <u>draft regulatory technical standards</u> on the concept of particularly risky <u>or complex</u> financial instruments- ~~taking due account of the specificities of the different types of instruments, and update them periodically. Those regulatory technical standards shall describe the characteristics of financial products that make them particularly risky or complex and which justify making them subject to the risk warnings referred to in the first subparagraph.~~	ESMA shall, ~~by [18 months after the entry into force of the amending Directive], develop, and update periodically, guidelines on~~ <u>draft regulatory technical standards to further specify</u> the concept of particularly risky financial instruments <u>and, after conducting consumer testing, the format and content of the risk warnings mentioned in the previous subparagraph</u> , taking due account of the specificities of the different types of <u>financial</u> instruments.	
198	ESMA shall develop draft	ESMA shall <u>also</u> develop draft	~~ESMA shall develop draft~~	

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	regulatory technical standards to further specify the format and content of such risk warnings, taking due account of the specificities of the different types of financial instruments and types of communications.	regulatory technical standards to further specify the format and content of such risk warnings <u>to retail clients</u> , taking due account of the specificities of the different types of financial instruments and types of communications.	~~regulatory technical standards to further specify~~ <u>The specificities of the financial instruments may, in particular, relate to specific market risks, credit risks and liquidity risks.</u> The format and content of ~~such~~ <u>the</u> risk warnings, ~~taking due~~ <u>shall take into</u> account ~~of the specificities of the different types of financial instruments and types of communications~~ <u>communication media.</u>	
199	ESMA shall submit those draft regulatory technical standards to the Commission by [OJ: insert date 18 months after the date of entry into force].	ESMA shall submit those draft regulatory technical standards to the Commission by [OJ: insert date 18 months after the date of entry into force].	ESMA shall submit those draft regulatory technical standards to the Commission by [OJ: insert date 18 months after the date of entry into force].	
200	Power is delegated to the Commission to adopt the regulatory technical standards referred to in the third subparagraph in accordance with Article 10 of Regulation (EU) No 1095/2010.	Power is delegated to the Commission to adopt the regulatory technical standards referred to in the <u>second and third subparagraph</u> <u>subparagraphs</u> in accordance with Article 10 of Regulation (EU) No 1095/2010.	Power is delegated to the Commission to adopt ~~the~~ <u>those</u> regulatory technical standards ~~referred to in the third subparagraph~~ in accordance with ~~Article 10~~ <u>Article 10</u> of Regulation (EU) No 1095/2010.	
201	ESMA shall monitor the consistent application of risk warnings	ESMA shall monitor the consistent application of risk warnings	ESMA shall monitor the consistent application of risk warnings	

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	throughout the Union. In case of concerns regarding the use, or absence of use or supervision of the use of such risk warnings in Member States, that may have a material impact on the investor protection, ESMA, after having consulted the competent authorities concerned, may impose the use of risk warnings by investment firms.;	throughout the Union. In case of concerns regarding the use, or absence of use or supervision of the use of such risk warnings in Member States, that may have a material impact on the investor protection, ESMA, after having consulted the competent authorities concerned, may impose the use of risk warnings by investment firms.;	throughout the Union. In case of concerns regarding the use, or <u>the</u> absence of use or <u>the</u> supervision of the use of such risk warnings in <u>one or more</u> Member States, that may have a material impact on the investor protection, ESMA, after having consulted the competent authorities concerned, may <u>issue a recommendation addressed to the relevant competent authorities, to impose on investment firms</u> the use of risk warnings ~~by investment firms~~ <u>for specific financial instruments.</u> ;	
201a			<u>(ga) The following subparagraph is added in paragraph 7:</u>	
201b			<u>'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.'</u> ;	

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201c		<u>(ga) in paragraph 7, point (b) is amended as follows:</u>		
201d		<u>(b) not accept or retain fees, commissions or any monetary or non-monetary benefits 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 clients in line with Article 24a. Minor non-monetary benefits capable of enhancing the quality of service provided to a client and 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 or of a total value below EUR 100 per annum shall be clearly disclosed and shall be excluded from this point.;</u>		
202	(h) the following paragraph 7a is inserted:	<i>deleted</i>	(h) the following paragraph 7a is inserted:	
203	7a. When providing investment	<i>deleted</i>	7a. When providing investment	

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	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.;		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.;	
204	(i) paragraphs 8, 9 and 9a are deleted;	(i) paragraphs 8, 9 and 9a are deleted;	(i) paragraphs 8, ~~9 and 9a~~ <u>and 9</u> are deleted;	
204a		<u>(ia) in paragraph 12, the first subparagraph is amended as follows:</u>		
204b		<u>Member States may, in exceptional cases, impose additional requirements on investment firms in respect of the matters covered by Article 24 and 24c. Such requirements shall be objectively</u>		

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		<u>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.;</u>		
204c			<u>(ia) paragraph 12 is replaced by the following:</u>	
204d			<u>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.</u>	
204e			<u>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</u>	

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			<u>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.’;</u>	
205	(j) in paragraph 13, the first subparagraph is amended as follows:	(j) in paragraph 13, the first subparagraph is amended as follows:	(j) in paragraph 13, the first subparagraph is amended as follows:	
206	(i) the introductory wording is replaced by the following:	(i) the introductory wording is replaced by the following:	(i) the introductory wording is replaced by the following:	
207	‘ 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;; ,	‘ 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;; ,	‘ 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;; ,	
208	(ii) point (d) is replaced by the	(ii) point (d) is replaced by the	(ii) point (d) is replaced by the	

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	following:	following:	following:	
209	‘ (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.; ’,	‘ (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.; ’,	‘ (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.; ’,	
210	(13) the following Articles 24a, 24b, 24c and 24d are inserted:	(13) the following Articles 24a, 24b, 24c and 24d are inserted:	(13) the following Articles 24a, 24b, 24c and 24d are inserted:	
211	‘ Article 24a	‘ Article 24a	‘ Article 24a	
212	Inducements	Inducements	Inducements	
213	1. Member States shall ensure that investment firms, when providing portfolio management, do not pay or receive any fee or commission, or provide or are provided with any non-monetary benefit, in connection with the provision of such service,	1. Member States shall ensure that investment firms, when providing portfolio management, do not ~~pay or receive any fee or commission, or provide or are provided with any~~ <u>accept and retain fees, commissions or any monetary or</u>	1. Member States shall ensure that investment firms, when providing portfolio management, do not ~~pay or receive any fee or commission, or provide or are provided with any non-monetary benefit, in connection with~~ <u>accept and retain any</u>	

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	to or by any party except the client or a person on behalf of the client.	non-monetary ~~benefit~~ <u>benefits, paid or provided by any third party or a person acting on behalf of a third party in relation to</u> ~~in connection with the provision of such service, to or by any party except the client or a person on behalf of the client~~ <u>the service to clients</u> .	<u>inducement, in relation to</u> the provision of such service, to or by any party except the client or a person on behalf of the client.	
214	2. Member States shall ensure that investment firms, when providing reception and transmission of orders or execution of orders to or on behalf of retail clients, do not pay or receive any fee or commission, or provide or are provided with any non-monetary benefit in connection with the provision of such services, to or from any third-party responsible for the creation, development, issuance or design of any financial instrument on which the firm provides such execution or reception and transmission services, or any person acting on behalf of that third-party.	<i>deleted</i>	2. Member States shall ensure that investment firms, ~~when providing reception and transmission of orders or execution of orders to or on behalf of retail clients, do not pay or receive any fee or commission, or provide or are provided with any non-monetary benefit in connection~~ <u>paying or receiving inducements comply</u> with the ~~provision of such services, to or from any third-party responsible for the creation, development, issuance or design of any~~ <u>following overarching principles:</u> <u>(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;</u> <u>(b) The level of inducements paid or accepted and retained is proportional to the value of the</u> financial instrument ~~on which the firm provides such execution or reception and transmission services;~~	

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			~~or any person acting on behalf of that third party~~ <u>and the level of service provided to the relevant client;</u> <u>(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;</u> <u>(d) Inducements accepted and retained do not directly benefit the recipient firm, its shareholders or employees without tangible benefit to the client.</u> <u>Investment firms shall explain in their inducements policy or procedures how they comply with the overarching principles.</u>	
215	3. Paragraph 2 shall not apply to investment firms, when providing investment advice on a non-independent basis relating to one or more transactions of that client covered by that advice.	deleted	3. ~~Paragraph 2~~ <u>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.</u> ~~not apply to~~ Investment firms <u>shall be considered not to comply with their duty to act honestly, fairly and professionally</u>	

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			<u>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:</u> <u>(a) the inducement takes into account qualitative criteria, such as compliance with applicable regulations;</u> <u>(b) the inducement is designed to enhance the quality of the relevant service to the client;</u> <u>(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;</u> <u>(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;</u> <u>(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;</u> <u>(f) the inducement is based on</u>	

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 (Text with EEA relevance) 2023/0167(COD) 28-06-2024 at 13h45 79/165

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			<u>a clear, comprehensible and transparent calculation method;</u> <u>(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.</u> <u>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:</u> <u>(i) the provision of non-independent ~~when providing~~ 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;</u> <u>(ii) the provision of a non-independent investment advice combined with either: an offer to</u>	

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 (Text with EEA relevance) 2023/0167(COD) 28-06-2024 at 13h45 80/165

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			<u>the client, at least on an annual basis</u>~~relating to one or more transactions of that~~, <u>to assess the continuing suitability of the financial instruments in which the client</u>~~covered by that~~<u>has invested; or with another on-going service that is likely to be of value to the client such as</u> advice <u>about the suggested optimal asset allocation of the client; or</u> <u>(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.</u> <u>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.</u>	

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216	4. Paragraph 2 shall not apply to fees or any other remuneration received from or paid to an issuer by an investment firm performing for that issuer one of the services referred to in Annex I, Section A, points 6 and 7, where the investment firm also provides to retail clients any of the investment services referred to in paragraph 2 and relating to the financial instruments subject to the placing or underwriting services.	<i>deleted</i>	4. ~~Paragraph 2 shall not apply to fees or any other remuneration received from or paid to an issuer by an Investment firm performing for that issuer one of the services referred to in Annex I, Section A, points 6 and 7, where the investment firm also provides to retail clients any of the~~ <u>firms shall keep an internal list of all inducements paid or accepted and retained in relation to the provision of</u> investment services ~~referred to in or ancillary services and keep records of the inducements test performed in accordance with~~ paragraph ~~2 and relating to the financial instruments subject to the placing or underwriting services~~ <u>3</u> .	
217	This paragraph shall not apply to financial instruments that are packaged retail investment products as referred to Article 4, point (1), of Regulation (EU) No 1286/2014.	<i>deleted</i>	<i>deleted</i>	
218	5. Paragraphs 1 and 2 shall not apply to the minor non-monetary benefits of a total value below EUR 100 per annum or of a scale and	5. ~~Paragraphs 1 and 2~~ <u>Paragraph 1</u> shall not apply to the minor non-monetary benefits of a total value below EUR 100 per annum or of a	5. Paragraphs 1, <u>2 and 3</u> ~~and 2~~ shall not apply to the minor non-monetary benefits of a total value below EUR 100 per annum <u>per</u>	

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	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.	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.	<u>third party</u> 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.	
219	6. Member States shall ensure that the provision of research by third parties to investment firms providing portfolio management or other investment or ancillary services to clients is to be regarded as fulfilling the obligations under Article 24(1) if:	6. ~~Member States shall ensure that~~ The provision of research by third parties to <u>an</u> investment ~~firms~~ <u>firm</u> providing portfolio management or other investment or ancillary services to clients is to be regarded as fulfilling the obligations under Article 24(1) if:	<i>deleted</i>	
220	(a) before the execution or research services have been provided, an agreement has been entered into between the investment firm and the research provider, identifying the part of any combined charges or joint payments for execution services and research that is attributable to research;	(a) ~~before the execution or research services have been provided,~~ an agreement has been entered into between the investment firm and the ~~research~~ <u>third-party</u> provider, ~~identifying the part of any combined charges or joint payments for of~~ <u>research and</u> execution services, <u>establishing a methodology for remuneration, including how the total cost of</u> ~~and research that is attributable to research~~ <u>is generally taken into account when establishing the total charges for investment services;</u>	<i>deleted</i>	

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221	(b) the investment firm informs its clients about the joint payments for execution services and research made to the third-party providers of research; and	(b) the investment firm ~~informs~~ <u>makes available to</u> its clients ~~about the~~ <u>its policy on separate or joint payments, as the case may be, for execution services and third-party research, including the type of information that may be provided in each case and, where relevant, how the investment firm prevents or manages conflicts of interest pursuant to Article 23 when providing</u> joint payments for execution services and research- ~~made to the third-party providers of research; and~~	<i>deleted</i>	
222	(c) the research for which the combined charges or the joint payment is made concerns issuers whose market capitalisation for the period of 36 months preceding the provision of the research did not exceed EUR 10 billion, as expressed by end-year quotes for the years when they are or were listed or by the own-capital for the financial years when they are or were not listed.	(c) <u>the investment firm assesses, on an annual basis, the quality, usability and value of</u> the research ~~for which the combined charges or the joint payment is made concerns issuers whose market capitalisation for the period of 36 months preceding the provision~~ <u>used, as well as the ability</u> of the research ~~did not exceed EUR 10 billion, as expressed by end-year quotes~~ <u>used to contribute to better investment decisions; ESMA may develop guidelines for investment firms</u> for the ~~years when they are or were listed or by the own-capital for the financial years when they are or were not listed~~ <u>purpose of</u>	<i>deleted</i>	

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		<u>conducting those assessments.</u>		
223	For the purpose of this Article, research shall be understood as covering research material or services concerning one or several financial instruments or other assets, or the issuers or potential issuers of financial instruments, or as covering research material or services closely related to a specific industry or market such that it informs views on financial instruments, assets or issuers within that industry or market.	For the purpose of this Article, research shall be understood as covering research material or services concerning one or several financial instruments or other assets, or the issuers or potential issuers of financial instruments, or as covering research material or services closely related to a specific industry or market such that it informs views on financial instruments, assets or issuers within that industry or market.	<i>deleted</i>	
224	Research shall also comprise material or services that explicitly or implicitly recommend or suggest an investment strategy and provide a substantiated opinion as to the present or future value or price of financial instruments or assets, or otherwise contain analysis and original insights and reach conclusions based on new or existing information that could be used to inform an investment strategy and be relevant and capable of adding value to the investment firm's decisions on behalf of clients being charged for that research.	Research shall also comprise material or services that explicitly or implicitly recommend or suggest an investment strategy and provide a substantiated opinion as to the present or future value or price of financial instruments or assets, or otherwise contain analysis and original insights and reach conclusions based on new or existing information that could be used to inform an investment strategy and be relevant and capable of adding value to the investment firm's decisions on behalf of clients being charged for that research.	<i>deleted</i>	

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225	7. Where the investment firm is not prohibited from getting or paying fees or benefits, from or to a third-party, in connection with services provided to its clients, it shall ensure that the reception or payment of such fees or benefits 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. The existence, nature and amount of such third-party payment(s) shall be disclosed in accordance with Article 24b(1).	7. Where the investment firm is not prohibited from getting or paying fees or benefits, from or to a third-party, in connection with services provided to its clients, it shall ensure that the reception or payment of such fees or benefits 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. The existence, nature and amount of such third-party payment(s) shall be disclosed in accordance with Article 24b(1).	7. ~~Where the investment firm is not prohibited from getting or paying fees or benefits, from or to a third-party, in connection with services provided to its clients, it shall ensure that the reception or payment of such fees or benefits 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.~~ The existence, nature and amount of ~~such third-party payment(s)~~ <u>inducements</u> shall be disclosed <u>separately from other costs and charges</u> in accordance with Article 24b(1).	
226	Where applicable, the investment firm shall also inform the client on mechanisms for transferring to the client the fee, commission, monetary or non-monetary benefit received in relation to the provision of the investment or ancillary service.	Where applicable, the investment firm shall also inform the client on mechanisms for transferring to the client the fee, commission, monetary or non-monetary benefit received in relation to the provision of the investment or ancillary service.	Where applicable, the investment firm shall also inform the client on mechanisms for transferring to the client the ~~fee, commission, monetary or non-monetary benefit~~ <u>inducement</u> received in relation to the provision of the investment or ancillary service.	
227	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	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	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	

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	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 first subparagraph.	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 first subparagraph.	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 ~~first subparagraph~~ <u>paragraphs 2 and 3</u> .	
227a			<u>7a. 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.</u>	
228	8. Three years after the date of entry into force of Directive (EU)	<i>deleted</i>	8. ~~Three~~ <u>Five</u> years after the date of entry into force of Directive (EU)	

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	[OP Please introduce the number of the amending Directive] and after having consulted ESMA and EIOPA, the Commission shall assess the effects of third-party payments on retail investors, 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 Directive (EU) [OP Please introduce the number of the amending Directive] on it. If necessary to prevent consumer detriment, the Commission shall propose legislative amendments to the European Parliament and the Council.		[OP Please introduce the number of the amending Directive] and after having consulted ESMA and EIOPA, the Commission shall assess the effects of ~~third-party payments~~<u>inducements</u> on retail ~~investors~~<u>clients</u>, 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 <u>this</u> Directive ~~(EU) [OP Please introduce the number of the amending Directive] on it~~<u>on retail clients</u>. If necessary to prevent consumer detriment, the Commission shall propose legislative amendments to the European Parliament and the Council.	
228a			<u>8a. 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</u>	

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			<u>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.</u>	
229	Article 24b	Article 24b	Article 24b	
230	Information on costs, associated charges and third-party payments	Information on costs, associated charges and third-party payments	Information on costs, associated charges and ~~third-party payments~~ <u>inducements</u>	
231	1. Member States shall ensure that investment firms provide clients or potential clients in good time prior to the provision of any investment services and 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 third-party payments related to those services, financial instruments or transactions.	1. Member States shall ensure that investment firms provide clients or potential clients in good time prior to the provision of any investment services and 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 third-party payments related to those services, financial instruments or transactions.	1. Member States shall ensure that investment firms provide clients or potential clients in good time prior to the provision of any investment services ~~and/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 ~~third-party payments~~ <u>inducements</u> related to those services, financial instruments or transactions.	

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232	The information on those costs, associated charges and third-party payments shall include all of the following:	<u>Information about costs and charges which are not caused by the occurrence of underlying market risk shall be aggregated. Investment firms shall explicitly inform their clients of their right to request the provision of an itemised breakdown and shall provide such an itemised breakdown at the request of the client.</u> The information on those costs, associated charges and third-party payments shall include all of the following:	The information on those costs, associated charges and ~~third-party payments~~ <u>inducements</u> shall include all of the following:	
233	(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;	(a) all explicit and implicit, and associated charges, <u>including all costs and charges relating to the distribution of the financial instrument, and the cost of advice, where relevant</u> , 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;	(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;	
234	(b) all costs and associated charges associated with the manufacturing	(b) all costs and associated charges associated with the manufacturing	(b) all costs and associated charges associated with the manufacturing	

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	and managing of any financial instrument recommended or marketed to the client or potential client;	and managing of any financial instrument recommended or marketed to the client or potential client;	and managing of any financial instrument recommended or marketed to the client or potential client;	
235	(c) any third-party payments paid or received by the firm in connection with the investment services provided to the client or potential client;	(c) any third-party payments paid or received by the firm in connection with the investment services provided to the client or potential client;	(c) any ~~third-party payments~~ <u>inducements</u> paid or ~~received~~ <u>accepted and retained</u> by the firm in ~~connection with~~ <u>relation to</u> the investment ~~or ancillary~~ services provided to the client or potential client;	
236	(d) how the client may pay for them.	(d) <u>options on</u> how the client may pay for them.	(d) how the client may pay for them.	
237	Member States shall ensure that investment firms aggregate the information on all costs and associated charges to enable the client to understand the overall cost, of the financial instruments and the cumulative effect on return of the 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	Member States shall ensure that investment firms aggregate the information on all costs and associated charges to enable the <u>retail</u> client to understand the overall cost, of the financial instruments ~~and the cumulative effect on return of the investment.~~ <u>For retail clients,</u> 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,~~	Member States shall ensure that investment firms aggregate the information on all costs ~~and,~~ associated charges <u>and inducements as mentioned under sub-paragraphs a, b and c</u> to enable the <u>retail</u> client to understand the overall cost, ~~of linked to~~ the financial instruments, <u>investment services and inducements and their</u> ~~and the~~ cumulative effect on return ~~of the on~~ investment. Member States shall ensure that investment firms express the overall cost in monetary terms and percentages calculated up	

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	the investment firm, or in the absence thereof, holding periods of 1, 3 and 5 years. Where the client so requests, investment firms shall provide an itemised breakdown.	~~the holding period recommended by the investment firm, or in the absence thereof, holding over the following periods of 1, 3 and 5 years. Where the client so requests, investment firms shall provide an itemised breakdown.~~	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, ~~3~~ and 5 years. Where the client so requests, investment firms shall provide an itemised breakdown. <u>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.</u>	
237a		<u>- for financial instruments which are packaged retail investment products, over the holding period recommended by the investment firm,</u>		
237b		<u>- for other financial instruments, up to the maturity date of the financial instrument;</u>		
237c		<u>- for financial instruments without a maturity date, and which are not packaged retail investment products, over a holding period of</u>		

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		<u>one year.</u>		
237d		<u>The information referred to in the second subparagraph, points (a) to (c), shall be accompanied by an appropriate explanation, in a standard and comprehensible language for a retail client, on the impact of the costs, charges and any third-party payments on the expected return.</u>		
238	The third-party payments paid or received by the investment firm in connection with the investment service provided to the client shall be itemised separately. The investment firm shall disclose the cumulative impact of such third-party payments, including any recurring third-party payments, on the net return over the holding period as mentioned in the preceding subparagraph. The purpose of the third-party payments and their impact on the net return shall be explained in a standardised way and in a comprehensible language for an average retail client.	The third-party payments paid or received by the investment firm in connection with the investment service provided to the client shall be itemised separately. The investment firm shall disclose the cumulative impact of such third-party payments, including any recurring third-party payments, on the net return over the holding period as mentioned in the preceding subparagraph. The purpose of the third-party payments and their impact on the net return shall be explained in a standardised way and in a comprehensible language for ~~an average~~ retail client.	The ~~third-party payments~~ <u>inducements</u> paid or ~~received~~ <u>accepted and retained</u> by the investment firm in ~~connection with~~ <u>relation to</u> the investment service provided to the client shall be itemised separately. The investment firm shall disclose the cumulative impact of such ~~third-party payments~~ <u>inducements</u> , including any recurring ~~third-party payments~~ <u>inducements</u> , on the net return over the holding period as mentioned in the preceding subparagraph. The purpose of the ~~third-party payments~~ <u>inducements</u> and their impact on the net return shall be explained in a standardised way and ~~in a comprehensible~~ <u>using</u> language <u>that is plain and intelligible</u> for an average retail	

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			client. <u>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.</u>	
239	Where the amount of any costs, associated charges or third-party payments 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.	Where the amount of ~~any costs, associated charges or~~ third-party payments 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 <u>retail</u> client in a manner that is comprehensible, accurate and understandable for ~~an average~~ retail client. <u>The firm shall also provide its clients with information on the exact amount of the third-party payments received or paid on an ex-post basis.</u>	Where the amount of any costs, associated charges or ~~third-party payments~~ <u>inducements</u> 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.	
240	Investment firms providing investment services to professional clients shall have the right to agree to a limited application of the detailed requirements set out in this paragraph, with such clients. Investment firms shall not be allowed to agree such limitations when the services of investment	<i>deleted</i>	<i>deleted</i>	

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	advice or portfolio management are provided or when, irrespective of the investment service provided, the financial instruments concerned embed a derivative.			
241	Investment firms providing investment services to eligible counterparties shall have the right to agree to a limited application of the detailed requirements set out in this paragraph, except when, irrespective of the investment service provided, the financial instruments concerned embed a derivative and the eligible counterparty intends to offer them to its clients.	<i>deleted</i>	<i>deleted</i>	
242	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:	2. <u>ESMA shall</u> , after having ~~conducted~~ <u>consulted EIOPA and after conducting</u> consumer and industry testing ~~and after having consulted EIOPA, ESMA shall~~ develop draft regulatory technical standards to specify all of the following:	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:	
243	(a) the relevant format for the provision of any costs, associated charges and third-party payments,	(a) the relevant format for the provision of any costs, associated charges and third-party payments,	(a) the relevant format for the provision of any costs, associated charges and ~~third-party~~	

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	by the investment firm to its retail client or potential retail client, prior to the conclusion of any transaction on financial instruments;	by the investment firm to its retail client or potential retail client, prior to the <u>provision of any investment services, ancillary services, and the</u> conclusion of any transaction on financial instruments;	~~payments~~ <u>inducements</u> , by the investment firm to its retail client or potential retail client, prior to the <u>provision of any investment services, ancillary services and the</u> conclusion of any transaction ~~on~~ <u>in</u> financial instruments;	
244	(b) the standard terminology and related explanations to be used by investment firms for the disclosure and calculation of any costs, associated charges and third-party payments charged directly or indirectly by firms to the client or potential client in connection with 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 third-party payments and their impact on the expected returns, shall ensure that they are likely to be understood by any average retail client without specific knowledge on investments in financial instruments.	(b) the standard terminology and <u>brief and concise</u> related explanations to be used by investment firms for the disclosure and calculation of any costs, associated charges and third-party payments charged directly or indirectly by firms to the <u>retail</u> client or potential <u>retail</u> client in connection with 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 <u>retail</u> client or potential <u>retail</u> client. <u>The</u> explanations ~~related to those costs, associated charges and third-party payments and their impact on the expected returns,~~ shall ensure that they are likely to be understood by any ~~average~~ retail client without specific knowledge on ~~investments in~~ financial instruments.	(b) the standard terminology <u>calculation method</u> and related explanations to be used by investment firms for the disclosure and calculation of any costs, <u>including implicit costs</u>, associated charges and ~~third-party payments~~<u>inducements</u> charged directly or indirectly by firms to the client or potential client in ~~connection with~~<u>relation to</u> 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 ~~third-party payments~~<u>inducements</u> and their impact on the ~~expected~~ returns, shall ensure that they are likely to be understood by any average retail client without specific knowledge on investments in financial instruments.	

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245	ESMA shall submit those draft regulatory technical standards to the Commission by [OJ: 18 months after the date of entry into force].	ESMA shall submit those draft regulatory technical standards to the Commission by [OJ: 18 months after the date of entry into force].	ESMA shall submit those draft regulatory technical standards to the Commission by [OJ: 18 months after the date of entry into force].	
246	Power is delegated to the Commission to adopt those regulatory technical standards in accordance with Article 10 of Regulation. (EU) No 1095/2010.	Power is delegated to the Commission to adopt those regulatory technical standards in accordance with Article 10 of Regulation. (EU) No 1095/2010.	Power is delegated to the Commission to adopt those regulatory technical standards in accordance with Article 10 of Regulation. (EU) No 1095/2010.	
247	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:	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 <u>and third-party payments</u> , the investment firm may provide the information on costs ~~and~~ , charges <u>and third-party payments</u> 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:	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:	
248	(a) the client has consented to receiving the information without undue delay after the conclusion of	(a) the client has consented to receiving the information without undue delay after the conclusion of	(a) the client has consented to receiving the information without undue delay after the conclusion of	

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	the transaction;	the transaction;	the transaction;	
249	(b) the investment firm has given the client the option of delaying the conclusion of the transaction until the client has received the information.	(b) the investment firm has given the client the option of delaying the conclusion of the transaction until the client has received the information.	(b) the investment firm has given the client the option of delaying the conclusion of the transaction until the client has received the information.	
250	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.	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.	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.	
251	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 connection with those instruments, provide its retail client with an annual statement with the following information expressed in monetary terms and percentages:	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 connection with those instruments, provide its retail client with an annual statement with the following information expressed in monetary terms and percentages:	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 ~~connection~~ <u>with relation to</u> those instruments, provide its retail client with an annual statement with the following information expressed in monetary terms and percentages:	

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252	(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:	(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:	(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:	
253	(i) the costs associated with the provision of any investment or ancillary service, as applicable, by the investment firm to the retail client;	(i) the costs associated with the provision of any investment or ancillary service, as applicable, by the investment firm to the retail client;	(i) the costs associated with the provision of any investment or ancillary service, as applicable, by the investment firm to the retail client;	
254	(ii) the costs associated to the manufacturing and managing of the financial instruments held by the retail client;	(ii) the costs associated to the manufacturing and managing of the financial instruments held by the retail client;	(ii) the costs associated to the manufacturing and managing of the financial instruments held by the retail client;	
255	(iii) if any, the payments received by the firm from, or paid to, third parties in connection with the investment services provided to the retail client;	(iii) if any, the payments received by the firm from, or paid to, third parties in connection with the investment services provided to the retail client;	(iii) if any, the payments received by the firm from, or paid to, third parties in ~~connection with~~ <u>relation to</u> the investment <u>or ancillary</u> services provided to the retail client;	
256	(b) the total amount of dividends, interest and other payments received annually by the retail client for the total portfolio;	(b) the total amount of dividends, interest and other payments received annually by the retail client for the total portfolio;	(b) the total amount of dividends, interest and other payments received annually by the retail client for the total portfolio;	

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257	(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;	(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;	(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;	
258	(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;	(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;	(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;	
259	(e) the net annual performance of the portfolio of the retail client and the annual performance of each of the financial instruments included in this portfolio.	(e) the net annual performance of the portfolio of the retail client and, <u>upon request</u> , the annual performance of each of the financial instruments included in this portfolio.	(e) the net annual performance, <u>at the end of the reporting period, of the whole</u> portfolio ~~of the retail client~~ <u>holds with the investment firm during the reporting period</u> and the <u>net</u> annual performance of each of the financial instruments included in this portfolio <u>at the end of the reporting period</u> .	
260	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	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	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	

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	applicable information on point (a).	information on point (a).	information on point (a). <u>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.</u>	
261	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 point (a), (b), (c) and (d).	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 point (a), (b), (c) and (d).	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 ~~point (a)~~ <u>points (a)(i) and (iii)</u> , (b), (c) and (d). <u>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</u>	

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			<u>instruments in the portfolio by the retail client.</u>	
262	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 per financial instrument owned during the relevant period as well as for each tax borne by the retail client.	~~Upon its request, the~~ <u>Investment firms shall inform</u> retail ~~client shall be entitled to receive each year~~ <u>clients explicitly about the possibility to ask for</u> a detailed breakdown of the information referred to under point (a) to (c) above per financial instrument owned during the relevant period ~~as well as for each tax borne by the retail~~ <u>and shall provide such an itemised breakdown at the request of the</u> client. <u>When several investment firms need to provide an annual statement to the client, it is sufficient to provide one statement that contains all the information foreseen in the second and third subparagraph.</u>	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, <u>including in relation to inducements</u> , per financial instrument owned during the relevant period as well as for each tax borne by the retail client. <u>Investment firms shall inform their clients of their right to request the provision of such detailed breakdowns.</u>	
262a		<u>Without prejudice to the requirement in this paragraph, where sufficient information is not available on a specific product to draw up an annual statement, the requirements with respect to the annual statement shall only be applicable to contracts concluded after the entry into force of Directive ... / [insert the number</u>		

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		<u>of this amending Directive].</u>		
263	The annual statement on costs and performance for retail clients shall be presented in an easy-to-understand way for an average retail client. Information on costs, associated charges and any third-party payments shall be presented using the terminology and explanations as described under paragraph 2 of this Article.	The annual statement on costs and performance for retail clients shall be presented in an easy-to-understand way for an average retail client. Information on costs, associated charges and any third-party payments shall be presented using the terminology and explanations ~~as described under~~ <u>and the calculation methodology specified in the regulatory technical standards referred to in</u> paragraph 2 of this Article.	The annual statement on costs and performance for retail clients shall be presented in an easy-to-understand way for an average retail client. <u>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.</u> Information on costs, associated charges and any ~~third-party payments~~ <u>inducements</u> shall be presented using the terminology- ~~and~~ , explanations ~~as described under~~ , <u>format and calculation method specified in the regulatory technical standards referred in</u> paragraph 2 of this Article <u>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.</u>	
264	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	5. <u>Upon request by the retail client, it shall not be necessary to provide</u> the annual statement referred to in paragraph 4 ~~shall not be provided where~~ <u>if</u> the investment firm provides its retail clients with	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	

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	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.	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.	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.	
265	Article 24c	Article 24c	Article 24c	
266	Marketing Communications and Practices	Marketing Communications and Practices	Marketing communications and practices	
267	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.	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.	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.	
268	2. Member States shall ensure that marketing communications are developed, designed and provided in a manner that is fair, clear, not	2. Member States shall ensure that marketing communications are developed, designed and provided in a manner that is fair, clear, not	2. Member States shall ensure that marketing communications are developed, designed and provided in a manner that is fair, clear, not	

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	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).	misleading, balanced in terms of presentation of benefits and risks, and appropriate in terms of content and distribution channels for the target ~~audience~~ <i>market clients</i> and where related to a specific financial instrument to the target market identified pursuant to Article 24(2).	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).	
269	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.	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.	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.	
269a		<u><i>The information shall be made accessible, depending on the characteristics of the medium, via a nested display, scroll over, through QR-code, or similar.</i></u>		
270	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	The presentation of the essential characteristics of the financial instruments and services ~~included~~ <i>made available</i> in the marketing communications provided or made accessible to retail or potential retail clients, shall ensure that they can easily	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	

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	financial instruments or services as well as the main risks associated with them.	understand the key features of the financial instruments or services as well as the <u>costs and</u> main risks associated with them.	financial instruments or services as well as the main risks associated with them.	
271	3. Member States shall ensure that marketing practices are developed and used in a manner that is fair and not misleading, and shall be appropriate for the target audience.	3. Member States shall ensure that marketing practices are developed and used in a manner that is fair and not misleading, and shall be appropriate for the target ~~audience~~ <u>market. Member States shall ensure that investment firms carrying out profiling of individuals for the purpose of this paragraph, fully comply with Regulation (EU) 2016/679.</u>	3. Member States shall ensure that marketing practices are developed and used in a manner that is fair, <u>clear</u> and not misleading, and shall be appropriate for the target audience <u>based on the target market assessment and the distribution strategy of the product in the context of the product oversight and governance requirements.</u>	
272	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.	4. Where a manufacturer of a financial instrument prepares and provides a marketing communication to be used by ~~the~~ <u>a</u> 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.	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.	

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273	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.	Where an investment firm <u>that</u> 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.	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.	
273a		<u>4a. Where an investment firm uses the services of a finfluencer, that investment firm shall:</u>		
273b		<u>(a) establish a written agreement with the finfluencer determining the nature and scope of the activity to be carried out on behalf of the firm;</u>		
273c		<u>(b) upon request, provide the competent authority with the identity and contact details of the finfluencer on whose services it relies to the competent authority;</u>		
273d		<u>(c) regularly verify whether the</u>		

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		<u>activity of the finfluencer whose services it relies on complies with paragraphs 1 to 4.</u>		
274	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.	5. Member States shall ensure, <u>that</u> 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.	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.	
275	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.	6. Member States shall ensure that national competent authorities can take timely and effective action in relation to any marketing communication <u>disseminated in their territory</u> or marketing practice <u>taking place in their territory</u> that do not comply with requirements ~~under~~ <u>laid down in</u> paragraphs 1 to 3.	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.	
276	7. Records to be kept by the investment firm according to Article 16(6) shall include all marketing	7. Records to be kept by the investment firm according to Article 16(6) shall include all marketing	7. Records to be kept by the investment firm according to Article 16(6) shall include all marketing	

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	communications provided or made accessible to retail clients or potential retail clients, by the investment firm or any third party remunerated or incentivised through non-monetary compensation by the investment firm.	communications provided or made accessible to retail clients or potential retail clients, by the investment firm or any third party remunerated or incentivised through non-monetary compensation by the investment firm.	communications provided or made accessible to retail clients or potential retail clients, by the investment firm or any third party remunerated or incentivised through non-monetary compensation by the investment firm.	
277	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.	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~~ <u>retained for at least the duration of the relationship between the investment firm and the customer</u> . Those records shall be retrievable by the investment firm upon request of the competent authority.	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.	
278	The records referred to in the first subparagraph shall contain all of the following:	The records referred to in the first subparagraph shall contain all of the following:	The records referred to in the first subparagraph shall contain all of the following:	
279	(a) the content of the marketing communication;	(a) the content of the marketing communication;	(a) the content of the marketing communication;	
280	(b) details about the medium used for the marketing communication;	(b) details about the medium used for the marketing communication;	(b) details about the medium used for the marketing communication;	

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281	(c) the date and duration of the marketing communication including relevant starting and end times;	(c) the date and duration of the marketing communication including relevant starting and end times;	(c) the date and duration of the marketing ~~communication including relevant starting and end times~~ <u>communication</u> ;	
282	(d) the targeted retail client segments or profiling determinants;	(d) the targeted retail client segments or profiling determinants;	(d) the targeted retail client segments or profiling determinants;	
283	(e) the Member States where the marketing communication is made available;	(e) the Member States where the marketing communication is made available;	(e) the Member States where the marketing communication is made available;	
284	(f) the identity of any third party involved in the dissemination of the marketing communication.	(f) the identity of any third party involved in the dissemination of the marketing communication.	(f) the identity of any third party involved in the dissemination of the marketing communication.	
285	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.	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.	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.	
286	8. The Commission is empowered to adopt a delegated act in	8. The Commission is empowered to adopt a delegated act in	8. The Commission is empowered to adopt a delegated act in	

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	accordance with Article 89 to supplement this Directive by specifying the following:	accordance with Article 89 to supplement this Directive by specifying <i>the following</i> :	accordance with Article 89 to supplement this Directive by specifying the following:	
287	(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;	(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;	(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;	
288	(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 distribution channels for the target audience or, where applicable, the target market.	(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, <u>costs</u> and risks, and appropriate in terms of content and distribution channels for the target audience or, where applicable, the target market.	(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 ~~distribution channels~~ <u>media, including character-limited media and short-form content</u> , for the target audience or, where applicable, the target market <u>based on the target market assessment and the distribution strategy of the product in the context of the product</u>	

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			<u>oversight and governance requirements.</u>	
289	Article 24d	Article 24d	Article 24d	
290	Professional requirements	Professional requirements	Professional requirements	
291	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 the criteria to be used for assessing effectively such knowledge and competence.	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 the criteria to be used for assessing effectively such knowledge and competence.	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 <u>all relevant information about</u> the criteria to be used for assessing effectively such	

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			knowledge and competence.	
292	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. Compliance with the criteria set out in Annex V as well as the yearly successful completion of the continuous professional training and development shall be proven by a certificate.	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, <u>during work hours. Member States shall have in place and publish mechanisms to control effectively and assess the knowledge and competence of natural persons giving investment advice to clients on behalf of investment firms. The mechanisms shall in particular define in which cases additional hours of professional training and development are to be required from those persons beyond the minimum of 15 hours per year, based on the assessment of knowledge and competence. An appropriate number of hours of professional training shall be allocated by national competent authorities to the minimum necessary knowledge in sustainable investments contributing to an</u>	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. <u>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 ~~continuous~~ continuing professional training and development, which shall be proven by a certificate or equivalent proof of completion of such training and development.</u>	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
		<u>environmental or social objective, including how to consider and integrate sustainability factors and clients' sustainability preferences into the advisory processes.</u> <u>Member States may provide that continuing vocational training acquired and required as a part of another professional qualification can be considered valid. Member States may require that</u> compliance with the criteria set out in Annex V as well as the yearly successful completion of the continuous professional training and development shall be proven by a certificate <u>or any other document recognised by the Union or a Member State.</u>		
293	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.;	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.;	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.;	
294	(14) Article 25 is amended as follows:	(14) Article 25 is amended as follows:	(14) Article 25 is amended as follows:	
295				

	Commission Proposal	EP Mandate	Council Mandate	MS comments
	(a) paragraphs 1, 2 and 3 are replaced by the following:	(a) paragraphs 1, 2 and 3 are replaced by the following:	(a) paragraphs 1, 2 and 3 are replaced by the following:	
296	‘ 1. The investment firm shall assess the suitability or appropriateness of the relevant financial instruments(s) or investment services or transaction(s) to be recommended to, or demanded by, his or her client or potential client in good time before respectively i) the provision of the investment advice or portfolio management or ii) the execution or reception and transmission of the order. Each of these assessments shall be determined on the basis of information about the client or potential client as obtained by the investment firm, in accordance with the below requirements.	‘ 1. The investment firm shall assess the suitability or appropriateness of the relevant financial instruments(s) or investment services or transaction(s) to be recommended to, or demanded by, his or her client or potential client in good time before respectively i) the provision of the investment advice or portfolio management or ii) the execution or reception and transmission of the order. Each of these assessments shall be determined on the basis of information about the client or potential client as obtained by the investment firm, in accordance with the below requirements.	‘ 1. <u>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.</u> The investment firm shall assess the suitability ~~or appropriateness~~ of the relevant financial ~~instruments~~<u>instrument</u>(s) or investment ~~services or transaction(s)~~<u>service</u> to be recommended to, or ~~demanded by, his or her~~<u>requested by, its retail</u> client or potential client in good time before ~~respectively i) the provision of the investment advice or portfolio management or ii) the execution or reception and transmission of the order.~~ Each of these assessments shall be ~~determined~~<u>carried out</u> on the basis of <u>proportionate and necessary</u> information about the client or potential client as obtained by the investment firm, in accordance with the ~~below~~ requirements <u>set out in this Article.</u>	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
297	The investment firm shall ensure that the purpose of the suitability or appropriateness assessment is explained to the client or potential client before any information is requested from him or her. The clients and potential clients shall be warned of the following consequences:	The investment firm shall ensure that the purpose of the suitability or appropriateness assessment is explained to the client or potential client before any information is requested from him or her. The clients and potential clients shall be warned of the following consequences:	The investment firm shall ensure that the purpose of the suitability or appropriateness assessment is explained to the client or potential client before ~~any~~ <u>the</u> information <u>necessary for this assessment</u> is requested from him or her. The clients and potential clients shall be warned of the following consequences:	
298	(a) the provision of inaccurate or incomplete information shall impact negatively the quality of the assessment to be made by the investment firm;	(a) the provision of inaccurate or incomplete information shall impact negatively the quality of the assessment to be made by the investment firm;	(a) the provision of inaccurate ~~or incomplete~~ information ~~shall~~ <u>may</u> impact negatively the quality of the assessment to be made by the investment firm;	
299	(b) the absence of information shall prevent the firm to determine whether the service or financial instrument envisaged is suitable or appropriate for them and to proceed with the recommendation or the execution of the client's order. Such explanation and warning shall be provided in a standardised format.	(b) the absence of information shall prevent the firm to determine whether the service or financial instrument envisaged is suitable or appropriate for them and to proceed with the recommendation or the execution of the client's order. Such explanation and warning shall be provided in a standardised format.	(b) the absence of <u>the necessary</u> information ~~shall prevent, including the provision of incomplete information, prevents~~ the firm ~~to determine~~ <u>from determining</u> whether the <u>investment</u> service or financial instrument envisaged is suitable or appropriate for them and ~~to proceed, in case of investment advice, from proceeding~~ with the recommendation ~~or the execution of the client's order. Such explanation and~~ <u>Such</u> warning shall be	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
			provided in a standardised format. – <u>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.</u>	
300	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. Such report shall be presented in a standardised format.	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. Such report shall be presented in a standardised format.	<u>The investment firm shall keep a record of the information collected from the retail client for the purpose of the suitability or appropriateness assessment.</u> 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. ~~Such report shall be presented in a standardised format.~~	
301	ESMA shall develop draft regulatory technical standards to determine the explanation and warning referred to in paragraph 1, second subparagraph, and the format and content of the report referred to in paragraph 1, third subparagraph.	ESMA shall develop draft regulatory technical standards to determine the explanation and warning referred to in paragraph 1, second subparagraph, and the format and content of the report referred to in paragraph 1, third subparagraph.	ESMA shall develop draft regulatory technical standards to determine the ~~explanation and~~ warning referred to in paragraph 1, second subparagraph, ~~and the format and content of the report referred to in paragraph 1, third subparagraph.~~	
302	ESMA shall submit the draft regulatory technical standards to the Commission by [OJ: insert date 18	ESMA shall submit the draft regulatory technical standards to the Commission by [OJ: insert date 18	ESMA shall submit the draft regulatory technical standards to the Commission by [OJ: insert date 18	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
	months after the date of entry into force].	months after the date of entry into force].	months after the date of entry into force].	
303	Power is conferred to the Commission to adopt those regulatory technical standards referred to above in the fourth subparagraph of this paragraph in accordance with Articles 10 to 14 of Regulation. (EU) No 1095/2010.	Power is conferred to the Commission to adopt those regulatory technical standards referred to above in the fourth subparagraph of this paragraph in accordance with Articles 10 to 14 of Regulation. (EU) No 1095/2010.	Power is ~~conferred~~ <u>delegated</u> to the Commission to adopt those regulatory technical standards ~~referred to above in the fourth subparagraph of this paragraph~~ in accordance with ~~Articles 10 to 14~~ <u>Article 10</u> of Regulation. (EU) No 1095/2010.	
304	2. Subject to the second subparagraph, when providing investment advice or portfolio management services, the investment firm shall obtain the necessary information regarding the client or potential client's knowledge and experience in the investment field relevant to the specific type of product or service, that client's financial situation, including the composition of any existing portfolios, its 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 the investment services or financial instruments that are suitable for that	2. Subject to the second subparagraph, when providing investment advice or portfolio management services, the investment firm shall obtain the necessary information regarding the client or potential client's knowledge and experience in the investment field relevant to the specific type of product or service, ~~that and~~ client's financial situation, including ~~the composition of any existing portfolios, its 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 the investment services or financial instruments that are suitable for~~	2. Subject to the second subparagraph, when providing investment advice or portfolio management services, the investment firm shall obtain the necessary information regarding the <u>retail</u> client's or potential client's knowledge and experience in the investment field relevant to the specific type of ~~product or financial instrument or investment~~ service, ~~that the~~ client's financial situation, including, <u>to the extent possible</u> , the composition of any existing portfolios, ~~its~~ <u>the client's</u> 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	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
	person, and, in particular, are in accordance with its risk tolerance, ability to bear losses and need for portfolio diversification.	~~that person, and, in particular, are in accordance with its risk tolerance, ability to bear losses and need for portfolio diversification.~~	client, <u>or to undertake on the client's behalf, the transactions in the investment services or</u> financial instruments that are suitable for that ~~person~~ client, and, in particular, are in accordance with its risk tolerance, ability to bear losses and, <u>to the extent applicable,</u> need for portfolio diversification. <u>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.</u> <u>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.</u>	
304a		<u>- to the extent disclosed by the client upon request of the firm, the composition of any existing portfolios.</u>		
304b		<u>- its ability to bear full or partial losses.</u>		

	Commission Proposal	EP Mandate	Council Mandate	MS comments
304c		<u>- investment needs and objectives including sustainability preferences, if any, and</u>		
304d		<u>- risk tolerance, so as to enable the investment firm to recommend to the client or potential client the investment services or financial instruments that are suitable for that person, and, in particular, are in accordance with its risk tolerance, ability to bear losses, its sustainability preferences and need for portfolio diversification.</u>		
304e		<u>Investment firms inform clients that there are different types of investment advice. On this ground, clients can decide which type of advice they want to receive.</u>		
305	When providing independent investment advice to retail clients restricted to well-diversified, non-complex, and cost-efficient financial instruments, the independent firm shall be under no obligation to obtain information on the retail client or potential retail client's knowledge and experience	Deleted	When providing independent investment advice to retail clients restricted to well-diversified, non-complex, and cost-efficient financial instruments, the ~~independent~~ <u>investment</u> firm shall be under no obligation to obtain information on the retail client or potential retail client's knowledge	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
	about the considered financial instruments or investment services or on the retail client's existing portfolio composition.		and experience about the considered financial instruments or investment services or on the retail client's existing portfolio composition.	
306	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.	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.	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.	
307	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.	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.	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.	
308	3. Member States shall ensure that investment firms, when providing investment services other than those	3. Member States shall ensure that investment firms, when providing investment services other than those	3. Member States shall ensure that investment firms, when providing investment services other than those	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
	referred to in paragraph 2, ask the client or potential client to provide information regarding their knowledge and experience in the investment field relevant to the specific type of product or service offered or demanded, 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 is appropriate for the client.	referred to in paragraph 2, ask the <u>retail</u> client or potential <u>retail</u> client to provide information regarding their knowledge and experience in the investment field relevant to the specific type of product or service offered or demanded, ~~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 is appropriate for the client.	referred to in paragraph 2, ask the <u>retail</u> client or potential <u>retail</u> client to provide information regarding their knowledge and experience in the investment field relevant to the specific type of product or service offered or ~~demanded~~ , <u>requested</u> 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 ~~is~~ <u>are</u> appropriate for the client.	
309	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 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 a bundle of services or products is envisaged pursuant to Article 24(11), the assessment shall consider whether the overall bundled package is appropriate.	
310	Where the investment firm assesses on the basis of the information received under the first subparagraph, that the product or service is not appropriate to the client or potential client, the investment firm shall warn the client or potential client. That warning shall be provided in a standardised format and shall be recorded.	Where the investment firm assesses on the basis of the information received under the first subparagraph, that the product or service is not appropriate to the client or potential client, the investment firm shall warn the client or potential client. <u>When the service is provided to a retail client,</u> that warning shall be provided in a standardised format and shall be	Where the investment firm assesses, on the basis of the information received under the first subparagraph, that the ~~product or~~ <u>financial instrument or investment</u> service is not appropriate to the <u>retail</u> client or potential <u>retail</u> client, the investment firm shall warn the <u>retail</u> client or potential <u>retail</u> client. That warning shall be provided in a	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
		recorded.	standardised format. <u>The investment firm</u> ~~and~~ shall ~~be recorded~~ <u>keep a record of such warnings</u> .	
311	The investment firm shall not proceed with a transaction subject to a warning indicating that the product of service is not appropriate, unless the client asks to proceed with it despite such warning. Both demand of the client and acceptance of the firm shall be recorded	The investment firm shall not proceed with a transaction subject to a warning indicating that the product of service is not appropriate, unless the client asks to proceed with it despite such warning. Both demand of the client and acceptance of the firm shall be recorded.	The investment firm shall not proceed with a transaction subject to a warning indicating that the ~~product of~~ <u>financial instrument or investment</u> service is not appropriate <u>or a warning indicating that the investment firm cannot assess the appropriateness of the financial instrument or investment service</u> , unless the <u>retail</u> client asks to proceed with it despite such warning. <u>The investment firm shall keep a record of both the request</u> ~~Both demand~~ of the <u>retail</u> client and <u>the</u> acceptance of the firm ~~shall be recorded~~ .	
312	ESMA shall develop draft regulatory technical standards to determine the format and content of the warning referred to in subparagraph 3.	ESMA shall develop draft regulatory technical standards to determine the format and content of the warning <u>to retail clients</u> referred to in subparagraph 3.	ESMA shall develop draft regulatory technical standards to determine the format and content of the warning referred to in subparagraph 3.	
313	ESMA shall submit the draft regulatory technical standards to the Commission by [OJ: insert date 18	ESMA shall submit the draft regulatory technical standards to the Commission by [OJ: insert date 18	ESMA shall submit the draft regulatory technical standards to the Commission by [OJ: insert date 18	

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	months after the date of entry into force].	months after the date of entry into force].	months after the date of entry into force].	
314	Power is conferred to the Commission to adopt those regulatory technical standards in accordance with Articles 10 of Regulation. (EU) No 1095/2010.;	Power is conferred to the Commission to adopt those regulatory technical standards in accordance with Articles 10 of Regulation. (EU) No 1095/2010.;	Power is ~~conferred~~ <u>delegated</u> to the Commission to adopt those regulatory technical standards in accordance with ~~Articles~~ <u>Article</u> 10 of Regulation- (EU) No 1095/2010.;	
315	(b) in paragraph 4, the following subparagraphs are added:	(b) in paragraph 4, the following subparagraphs are added:	(b) in paragraph 4, the following subparagraphs are added:	
316	‘ 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 develop draft regulatory technical standards to determine the format and content of warning <u>to retail clients</u> referred to in the first subparagraph, point (c).	‘ ESMA shall develop draft regulatory technical standards to determine the format and content of warning referred to in the first subparagraph, point (c).	
317	ESMA shall submit the draft regulatory technical standards to the Commission by [OJ: insert date 18 months after the date of entry into force].	ESMA shall submit the draft regulatory technical standards to the Commission by [OJ: insert date 18 months after the date of entry into force].	ESMA shall submit the draft regulatory technical standards to the Commission by [OJ: insert date 18 months after the date of entry into force].	
318				

	Commission Proposal	EP Mandate	Council Mandate	MS comments
	Power is conferred to the Commission to adopt those regulatory technical standards as referred to above in accordance with Articles 10 of Regulation. (EU) No 1095/2010.;	Power is conferred to the Commission to adopt those regulatory technical standards as referred to above in accordance with Articles 10 of Regulation. (EU) No 1095/2010.;	Power is ~~conferred~~ <u>delegated</u> to the Commission to adopt those regulatory technical standards ~~as referred to above~~ in accordance with ~~Articles~~ <u>Article</u> 10 of Regulation. ~~(EU) No 1095/2010.~~ <u>(EU) No 1095/2010.</u> ;	
319	(c) in paragraph 6, second subparagraph, the following sentence is added:	(c) in paragraph 6, second subparagraph, the following sentence is added:	(c) in paragraph 6, second subparagraph, the following sentence is added:	
320	‘ 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.;	‘ 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.;	‘ 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.;	
321	(d) paragraph 8 is replaced by the following:	(d) paragraph 8 is replaced by the following:	(d) paragraph 8 is replaced by the following:	
322	‘	‘	‘	

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	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 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:	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 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:	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 <u>criteria and conditions for the provision of investment advice pursuant to paragraph 2, second subparagraph, the</u> 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:	
323	(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;	(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;	(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;	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
324	(b) the nature of the products being offered or considered, including different types of financial instruments;	(b) the nature of the products being offered or considered, including different types of financial instruments;	(b) the nature of the products being offered or considered, including different types of financial instruments;	
325	(c) the retail or professional nature of the client or potential clients or, in the case of paragraph 6, their classification as eligible counterparties.;	(c) the retail or professional nature of the client or potential clients or, in the case of paragraph 6, their classification as eligible counterparties.;	(c) the retail or professional nature of the client or potential clients or, in the case of paragraph 6, their classification as eligible counterparties.;	
325a		<u>(ca) the criteria for assessing the alignment of financial products with a client's sustainability preferences and outlining the procedures for tailoring a portfolio or investment product offering to meet a client's sustainability preferences.';</u>		
325b		<u>(14a) in Article 29a, the following paragraph is inserted:</u>	<u>(14a) Article 29a is amended as follows:</u>	
325c		<u>(2a) Investment firms providing investment services to professional clients shall have the right to agree to a limited application of the</u>	<u>(a) paragraph 1 is replaced by the following:</u>	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
		<u>detailed requirements of Articles 24 and Article 24b, with such clients. Investment firms shall not be allowed to agree on such limitations with regard to investment advice or portfolio management nor, irrespective of the investment service provided, with regard to financial instruments which embed a derivative.';</u>		
325d			<u>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.';</u>	
326	(15) Article 30 is amended as follows:	(15) ~~Article~~ Article 30 is amended as follows:	(15) Article 30 is amended as follows:	
327	(a) in paragraph 1, the first subparagraph is replaced by the following:	(a) in paragraph 1, the first subparagraph is replaced by the following:	(a) in paragraph 1, the first subparagraph is replaced by the following:	
328				

	Commission Proposal	EP Mandate	Council Mandate	MS comments
	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 with the exception of paragraphs 5, 5a and 5c thereof, Article 24a, Article 24b, with the exception of paragraph 1, 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.;	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 ~~with the exception of paragraphs 5, 5a and 5c thereof, Article 24a,~~ Article 24b, ~~with the exception of paragraph 1,~~ 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.;	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 ~~with the exception of paragraphs 5, 5a and 5c thereof,~~ Article 24a, Article 24b, ~~with the exception of paragraph 1,~~ 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.;	
329	(b) in paragraph 2, the second subparagraph is replaced by the following:	(b) in paragraph 2, the second subparagraph is replaced by the following:	(b) in paragraph 2, the second subparagraph is replaced by the following:	
330	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	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,	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,	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
	basis, treatment as clients whose business with the investment firm is subject to Articles 24, 24a, 24b, 24c, 25, 27 and 28.;	treatment as clients whose business with the investment firm is subject to Articles 24, 24a, 24b, 24c, 25, 27 and 28.;	treatment as clients whose business with the investment firm is subject to Articles 24, 24a, 24b, 24c, 25, 27 and 28.;	
331	(16) the following Article 35a is inserted:	(16) the following Article 35a is inserted:	(16) the following Article 35a is inserted:	
332	‘ Article 35a	‘ Article 35a	‘ Article 35a	
333	Reporting of cross-border activities	Reporting of cross-border activities	Reporting of cross-border activities	
334	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:	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~~ <u>cross-border</u> services <u>under the freedom of services or freedom of establishment</u> to more than 50 clients on a cross-border basis:	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:	
335				

	Commission Proposal	EP Mandate	Council Mandate	MS comments
	(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);	(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);	(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);	
336	(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;	(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;	(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;	
337	(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;	(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;	(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;	
338	(d) the number of complaints referred to under Article 75 received from clients and interested parties in each host Member State;	(d) the number of complaints referred to under Article 75 received from clients and interested parties in each ~~host~~ Member State;	(d) the number of complaints referred to under Article 75 received from clients and interested parties in each host Member State;	
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	Commission Proposal	EP Mandate	Council Mandate	MS comments
	(e) the type of marketing communications used in host Member States.	(e) the type of marketing communications used in ~~host~~ Member States.	(e) the type of marketing communications used in host Member States.	
340	Competent authorities shall communicate to ESMA all the information collected from investment firms.	Competent authorities shall communicate to ESMA all the information collected from investment firms.	Competent authorities shall communicate to ESMA all the information collected from investment firms.	
341	2. ESMA shall establish an electronic database containing the information collected pursuant to paragraph 1, which shall be made accessible to all competent authorities.	2. ESMA shall establish an electronic database containing the information collected pursuant to paragraph 1, which shall be made accessible to all competent authorities.	2. ESMA shall establish an electronic database containing the information collected pursuant to paragraph 1, which shall be made accessible to all competent authorities.	
342	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.	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.	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.	
343	ESMA shall submit those draft regulatory technical standards to the Commission by [OJ: insert date 18 months after the date of entry into force].	ESMA shall submit those draft regulatory technical standards to the Commission by [OJ: insert date 18 months after the date of entry into force].	ESMA shall submit those draft regulatory technical standards to the Commission by [OJ: insert date 18 months after the date of entry into force].	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
344	Power is delegated to the Commission to adopt the regulatory those technical standards in accordance with Article 10 of Regulation (EU) No 1095/2010.	Power is delegated to the Commission to adopt the regulatory those technical standards in accordance with Article 10 of Regulation (EU) No 1095/2010.	Power is delegated to the Commission to adopt ~~the~~ <u>those</u> regulatory ~~those~~ technical standards in accordance with Article 10 of Regulation (EU) No 1095/2010.	
345	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.	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.	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.	
346	ESMA shall submit those draft implementing technical standards to the Commission by [OJ: insert date 18 months after the date of entry into force].	ESMA shall submit those draft implementing technical standards to the Commission by [OJ: insert date 18 months after the date of entry into force].	ESMA shall submit those draft implementing technical standards to the Commission by [OJ: insert date 18 months after the date of entry into force].	
347	Power is conferred on the Commission to adopt the implementing technical standards in accordance with Article 15 of Regulation (EU) No 1095/2010.	Power is conferred on the Commission to adopt the implementing technical standards in accordance with Article 15 of Regulation (EU) No 1095/2010.	Power is conferred on the Commission to adopt the implementing technical standards in accordance with Article 15 of Regulation (EU) No 1095/2010.	
348	5. Based on the information communicated pursuant to	5. Based on the information communicated pursuant to	5. Based on the information communicated pursuant to	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
	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.;	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.;	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.;	
349	(17) Article 69(2) is amended as follows:	(17) Article 69(2) is amended as follows:	(17) Article 69(2) is amended as follows:	
349a		<u>(-a) the following point is inserted:</u>		
349b		<u>‘(ba) regularly check the alignment of the qualitative and quantitative features of the financial instrument on the market with the relevant benchmarks and, when necessary, take corrective actions in accordance with Article 69a;’;</u>		
349c			<u>(a-1) the introductory wording is replaced by the following:</u>	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
349d			<u>'The powers referred to in paragraph 1 shall include, at least, the powers to:'</u>	
350	(a) the following point (ca) is inserted:	(a) the following point (ca) is inserted:	(a) the following point (ca) is inserted:	
351	‘ (ca) carry out mystery shopping activities; ’	‘ (ca) carry out mystery shopping activities; ’	‘ (ca) carry out mystery shopping activities; ’	
352	(b) the following point (ka) is inserted:	(b) the following point (ka) is inserted:	(b) the following point (ka) is inserted:	
353	‘ (ka) suspend or prohibit, for a maximum duration of 1 year, 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.; ’	‘ (ka) suspend or prohibit, for a maximum duration of 1 year, 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.; ’	‘ (ka) suspend ~~or prohibit~~ , for a maximum duration of 1 year, <u>renewable for further periods not exceeding one year at a time if the grounds for the temporary suspension continue to be applicable</u> , 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)	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
			No 600/2014 have been infringed.;	
354	(c) the following points (v) and (w) are inserted:	(c) the following points (v) and (w) are inserted:	(c) the following points (v), <u>(w)</u> <u>and (wa)</u> ~~and (w)~~ are inserted:	
355	‘ (v) 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:	‘ (v) 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:	‘ (v) <u>to the extent permitted by national law</u> , 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:	
356	(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;	(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;	(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;	
357	(ii) order a hosting service provider to remove, disable or restrict access to an online interface;	(ii) order a hosting service provider to remove, disable or restrict access to an online interface;	(ii) order a hosting service provider to remove, disable or restrict access to an online interface;	
358	(iii) order domain registries or registrars to delete a fully qualified	(iii) order domain registries or registrars to delete a fully qualified	(iii) order domain registries or registrars to delete a fully qualified	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
	domain name and to allow the competent authority concerned to register it.	domain name and to allow the competent authority concerned to register it.	domain name and to allow the competent authority concerned to register it.	
359	(w) to impose the use of risk warnings by investment firms in information materials, including marketing communications, related to particularly risky financial instruments where those instruments could pose a serious threat to investor protection.;	(w) to impose the use of risk warnings by investment firms in information materials, including marketing communications, <u>provided or made accessible to retail clients or potential retail clients</u> , related to particularly risky <u>or complex</u> financial instruments where those instruments could pose a serious threat to investor protection.;	(w) ~~to~~ impose the use of risk warnings <u>by on</u> investment firms in information materials, including marketing communications, ~~related~~ <u>to provided to retail investors concerning</u> particularly risky financial instruments ~~where those instruments could pose a serious threat to investor protection.~~ ;	
359a		<u>(wa) use webscraping techniques and tools to collect online data for monitoring, surveillance, detection and investigation purposes;</u> ;		
359b			<u>(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.</u> ;	

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360	(d) the following subparagraphs are added:	(d) the following subparagraphs are added:	(d) the following subparagraphs are added:	
361	‘ 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).	‘ 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).	‘ 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).	
362	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.;	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.;	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 <u>applicable</u> 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.;	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
362a			<u>(da) point (t) is replaced by the following:</u>	
362b			<u>'(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.'</u>	
362c		<u>(17a) the following article is inserted:</u>		
362d		<u>Article 69a</u>		
362e		<u>Benchmarks as a supervisory tool</u>		
362f		<u>1. In accordance with Article 16-a, ESMA, on the basis of industry testing and after consulting EIOPA</u>		

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 (Text with EEA relevance) 2023/0167(COD) 28-06-2024 at 13h45 139/165

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		<u>and the national competent authorities, shall, where appropriate, develop common European benchmarks for groups of comparable financial instruments manufactured and distributed in more than one Member State. The benchmarks shall represent reference points for comparable groups of investment products and shall be used by national competent authorities to perform the assessment of the qualitative and quantitative features of investment products manufactured or distributed by investment firms.</u>		
362g		<u>ESMA shall regularly update those benchmarks, taking into account the developments on the market.</u>		
362h		<u>In specific cases, when national specificities exist which have a direct impact on the key features of a product, such as the costs, performance and qualitative benefits, these shall be taken into account. For this purpose, national competent authorities shall communicate these to ESMA and shall provide guidance on how such features affect the</u>		

	Commission Proposal	EP Mandate	Council Mandate	MS comments
		<u>benchmarks, including by providing a range of the impact that such features of the product have on the compliance with the benchmarks.</u>		
362i		<u>When the investment product is manufactured and distributed in just one Member State, such product shall be subject to national benchmarks developed by the national competent authority of that Member State. ESMA shall, after consulting EIOPA, develop draft regulatory technical standards on the development of national benchmarks to ensure a harmonized approach within the Union, and shall periodically update those standards.</u>		
362j		<u>ESMA shall submit those draft regulatory technical standards to the Commission by [18 months after the date of entry into force of this amending Directive].</u>		
362k		<u>Power is delegated to the Commission to adopt the regulatory technical standards referred to in the fourth</u>		

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		<u>subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.</u>		
362l		<u>2. The benchmarks referred to in paragraph 1 shall serve the sole purpose of a supervisory tool for national competent authorities in order to facilitate identification of potential outliers among investment products on the market based on a risk-based approach and to allow them to conduct further inquiry when necessary.</u>		
362m		<u>For this purpose, national competent authorities may engage in cooperation with the private sector in order to support their efforts in market screening.</u>		
362n		<u>When using this power, national competent authorities shall regularly check the investment products on the market and compare them to the relevant benchmarks. If they identify products that deviate from the benchmark, they may require the investment firm to provide an explanation for that deviation and,</u>		

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		<u>if they consider that the explanation duly justifies the deviation, they shall conclude their inquiry with a positive assessment.</u>		
362o		<u>If however, they consider that the explanation does not duly justify the deviation from the benchmark, they may require the investment firm to correct its approach and comply with the product governance requirements in Article 16-a to provide the consumer with the intended qualitative and quantitative features of the concerned investment product. If the company makes such correction, the national competent authorities shall conclude the inquiry with a positive assessment.</u>		
362p		<u>Where an investment firm fails to provide an explanation or the explanation does not duly justify the deviation of the product from the benchmark and the company fails to align the qualitative and quantitative features of the product with the relevant benchmark, the national competent authorities may require the investment firm, as a measure of last resort, to remove that product off the market, if</u>		

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		<u>necessary.</u> ’;		
363	(18) in Article 70(3), point (a), the following points (xxxvii) to (xxxxii) are added:	(18) in Article 70(3), point (a), the following points (xxxvii) to (xxxxii) are added:	(18) in Article 70(3), point (a), the following points (xxxvii) to (xxxxii) are added:	
364	‘ (xxxvii) Article 16-a(1) to (8);	‘ (xxxvii) Article 16-a(1) to (8);	‘ (xxxvii) Article 16-a(1) to (8);	
365	(xxxviii) Article 24(5a) to (5c) and (11a);	(xxxviii) Article 24(5a) to (5c) and (11a);	(xxxviii) Article 24(5a) ~~to~~ <u>and</u> (5c) and (~~Ha~~ <u>LI</u>);	
366	(xxxix) Article 24a(1) to (2) and (6) to (7);	(xxxix) Article 24a(1) to (2) and (6) to (7);	(xxxix) Article 24a(1) to (2) and (6) to (7);	
367	(xxxx) Article 24b(1), (3) and (4);	(xxxx) Article 24b(1), (3) and (4);	(xxxx) Article 24b(1), (3) and (4);	
368	(xxxxi) Article 24c(1) to (5) and (7);	(xxxxi) Article 24c(1) to (5) and (7);	(xxxxi) Article 24c(1) to (5) and (7);	
369	(xxxxii) Article 35a(1);;	(xxxxii) Article 35a(1);;	(xxxxii) Article 35a(1);;	

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369a			<u>(18a) in Article 70(6), point d is replaced by the following:</u>	
369b			<u>'(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;'</u>	
370	(19) Article 73(1) is amended as follows:	(19) Article 73(1) is amended as follows:	(19) Article 73(1) is amended as follows:	
371	(a) the first subparagraph is replaced by the following:	(a) the first subparagraph is replaced by the following:	(a) the first subparagraph is replaced by the following:	
372	‘ 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	‘ 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	‘ 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	

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	implementation of this Directive to competent authorities, including by firms not duly authorised under this Directive.;	implementation of this Directive to competent authorities, including by firms not duly authorised under this Directive.;	implementation of this Directive to competent authorities, including by firms not duly authorised under this Directive.;	
373	(b) in the second subparagraph, point (a) is replaced by the following:	(b) in the second subparagraph, point (a) is replaced by the following:	(b) in the second subparagraph, point (a) is replaced by the following:	
374	‘ (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;; ’	‘ (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;; ’	‘ (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;; ’	
375				

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	(20) Article 86 is amended as follows:	(20) Article 86 is amended as follows:	(20) Article 86 is amended as follows:	
376	(a) paragraph 1 is replaced by the following:	(a) paragraph 1 is replaced by the following:	(a) paragraph 1 is replaced by the following:	
377	‘ 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.	‘ 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.	‘ 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.	
378	Information that such referral is made shall be transmitted to ESMA. ESMA shall transmit such	Information that such referral is made shall be transmitted to ESMA. ESMA shall transmit such	Information that such referral is made shall be transmitted to ESMA. ESMA shall transmit such	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
	information to the competent authorities of all other host Member States where the investment firm provides investment services or performing activities.	information to the competent authorities of all other host Member States where the investment firm provides investment services or performing activities.	information to the competent authorities of all other host Member States where the investment firm provides investment services or performing activities.	
379	The competent authority of the home Member State shall, without undue delay and at the latest 30 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.	The competent authority of the home Member State shall, without undue delay and at the latest 30 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.	The competent authority of the home Member State shall, without undue delay and at the latest ~~30~~ 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.	
380	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	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	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	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
	functioning of markets, the following shall apply:	functioning of markets, the following shall apply:	functioning of markets, the following shall apply:	
381	(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	(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	(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	
382	(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 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 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.;	
383	(b) the following paragraphs 1a and	(b) the following paragraphs 1a and	(b) the following paragraphs 1a and	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
	1b are inserted:	1b are inserted:	1b are inserted:	
384	‘ 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.	‘ 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.	‘ 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.	
385	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 five working days before taking such precautionary measures.	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 five working days before taking such precautionary measures.	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 ~~five~~^{ten} working days before taking such precautionary measures.	
386				

	Commission Proposal	EP Mandate	Council Mandate	MS comments
	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.	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.	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.	
387	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 set up a cooperation platform in accordance with Article 87a.;	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 set up a cooperation platform in accordance with Article 87a.;	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 <u>at the request of an NCA</u> , set up a cooperation platform in accordance with Article ~~87a~~ <u>87b</u> .;	
388	(21) the following Article 87a is inserted:	(21) the following Article 87a is inserted:	(21) the following Article ~~87a~~ <u>87b</u> is inserted:	
389	Article 87a	Article 87a	Article ~~87a~~ <u>87b</u>	
390	Collaboration platforms	Collaboration platforms	Collaboration platforms	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
391	1. ESMA may, in the case of justified concerns about negative effects on investors, on its own initiative or at the request of one 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 a competent authority, that competent authority shall notify the competent authority of the home Member State of its justified concerns about negative effects on investors.	1. ESMA may, in the case of justified concerns about negative effects on investors, on its own initiative or at the request of one 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 a competent authority, that competent authority shall notify the competent authority of the home Member State of its justified concerns about negative effects on investors.	1. ESMA may, in the case of justified concerns about negative effects on investors, ~~on its own initiative or~~ at the request of ~~one~~<u>two</u> 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 ~~a~~ competent ~~authority,~~ ~~that~~<u>authorities, those</u> competent ~~authority~~<u>authorities</u> shall notify the competent authority of the home Member State of ~~its~~<u>their</u> justified concerns about negative effects on investors.	
392	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.	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.	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.	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
393	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.	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.	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.	
394	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.	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.	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.	
395	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.	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.	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.	
396	6. In the event of disagreement	6. In the event of disagreement	6. In the event of disagreement	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
	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.;	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~~ <u>decide to initiate and coordinate joint on-site inspections. ESMA</u> shall invite the competent authority of the home Member State ~~to consider the concerns of as well as~~ other <u>relevant</u> competent authorities ~~concerned and to launch a~~ <u>of the collaboration platform to participate in such</u> joint on-site inspection ~~together with other competent authorities concerned.~~;	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.;	
397	(22) the following Title VIa is inserted:	(22) the following Title VIa is inserted:	(22) the following Title VIa is inserted:	
398	‘ TITLEE VIa	‘ ~~TITLEE~~ <u>TITTLE</u> VIa	‘ ~~TITLEE~~ <u>TITTLE</u> VIa	
399	FINANCIAL EDUCATION	FINANCIAL EDUCATION	FINANCIAL EDUCATION	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
400	Article 88a	Article 88a	Article 88a	
401	Financial education of retail clients and prospective retail clients	Financial education of retail clients and prospective retail clients	Financial education of retail clients and prospective retail clients	
402	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.	Member States shall <u>define and implement information and educational actions in order to promote ~~measures~~ and increase consumers' education and knowledge in relation to responsible investment when accessing investment services or ancillary services.</u> <u>Member States shall consider the contribution of national competent authorities, universities and relevant stakeholders when designing the educational instruments to promote financial literacy. In that regard, Member States shall duly consider to introduce compulsory teaching content in their national school curricula.</u> <u>Member States shall establish programmes to fund consumer organisations, independent investor or shareholder organisations</u> that support the education of retail clients and ~~prospective~~ <u>potential</u> retail clients in	<u>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. <u>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.</u></u>	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
		relation to responsible investment when accessing investment services or ancillary services.		
402a		<u>(1a) National competent authorities shall engage in a dialogue and carry out, at their own initiative, peer reviews to assess the applicability of best practices to their national system.</u>	<u>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.</u>	
402b		<u>(1b) The Commission, in collaboration with the European Supervisory Authorities (ESAs), the European Investment Bank and the European Central Bank shall:</u>		
402c		<u>(a) facilitate cooperation and exchange of best practices among Member States and stakeholders active in education and finance;</u>		
402d		<u>(b) establish clear targets on financial literacy;</u>		
402e		<u>(c) establish a Platform on</u>		

	Commission Proposal	EP Mandate	Council Mandate	MS comments
		<u>Financial education and literacy which shall be composed of representatives of:</u> <u>- the European Central Bank;</u> <u>- the European Investment Bank;</u> <u>- the ESAs;</u> <u>- each Member State, in the education and finance sectors, designated by the national competent authorities;</u> <u>- European and national consumer associations;</u> <u>- European financial industry federations.</u>		
402f		<u>International organisations, and other public and private stakeholders may be invited on an ad hoc basis.</u>		
402g		<u>The Platform shall be chaired by the Commission. Representatives shall be appointed for a two-year renewable mandate.</u>		
402h		<u>Member States shall promote and take measures for the development of financial literacy skills.</u>		
402i				

	Commission Proposal	EP Mandate	Council Mandate	MS comments
		<u>By ... [PO please insert the date = 12 months after the entry into force of this amending Directive] and every three years thereafter, Member States shall report to the Commission on the implementation on paragraph 1. The Commission shall issue guidelines regarding the scope of such reports.</u>		
402j		<u>By [PO please insert the date = 12 months after the entry into force of this amending Directive] and every five years thereafter, the Commission shall submit a report to the European Parliament and the Council on the implementation of measures in relation to paragraph 1, outlining the best practices, the possible way forward as well as the observed evolution and results between each report.</u>		
402k		<u>(1c) Member states are encouraged to:</u>		
402l		<u>(a) coordinate and cooperate on matters related to financial education at Union level, such as through the use of the open methods of coordination and joint</u>		

	Commission Proposal	EP Mandate	Council Mandate	MS comments
		<u>exchanges on best practices between the finance ministers of the Union and the education ministers of the Union, as well as with other Union institutions;</u>		
402m		<u>(b) promote financial education and training, including through lifelong learning opportunities at national level, such as public-private partnerships, and through mentoring programmes.</u>		
402n		<u>The Commission and Member States shall aim at strengthening the cooperation in the field of financial education within the European Education Area, as for example through the Erasmus+ Teacher Academies initiative. Member States are encouraged to use the existing tools and EU funding programmes at Union and national level in order to promote, support and enable financial education and training, and to ensure the mutual recognition of diplomas across the Union.</u>		
403	Article 88b	Article 88b	Article 88b	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
404	Financial education and marketing communication	Financial education and marketing communication	Financial education and marketing communication	
405	Financial education material that aims to support individuals' financial literacy by enabling them to acquire financial competences, and that does not directly promote or entice 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.;	Financial education material that aims to support individuals' financial literacy by enabling them to acquire financial competences, and that does not directly promote or entice 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.;	Financial education material that aims to support individuals' financial literacy by enabling them to acquire financial competences, and that does not directly promote- ~~or entice~~ 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.;	
406	(23) Article 89, is replaced by the following:	(23) Article 89, is replaced by the following:	(23) Article 89, is replaced by the following:	
407	‘ 1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.	‘ 1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.	‘ 1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.	
408	2. The delegation of power referred to in Article 2(3), Article 2(4),	2. The delegation of power referred to in Article 2(3), Article 2(4),	2. The delegation of power referred to in Article 2(3), Article 2(4),	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
	Article 4(1)(2), second subparagraph, 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), Article 24b(2), Article 24c(8), Article 24d(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.	Article 4(1)(2), second subparagraph, 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), Article 24b(2), Article 24c(8), Article 24d(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.	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), Article 24b(2), Article 24c(8), Article 24d(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.	
409	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), Article 24b(2), Article 24c(8), Article 24d(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	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), Article 24b(2), Article 24c(8), Article 24d(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	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), Article 24b(2), Article 24c(8), Article 24d(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	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
	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.	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.	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.	
410	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.	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.	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.	
411	5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.	5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.	5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.	
412	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),	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),	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),	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
	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.;	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.;	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.;	
412a		<u>(23a) in Article 90, paragraph 5 is added:</u>		
412b		<u>‘5. By ... [5 years after the entry into force of this Directive], the Commission shall prepare a report, after consulting ESMA and the</u>		

	Commission Proposal	EP Mandate	Council Mandate	MS comments
		<u><i>national competent authorities, assessing whether providers of financial and non-financial market data should be included in the scope of this Directive. The Commission shall take into account market developments and the relevant evidence at its disposal. The report shall in particular assess:</i></u>		
412c		<u><i>(a) the evolution of the number and the diversity of financial and non-financial market data providers;</i></u>		
412d		<u><i>(b) the adequacy of the requirements for financial and non-financial market data providers established outside the Union to operate in the Union;</i></u>		
412e		<u><i>(c) the functioning of the market of financial and non-financial market data providers in the Union, including potential conflicts of interests, and its supervision by ESMA.</i></u>		
412f				

	Commission Proposal	EP Mandate	Council Mandate	MS comments
		<i><u>Where the Commission finds it appropriate, the report shall be accompanied by a legislative proposal to amend this Directive.';</u></i>		
413	(24) Annex II is amended as set out in Annex I to this Directive.	(24) Annex II is amended as set out in Annex I to this Directive.	(24) Annex II is amended as set out in Annex I to this Directive.	
414	(25) Annex V is added as set out in Annex II to this Directive.	(25) Annex V is added as set out in Annex II to this Directive.	(25) Annex V is added as set out in Annex II to this Directive.	

RIS: Omnibus Directive

Part III: IDD

Deadline for comments: 16 August 2024 COB

	Commission Proposal	EP Mandate	Council Mandate	MS comments
415	Article 2 Amendments to Directive (EU) 2016/97	Article 2 Amendments to Directive (EU) 2016/97	Article 2 Amendments to Directive (EU) 2016/97	
416	Directive (EU) 2016/97 is amended as follows:	Directive (EU) 2016/97 is amended as follows:	Directive (EU) 2016/97 is amended as follows:	
416a		<u><i>(-1) In Article 1(6), the first and the second paragraph are replaced by the following:</i></u>		
416b		<u><i>Without prejudice to intra-group relationships where an insurance intermediary or reinsurance intermediary established in a third country carries out insurance or reinsurance distribution activities on behalf of a registered insurance intermediary or reinsurance intermediary in the Union acting on its behalf or having close links with such third-country insurance intermediary or reinsurance</i></u>		

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 (Text with EEA relevance) 2023/0167(COD) 28-06-2024 at 13h45 1/183

	Commission Proposal	EP Mandate	Council Mandate	MS comments
		<u>intermediary. Member States shall require insurance intermediaries and reinsurance intermediaries registered in a third country to establish a branch in their territory and apply for registration in accordance with Article 3 in order to take up and pursue insurance or reinsurance distribution activities as defined in Article 2(1), points (1) and (2), in the relevant Member State. With respect to the operation of intra-group relationships, Member States shall ensure that any registered insurance intermediary or reinsurance intermediary acting on behalf of or having close links with an insurance intermediary or reinsurance intermediary in a third country, which is unable to demonstrate to the competent authority of the home Member State:</u>		
416c		<u>(a) during the process of registration under Article 3 or on the basis of a regular review of the validity of the registration under Article 3(4), fifth subparagraph, that it has an appropriate level of corporate substance in that Member State, namely that it possesses appropriate knowledge and ability in order to complete its</u>		

	Commission Proposal	EP Mandate	Council Mandate	MS comments
		<u>tasks and perform its duties adequately in accordance with Article 3(4), fourth subparagraph and Article 10(1), shall not be allowed to take up and pursue insurance distribution activities as defined in Article 2(1), point (1), in that Member State or if already registered in that Member State, shall be removed from the register in accordance with Article 3(4), sixth subparagraph, and</u>		
416d		<u>(b) without prejudice to situations in which an appropriate level of corporate substance is demonstrated to the competent authority of the home Member State under subparagraph (i), the establishment of a branch of an insurance or reinsurance intermediary established in a third country with the primary purpose of providing an insurance or reinsurance distribution activity to a customer or customers having their habitual residence or establishment in that Member State, shall be substantially restricted in terms of its scope and duration.’;</u>		
417				

	Commission Proposal	EP Mandate	Council Mandate	MS comments
	(1) Article 2(1) is amended as follows:	(1) Article 2(1) is amended as follows:	(1) Article 2(1) is amended as follows:	
418	(a) in point (4), point (c) is replaced by the following:	(a) in point (4), point (c) is replaced by the following:	(a) in point (4), point (c) is replaced by the following:	
419	‘ (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;’,	‘ (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;’,	‘ (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;’,	
420	(b) point (8) is replaced by the following:	(b) point (8) is replaced by the following:	(b) point (8) is replaced by the following:	
421	‘ (8) ‘insurance distributor’ means any insurance intermediary, ancillary insurance intermediary or any insurance undertaking engaging in insurance distribution activities;’,	‘ (8) ‘insurance distributor’ means any insurance intermediary, ancillary insurance intermediary or any insurance undertaking engaging in insurance distribution activities;’,	‘ (8) ‘insurance distributor’ means any insurance intermediary, ancillary insurance intermediary or any insurance undertaking engaging in insurance distribution activities;’,	
421a				

	Commission Proposal	EP Mandate	Council Mandate	MS comments
			<u>(ba) in point (17), the following point (f) is added:</u>	
421b			<u>‘(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;’;</u>	
422	(c) the following points (19) to (22) are added:	(c) the following points (19) to (22) are added:	(c) the following points (19) to (~~22~~ <u>24</u>) are added:	
423	‘ (19) ‘electronic format’ means any durable medium other than paper;	‘ (19) ‘electronic format’ means any durable medium other than paper;	‘ (19) ‘electronic format’ means any durable medium other than paper;	
424	(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 entices investments in insurance-based investment products and that is made:	(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 entices investments in insurance-based investment products and that is made:	(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 ~~entices~~ <u>promotes</u> investments in insurance-based investment products and that is	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
			made:	
425	(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;	(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;	(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;	
426	(b) to natural or legal persons;	(b) to natural or legal persons;	(b) to natural or legal persons;	
427	(c) in any form and by any means;	(c) in any form and by any means;	(c) in any form and by any means;	
427a		‘ <u>20a. “influencer” means a natural or legal person carrying out a commercial influence activity by mobilizing their popularity to communicate to the public, by electronic means and for any sort of remuneration as defined in Article 2, point (5), of Delegated Regulation (EU) 2017/565, content aimed at promoting, directly or indirectly, financial products or contracts;</u>		

	Commission Proposal	EP Mandate	Council Mandate	MS comments
428	(21) ‘marketing practice’ means any strategy, use of a tool or technique 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 firm or insurance intermediary to:	(21) ‘marketing practice’ means any strategy, use of a tool or technique 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 firm or insurance intermediary to:	(21) ‘marketing practice’ means any strategy, use of a tool or technique, <u>including online targeting of customers</u> , 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 ~~firm~~ <u>undertaking</u> or insurance intermediary to:	
429	(a) directly or indirectly disseminate marketing communications;	(a) directly or indirectly disseminate marketing communications;	(a) directly or indirectly disseminate marketing communications; <u>or</u>	
430	(b) accelerate or improve the reach and effectiveness of marketing communications;	(b) accelerate or improve the reach and effectiveness of marketing communications;	(b) accelerate or improve the reach ~~and~~ <u>or</u> effectiveness of marketing communications; <u>or</u>	
431	(c) promote in any way the insurance undertakings, insurance intermediaries or insurance products;	(c) promote in any way the insurance undertakings, insurance intermediaries or insurance products;	(c) promote in any way the insurance undertakings, insurance intermediaries or insurance products; ~~including the online~~ <u>choice architecture</u> .	
432	(22) ‘online interface’ means any software, including a website, part	(22) ‘online interface’ means any software, including a website, part	(22) ‘online interface’ means any software, including a website, ~~part~~	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
	of a website, or an application.;	of a website, or an application., <u>including mobile application.</u> ;	~~of a website, or a part thereof.~~ , <u>and an application., including</u> <u>mobile applications</u> ;	
432a			<u>(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;</u>	
432b			<u>(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;';</u>	
433	(2) Article 3 is amended as follows:	(2) Article 3 is amended as follows:	(2) Article 3 is amended as follows:	
433a		<u>(-a) in paragraph 4, the fourth paragraph is replaced by the</u>		

	Commission Proposal	EP Mandate	Council Mandate	MS comments
		<u>following:</u>		
433b		‘<u>Home Member States shall ensure that the registration of insurance, reinsurance and ancillary insurance intermediaries is made subject to the fulfilment of the relevant requirements laid down in Article 10, including the requirement for an insurance or reinsurance intermediary to have an appropriate level of corporate substance with respect to an intra-group relationship with a branch of a registered insurance or reinsurance intermediary in a third country in accordance with Article 1(6).;</u>		
434	(a) in paragraph 4, in the sixth subparagraph, the second sentence is replaced by the following:	(a) in paragraph 4, in the sixth subparagraph, the second sentence is replaced by the following:	(a) in paragraph 4, in the sixth subparagraph, the second sentence is replaced by the following:	
435	Where applicable, the home Member State shall inform the host Member State of such removal immediately.;	Where applicable, the home Member State shall inform the host Member State of such removal immediately.;	Where applicable, the home Member State shall inform the host Member State of such removal immediately.;	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
436	(b) in paragraph 5, the following subparagraph is added:	(b) in paragraph 5, the following subparagraph is added:	<i>deleted</i>	
437	Where the registration is refused or where an insurance, reinsurance or ancillary insurance intermediary is removed from the register, the competent authority shall communicate its decision to the applicant or the insurance, reinsurance or ancillary insurance intermediary concerned in a well-reasoned document and inform EIOPA about the reasons for such refusal of registration or removal from the register.;	Where the registration is refused or where an insurance, reinsurance or ancillary insurance intermediary is removed from the register, the competent authority shall communicate its decision to the applicant or the insurance, reinsurance or ancillary insurance intermediary concerned in a well-reasoned document and inform EIOPA about the reasons for such refusal of registration or removal from the register.;	<i>deleted</i>	
438	(c) the following paragraph 5a is inserted:	(c) the following paragraph 5a is inserted:	<i>deleted</i>	
439	5a. EIOPA shall establish and make available to competent authorities a list of all insurance, reinsurance or ancillary insurance intermediaries whose registration	5a. EIOPA shall establish and make available to competent authorities a list of all insurance, reinsurance or ancillary insurance intermediaries whose registration has been refused	<i>deleted</i>	

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	has been refused or which have been removed from the register by a competent authority.	or which have been removed from the register by a competent authority.		
440	The list referred to in the first subparagraph shall contain, where applicable, information on the services or activities for which each insurance, reinsurance or ancillary insurance intermediary has sought registration, as well as the reasons for the refusal of registration or the removal from the register and shall be updated on regular basis.;	The list referred to in the first subparagraph shall contain, where applicable, information on the services or activities for which each insurance, reinsurance or ancillary insurance intermediary has sought registration, as well as the reasons for the refusal of registration or the removal from the register and shall be updated on regular basis.;	<i>deleted</i>	
440a		<u>(d) in paragraph 7, the following subparagraphs are added:</u>		
440b		<u>‘Member States shall ensure that competent authorities uphold the integrity of the internal market when making their decision to grant or refuse registration to an insurance, reinsurance or ancillary insurance intermediary, which is a legal person.</u>		
440c				

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		<u>Where an insurance or ancillary insurance intermediary, which is a legal person, has its head office in the same Member State as its registered office but provides or performs investment activities solely in other Member States, Member States shall ensure that the insurance, or ancillary insurance intermediary has a sufficient understanding of the risk and legal requirements to which it or its customers are subject, and acts in a manner consistent with Union law and the principles of the internal market, refraining from imposing restrictions on undertakings providing cross-border services in line with those principles.</u>		
440d		<u>Member States shall ensure that the competent authority of the home Member State collaborates with the competent authority of the host Member State when assessing the fulfilment of the first subparagraph.;</u>		
441	(3) Article 5 is amended as follows:	(3) Article 5 is amended as follows:	(3) Article 5 is amended as follows:	

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442	(a) paragraph 1 is replaced by the following:	(a) paragraph 1 is replaced by the following:	(a) paragraph 1 is replaced by the following:	
443	‘ 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.	‘ 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 <u>without undue delay</u>. ’	‘ 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.	
444	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.	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.	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.	

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445	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 30 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.	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 30 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.	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 ~~30~~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.	
446	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	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	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	

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	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.;	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.;	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.;	
447	(b) paragraph 3 is replaced by the following:	(b) paragraph 3 is replaced by the following:	(b) paragraph 3 is replaced by the following:	
448	‘ 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 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 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.	

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	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.;	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.;	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.;	
449	(c) the following paragraph 4 is added:	(c) the following paragraph 4 is added:	(c) the following paragraph 4 is added:	
450	‘ 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 may set up a cooperation platform in accordance with Article 12b.; ’	‘ 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 may set up a cooperation platform in accordance with Article 12b.; ’	‘ 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, <u>at the request of two or more competent authorities</u>, may set up a ~~cooperation~~ <u>collaboration</u> platform in accordance with Article 12b.† ’	

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451	(4) the following Article 9a is inserted:	(4) the following Article 9a is inserted:	(4) the following Article 9a is inserted:	
452	‘ Article 9a	‘ Article 9a	‘ Article 9a	
453	Reporting of cross-border activities	Reporting of cross-border activities	Reporting of cross-border activities	
454	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 50 customers on a cross-border basis:	‘ 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~~ <u>cross-border</u> activities <u>under the freedom of services or the freedom of establishment</u> with more than 50 customers on a cross-border basis:	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 ~~50~~ <u>500</u> customers on a cross-border basis:	
455	(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;	(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;	(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;	
456				

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	(b) the scale and scope of the insurance distribution activities carried out in each host Member State;	(b) the scale and scope of the insurance distribution activities carried out in each ~~host~~ Member State;	(b) the scale and scope of the insurance distribution activities carried out in each host Member State;	
457	(c) the type of insurance products distributed in each host Member State;	(c) the type of insurance products distributed in each ~~host~~ Member State;	(c) the type of insurance products distributed in each host Member State;	
458	(d) for each host Member State, the total number of customers, for the relevant period ending on the 31 December;	(d) for each ~~host~~ Member State, the total number of customers, for the relevant period ending on the 31 December;	(d) for each host Member State, the total number of customers, for the relevant period ending on the 31 December;	
459	(e) the number of complaints received from customers and interested parties in each host Member State.	(e) the number of complaints received from customers and interested parties in each ~~host~~ Member State.	(e) the number of complaints received from customers and interested parties in each host Member State.	
460	Competent authorities shall communicate to EIOPA all information reported by insurance distributors pursuant to the first subparagraph.	Competent authorities shall communicate to EIOPA all information reported by insurance distributors pursuant to the first subparagraph.	Competent authorities shall communicate to EIOPA all information reported by insurance distributors pursuant to the first subparagraph.	
461	2. EIOPA shall establish an	2. EIOPA shall establish an	2. EIOPA shall establish an	

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	electronic database containing the information reported pursuant to paragraph 1, second subparagraph. That database shall be made accessible to all competent authorities.	electronic database containing the information reported pursuant to paragraph 1, second subparagraph. That database shall be made accessible to all competent authorities.	electronic database containing the information reported pursuant to paragraph 1, second subparagraph. That database shall be made accessible to all competent authorities.	
462	3. EIOPA shall develop draft regulatory technical standards regarding the details of the information referred to in paragraph 1.	3. EIOPA shall develop draft regulatory technical standards regarding the details of the information referred to in paragraph 1.	3. EIOPA shall develop draft regulatory technical standards regarding the details of the information referred to in paragraph 1.	
463	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].	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].	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].	
464	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.	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.	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.	
465	4. EIOPA shall develop draft implementing technical standards specifying the data standards and	4. EIOPA shall develop draft implementing technical standards specifying the data standards and	4. EIOPA shall develop draft implementing technical standards specifying the data standards and	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
	formats, methods and transfer arrangements, frequency and starting date for the information to be reported and communicated pursuant to paragraph 1.	formats, methods and transfer arrangements, frequency and starting date for the information to be reported and communicated pursuant to paragraph 1.	formats, methods and transfer arrangements, frequency and starting date for the information to be reported and communicated pursuant to paragraph 1.	
466	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].	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].	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].	
467	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.	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.	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.	
468	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. 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. 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.;	

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469	(5) Article 10 is amended as follows:	(5) Article 10 is amended as follows:	(5) Article 10 is amended as follows:	
470	(a) paragraph 1 is replaced by the following:	(a) paragraph 1 is replaced by the following:	(a) paragraph 1 is replaced by the following:	
471	‘ 1. Home Member States shall ensure that insurance and reinsurance distributors and employees of insurance and reinsurance undertakings carrying out insurance or reinsurance distribution activities possess the necessary knowledge and competence in order to complete their tasks and perform their duties adequately. ’	‘ 1. Home Member States shall ensure that insurance and reinsurance distributors and employees of insurance and reinsurance undertakings carrying out insurance or reinsurance distribution activities possess the necessary knowledge and competence in order to complete their tasks and perform their duties adequately. ’	‘ 1. Home Member States shall ensure that insurance and reinsurance ~~distributors~~ <u>and intermediaries</u> , employees of insurance and reinsurance undertakings carrying out <u>insurance or reinsurance distribution activities, and employees of insurance and reinsurance intermediaries directly involved in</u> insurance or reinsurance distribution activities possess the necessary knowledge and competence in order to complete their tasks and perform their duties adequately. ’	
471a		‘ <u>In the context of an intra-group relationship with a branch of a registered insurance or reinsurance intermediary in a third country, the competent authority of the home Member State shall</u> ’	<u>1a. 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</u>	

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		<u>assess whether the registered insurance or reinsurance intermediary has an appropriate level of corporate substance in the home Member State in accordance with Article 1(6) by considering whether the insurance intermediary or reinsurance intermediary, including its employees where the insurance or reinsurance intermediary is a legal person, has appropriate knowledge and ability in order to complete its tasks and perform its duties adequately.;</u>	<u>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.;</u>	
472	(b) paragraph 2 is amended as follows:	(b) paragraph 2 is amended as follows:	(b) paragraph 2 is amended as follows:	
473	(i) the first, second and third subparagraphs are replaced by the following:	(i) the first, second and third subparagraphs are replaced by the following:	(i) the first, second and third subparagraphs are replaced by the following:	
474	‘ Home Member States shall ensure that insurance and reinsurance intermediaries, employees of insurance and reinsurance undertakings and employees of insurance and reinsurance	‘ Home Member States shall ensure that insurance and reinsurance intermediaries, employees of insurance and reinsurance undertakings and employees of insurance and reinsurance	‘ Home Member States shall ensure that insurance and reinsurance intermediaries, employees of insurance and reinsurance undertakings <u>carrying out insurance or reinsurance</u>	

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	intermediaries maintain and update their knowledge and competence 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.	intermediaries maintain and update their knowledge and competence 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.	<u>distribution activities</u> , and employees of insurance and reinsurance intermediaries <u>directly involved in insurance or reinsurance distribution activities</u> maintain and update their knowledge and competence, <u>as set out in Annex I</u> , 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.	
475	For the purpose of the first subparagraph, home Member States shall have in place and publish mechanisms to control effectively and assess the knowledge and competence of insurance and reinsurance intermediaries, employees of insurance and reinsurance undertakings and employees of insurance and reinsurance intermediaries, as set out in Annex I, based on 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.	For the purpose of the first subparagraph, home Member States shall have in place and publish mechanisms to control effectively and assess the knowledge and competence of insurance and reinsurance intermediaries, employees of insurance and reinsurance undertakings and employees of insurance and reinsurance intermediaries, as set out in Annex I, based on <u>at least 15 hours of professional training or development per year, <u>during work hours</u></u> taking into account the nature of the products sold, the type of distributor, the role they perform, and the activity carried out within	For the purpose of the first subparagraph, home Member States shall have in place <u>mechanisms</u> and publish <u>all relevant information about these</u> mechanisms to control effectively and assess the ~~knowledge and competence of~~ <u>successful completion by</u> insurance and reinsurance intermediaries, employees of insurance and reinsurance undertakings <u>carrying out insurance or reinsurance distribution activities</u> , and employees of insurance and reinsurance intermediaries, ~~as set out in Annex I, based on~~ <u>directly involved in insurance or reinsurance distribution activities, of</u> at least 15 hours of professional	

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		the insurance or reinsurance distributor. <u>The mechanisms shall in particular define in which cases additional hours of professional training and development are to be required from an employee or intermediary beyond the minimum of 15 hours per year, based on the assessment of knowledge and competence. An appropriate number of hours of the professional training of employees of insurance and reinsurance undertakings and insurance and reinsurance intermediaries providing advice on insurance-based investment products shall be allocated by national competent authorities to the minimum necessary knowledge in sustainable investments contributing to an environmental or social objective, including how to consider and integrate sustainability factors and clients' sustainability preferences into the advisory processes.</u> <u>For small intermediaries which distribute both financial instruments and insurance-based investment products, Member States may provide for specific requirements regarding the number of hours of professional training.</u>	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.	

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476	Home Member States shall require that compliance with the criteria set out in Annex I, as well as the yearly successful completion of the continuous professional training and development is proven by a certificate.	Home Member States shall require that compliance with the criteria set out in Annex I, as well as the yearly successful completion of the continuous professional training and development is proven by a certificate <u>or any other document recognised by the Union or a Member State.</u> ;	<u>To that end</u> , home Member States shall require that ~~compliance with the criteria set out in Annex I, as well as~~ the yearly successful completion of ~~the~~ continuous professional training and development is proven by a certificate <u>or equivalent proof of completion of such training and development.</u> ;	
477	(ii) the following subparagraph is added:	(ii) the following subparagraph is added:	(ii) the following subparagraph is added:	
478	‘ 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;’,	‘ 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;’,	‘ 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;’,	
479	(c) paragraph 4 is replaced by the following:	(c) paragraph 4 is replaced by the following:	<i>deleted</i>	
480	‘	‘		

	Commission Proposal	EP Mandate	Council Mandate	MS comments
	4. Insurance and reinsurance intermediaries shall hold professional indemnity insurance covering the whole territory of the Union or some other comparable guarantee against liability arising from professional negligence, for at least EUR 1 250 000 applying to each claim and in aggregate EUR 1 850 000 per year for all claims, unless such insurance or comparable guarantee is already provided by an insurance undertaking, reinsurance undertaking or other undertaking on whose behalf the insurance or reinsurance intermediary is acting or for which the insurance or reinsurance intermediary is empowered to act or such undertaking has taken on full responsibility for the intermediary's actions.;	4. -Insurance and reinsurance intermediaries shall hold professional indemnity insurance covering the whole territory of the Union or some other comparable guarantee against liability arising from professional negligence, for at least EUR ~~1 250 000~~ <u>1 564 610</u> applying to each claim and in aggregate EUR ~~1 850 000~~ <u>2 315 610</u> per year for all claims, unless such insurance or comparable guarantee is already provided by an insurance undertaking, reinsurance undertaking or other undertaking on whose behalf the insurance or reinsurance intermediary is acting or for which the insurance or reinsurance intermediary is empowered to act or such undertaking has taken on full responsibility for the intermediary's actions.;	<i>deleted</i>	
481	(d) in paragraph 6, point (b) is replaced by the following:	(d) in paragraph 6, point (b) is replaced by the following:	<i>deleted</i>	
482	‘ (b) a requirement for the intermediary to have financial capacity amounting, on a permanent basis, to 4 % of the sum of annual	‘ (b) a requirement for the intermediary to have financial capacity amounting, on a permanent basis, to 4 % of the sum of annual	<i>deleted</i>	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
	premiums received, subject to a minimum of EUR 18 750;;	premiums received, subject to a minimum of EUR 18 750;;		
483	(6) in Article 12(3) the following subparagraphs are added:	(6) in Article 12(3) the following subparagraphs are added:	(6) in Article 12(3) the following subparagraphs are added:	
484	‘ The powers referred to in the first subparagraph, first sentence, shall include the power to:	‘ The powers referred to in the first subparagraph, first sentence, shall include the power to:	‘ The powers referred to in the first subparagraph, first sentence, shall include <u>at least</u> the power to:	
485	(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;	(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;	(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;	
486	(b) require or demand the provision of information from any person and if necessary to summon and question a person to obtain information;	(b) require or demand the provision of information from any person and if necessary to summon and question a person to obtain information;	(b) require or demand the provision of information from any person and if necessary to summon and question a person to obtain information;	
486a		‘		

	Commission Proposal	EP Mandate	Council Mandate	MS comments
		<u>(ba) carry out regular checks of the alignment of the qualitative and quantitative features of the insurance-based investment products on the market with the relevant benchmarks and, when necessary, take corrective actions in accordance with Article 12a of this Directive;</u>		
487	(c) carry out on-site inspections or investigations;	(c) carry out on-site inspections or investigations;	(c) carry out on-site inspections or investigations;	
488	(d) carry out mystery shopping activities;	(d) carry out mystery shopping activities;	(d) carry out mystery shopping activities;	
489	(e) require the freezing or the sequestration of assets, or both;	(e) require the freezing or the sequestration of assets, or both;	(e) require the freezing or the sequestration of assets, or both;	
490	(f) require the temporary prohibition of professional activity;	(f) require the temporary prohibition of professional activity;	(f) require the temporary prohibition of professional activity;	
491	(g) require the auditors of insurance undertakings or insurance intermediaries to provide information;	(g) require the auditors of insurance undertakings or insurance intermediaries to provide information;	(g) require the auditors of insurance ~~undertakings or insurance intermediaries~~ <u>or reinsurance distributors</u> to provide information;	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
492	(h) refer matters for criminal prosecution;	(h) refer matters for criminal prosecution;	(h) refer matters for criminal prosecution;	
493	(i) allow auditors or experts to carry out verifications or investigations;	(i) allow auditors or experts to carry out verifications or investigations;	(i) allow auditors or experts to carry out verifications or investigations;	
494	(j) suspend or prohibit for a maximum duration of 1 year marketing communications or practices used in their Member State, where there are reasonable grounds for believing that this Directive has been infringed.;	(j) suspend or prohibit for a maximum duration of 1 year marketing communications or practices used in their Member State, where there are reasonable grounds for believing that this Directive has been infringed.;	(j) suspend ~~or prohibit~~ , for a maximum duration of ~~1 year~~ <u>one year, renewable for further periods not exceeding one year at a time if the grounds for the temporary suspension continue to be applicable</u> , marketing communications or practices used in their Member State, where there are reasonable grounds for believing that this Directive has been infringed.;	
495	(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;	(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;	(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;	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
496	(l) adopt any other type of measure to ensure that insurance undertakings and insurance intermediaries continue to comply with legal requirements;	(l) adopt any other type of measure to ensure that insurance undertakings and insurance intermediaries continue to comply with legal requirements;	(l) adopt any other type of measure to ensure that insurance ~~undertakings and insurance intermediaries~~ <u>or reinsurance distributors</u> continue to comply with legal requirements;	
497	(m) suspend or prohibit the distribution of an insurance-based investment product;	(m) suspend or prohibit the distribution of an insurance-based investment product;	(m) suspend or prohibit the distribution of an insurance-based investment product;	
498	(n) suspend the distribution of an insurance-based investment product where the insurance undertaking or insurance distributor has failed to comply with Article 25;	(n) suspend the distribution of an insurance-based investment product where the insurance undertaking or insurance distributor has failed to comply with Article 25;	(n) suspend the distribution of an insurance-based investment product where the insurance undertaking or insurance distributor has failed to comply with Article 25;	
499	(o) require the removal of a natural person from the management board of an insurance undertaking or insurance distributor;	(o) require the removal of a natural person from the management board of an insurance undertaking or insurance distributor;	(o) require the removal of a natural person from the management board of an insurance ~~undertaking or insurance~~ <u>or reinsurance</u> distributor;	
500	(p) 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,	(p) 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,	(p) <u>to the extent permitted by national law</u> , take all the necessary measures, including by requesting a third party or other public authority to implement such measures,	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
	to:	to:	whether on a temporary or permanent basis, to:	
501	(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;	(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;	(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;	
502	(ii) order a hosting service provider to remove, disable or restrict access to an online interface;	(ii) order a hosting service provider to remove, disable or restrict access to an online interface;	(ii) order a hosting service provider to remove, disable or restrict access to an online interface;	
503	(iii) order domain registries or registrars to delete a fully qualified domain name and to allow the competent authority concerned to register it;	(iii) order domain registries or registrars to delete a fully qualified domain name and to allow the competent authority concerned to register it;	(iii) order domain registries or registrars to delete a fully qualified domain name and to allow the competent authority concerned to register it;	
504	(q) impose the use of risk warnings for insurance-based investment products in information materials, including marketing communications, related to particularly risky insurance-based investment products and, where applicable, underlying investment assets, where those products and assets could pose a serious threat to	(q) impose the use of risk warnings for insurance-based investment products, <u>and, where applicable, underlying investment options</u> , in information materials, including marketing communications, related to particularly risky insurance-based investment products and, where applicable, underlying investment <u>assets options</u> , where those products	(q) impose the use of risk warnings for insurance-based investment products <u>on insurance undertakings or insurance intermediaries</u> in information materials, including marketing communications, <u>related to provided to customers concerning</u> particularly risky insurance-based investment products and, where	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
	investor protection.’;	and ~~assets~~ <u>underlying investment options</u> could pose a serious threat to investor protection.’;	applicable, underlying investment assets, ~~where those products and assets could pose a serious threat to investor protection.’;~~	
504a		<u>(qa) use webscraping techniques and tools to collect online data for monitoring, surveillance, detection and investigation purposes.</u>	<u>(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.</u>	
505	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).	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).	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).	
506	The implementation and the exercise of powers set out in this paragraph shall be proportionate and shall comply with Union and	The implementation and the exercise of powers set out in this paragraph shall be proportionate and shall comply with Union and	The implementation and the exercise of powers set out in this paragraph shall be proportionate and shall comply with Union and	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
	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.;	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.;	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.;	
506a		<u>(6a) the following article is inserted:</u>		
506b		<u>‘Article 12-a</u>		
506c		<u>Benchmarks as a supervisory tool</u>		
506d		<u>1. In accordance with Article 25, EIOPA, on the basis of industry testing and after consulting ESMA and the national competent authorities, shall, where appropriate, develop common European benchmarks for groups of comparable insurance-based investment products manufactured</u>		

	Commission Proposal	EP Mandate	Council Mandate	MS comments
		<u>and distributed in more than one Member State. The benchmarks shall represent reference points for comparable groups of insurance-based investment products and shall be used by national competent authorities to perform the assessment of the qualitative and quantitative features of insurance based-investment products distributed or manufactured by insurance undertakings and insurance intermediaries.</u>		
506e		<u>EIOPA shall regularly update those benchmarks, taking into account the developments on the market.</u>		
506f		<u>In specific cases, when national specificities exist which have a direct impact on the key features of a product, such as the costs, performance and qualitative benefits, these shall be taken into account. For this purpose, national competent authorities shall communicate these to EIOPA and shall provide guidance on how such features affect the benchmarks, including by providing a range of the impact</u>		

	Commission Proposal	EP Mandate	Council Mandate	MS comments
		<u>that such features of the product have on the compliance with the benchmarks.</u>		
506g		<u>When the insurance-based investment product is manufactured and distributed in just one Member State, such product shall be subject to national benchmarks developed by the national competent authority of that Member State. EIOPA shall, after consulting ESMA, develop draft regulatory technical standards on the development of national benchmarks to ensure a harmonized approach within the Union, and shall periodically update those standards.</u>		
506h		<u>EIOPA shall submit those draft regulatory technical standards to the Commission by ... [18 months after the date of entry into force of this amending Directive].</u>		
506i		<u>Power is delegated to the Commission to adopt the regulatory technical standards referred to in the fourth subparagraph in accordance with</u>		

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		<u>Articles 10 to 14 of Regulation (EU) No 1094/2010.</u>		
506j		<u>2. The benchmarks referred to in paragraph 1 shall serve the sole purpose of a supervisory tool for national competent authorities in order to facilitate identification of potential outliers among insurance-based investment products on the market based on a risk-based approach and to allow them to conduct further inquiry when necessary.</u>		
506k		<u>For this purpose, national competent authorities may engage in cooperation with the private sector in order to support their efforts in market screening.</u>		
506l		<u>When using this power, national competent authorities shall regularly check the insurance-based investment products on the market and compare them to the relevant benchmarks. If they identify products that deviate from the benchmark, they may require the insurance undertaking or insurance intermediary to provide</u>		

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		<u><i>an explanation for that deviation and, if they consider that the explanation duly justifies the deviation, they shall conclude the inquiry with a positive assessment.</i></u>		
506m		<u><i>If however, they consider that the explanation does not justify the deviation from the benchmark, they may require the insurance undertaking or insurance intermediary to correct its approach and comply with the product oversight and governance requirements in Article 25 of this Directive to provide the consumer with the intended qualitative and quantitative features of the concerned product. If the undertaking or intermediary makes such correction, the national competent authorities shall conclude the inquiry with a positive assessment.</i></u>		
506n		<u><i>Where an insurance undertaking or insurance intermediary fails to provide an explanation or the explanation does not justify the deviation of the product from the benchmark and the undertaking or intermediary fails to align the qualitative and quantitative</i></u>		

	Commission Proposal	EP Mandate	Council Mandate	MS comments
		<u>features of the product with the relevant benchmark, the national competent authorities may require the insurance undertaking or insurance intermediary, as a measure of last resort, to remove that product from the market.’;</u>		
507	(7) the following Articles 12a and 12b are inserted:	(7) the following Articles 12a and 12b are inserted:	(7) the following Articles 12a and 12b are inserted:	
508	‘ Article 12 a	‘ Article 12 a	‘ Article ~~12 a~~ <u>12a</u>	
509	Cooperation and exchange of information with EIOPA	Cooperation and exchange of information with EIOPA	Cooperation and exchange of information with EIOPA	
510	1. The competent authorities shall cooperate with EIOPA for the purposes of this Directive.	1. The competent authorities shall cooperate with EIOPA for the purposes of this Directive.	1. The competent authorities shall cooperate with EIOPA for the purposes of this Directive.	
511	2. The competent authorities shall, without undue delay, provide EIOPA with all information EIOPA needs to carry out its duties under 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.	2. The competent authorities shall, without undue delay, provide EIOPA with all information EIOPA needs to carry out its duties under this Directive.	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
512	Article 12b	Article 12b	Article 12b	
513	Collaboration platforms	Collaboration platforms	Collaboration platforms	
514	1. EIOPA may, in the case of justified concerns about negative effects on policyholders, on its own initiative or at the request of one or more of the 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 a competent authority, that competent authority shall notify the competent authority of the home Member State of its justified concerns about negative effects on investors.	1. EIOPA may, in the case of justified concerns about negative effects on policyholders, on its own initiative or at the request of one or more of the 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, <u>or where an insurance manufacturer distributes, or intends to distribute products in another Member State using insurance distributors registered in the host Member State</u>, and where such activities are of relevance with respect to the host Member State's market. If a collaboration platform is set up at	1. EIOPA may, in the case of justified concerns about negative effects on ~~policyholders~~<u>customers</u>, ~~on its own initiative or~~ at the request of ~~one~~<u>two</u> or more ~~of the~~ 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 ~~a~~ competent ~~authority~~, ~~that~~<u>authorities, those</u> competent ~~authority~~<u>authorities</u> shall notify the competent authority of the home Member State of ~~its~~<u>their</u> justified concerns about negative effects on	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
		the request of a competent authority, that competent authority shall notify the competent authority of the home Member State of its justified concerns about negative effects on investors.	~~investors~~ <u>customers</u> .	
515	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.	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.	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.	
516	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.	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.	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.	
517	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.	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.	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.	
518	5. Where two or more competent	5. Where two or more competent	5. Where two or more competent	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
	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.	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.	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.	
519	6. In the event of disagreement within the platform and where there are serious concerns about negative effects on policyholders 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.;	6. In the event of disagreement within the platform and where there are serious concerns about negative effects on policyholders 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,~~ <u>issue a recommendation to decide to initiate and coordinate joint on-site inspections. In that case, EIOPA shall invite</u> the competent authority of the home Member State ~~to consider the concerns of, as well as~~ other <u>relevant</u> competent authorities ~~concerned and to launch a of the~~ <u>collaboration platform, to participate in such</u> joint on-site inspection ~~together with other competent authorities concerned.~~ ;	6. In the event of disagreement within the platform and where there are serious concerns about negative effects on ~~policyholders~~ <u>customers</u> 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.;	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
520	(8) Article 14 is replaced by the following:	(8) Article 14 is replaced by the following:	(8) Article 14 is replaced by the following:	
521	‘ Article 14	‘ Article 14	‘ Article 14	
522	Complaints	Complaints	Complaints	
523	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 and receive replies in the same language in which the communication material or any contractual documents were provided. In all cases, complainants shall receive replies within 40 working days.;	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 and receive replies in the same language in which the communication material or any contractual documents were provided. In all cases, complainants shall receive replies within 40 working days.;	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 ~~and receive replies~~ in the same language in which the communication material or any contractual documents were provided. ~~–~~ In all cases, ~~complainants~~ <u>insurance and reinsurance distributors</u> shall	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
			~~receive replies within~~ <u>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.</u> <u>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.</u>;	
524	(9) the following Articles 16a and	(9) the following Articles 16a and	(9) the following Articles 16a and	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
	16b are inserted:	16b are inserted:	16b are inserted:	
525	‘ Article 16a	‘ Article 16a	‘ Article 16a	
526	Financial education of customers	Financial education of customers	Financial education of customers	
527	Member States shall promote measures that support the education of customers in relation to the responsible purchase of insurance products when accessing insurance services or ancillary services.	‘ <u>1. Member States shall <i>define and implement information and educational actions in order to</i> promote ~~measures that support the~~<i>and increase customers’</i> education ~~of customers~~<i>and knowledge</i> in relation to the responsible purchase of insurance products when accessing insurance services or ancillary services.</u>	<u>1. Member States shall promote measures that support the education of customers in relation to the responsible purchase of insurance products when accessing insurance ~~services or ancillary services~~<i>distribution activities</i>. 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.</u>	
527a		<u>Member States shall consider the contribution of national competent authorities, universities and relevant stakeholders when designing the educational instruments to promote financial literacy. In that regard, Member States shall consider introducing</u>	<u>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.</u>	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
		<u><i>compulsory teaching content in their national school curricula.</i></u>		
527b		<u><i>Member States may establish programmes to fund consumer organisations and independent investor or shareholder organisations that support the education of retail clients and potential retail clients in relation to responsible investment when accessing investment services or ancillary services.</i></u>		
527c		<u><i>1a. National competent authorities shall engage in a dialogue and carry out, at their own initiative, peer reviews to assess the applicability of best practices to their national system.</i></u>		
527d		<u><i>1b. The Commission, in collaboration with the ESAs, the European Investment Bank and the European Central Bank shall:</i></u>		
527e		<u><i>(a) facilitate cooperation and exchange of best practices among Member States and stakeholders</i></u>		

	Commission Proposal	EP Mandate	Council Mandate	MS comments
		<u>active in education and finance;</u>		
527f		<u>(b) establish clear targets on financial literacy;</u>		
527g		<u>(c) establish a Platform on Financial education and literacy, which shall be composed of representatives of:</u> <u>- the European Central Bank;</u> <u>- the European Investment Bank;</u> <u>- the ESAs;</u> <u>- each Member State, in the education and finance sectors, designated by the national competent authorities;</u> <u>- European and national consumer associations;</u> <u>- European financial industry federations.</u>		
527h		<u>International organisations and other public and private stakeholders may be invited on an ad hoc basis.</u>		
527i		<u>The Platform shall be chaired by the Commission. Representatives shall be appointed for a two-year</u>		

	Commission Proposal	EP Mandate	Council Mandate	MS comments
		<u>renewable mandate.</u>		
527j		<u>Member States shall promote and take measures for the development of financial literacy skills.</u>		
527k		<u>By ... [PO please insert the date = 12 months after the entry into force of this amending Directive] and every three years thereafter, Member States shall report to the Commission on the implementation of paragraph 1. The Commission shall issue guidelines regarding the scope of such reports.</u>		
527l		<u>By ... [PO please insert the date = 12 months after the entry into force of this amending Directive] and every five years thereafter, the Commission shall submit a report to the European Parliament and the Council on the implementation of measures in relation to paragraph 1, outlining the best practices, the possible way forward as well as the observed evolution and results between each report.</u>		
527m				

	Commission Proposal	EP Mandate	Council Mandate	MS comments
		<u><i>1c. Member States are encouraged to:</i></u>		
527n		<u><i>(a) coordinate and cooperate on matters related to financial education at Union level, such as through the use of the open methods of coordination and joint exchanges on best practices between the finance ministers of the Union and the education ministers of the Union, as well as with other Union institutions;</i></u>		
527o		<u><i>(b) promote financial education and training, also through lifelong learning opportunities at national level, as for example public-private partnerships, or through mentoring programmes.</i></u>		
527p		<u><i>The Commission and the Member States shall aim to strengthen cooperation in the field of financial education within the European Education Area, for example through the Erasmus+ Teacher Academies initiative. Member States are encouraged to use the existing tools and Union funding programmes at Union and national</i></u>		

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		<u>level in order to promote, support and enable financial education and training, and to ensure the mutual recognition of diplomas across the European Union.</u>		
527q		<u>1d. Member States shall consider the contributions of national competent authorities, universities and relevant stakeholders when designing the educational instruments to promote financial literacy.</u>		
528	Article 16b	Article 16b	Article 16b	
529	Financial education of customers and marketing communication	Financial education of customers and marketing communication	Financial education of customers and marketing communication	
530	Financial education material that aims to support individuals' financial literacy by enabling them to acquire financial competences, and that does not directly promote or entice investment in one or several insurance products, or categories thereof, or specific insurance services, shall not be	Financial education material that aims to support individuals' financial literacy by enabling them to acquire financial competences, and that does not directly promote or entice investment in one or several insurance products, or categories thereof, or specific insurance services, shall not be	Financial education material that aims to support individuals' financial literacy by enabling them to acquire financial competences, and that does not directly promote- ~~or entice~~ investment in one or several insurance products, or categories thereof, or specific insurance services, shall not be	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
	deemed to constitute a marketing communication for the purposes of this Directive.;	deemed to constitute a marketing communication for the purposes of this Directive.;	deemed to constitute a marketing communication for the purposes of this Directive.;	
531	(10) in Article 17, paragraph 2 is replaced by the following:	(10) in Article 17, paragraph 2 is replaced by the following:	(10) in Article 17, paragraph 2 is replaced by the following:	
532	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.	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.	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.	
533	Marketing communications shall be clearly identifiable as such and shall clearly identify the insurance undertaking or insurance distributor responsible for their content and distribution, regardless of whether the communication is made directly or indirectly by that insurance undertaking or insurance distributor.;	Marketing communications shall be clearly identifiable as such and shall clearly identify the insurance undertaking or insurance distributor responsible for their content and distribution, regardless of whether the communication is made directly or indirectly by that insurance undertaking or insurance distributor.;	Marketing communications shall be clearly identifiable as such and shall clearly identify the insurance undertaking or insurance ~~distributor~~ intermediary responsible for their content and distribution, regardless of whether the communication is made directly or indirectly by that insurance undertaking or insurance distributor.;	
534	(11) Article 18 is replaced by the	(11) Article 18 is replaced by the	(11) Article 18 is replaced by the	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
	following:	following:	following:	
535	Article 18	Article 18	Article 18	
536	General information to be provided to the customer	General information to be provided to the customer	General information to be provided to the customer	
537	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 communicated 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 communicated 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 ~~communicated~~ <u>provided</u> to the customer:	
538	(a) the name of the undertaking and its legal form;	(a) the name of the undertaking and its legal form;	(a) the name of the <u>insurance</u> undertaking ~~and~~ , its legal form <u>and the address of its head office</u> ;	
539	(b) where the insurance contract is proposed under the right of establishment or the freedom to provide services, the Member State in which the head office of the	(b) where the insurance contract is proposed under the right of establishment or the freedom to provide services, the Member State in which the head office of the	(b) where the insurance contract is proposed under the right of establishment ~~or the freedom to provide services, the Member State in which the head office of the~~	

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	insurance undertaking and, where appropriate, the branch proposing the contract is located;	insurance undertaking and, where appropriate, the branch proposing the contract is located;	~~insurance undertaking and, where appropriate,~~ <u>the address of</u> the branch proposing the <u>insurance</u> contract ~~is located~~ ;	
540	(c) the address of the head office and, where appropriate, of the branch proposing the contract;	(c) the address of the head office and, where appropriate, of the branch proposing the contract;	(c) <u>where the insurance contract is proposed under the freedom to provide services, the Member State in which</u> ~~the address of~~ the head office <u>of the insurance undertaking is located</u> and, where appropriate, <u>the address</u> of the branch proposing the <u>insurance</u> contract;	
541	(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;	(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;	(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;	
542	(e) a 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.	(e) a 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.	(e) a <u>concrete</u> 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.	
543				

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	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, communicate the following additional information to the customer:	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, communicate the following additional information to the customer:	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, ~~communicate~~ <u>provide, in addition to the information indicated in paragraph 1,</u> the following- ~~additional~~ information to the customer:	
544	(a) the name of the insurance intermediary, its legal form and address and the fact that it is an insurance intermediary;	(a) the name of the insurance intermediary, its legal form and address and the fact that it is an insurance intermediary;	(a) the name of the insurance intermediary, its legal form and address and the fact that it is an insurance intermediary;	
545	(b) where the insurance intermediary is acting under the right of establishment or the freedom to provide services, the Member State in which the head office of the insurance intermediary and, where appropriate, the branch proposing the contract is located;	(b) where the insurance intermediary is acting under the right of establishment or the freedom to provide services, the Member State in which the head office of the insurance intermediary and, where appropriate, the branch proposing the contract is located;	(b) where the insurance intermediary is acting under the right of establishment ~~or the freedom to provide services, the Member State in which the head office of the insurance intermediary and, where appropriate,~~ <u>the address of</u> the branch proposing the <u>insurance</u> contract ~~is located~~ ;	
545a			<u>(ba) where the insurance intermediary is acting under the freedom to provide services, the Member State in which the head</u>	

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			<u>office of the insurance intermediary is located and, where appropriate, the address of the branch proposing the insurance contract;</u>	
546	(c) whether the insurance intermediary provides advice about the proposed insurance contract;	(c) whether the insurance intermediary provides advice about the proposed insurance contract;	(c) whether the insurance intermediary provides advice about the proposed insurance contract;	
547	(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;	(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;	(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;	
548	(e) the register in which the insurance intermediary has been included and the means for verifying that it has been registered;	(e) the register in which the insurance intermediary has been included and the means for verifying that it has been registered;	(e) the register in which the insurance intermediary has been included and the means for verifying that it has been registered;	
549	(f) whether the insurance intermediary is representing the customer or is acting for and on behalf of the insurance undertaking.	(f) whether the insurance intermediary is representing the customer or is acting for and on behalf of the insurance undertaking.	(f) whether the insurance intermediary is representing the customer or is acting for and on behalf of the insurance undertaking.	

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550	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, communicate the following additional information to the customer:	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, communicate the following additional information to the customer:	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, ~~communicate~~ <u>provide, in addition to the information indicated in paragraph 1,</u> the following- ~~additional~~ information to the customer:	
551	(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);	(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);	(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);	
552	(b) whether it provides advice about the proposed insurance contract;	(b) whether it provides advice about the proposed insurance contract;	(b) whether it provides advice about the proposed insurance contract;	
553	(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	(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	(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	

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	procedures referred to in Article 15;	procedures referred to in Article 15;	procedures referred to in Article 15;	
554	(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);	(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);	(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);	
555	(e) whether the insurance undertaking is the manufacturer of the proposed contract or whether it is distributing the proposed contract on behalf of another insurance undertaking.;	(e) whether the insurance undertaking is the manufacturer of the proposed contract or whether it is distributing the proposed contract on behalf of another insurance undertaking.;	(e) whether the insurance undertaking is the manufacturer of the proposed contract or, <u>where applicable</u> , whether it is distributing the proposed contract on behalf of another insurance undertaking.;	
556	(12) Article 19 is amended as follows:	(12) Article 19 is amended as follows:	(12) Article 19 is amended as follows:	
557	(a) the title is replaced by the following:	(a) the title is replaced by the following:	(a) the title is replaced by the following:	
558				

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	Disclosures;	Disclosures;	Disclosures;	
559	(b) paragraph 1 is amended as follows:	(b) paragraph 1 is amended as follows:	(b) paragraph 1 is amended as follows:	
560	(i) the introductory wording is replaced by the following:	(i) the introductory wording is replaced by the following:	(i) the introductory wording is replaced by the following:	
561	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;;	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;;	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;;	
562	(ii) in point (c), the introductory wording is replaced by the following:	(ii) in point (c), the introductory wording is replaced by the following:	(ii) in point (c), the introductory wording is replaced by the following:	
563	in relation to insurance products other than insurance-based investment products, whether;;	in relation to insurance products other than insurance-based investment products, whether;;	in relation to insurance products other than insurance-based investment products, whether;;	

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	,	,	,	
564	(iii) point (d) is replaced by the following:	(iii) point (d) is replaced by the following:	(iii) point (d) is replaced by the following:	
565	(d) the nature of the remuneration received in relation to the insurance contract, in particular whether it works:	(d) the nature of the remuneration received in relation to the insurance contract, in particular whether it works:	(d) the nature of the remuneration received in relation to the insurance contract, in particular whether it works:	
566	(i) on the basis of a fee, that is the remuneration paid directly by the customer;	(i) on the basis of a fee, that is the remuneration paid directly by the customer;	(i) on the basis of a fee, that is the remuneration paid directly by the customer;	
567	(ii) on the basis of a commission of any kind, that is the remuneration included in the insurance premium;	(ii) on the basis of a commission of any kind, that is the remuneration included in the insurance premium;	(ii) on the basis of a commission of any kind, that is the remuneration included in the insurance premium;	
568	(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	(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	(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	
569	(iv) on the basis of a combination	(iv) on the basis of a combination	(iv) on the basis of a combination	

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	of any type of remuneration set out at points (i), (ii) and (iii).;	of any type of remuneration set out at points (i), (ii) and (iii).;	of any type of remuneration set out at points (i), (ii) and (iii).;	
570	(iv) point (e) is deleted;	(iv) point (e) is deleted;	(iv) point (e) is deleted;	
571	(c) paragraph 4 is replaced by the following:	(c) paragraph 4 is replaced by the following:	(c) paragraph 4 is replaced by the following:	
572	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.;	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.;	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.;	
573	(13) Article 20 is amended as follows:	(13) Article 20 is amended as follows:	(13) Article 20 is amended as follows:	
574	(a) in paragraph 1, the first subparagraph is replaced by the following:	(a) in paragraph 1, the first subparagraph is replaced by the following:	(a) in paragraph 1, the first subparagraph is replaced by the following:	

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575	‘ 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. ’,	‘ 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. ’,	‘ 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. ’,	
576	(b) paragraphs 3, 4 and 5 are replaced by the following:	(b) paragraphs 3, 4 and 5 are replaced by the following:	(b) paragraphs 3, 4 and 5 are replaced by the following:	
577	‘ 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	‘ 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	‘ 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	

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	personal recommendation, in accordance with professional criteria, regarding which insurance contract would be adequate to meet the customer's needs.	personal recommendation, in accordance with professional criteria, regarding which insurance contract would be adequate to meet the customer's needs.	personal recommendation, in accordance with professional criteria, regarding which insurance contract would be adequate to meet the customer's needs.	
578	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.	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.	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.	
579	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 retail customers by	‘ 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, <u>and other than life insurance products within the</u>	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 ~~retail~~ customers by	

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	way of a standardised insurance product information document on paper or on another durable medium.;	<u>meaning of Article 2(1), point (17), (c) to (e).</u> the information referred to in paragraph 4 of this Article shall be provided to retail customers by way of a standardised insurance product information document on paper or on another durable medium.;	way of a standardised insurance product information document ~~on paper or on another durable medium.~~ ;	
580	(c) paragraph 8 is amended as follows:	(c) paragraph 8 is amended as follows:	(c) paragraph 8 is amended as follows:	
581	(i) the introductory wording is replaced by the following:	(i) the introductory wording is replaced by the following:	(i) the introductory wording is replaced by the following:	
582	For non-life insurance products, the insurance product information document shall contain the following information;;	For non-life insurance products, the insurance product information document shall contain the following information;;	For non-life insurance products, the insurance product information document shall contain the following information;;	
583	(ii) the following point (j) is added:	(ii) the following point (j) is added:	(ii) the following point (j) is added:	
584	(j) the law applicable to the	(j) the law applicable to the	(j) the law applicable to the	

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	contract where the parties do not have a choice of law or, where the parties can choose the law applicable to the contract, the law that the insurance undertaking proposes to choose, and the competent jurisdiction.;	contract where the parties do not have a choice of law or, where the parties can choose the law applicable to the contract, the law that the insurance undertaking proposes to choose, and the competent jurisdiction.;	<u>insurance</u> contract; where the ~~parties do not have~~ <u>insurance undertaking proposes</u> a choice of law ~~or, where the parties can choose the law applicable to the contract,~~ the law that the insurance undertaking proposes to choose, ~~and the competent jurisdiction.;~~ <u>;</u>	
584a			<u>(ca) paragraph 6 is replaced by the following:</u>	
584b			<u>‘(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.’;</u>	
585	(d) the following paragraph 8a is inserted:	(d) the following paragraph 8a is inserted:	(d) the following paragraph 8a is inserted:	
586	‘ 8a. For life insurance products other than insurance-based investment products, the insurance	‘ 8a. For life insurance products other than insurance-based investment products <u>and other than</u>	‘ 8a. For life insurance products other than insurance-based investment products, the insurance	

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	product information document shall contain the following:	<u>life insurance products within the meaning of Article 2(1), point (17), (c) to (e)</u> , the insurance product information document shall contain the following:	product information document shall contain the following:	
587	(a) information about the type of insurance;	(a) information about the type of insurance;	(a) information about the type of insurance;	
588	(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;	(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;	(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;	
589	(c) the means of payment of premiums and the duration of payments;	(c) the means of payment of premiums and the duration of payments;	(c) the means of payment of premiums and the duration of payments;	
590	(d) information on the premiums for each benefit, both main benefits and supplementary benefits, where applicable;	(d) information on the premiums for each benefit, both main benefits and supplementary benefits, where applicable;	(d) information on the premiums for each benefit, both main benefits and supplementary benefits, where applicable;	
591	(e) where applicable, the means of	(e) where applicable, the means of	(e) where applicable, the means of	

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	calculation and distribution of bonuses;	calculation and distribution of bonuses;	calculation and distribution of bonuses;	
592	(f) main exclusions where claims cannot be made;	(f) main exclusions where claims cannot be made;	(f) main exclusions where claims cannot be made;	
593	(g) obligations at the start of the contract;	(g) obligations at the start of the contract;	(g) obligations at the start of the contract;	
594	(h) obligations during the term of the contract;	(h) obligations during the term of the contract;	(h) obligations during the term of the contract;	
595	(i) obligations in the event that a claim is made;	(i) obligations in the event that a claim is made;	(i) obligations in the event that a claim is made;	
596	(j) an indication of surrender and paid-up values and the extent to which they are guaranteed;	(j) an indication of surrender and paid-up values and the extent to which they are guaranteed;	(j) an indication of surrender and paid-up values and the extent to which they are guaranteed;	
597	(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;	(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;	(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;	

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598	(l) general information on the tax rules applicable to the type of insurance policy;	(l) general information on the tax rules applicable to the type of insurance policy;	(l) general information on the tax rules applicable to the type of insurance policy;	
599	(m) the term of the insurance contract, including the start and end dates of the contract;	(m) the term of the insurance contract, including the start and end dates of the contract;	(m) the term of the insurance contract, including the start and end dates of the contract;	
600	(n) the means of terminating the contract;	(n) the means of terminating the contract;	(n) the means of terminating the contract;	
601	(o) the law applicable to the contract where the parties do not have a choice of law or, where the parties can choose the law applicable to the contract, the law that the insurance undertaking proposes to choose, and the competent jurisdiction.;	(o) the law applicable to the contract where the parties do not have a choice of law or, where the parties can choose the law applicable to the contract, the law that the insurance undertaking proposes to choose, and the competent jurisdiction.;	(o) the law applicable to the contract; where the ~~parties do not have~~ <u>insurance undertaking proposes</u> a choice of law ~~or, where the parties can choose the law applicable to the contract,~~ the law that the insurance undertaking proposes to choose, ~~and the competent jurisdiction.;~~ <u>;</u>	
602	(e) paragraph 9 is amended as follows:	(e) paragraph 9 is amended as follows:	(e) paragraph 9 is amended as follows:	
603	(i) in the first subparagraph, 'paragraph 8' is replaced by	(i) in the first subparagraph, 'paragraph 8' is replaced by	(i) in the first subparagraph, 'paragraph 8' is replaced by	

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	‘paragraph 8a’;	‘paragraph 8a’;	‘ ~~paragraph~~ <u>paragraphs 8 and</u> 8a’;	
604	(ii) in the second subparagraph, ‘23 February 2017’ is replaced by [DATE TBD IN ACCORDANCE TO DATE OF ADOPTION].;	(ii) in the second subparagraph, ‘23 February 2017’ is replaced by [DATE TBD IN ACCORDANCE TO DATE OF ADOPTION].;	(ii) <u> </u> in the second subparagraph, ‘ ~~23~~ February 2017’ is replaced by [~~DATE TBD IN ACCORDANCE TO DATE OF ADOPTION~~ <u>OJ: insert date one year after the date of entry into force of this Directive</u>].;	
605	(14) in Article 22(1), the first subparagraph is replaced by the following:	(14) in Article 22(1), the first subparagraph is replaced by the following:	(14) in Article 22(1), the first subparagraph is replaced by the following:	
606	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*.’	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*.’	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*.’	
607	_____ _____ _____	_____ _____ _____	_____ _____ _____	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
608	*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).;	*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).;	*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).;	
609	(15) Article 23 is replaced by the following:	(15) Article 23 is replaced by the following:	(15) Article 23 is replaced by the following:	
610	Article 23	Article 23	Article 23	
611	Electronic distribution and other durable means	Electronic distribution and other durable means	Electronic distribution, <u>telephone selling</u> and other durable means	
612	1. Insurance distributors shall provide all information required by this Directive to customers in electronic format.	1. Insurance distributors shall provide all information required by this Directive to customers in electronic format.	1. Insurance distributors shall provide all information required by this Directive to customers in electronic format.	
613	By way of derogation from the first subparagraph, insurance distributors	By way of derogation from the first subparagraph, insurance distributors	By way of derogation from the first subparagraph, insurance distributors	

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	shall provide, upon request from the retail customer, the information referred to in the first subparagraph, free of charge on paper.	shall provide, upon request from the retail customer, the information referred to in the first subparagraph, free of charge on paper.	shall provide, upon request from the ~~retail~~ customer, the information referred to in the first subparagraph, free of charge on paper.	
614	2. Insurance distributors shall inform retail customers that they have the option of receiving the information free of charge on paper.	2. Insurance distributors shall inform retail customers that they have the option of receiving the information free of charge on paper.	2. Insurance distributors shall inform ~~retail~~ <u>their</u> customers, <u>in good time before they are bound by the contract or offer</u> , that they have the option of receiving the information free of charge on paper.	
615	3. Insurance distributors shall inform the existing retail customers 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 retail customers that an automatic switch to the electronic format will occur after a period of at least eight weeks, if they do not request the continuation of the provision of the information on paper within that eight weak period. Existing retail customers who already receive the information referred to in paragraph 1 in electronic format do not need to be informed.	3. Insurance distributors shall inform the existing retail customers 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 retail customers that an automatic switch to the electronic format will occur after a period of at least eight weeks, if they do not request the continuation of the provision of the information on paper within that eight weak period. Existing retail customers who already receive the information referred to in paragraph 1 in electronic format do not need to be informed.	3. Insurance distributors shall inform ~~the~~ <u>their</u> existing ~~retail~~ customers <u>who receive the information in paper format</u> 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 ~~retail~~ customers ~~that an automatic switch to the electronic format will occur after a period of at least eight weeks, if they do not request the continuation of the provision of~~ <u>who receive</u> the information on paper ~~within that eight weak period. Existing retail customers who already receive the information referred to in~~ <u>paragraph 1 in format, that if they do not indicate a choice, the paper</u>	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
			<u>format will remain until the customer consents to an</u> electronic format ~~do not need to be informed.~~	
616	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.	4. EIOPA shall, <u>taking into account the requirements of other existing legislation</u> , 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.	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.	
617	The guidelines referred to in the first subparagraph shall specify:	The guidelines referred to in the first subparagraph shall specify:	~~—~~ The guidelines referred to in the first subparagraph shall specify:	
618	(a) the presentation and format of the digital disclosures, considering the various designs and channels that insurance distributors may use to inform their customers;	(a) the presentation and format of the digital disclosures, considering the various designs and channels that insurance distributors may use to inform their customers;	(a) the presentation and format of the digital disclosures, considering the various designs and channels that insurance distributors may use to inform their customers;	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
619	(b) the necessary safeguards to ensure ease of navigability and accessibility of the information, regardless of the device used by the customer;	(b) the necessary safeguards to ensure ease of navigability and accessibility of the information, regardless of the device used by the customer;	(b) the necessary safeguards to ensure ease of navigability and accessibility of the information, regardless of the device used by the customer;	
620	(c) the necessary safeguards to ensure easy retrievability of the information and facilitate the storing of information by customers in a durable medium.;	(c) the necessary safeguards to ensure easy retrievability of the information and facilitate the storing of information by customers in a durable medium.;	(c) the necessary safeguards to ensure easy retrievability of the information and facilitate the storing of information by customers in a durable medium.;	
620a			<u>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:</u> <u>(a) the customer has consented to receiving the information without undue delay after the conclusion of the contract;</u> <u>(b) the insurance distributor has given the customer the option</u>	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
			<u>of delaying the conclusion of the contract until the customer has received the information.</u> <u>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:</u> <u>(a) the name of the insurance distributor, and where the insurance contract is proposed by an insurance intermediary, the name of the insurance undertaking;</u> <u>(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;</u> <u>(c) information on the total price, including information on the premium, costs and charges;</u> <u>(d) whether the insurance distributor provides advice about the proposed insurance contract;</u> <u>(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</u>	

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 (Text with EEA relevance) 2023/0167(COD) 28-06-2024 at 13h45 72/183

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			<u>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.’;</u>	
621	(16) Article 25 is replaced by the following:	(16) Article 25 is replaced by the following:	(16) Article 25 is replaced by the following:	
622	‘ Article 25	‘ Article 25	‘ Article 25	
623	Product oversight and governance requirements	Product oversight and governance requirements	Product oversight and governance requirements	
624	1. The home Member State of the manufacturer shall require that insurance undertakings and 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	1. The home Member State of the manufacturer shall require that insurance undertakings and 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	1. The home Member State of the manufacturer shall require that insurance undertakings and <u>insurance</u> 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	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
	customers ('the product approval process').	customers ('the product approval process').	marketed or distributed to customers ('the product approval process').	
625	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:	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:	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:	
626	(a) a specification of an identified target market for each insurance product;	(a) a specification of an identified target market for each insurance product;	(a) a specification of an identified target market for each insurance product <u>and of the intended distribution strategy</u> ;	
627	(b) a clear identification of target market's objectives and needs;	(b) a clear identification of target market's objectives and needs;	(b) a clear identification of target market's objectives and needs;	
628	(c) an assessment of whether the insurance product is designed appropriately to meet the 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;	(c) an assessment of whether the insurance product is designed appropriately to meet the target market's objectives and needs;	
629	(d) an assessment of all relevant risks to the identified target market and that the intended distribution strategy is consistent with the identified target market;	(d) an assessment of all relevant risks to the identified target market and that the intended distribution strategy is consistent with the identified target market;	(d) an assessment of all <u>risks</u> relevant ~~risks~~ to the identified target market and ~~that~~ <u>arising from the distribution strategy and whether</u> the intended distribution strategy is	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
			consistent with the identified target market;	
630	(e) reasonable steps to ensure that the insurance product is distributed to the identified target market;	(e) reasonable steps to ensure that the insurance product is distributed to the identified target market;	(e) reasonable steps to ensure that the insurance product is distributed to the identified target market;	
631	(f) in relation to insurance-based investment products, a clear identification and quantification of all costs and charges related to the product and an assessment of whether these costs and charges are justified and proportionate, having regard to the characteristics, objectives, strategy and performance of the product, as well as the guarantees and insurance coverage of biometric and other risks (pricing process);	(f) in relation to insurance-based investment products, <u>and which are made available to retail clients,</u> a clear ~~identification and quantification of all costs and charges related to the product and an assessment~~ <u>and description of both quantitative and qualitative features of whether these costs and charges are justified and proportionate, having regard to the characteristics, objectives, strategy and performance of the product, as well as the guarantees and financial insurance coverage of biometric and other risks (pricing process);</u> <u>product, including:</u>	(f) in relation to insurance-based investment products, a clear identification and quantification of all costs and charges <u>and the performance</u> related to the product, <u>a clear identification and, where possible, quantification of its other benefits</u> and an assessment of <u>whether the product offers value for money, by evaluating</u> whether these costs and charges are justified and proportionate, having regard to the <u>performance, the other benefits and the</u> characteristics, objectives, <u>and</u> strategy ~~and performance~~ of the product, as well as the guarantees and insurance coverage of biometric and other risks (~~pricing~~ <u>value-for-money assessment</u> process);	
631a		<u>(i) all costs and charges related to the product</u>		

	Commission Proposal	EP Mandate	Council Mandate	MS comments
631b		<u>(ii) whether these costs and charges are justified, in relation to those actually incurred for the design, management and distribution of the product, and proportionate (pricing process), having regard to the target market's objectives and needs, the product's characteristics, objectives, strategy and performance, as well as the guarantees and insurance coverage of biometric and other risks;</u>		
631c		<u>(iii) additional product features and services that may impact the value and benefits provided to investors. When an insurance product offers a range of underlying investment options, these requirements must also be carried out at the level of each investment option;</u>		
632	(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.	(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.	(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.	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
633	The pricing process referred to in point (f) shall contain a comparison with the relevant benchmark, where available, on costs and performance published by EIOPA in accordance with paragraph 8.	<u>For the purposes of the second subparagraph, ~~The pricing process referred to in~~ point (f)(a), the manufacturer shall ~~contain a comparison with the relevant benchmark, where available, on costs and performance published by EIOPA in accordance with paragraph 8.~~ as part of the target market definition, assess the type of customers to whom the product is targeted, the knowledge and experience level needed to understand the product, the ability to bear losses, the risk tolerance and whether the product allows the target market to:</u>	The ~~pricing process~~ <u>assessment that the insurance-based investment product can be expected to offer value for money</u> referred to in point (f) shall, <u>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 ~~contain a~~ comparison with similar insurance-based investment products in the Union, subject to data availability, by comparing the relevant benchmark, where available, on costs and charges as well as performance published by EIOPA in accordance with paragraph 8 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</u>	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
			<u>systematically include information on product testing and assessments.</u>	
633a		<u>(a) smoothly manage short-term finances to meet short-term needs;</u>		
633b		<u>(b) absorb economic shocks; or</u>		
633c		<u>(c) reach future long term goals.</u>		
633b			<u>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.</u> <u>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</u>	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
			<u>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.</u> <u>The peer-group comparison, including the selection of insurance-based investment products with similar characteristics, shall be based on relevant and objective criteria.</u>	
633c		<u>The product approval process shall ensure that insurance undertakings and intermediaries take the clients' best interest into consideration in the manufacturing of the insurance products and take into account the intended monetary and non-monetary benefits to the customer.</u>		
633d		<u>Insurance undertakings and intermediaries shall regularly review the insurance products they manufacture, taking into account any event or risk that could materially affect the identified target market, to assess whether</u>		

	Commission Proposal	EP Mandate	Council Mandate	MS comments
		<u>the insurance product remains consistent with the objectives, needs and characteristics of the target market.</u>		
633e		<u>1a. Insurance undertakings and intermediaries shall ensure that compliance reports to the management body systematically include information about the insurance product manufactured by the firm, including information on the distribution strategy and the intended monetary and non-monetary benefits to the clients related to the financial instruments. Insurance undertakings and intermediaries shall make the reports available to their competent authority upon request.</u>		
634	2. When an insurance-based investment product which deviates from the relevant benchmark referred to in paragraph 8, the manufacturer shall perform additional testing and further assessments and establish whether costs and charges are nevertheless justified and proportionate. If justification and proportionality of costs and charges cannot be	deleted	2. ~~When~~ <u>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</u>	

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	demonstrated, the insurance-based investment product shall not be approved by the manufacturer. Where no relevant benchmark exists for an insurance-based investment product, a manufacturer shall approve the product only if it has established through product testing and assessments that the costs and charges are justified and proportionate and that the product meets the target market's objectives and needs.		<u>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</u> an insurance-based investment product ~~which deviates from~~<u>with</u> the relevant <u>Union supervisory</u> benchmark <u>as</u> referred to in paragraph ~~8, the~~ <u>manufacturer</u> ~~7~~ <u>instead of a peer group.</u> <u>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</u> ~~perform~~ additional testing and further assessments ~~and establish whether costs and charges are nevertheless justified and proportionate. If justification and proportionality of costs and charges cannot be demonstrated,~~ <u>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</u>	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
			<u>relevant features of</u> the insurance-based investment product ~~shall not be approved by the manufacturer.~~ ~~Where no relevant benchmark exists for an insurance-based investment product, a manufacturer~~ <u>and the interest of the client. The compliance report to the management body</u> shall ~~approve the product only if it has established through product testing-~~ <u>and systematically include information on these additional testings and further</u> assessments ~~that the costs and charges are justified and proportionate and that the product meets the target market's objectives and needs~~ <u>and their conclusions, including on any actions to ensure value for money.</u>	
635	3. Insurance undertakings and 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.	3. Insurance undertakings and 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.	3. Insurance undertakings and <u>insurance</u> 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.	

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636	Insurance undertakings and 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 any costs and charges of the insurance product.	Insurance undertakings and 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 any costs and charges, <u>features, objectives, strategy and performance</u> of the insurance product.	Insurance undertakings and <u>insurance</u> 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 ~~any costs and charges of the insurance product~~ <u>the value-for-money assessment</u> .	
637	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 costs and charges are justified and proportionate and that the product meets the objectives and needs of the customers belonging to the target market.	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 costs and charges are justified and proportionate and that the product meets the objectives and needs of the customers belonging to the target market.	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 ~~costs and charges are justified and proportionate and that~~ the product <u>offers value for money and</u> meets the objectives and needs of the customers belonging to the target market.	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
638	4. Insurance undertakings and insurance intermediaries which manufacture insurance-based investment products shall report to their home authorities all of the following:	<i>deleted</i>	4. Insurance undertakings and insurance intermediaries which manufacture insurance-based investment products shall report to their home authorities all of the following:	
639	(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 third-party payments;	<i>deleted</i>	(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 ~~third-party payments~~ <u>inducements</u> ;	
640	(b) data on the characteristics of the insurance-based investment product, in particular its performance and level of risk.	<i>deleted</i>	(b) data on the characteristics of the insurance-based investment product, in particular its performance and ~~level of risk~~ <u>any additional benefits</u> ;	
640a			<u>(ba) the Member State(s) where they distribute the insurance-based investment product.</u>	
640b			<u>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</u>	

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			<u>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.</u>	
641	The competent authorities shall transmit the data referred to in the first subparagraph data to EIOPA without undue delay.	<i>deleted</i>	The competent authorities shall transmit the data referred to in ~~the first subparagraph data~~ <u>point (a), (b) and (c)</u> to EIOPA ~~without undue delay.~~	
642	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.	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, <u>including the</u>	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.	

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		<u>monetary and non-monetary benefits relevant to the target market, but also to ensure that the insurance undertaking and intermediary takes into account the best interest of the target market.</u>		
643	Insurance intermediaries or insurance undertakings distributing insurance-based investment products shall:	<u>5a.</u> Insurance intermediaries or insurance undertakings distributing insurance-based investment products shall:	Insurance intermediaries or insurance undertakings distributing insurance-based investment products shall:	
644	(a) make sure that they obtain and fully understand the information referred to in paragraph 3, third subparagraph;	(a) make sure that they obtain and fully understand the information referred to in paragraph 3, third subparagraph;	(a) make sure that they obtain and fully understand the information referred to in paragraph 3, third subparagraph;	
645	(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;	(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, <u>including entry costs, exit costs and third-party payments received and retained by the distributor;</u>	(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;	
646	(c) assess whether the total costs and charges are justified and	(c) assess whether the total costs and charges <u>incurred for the</u>	(c) assess whether the ~~total costs and charges are justified and~~	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
	proportionate, having regard to the target market's objectives and needs (pricing process).	<u>distribution of the product, including those associated with the advice provided to the client,</u> are justified and proportionate, having regard to the target market's objectives and needs (pricing process).	~~proportionate, having regard to~~ <u>product meets</u> the target market's objectives and needs ~~(pricing process)~~ .	
646a		<u>(ca) assess additional product features and services that may impact the value and benefits provided to investors.</u>		
647	The pricing process referred to in point (c) shall include, where available, a comparison with the relevant benchmark on costs and performance published by EIOPA in accordance with paragraph 8.	<i>deleted</i>	<i>deleted</i>	
648	The distributor shall provide the insurance undertaking or insurance intermediary manufacturing the insurance-based investment product regularly with all relevant information about the results of its pricing process. Where the distributor finds that there are costs and charges, in particular distribution costs, that have not been fully taken into account in the	The distributor shall provide the insurance undertaking or insurance intermediary manufacturing the insurance-based investment product regularly with all relevant information about the results of its pricing process. Where the distributor finds that there are costs and charges, in particular distribution costs, that have not been fully taken into account in the	~~The distributor shall provide the insurance undertaking or insurance intermediary manufacturing the insurance-based investment product regularly with all relevant information about the results of its pricing process.~~ Where the distributor finds that there are costs and charges, in particular distribution costs, that have not been fully taken into account in the	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
	manufacturer's pricing process, it shall immediately inform the manufacturer.	manufacturer's pricing process, it shall immediately inform the manufacturer.	manufacturer's ~~pricing~~ <u>value-for-money assessment</u> process, it shall immediately inform the manufacturer. <u>The manufacturer shall take these costs and charges into account in its value-for-money assessment process.</u>	
649	6. When an insurance-based investment product deviates from the relevant benchmark referred to in paragraph 8, the insurance intermediary or insurance undertaking distributing insurance-based investment products shall perform additional testing and further assessments and establish whether costs and charges are nevertheless justified and proportionate. If justification and proportionality of costs and charges cannot be demonstrated, the insurance intermediary or insurance undertaking shall not advise on or propose the insurance-based investment product to retail customers. Where no relevant benchmark exists for an insurance-based investment product, distributors shall only advise on or propose the product, if they have established through product testing and assessments that the costs and charges are justified and proportionate and that the product	<i>deleted</i>	<i>deleted</i>	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
	meets the target market's objectives and needs.			
649a		<u>6a. Member States shall ensure that insurance undertakings and intermediaries manufacturing or distributing insurance-based investment product consider the following when complying with the product oversight and governance requirements:</u>		
649b		<u>(a) that the insurance-based investment product's costs and charges are compatible with the objectives, needs and characteristics of the target market;</u>		
649c		<u>(b) Where insurance undertakings and intermediaries manufacture or distribute insurance-based investment products falling under the definition of packaged retail investment products in Article 4, point (1), of Regulation (EU) No 1286/2014, they shall perform a peer grouping analysis in accordance with this paragraph. In their assessment, distributors may rely on the manufacturer's peer</u>		

	Commission Proposal	EP Mandate	Council Mandate	MS comments
		<u>grouping analysis.</u>		
649d		<u>The manufacturer and distributor of an insurance-based investment product falling under the definition of packaged retail investment products in accordance with Article 4(1) of Regulation (EU) No 1286/2014, shall perform a peer grouping evaluation of the insurance product.</u>		
649e		<u>Insurance undertakings and intermediaries which manufacture insurance-based investment products shall, in addition, perform a peer analysis of historical performance when performing product review of existing insurance products falling under the definition of packaged retail investment products in accordance with Article 4(1) of Regulation (EU) No 1286/2014.</u>		
649f		<u>Insurance undertakings and intermediaries which distribute insurance-based investment products shall, in addition, perform a peer-analysis of service costs based on an internal analysis of</u>		

	Commission Proposal	EP Mandate	Council Mandate	MS comments
		<u>relevant peers in the market.</u>		
649g		<u>The peer grouping evaluation shall be performed on the basis of a peer group defined by the insurance undertakings and intermediaries. Insurance undertakings and intermediaries shall substantiate and document the choice and definition of the peer group. If the product falls under the definition of a UCITS in Article 1(2) of Directive 2009/65/EC of the European Parliament and of the Council, or of an AIF in Article 4(1), point (a), of Directive 2011/61/EU of the European Parliament and of the Council, the peer group may be based on the relevant European fund classification system in accordance with Article 14(1f) of Directive 2009/65/EC of the European Parliament and of the Council or Article 12(1f) of Directive 2011/61/EU of the European Parliament and of the Council.</u>		
649h		<u>EIOPA shall by ... [12 months after the entry into force of this amending Directive], develop guidelines on the process and</u>		

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		<u>criteria used by investment firms to carry out their peer grouping evaluation, and shall periodically update those guidelines.</u>		
650	7. An insurance intermediary or insurance undertaking which manufactures or distributes insurance-based investment products shall document all assessments made, including the following:	7. An <u>insurance undertaking or</u> insurance intermediary ~~or insurance undertaking~~ which manufactures or distributes insurance-based investment products shall document all assessments made <u>and shall, upon request, provide such assessments to a relevant competent authority</u> , including the ~~following~~ <u>the justification and demonstration of the proportionality of costs and charges of the insurance-based investment product:</u>	7. An insurance intermediary or insurance undertaking which manufactures ~~or distributes~~ insurance-based investment products shall document <u>the product testing and</u> all assessments made, including the following:	
651	(a) where relevant, the results of the comparison of the insurance-based investment product to the relevant benchmarks,	<i>deleted</i>	(a) ~~where relevant,~~ <u>the dataset and the criteria used to select the peer group and</u> the results of the comparison of the insurance-based investment product to the ~~relevant benchmarks~~ <u>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;</u>	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
652	(b) where applicable, the reasons justifying a deviation from the benchmark	<i>deleted</i>	(b) where applicable, the reasons justifying <u>that the insurance-based investment product offers value for money when it is at a significant distance</u> ~~a deviation~~ from the <u>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;</u>	
653	(c) justification and demonstration of the proportionality of costs and charges of the insurance-based investment product.	<i>deleted</i>	(c) ~~justification and demonstration of the proportionality of costs and charges of the insurance-based investment product~~ <u>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.</u>	
653a		<u>In accordance with the information to be disclosed under Article 29 of this Directive, an insurance undertaking or intermediary which manufactures or distributes an insurance-based investment product falling under the definition of packaged retail</u>		

	Commission Proposal	EP Mandate	Council Mandate	MS comments
		<u>investment products in accordance with Article 4(1) of Regulation (EU) No 1286/2014, shall report to the competent authorities details of costs and charges of the insurance-based investment product destined for retail investors, including, where relevant, distribution costs incorporated in the costs of the insurance-based investment product and costs related to the distribution of advice. The competent authorities shall transmit such data without undue delay to EIOPA.</u>		
653b		<u>EIOPA, after having consulted ESMA and the competent authorities and after industry testing, shall develop draft regulatory technical standards for the application of the requirements in this paragraph to determine the following:</u>		
653c		<u>(a) in accordance with the information to be disclosed under Article 29, the content and type of data to be reported to the home authorities, based on existing disclosure and reporting obligations;</u>		

	Commission Proposal	EP Mandate	Council Mandate	MS comments
653d		<u>(b) the formats, frequency and starting date for the information to be reported, in accordance with the information to be disclosed under Article 29.</u>		
653e		<u>EIOPA shall submit those draft regulatory technical standards to the Commission by 18 months after date of entry into force of this Directive.</u>		
653f		<u>Power is delegated to the Commission supplement this Directive by adopting the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1094/2010.</u>		
653g		<u>7a. An insurance undertaking which manufactures and offers or recommends an insurance-based investment product may establish one pricing process relating to both manufacturing and distribution stages.</u>		

	Commission Proposal	EP Mandate	Council Mandate	MS comments
654	8. EIOPA, after having consulted ESMA and the competent authorities, shall, where appropriate, develop and make publicly available common benchmarks for insurance-based investment products that present similar levels of performance, risk, strategy, objectives, or other characteristics to help insurance undertakings and insurance intermediaries manufacturing or distributing insurance-based investment products to perform the comparative assessment of the cost and performance of insurance-based investment products.	<i>deleted</i>	8. ~~EIOPA, after having consulted~~<u>In consultation with</u> ESMA and <u>relevant stakeholders and in close and thorough cooperation with</u> the competent authorities <u>throughout the entire development and testing process</u>, ~~EIOPA~~ shall, where appropriate <u>and feasible</u>, develop and make publicly available ~~common~~<u>Union supervisory benchmarks. Those</u> benchmarks ~~for~~<u>shall be developed per product cluster that contains a significant number of</u> insurance-based investment products <u>including, where applicable, underlying investment assets</u>, that present similar <u>characteristics including, where relevant, similar</u> levels of ~~performance~~, risk, <u>guarantee</u>, strategy, objectives, ~~or other characteristics to help~~<u>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</u>	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
			<u>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.</u> <u>Competent authorities shall verify that the value-for-money assessment process of</u> insurance ~~undertakings and~~ <u>companies or</u> insurance intermediaries manufacturing ~~or distributing~~ insurance-based investment products ~~to perform the comparative assessment of the cost and performance of insurance-based investment products~~ <u>complies with the product governance requirements under paragraphs 1 to 4, 6 and 9.</u>	
655	The benchmarks shall display a range of costs and performance, in order to facilitate the identification of insurance-based investment products whose costs and performance depart significantly from the average.	deleted	~~The~~ <u>Union supervisory</u> benchmarks shall ~~display a range of costs and performance, in order to facilitate the identification of~~ <u>allow to identify</u> insurance-based investment products ~~whose~~ <u>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</u> costs and performance ~~depart significantly~~	

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			~~from the average~~ <u>and thereby have an increased risk of poor value for money.</u>	
656	The costs used for the development of benchmarks shall, in addition to the total product cost, also include all costs of distribution, inclusive inducements. They shall allow comparison with individual cost components.	~~deleted~~	The costs used for the development of <u>Union supervisory</u> benchmarks shall, in addition to the total product cost, also include all costs of distribution, ~~inclusive~~ <u>including</u> inducements. They shall allow comparison with individual cost components.	
657	EIOPA shall regularly update those benchmarks.	~~deleted~~	EIOPA shall regularly update ~~those~~ <u>the Union supervisory</u> benchmarks.	
657a			<u>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.</u>	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
			<u>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:</u> <u>(a) any Union institution, body, office or agency;</u> <u>(b) any competent authority designated by a Member State pursuant to a Union legislative act;</u> <u>(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;</u> <u>(d) any governmental institution, body or agency of a Member State;</u> <u>(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</u>	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
			<u>performance of their tasks.</u> <u>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.</u>	
657b				

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			<u>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:</u> <u>(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;</u> <u>(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;</u> <u>(c) the differences in</u>	

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 (Text with EEA relevance) 2023/0167(COD) 28-06-2024 at 13h45 101/183

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			<u>methodologies do not increase over time, except when needed to take into account national specificities with a view to protecting clients;</u> <u>(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</u> <u>(e) the national benchmark is made public.</u>	
657c			<u>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.</u> <u>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.</u>	
657d			<u>8c. By [OJ: insert date of application of this amending Directive referred to in Article 6(2)]</u>	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
			<u>+ 5 years], the competent authorities shall report to EIOPA on:</u> <u>(a) the impact and the added value of the peer-group comparison on the value for money of insurance-based investment products;</u> <u>(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;</u> <u>(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</u> <u>(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.</u> <u>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:</u> <u>(a) the impact and the added value of the peer-group comparison and of the Union supervisory benchmarks on the value for</u>	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
			<u>money of insurance-based investment products and on the supervision of the value-for-money assessment process, including the need to revise the framework;</u> <u>(b) the application of Union supervisory benchmarks in the value-for-money assessment process of insurance-based insurance products;</u> <u>(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;</u> <u>and</u> <u>(d) whether and how to modify the approach to the data that is made available in accordance with paragraph 8a.</u> <u>When drafting the report, EIOPA shall coordinate with ESMA.</u> <u>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.</u>	
658	9. The Commission shall be	9. ~~The Commission~~ EIOPA shall ~~be~~	9. The Commission shall be	

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	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,	~~empowered to supplement this by ...~~ <u>[12 months after the entry into force of the amending Directive by adopting delegated acts in accordance with Article 38 to further], develop guidelines to specify the principles set out in this Article, including, with regard to insurance-based investment products criteria to determine whether costs and charges are justified and proportionate, and it shall periodically update those guidelines.</u>	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, <u>the methodology to be used by insurance undertakings and insurance intermediaries manufacturing insurance-based investment products to perform the peer-group comparison.</u>	
659	(a) the methodology to be used by EIOPA to develop the benchmarks referred to in paragraph 8;	<i>deleted</i>	<i>deleted</i>	
660	(b) the criteria to determine whether costs and charges are justified and proportionate;	<i>deleted</i>	<i>deleted</i>	
661	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.	<i>deleted</i>	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.	
662				

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	10. EIOPA, after having consulted ESMA and the competent authorities and after industry testing, and taking into consideration the methodology referred to in paragraph 9, point (a), shall develop draft regulatory technical standards to determine the following:	<i>deleted</i>	10. EIOPA, after having consulted ESMA and the competent authorities and after industry testing, and taking into consideration the ~~methodology~~ <u>methodologies</u> referred to in paragraph ~~9, point (a)~~ <u>7 and 9</u> , shall develop draft regulatory technical standards to determine the following:	
663	(a) content and type of data to be reported to the home authorities in accordance with paragraph 4, based on disclosure and reporting obligations, unless additional data is exceptionally necessary;	<i>deleted</i>	(a) content and type of data to be reported to the home authorities in accordance with paragraph 4; ~~based on disclosure and reporting obligations, unless additional data is exceptionally necessary;~~	
664	(b) the data standards and formats, methods and arrangements, frequency and starting date for the information to be reported in accordance with paragraph 4.	<i>deleted</i>	(b) the data standards and formats, methods and arrangements, frequency and starting date for the information to be reported in accordance with paragraph 4.	
665	EIOPA shall submit those draft regulatory technical standards to the Commission by [9 months after the adoption of the delegated act referred to in paragraph 2].	<i>deleted</i>	EIOPA shall submit those draft regulatory technical standards to the Commission by [~~9 months after the adoption~~ <u>OJ: insert date of entry into force</u> of the ~~delegated act referred to in paragraph 2~~ <u>amending Directive + 24 months</u>].	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
665a			<u>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.</u> <u>EIOPA shall ensure that the reporting standards and formats, methods and arrangements and frequency remain proportionate and are aggregated to the extent feasible.</u>	
666	Power is delegated to the Commission to adopt the regulatory technical standards referred to in the	<i>deleted</i>	Power is delegated to the Commission to adopt the regulatory technical standards referred to in the	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
	first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1094/2010.		first subparagraph in accordance with ~~Articles 10 to 14~~ <u>Article 10</u> of Regulation (EU) No 1094/2010.	
667	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 third-party payments.	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 third-party payments.	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 ~~third-party payments~~ <u>inducements</u> .	
668	12. This Article shall not apply to insurance products which consist of the insurance of large risks.;	12. This Article shall not apply to insurance products which consist of the insurance of large risks.;	12. This Article shall not apply to insurance products which consist of the insurance of large risks.;	
668a		<u>13. By ... [five years after the date of application of this amending Directive], Member States shall communicate to the Commission and ESMA all relevant information concerning the implementation of this Article. The Commission and ESMA may request additional information from national competent authorities.</u>		

	Commission Proposal	EP Mandate	Council Mandate	MS comments
668b		<u>On the basis of the information provided by Member States, the Commission, in consultation with ESMA and EIOPA, shall carry out an evaluation of the effective implementation of this Article and assess in particular:</u>		
668c		<u>(a) whether the effects of strengthened product governance requirements set out in this article have led to better value for money for citizens;</u>		
668d		<u>(b) the impact of the relevant provisions of this Directive on potential conflicts of interest associated with inducements, the evolution of costs, the overall level of retail investment in capital markets, consumer protection and the relevance of distribution rules;</u>		
668e		<u>(c) the implementation of financial literacy measures.</u>		
668f				

	Commission Proposal	EP Mandate	Council Mandate	MS comments
		<u><i>If the evaluation carried out by the Commission proves that the implementation of the new product governance requirements set out in this Article provides no positive change for consumers, the Commission shall accompany its report by a legislative proposal amending this Directive, if appropriate.</i></u> ;		
669	(17) Article 26 is replaced by the following:	(17) Article 26 is replaced by the following:	(17) Article 26 is replaced by the following:	
670	' Article 26	' Article 26	' Article 26	
671	Scope of additional requirements	Scope of additional requirements	Scope of additional requirements	
672	'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.	'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.	'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.	
673				

	Commission Proposal	EP Mandate	Council Mandate	MS comments
	Insurance-based investment products may only be distributed by:	Insurance-based investment products may only be distributed by:	Insurance-based investment products may only be distributed by:	
674	(a) an insurance intermediary;	(a) an insurance intermediary;	(a) an insurance intermediary;	
675	(b) an insurance undertaking.;	(b) an insurance undertaking.;	(b) an insurance undertaking.;	
676	(18) the following Article 26a is inserted:	(18) the following Article 26a is inserted:	(18) the following Article 26a is inserted:	
677	Article 26a	Article 26a	Article 26a	
678	Marketing communications and practices	Marketing communications and practices	Marketing communications and practices	
679	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	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	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	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
	content and distribution, regardless of whether the communication is made directly or indirectly by the insurance intermediary or insurance undertaking.	content and distribution, regardless of whether the communication is made directly or indirectly by the insurance intermediary or insurance undertaking.	content and distribution, regardless of whether the communication is made directly or indirectly by the insurance intermediary or insurance undertaking.	
680	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).	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).	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).	
681	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.	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.	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.	
681a		‘ <u>The information shall be made</u>		

	Commission Proposal	EP Mandate	Council Mandate	MS comments
		<u>accessible, depending on the characteristics of the medium, via a nested display, scroll over, through a QR-code, or similar.</u>		
682	The presentation of the essential characteristics of marketing communications of insurance-based investment products shall ensure that retail investors can easily understand the key features of the insurance-based investment product as well as the main risks associated with them.	The presentation of the essential characteristics of marketing communications of insurance-based investment products shall ensure that retail investors can easily understand the key features of the insurance-based investment product as well as the main risks associated with them.	The presentation of the essential characteristics of marketing communications of insurance-based investment products shall ensure that ~~retail investors~~ <u>customers</u> can easily understand the key features of the insurance-based investment product as well as the main risks associated with them.	
683	3. Member States shall ensure that marketing practices are developed and used in a manner that is fair and not misleading, and shall be appropriate for the target audience.	3. Member States shall ensure that marketing practices are developed and used in a manner that is fair and not misleading, and shall be appropriate for the target audience. <u>Member States shall ensure that insurance undertakings and insurance intermediaries, carrying out profiling of individuals for the purpose of this paragraph, fully comply with Regulation (EU) 2016/679.</u>	3. Member States shall ensure that marketing practices are developed and used in a manner that is fair, <u>clear</u> and not misleading, and shall be appropriate for the target audience <u>based on the target market assessment and the distribution strategy of the product in the context of the product oversight and governance requirements.</u>	
684	4. Where a manufacturer of an insurance-based investment product prepares and provides a marketing	4. Where a manufacturer of an insurance-based investment product prepares and provides a marketing	4. Where a manufacturer of an insurance-based investment product prepares and provides a marketing	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
	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.	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~~ <u>the</u> target market.	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.	
685	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.	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.	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.	
685a		<u>4a. Where an insurance undertaking or insurance intermediary uses the services of a finfluencer, the insurance undertaking or insurance intermediary shall:</u>		
685b		<u>(a) establish a written agreement</u>		

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		<u>with the finfluencer determining the nature and scope of the activity to be carried out on behalf of the insurance undertaking or insurance intermediary;</u>		
685c		<u>(b) upon request, provide the identity and contact details of all finfluencers on whose services it relies to the competent authority;</u>		
685d		<u>(c) regularly verify whether the activity of the finfluencers whose services it relies on complies with paragraphs 1 to 4.</u>		
686	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.	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.	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.	

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687	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.	6. Member States shall ensure that national competent authorities can take timely and effective action in relation to any marketing communication <u>disseminated on their territory</u> or marketing practice <u>taking place on their territory</u> that do not comply with the requirements laid down in paragraphs 1 to 3.	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.	
688	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.	7. Member States shall ensure that insurance undertakings and insurance intermediaries keep records of all their marketing communications of insurance-based investment products <u>provided or made accessible to retail customers or potential retail customers</u> , or their marketing communications <u>provided or made accessible to retail customers or potential retail customers that is</u> made by any third party remunerated or incentivised through non-monetary compensation.	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.	
689	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	Such records shall be ~~kept for a period of five years and~~ <u>retained for at least the duration of the relationship between the insurance undertaking or insurance</u>	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.	

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	retrievable by the insurance undertaking or insurance distributor upon request by the competent authority.	<u>intermediary and the customer.</u> Where ~~requested by the competent authority, for a period of up to the duration of the contract is more than~~ seven years, <u>only records of essential information shall be kept.</u> Those records shall be retrievable by the insurance undertaking or insurance distributor upon request by the competent authority.	Those records shall be retrievable by the insurance undertaking or insurance ~~distributor~~ <u>intermediary</u> upon request by the competent authority.	
690	The records referred to in the first subparagraph shall contain all of the following:	The records referred to in the first subparagraph shall contain all of the following:	The records referred to in the first subparagraph shall contain all of the following:	
691	(a) the content of the marketing communication;	(a) the content of the marketing communication;	(a) the content of the marketing communication;	
692	(b) details about the medium used for the marketing communication;	(b) details about the medium used for the marketing communication;	(b) details about the medium used for the marketing communication;	
693	(c) the date and duration of the marketing communication, including relevant starting and end times;	(c) the date and duration of the marketing communication, including relevant starting and end times;	(c) the date and duration of the marketing communication, ~~including relevant starting and end times;~~	
694				

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	(d) the targeted customer segments or profiling determinants;	(d) the targeted customer segments or profiling determinants;	(d) the targeted customer segments or profiling determinants;	
695	(e) the Member States where the marketing communication was made available;	(e) the Member States where the marketing communication was made available;	(e) the Member States where the marketing communication was made available;	
696	(f) the identity of any third party involved in the dissemination of the marketing communication.	(f) the identity of any third party involved in the dissemination of the marketing communication.	(f) the identity of any third party involved in the dissemination of the marketing communication.	
697	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.	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.	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.	
698	8. The Commission shall be empowered to adopt a delegated act in accordance with Article 38 to supplement this Directive by specifying:	8. The Commission shall be empowered to adopt a delegated act in accordance with Article 38 to supplement this Directive by specifying:	8. The Commission shall be empowered to adopt a delegated act in accordance with Article 38 to supplement this Directive by specifying:	
699	(a) the essential characteristics of insurance-based investment products to be disclosed in all	(a) the essential characteristics of insurance-based investment products to be disclosed in all	(a) the essential characteristics of insurance-based investment products to be disclosed in all	

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	marketing communications targeting retail customers or potential retail customers and any other relevant criteria to ensure that those essential characteristics appear in a prominent way and are easily accessible by an average retail customer, regardless of the means of communication;	marketing communications targeting retail customers or potential retail customers and any other relevant criteria to ensure that those essential characteristics appear in a prominent way and are easily accessible by an average retail customer, regardless of the means of communication;	marketing communications- ~~targeting retail customers or potential retail customers~~ and any other relevant criteria to ensure that those essential characteristics appear in a prominent way and are easily accessible by an average ~~retail~~ customer, regardless of the means of communication;	
700	(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 distribution channels for the target audience or, where applicable, the target market.;	(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 distribution channels for the target audience or, where applicable, the target market.;	(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 ~~distribution channels~~ <u>media, including character-limited media and short form content</u> for the target audience or, where applicable, the target market <u>based on the target market assessment and the distribution strategy of the product in the context of the product oversight and governance requirements.</u> ;	
701	(19) in Article 28, paragraph 2 is replaced by the following:	(19) in Article 28, paragraph 2 is replaced by the following:	(19) in Article 28, paragraph 2 is replaced by the following:	

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702	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.;	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.;	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.;	
703	(20) Article 29 is replaced by the following:	(20) Article 29 is replaced by the following:	(20) Article 29 is replaced by the following:	
704	Article 29	Article 29	Article 29	
705	Information to customers and policyholders	Information to customers and policyholders	Information to customers and policyholders	
706				

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	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 the customers 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 all of the following:	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 <u>customers or potential</u> customers in good time before the customers 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 all of the following:	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 ~~the~~ <u>customers</u> 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 <u>at least</u> all of the following:	
707	(a) where advice is provided;	(a) where advice is provided;	(a) where advice is provided;	
708	(i) whether or not the advice is provided on an independent basis;	(i) whether or not the advice is provided on an independent basis;	(i) whether or not the advice is provided on an independent basis;	
709	(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	(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~~ <u>options</u> , and in particular, whether or not the range is limited to products and assets manufactured	(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	

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	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;	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;	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;	
710	(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;	(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;	(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;	
711	(iv) where the insurance intermediary or insurance undertaking provides independent advice to a retail 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(3)) and cost-efficient insurance-based investment products only;	(iv) where the insurance intermediary or insurance undertaking provides independent advice to a retail 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(3)) and cost-efficient insurance-based investment products only;	(iv) where the insurance intermediary ~~or insurance undertaking~~ provides <u>advice on an independent ~~advice to a retail~~ basis to a</u> 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(3)~~ <u>30(5c)</u> and cost-efficient insurance-based investment products only;	
712				

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	(v) how the recommended insurance-based investment products take into account the diversification of the customer's portfolio;	<i>deleted</i>	(v) how the recommended insurance-based investment products take into account the diversification of the customer's portfolio;	
713	(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, including appropriate guidance on, and warnings of, the risks associated with the insurance-based investment products and, where applicable, the recommended underlying investment assets or in respect of particular investment strategies followed by that product;	(b) a description of the main features of the proposed insurance-based investment product and, where applicable, any recommended underlying investment ~~assets~~ <u>options</u> and investment strategies, including appropriate guidance on, and warnings of, the risks associated with the insurance-based investment ~~products~~ <u>product</u> and, where applicable, the recommended underlying investment ~~assets~~ <u>options</u> or in respect of particular investment strategies followed by that product;	(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, ~~including appropriate guidance on, and warnings of, the risks associated with the insurance-based investment products and, where applicable, the recommended underlying investment assets or in respect of particular investment strategies followed by that product;~~	
713a			<u>(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</u>	

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			5:	
714	(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;	(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;	(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;	
715	(d) information on all explicit and implicit costs, associated charges and third-party payments, 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;	(d) information on all explicit and implicit costs, associated charges and third-party payments, 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;	(d) information on all explicit and implicit costs, ~~associated~~ charges and ~~third-party payments~~ <u>inducements</u> , 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;	
716	(e) the law applicable to the contract and the competent jurisdiction;	(e) the law applicable to the contract and the competent jurisdiction;	(e) the law applicable to the <u>insurance</u> contract; <u>where the insurance undertaking proposes a choice of law, the law that the insurance undertaking proposes to choose</u> ~~and the competent jurisdiction~~ ;	

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717	(f) general information on the tax rules applicable to the type of insurance-based investment product.	(f) general information on the tax rules applicable to the type of insurance-based investment product.	(f) general information on the tax rules applicable to the type of insurance-based investment product.	
717a			<u>(fa) 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.</u>	
718	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 retail customer, on the impact of the costs, charges and any third-party payments on the expected return.	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~~ <u>average</u> retail customer, on the impact of the costs, charges and any third-party payments on the expected return.	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 ~~retail~~ customer, on the impact of the costs, charges and any ~~third-party payments~~ <u>inducements</u> on the ~~expected return~~ <u>returns</u> .	
719	Member States shall ensure that insurance intermediaries and insurance undertakings present the information on all costs, charges and third-party payments referred to in the first subparagraph, point (d) in aggregated form to enable the customer to understand the overall	Member States shall ensure that insurance intermediaries and insurance undertakings present the information on all costs, charges and third-party payments referred to in the first subparagraph, point (d) in aggregated form to enable the customer to understand the overall	Member States shall ensure that insurance intermediaries and insurance undertakings present the information on all costs, charges and ~~third-party payments~~ <u>inducements</u> referred to in the first subparagraph, point (d) in aggregated form to enable the	

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	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.	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~~ <u>inform clients explicitly of their right to request</u> an itemised breakdown of that information <u>and they shall provide such an itemised breakdown at the request of the client.</u>	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~~ <u>insurance based</u> investment product. Where the customer so requests, insurance intermediaries and insurance undertakings shall provide an itemised breakdown of that information.	
719a		<u>If the disclosure of third-party payments cannot be ascertained at the pre-contractual stage, the method for calculating the amount shall be clearly disclosed to the client in a manner that is comprehensible and accurate for a retail client. Insurance intermediaries and insurance undertakings shall also provide their clients with information on the exact amount of the third-party payments received or paid on an ex-post basis.</u>		
719b			<u>Insurance undertakings and insurance intermediaries shall</u>	

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			<u>inform their customers that they have the option of receiving an itemised breakdown of the cost data.</u>	
720	The third-party payments paid or received by the insurance intermediary or insurance undertaking in connection with 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 third-party payments, including any recurring third-party payments, on the net return over the term of the insurance-based investment product. The purpose of the third-party payments and their impact on the net return shall be explained in a standardised way and in a comprehensible language for an average retail customer.	The third-party payments paid or received by the insurance intermediary or insurance undertaking in connection with 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 third-party payments, including any recurring third-party payments, on the net return over the term of the insurance-based investment product. The purpose of the third-party payments and their impact on the net return shall be explained in a standardised way and in a comprehensible language for an average retail customer.	<u>By way of derogation from the third subparagraph, the inducements</u> ~~The third-party payments~~ paid or ~~received~~ <u>accepted and retained</u> by the insurance intermediary or insurance undertaking in ~~connection-~~ <u>relation to</u> 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 ~~third-party payments~~ <u>inducements</u> , including any recurring ~~third-party payments~~ <u>inducements</u> on the net return over the term of the insurance-based investment product. The purpose of the ~~third-party payments~~ <u>inducements</u> and their impact on the net return shall be explained in a standardised way and in a comprehensible language for an average ~~retail~~ customer.	
720a			<u>Where the amount of any costs, charges or inducements cannot be</u>	

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			<u>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.</u> <u>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.</u>	
721	2. Member States shall ensure that manufacturers of insurance-based investment products draw up a concise personalised document containing key information to be provided annually to each retail customer holding the product ('annual statement').	2. Member States shall ensure that manufacturers of insurance-based investment products draw up a concise personalised document containing key information to be provided annually to each retail customer holding the product ('annual statement').	2. Member States shall ensure that ~~manufacturers of~~ <u>insurance undertakings or, where applicable, insurance intermediaries manufacturing</u> insurance-based investment products, draw up a concise personalised document containing key information to be provided annually to each ~~retail customer~~ <u>policyholder</u> holding ~~the an~~ <u>insurance-based investment</u> product ('annual statement').	
722	The exact date to which the information in the annual statement	The exact date to which the information in the annual statement	The exact date to which the information in the annual statement	

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	refers shall be stated prominently.	refers shall be stated prominently.	refers shall be stated prominently.	
723	The information in the annual statement shall be accurate and up to date.	The information in the annual statement shall be accurate and up to date.	The information in the annual statement shall be accurate and up to date. <u>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.</u>	
724	Manufacturers shall make the annual statement available to each retail policyholder free of charge through electronic format. A paper copy shall be provided upon request in addition to any information available through electronic means.	Manufacturers shall make the annual statement available to each retail policyholder free of charge through electronic format. A paper copy shall be provided upon request in addition to any information available through electronic means.	<i>deleted</i>	
725	The annual statement does not need to be provided where the manufacturer provides its retail policyholders with access to an online system, which qualifies as a durable medium, where up-to-date statements with the relevant information set out in paragraph 3 can be easily accessed and the manufacturer has evidence that the retail policyholder has accessed those statements at least once during the previous 12 months.	The annual statement does not need to be provided where the manufacturer provides its retail policyholders with access to an online system, which qualifies as a durable medium, where up-to-date statements with the relevant information set out in paragraph 3 can be easily accessed and the manufacturer has evidence that the retail policyholder has accessed those statements at least once during the previous 12 months.	<u>By way of derogation from Article 23 (1), (2) and (3),</u> the annual statement does not need to be provided where the ~~manufacturer~~ <u>insurance undertaking or, where applicable, insurance intermediary manufacturing insurance-based investment products,</u> provides its ~~retail~~ policyholders with access to an online system, which qualifies as ~~a durable medium~~ <u>an electronic format,</u> where up-to-date statements	

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			with the relevant information set out in paragraph 3 can be easily accessed and the ~~manufacturer~~ <u>insurance undertaking or, where applicable, insurance intermediary manufacturing insurance-based investment products</u> , has evidence that the ~~retail~~ policyholder has accessed those statements at least once during the previous 12 months.	
726	3. The annual statement shall include, at least, the following key information:	3. The annual statement shall include, at least, the following key information:	3. The annual statement shall include, at least, the following key information:	
727	(a) the total costs associated charges and third-party payments, expressed in an itemised way in monetary terms and percentages, paid or borne, directly or indirectly, by the retail policyholder over the previous 12 months and on a compounded basis since the start of the contract term in connection with the insurance-based investment product;	(a) the total costs associated charges and third-party payments, expressed in an itemised way in monetary terms and percentages, paid or borne, directly or indirectly, by the retail policyholder over the previous 12 months and on a compounded basis since the start of the contract term in connection with the insurance-based investment product;	(a) the total costs ~~associated~~ , charges and ~~third-party payments~~ <u>inducements</u> , expressed in an itemised way in monetary terms and percentages, paid or borne, directly or indirectly, by the ~~retail~~ policyholder over the previous 12 months and on a ~~compounded~~ <u>cumulative</u> basis since the start of the contract term in ~~connection with~~ <u>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</u>	

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			<u>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</u> the insurance-based investment product;	
728	(b) the annual performance of each of the underlying investment assets of the insurance-based investment product and the annual global performance of the portfolio, each compared with past performance over previous years:	(b) the annual performance of each of the underlying investment ~~assets~~ <u>options</u> of the insurance-based investment product and the annual global performance of the portfolio, each compared with past performance over previous years:	(b) the annual performance of <u>where applicable</u> , each of the underlying investment assets of the insurance-based investment product <u>held by the policyholder</u> and the annual global performance of the <u>policy holder's</u> portfolio, each compared with past performance, <u>where applicable, of</u> ~~over~~ previous years: <u>'investment assets'</u> ;	
729	(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 retail customer in connection with the insurance-based investment product;	(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 retail customer in connection with the insurance-based investment product;	(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 ~~retail customer in connection with~~ <u>policyholder in relation to</u> the insurance-based investment product;	
730	(d) where applicable, the market or	(d) where applicable, the market or	(d) where applicable, the market or	

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	estimated value when the market value is not available of the underlying investment assets of the insurance-based investment product;	estimated value when the market value is not available of the underlying investment ~~assets~~ <u>options</u> of the insurance-based investment product;	estimated value when the market value is not available of <u>each of</u> the underlying investment assets of the insurance-based investment product <u>held by the policyholder</u> ;	
731	(e) payments made by the retail policyholder with regard to the insurance-based investment product including investments, deposits, contributions, premiums and fees, over the previous 12 months, deducting any withdrawals made;	(e) payments made by the retail policyholder with regard to the insurance-based investment product including investments, deposits, contributions, premiums and fees, over the previous 12 months, deducting any withdrawals made;	(e) payments made by the ~~retail~~ policyholder with regard to the insurance-based investment product including investments, deposits, contributions, premiums and fees, over the previous 12 months, <u>after</u> deducting any withdrawals made. <u>The insurance undertaking shall inform the policyholder that fees charged directly by insurance intermediaries to the policyholder are not included in this annual statement</u> ;	
732	(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;	(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;	(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;	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
733	(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;	(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;	(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;	
734	(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;	(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;	(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;	
735	(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.	(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.	(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.	
735a			<u>(ia) the nature of the insurance distribution activities undertaken by the insurance undertaking for the policyholder during the reporting period;</u>	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
735b			<u>(ib) 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.</u>	
735c		<u>Without prejudice to the requirements in this paragraph, where sufficient information is not available on a specific product to draw up an annual statement, the requirements with respect to the annual statement shall only be applicable contracts concluded after the entry into force of Directive .../... [insert the number of this amending Directive].</u>		
736	4. The information described in paragraph 1 and the annual statement referred to in paragraphs 2 and 3 shall be provided to retail customers and policyholders by using a Union standardised terminology and format.	4. The information described in paragraph 1 and the annual statement referred to in paragraphs 2 and 3 shall be provided to retail customers and policyholders by using a Union standardised terminology and format.	4. The information described in paragraph 1 and the annual statement referred to in paragraphs 2 and 3 shall be provided to ~~retail~~ customers and policyholders by using a Union standardised terminology and format.	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
		<i><u>Without prejudice to the manufacturer providing its retail policyholders with access to an online system in accordance with Article 29(2), fifth subparagraph, layering of the information required under paragraphs 1, 2 and 3 of this Article, whereby detailed parts of the information can be presented through pop-ups or through links to accompanying layers, shall be permitted where the annual statement is provided in an electronic format. In that case, it shall be possible to print the annual statement as one single document.</u></i>		
737	EIOPA shall, after having consulted ESMA and after conducting consumer testing and industry testing, develop draft regulatory technical standards to specify:	EIOPA shall, after having consulted ESMA and after conducting consumer testing and industry testing, develop draft regulatory technical standards to specify <u>the following</u> :	EIOPA shall, after having consulted ESMA and after conducting consumer testing and industry testing, develop draft regulatory technical standards to specify:	
738	(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;	(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;	(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;	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
739	(b) the Union standardised terminology and related explanations to be used for the provision of the information listed in paragraphs 1 and 3. The explanations shall ensure that they are likely to be understood by any retail customer without specific knowledge on insurance-based investment products;	(b) the ~~Union standardised~~ <u>standard</u> terminology and <u>brief and concise</u> related explanations to be used <u>by insurance undertakings and insurance intermediaries</u> for the ~~provision~~ <u>disclosure</u> of the information listed in paragraphs 1 and 3. The explanations shall ensure that they are likely to be understood by any retail customer without specific knowledge on insurance-based investment products;	(b) the Union standardised terminology, <u>calculation method</u> and related explanations to be used for the provision of the information listed in paragraphs 1 and 3, <u>including information on implicit costs</u> . The explanations shall ensure that they are likely to be understood by any ~~retail~~ customer without specific knowledge on insurance-based investment products.	
740	EIOPA shall submit those draft regulatory technical standards to the Commission by [OJ: insert date 18 months after the date of entry into force].	EIOPA shall submit those draft regulatory technical standards to the Commission by [OJ: insert date 18 months after the date of entry into force].	EIOPA shall submit those draft regulatory technical standards to the Commission by [OJ: insert date 18 months after the date of entry into force].	
741	Power is conferred on 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.	Power is ~~conferred on~~ <u>delegated to</u> 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.	Power is ~~conferred on~~ <u>delegated to</u> 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.	
742	5. Member States shall ensure that insurance intermediaries and	5. Member States shall ensure that insurance intermediaries and	5. Member States shall ensure that insurance intermediaries and	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
	insurance undertakings distributing insurance-based investment products display appropriate warnings in information material, including marketing communications, provided to retail customers to alert them on the specific risks of potential losses carried by particularly risky insurance-based investment products and, where applicable, underlying investment assets.	insurance undertakings distributing insurance-based investment products display appropriate warnings in information material, including marketing communications, provided to retail customers to alert them on the specific risks of potential losses carried by particularly risky <u>or complex</u> insurance-based investment products and, where applicable, underlying investment ~~assets~~ <u>options</u> .	insurance undertakings distributing insurance-based investment products display appropriate warnings in information ~~material~~ <u>materials</u> , including marketing communications, <u>concerning particularly risky insurance-based investment products</u> provided to ~~retail~~ customers to ~~alert them on~~ <u>highlight</u> the specific risks of potential losses ~~carried by particularly risky~~ <u>associated with such</u> insurance-based investment products and, where applicable, underlying investment assets.	
743	EIOPA shall, by [18 months after the entry into force of the amending Directive], develop, and update periodically, guidelines on the concept of particularly risky insurance-based investment products, taking due account of the specificities of the different types of insurance-based investment products.	EIOPA shall, by [18 months after the entry into force of the amending Directive], develop, and update periodically, guidelines on the concept of particularly risky <u>or complex</u> insurance-based investment products, taking due account of the specificities of the different types of insurance-based investment products.	<i>deleted</i>	
744	EIOPA shall develop regulatory technical standards to further specify the format and content of such risk warnings, taking due account of the specificities of the	EIOPA shall develop regulatory technical standards to further specify the format and content of such risk warnings, taking due account of the specificities of the	EIOPA shall develop regulatory technical standards to further specify the <u>concept of particularly risky insurance-based investment products and, after conducting</u>	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
	different types of insurance-based investment products and types of communications.	different types of insurance-based investment products and types of communications, <u>including the specificities of multi-option products (MOPs).</u>	<u>consumer testing, the</u> format and content of ~~such~~ <u>the</u> risk warnings <u>mentioned in the previous subparagraph</u> , taking due account of the specificities of the different types of insurance-based investment products ~~and types of communications.~~	
744a			<u>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.</u> <u>The format and content of the risk warnings shall take into account the different types of communication media.</u>	
745	EIOPA shall submit those regulatory technical standards to the Commission by [OJ: insert date 18 months after the date of entry into force].	EIOPA shall submit those regulatory technical standards to the Commission by [OJ: insert date 18 months after the date of entry into force].	EIOPA shall submit those regulatory technical standards to the Commission by [OJ: insert date 18 months after the date of entry into force].	
746	Power is delegated to the Commission to adopt the regulatory technical standards referred to in the third subparagraph in accordance	Power is delegated to the Commission to adopt the regulatory technical standards referred to in the third subparagraph in accordance	Power is delegated to the Commission to adopt ~~the~~ <u>those</u> regulatory technical standards- ~~referred to in the third~~	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
	with Article 10 of Regulation (EU) No 1094/2010.	with Article 10 of Regulation (EU) No 1094/2010.	~~subparagraph~~ in accordance with Article 10 of Regulation (EU) No 1094/2010.	
747	EIOPA shall monitor the consistent application of risk warnings throughout the Union. In case of concerns regarding the use, or absence of use or supervision of the use of such risk warnings in Member States, that may have a material impact on the investor protection, EIOPA, after having consulted the competent authorities concerned, may impose the use of risk warnings by insurance intermediaries and insurance undertakings distributing insurance-based investment products.;	~~EIOPA~~ <u>National competent authorities</u> shall monitor the ~~consistent~~ application of risk warnings ~~throughout the Union~~ . In case of concerns regarding the use, or absence of use ~~or supervision of the use~~ of such risk warnings ~~in Member States~~ , that may have a material impact on the investor protection, ~~EIOPA, after having consulted the competent authorities concerned~~ , may impose the use of risk warnings by insurance intermediaries and insurance undertakings distributing insurance-based investment products.;	EIOPA shall monitor the consistent application of risk warnings throughout the Union. In case of concerns regarding the use, or <u>the</u> absence of use or <u>the</u> supervision of the use of such risk warnings in <u>one or more</u> Member States, that may have a material impact on the investor protection, EIOPA, after having consulted the competent authorities concerned, may <u>issue a recommendation addressed to the relevant competent authorities, to impose the use of risk warnings by</u> <u>on</u> insurance intermediaries and insurance undertakings <u>distributing the use of risk warnings for specific</u> insurance-based investment products.;	
748	(21) the following Articles 29a and 29b are inserted:	(21) the following Articles 29a and 29b are inserted:	(21) the following Articles 29a and 29b are inserted:	
749	‘ Article 29a	‘ Article 29a	‘ Article 29a	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
750	Inducements	Inducements	Inducements	
751	1. Member States shall ensure that insurance intermediaries or insurance undertakings that manufacture insurance-based investment products or distribute such products in accordance with Article 30(2) and (3) do not pay or receive any fee or commission, or provide or are provided with any non-monetary benefit with regard to the provision or distribution of an insurance based investment product, to or by any party except the customer or a person on behalf of the customer.	<i>deleted</i>	1. Member States shall ensure that insurance intermediaries <u>and insurance undertakings paying or receiving inducements comply with the following overarching principles:</u> <u>(a) Inducements do not provide an incentive to the insurance intermediary</u> or insurance undertakings ~~that manufacture~~ <u>to offer or recommend a particular</u> insurance-based investment ~~products or distribute such products in accordance with Article 30(2) and (3) do not pay or receive any fee or commission, or provide or are provided with any non-monetary benefit with regard~~ <u>product or service over others to the customer;</u> <u>(b) The level of inducements paid or accepted and retained is proportional</u> to the ~~provision or distribution of an insurance-based~~ <u>value of the insurance-based</u> investment product, ~~to or by any party except~~ <u>and the level of service provided to</u> the <u>relevant</u> customer; <u>(c) Inducements paid to or accepted and retained by entities belonging to the same group are</u>	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
			<u>treated in the same way as inducements paid to or accepted and retained from other entities;</u> <u>(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 ~~or a person on behalf of~~ the customer.</u> <u>Insurance intermediaries and insurance undertakings shall explain in their inducements policy or procedures how they comply with the overarching principles.</u>	
752	The prohibition contained in the first sub-paragraph shall not apply to minor non-monetary benefits of a total value below EUR 100 per annum 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.	<i>deleted</i>	<i>deleted</i>	
753	Any payment or benefit which enables or is necessary for the	<i>deleted</i>	<i>deleted</i>	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
	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 set out in the first subparagraph.			
754	2. Member States shall ensure that insurance intermediaries or insurance undertakings, when distributing insurance-based investment products in accordance with Article 30(1), only receive or pay fees or benefits from or to a third-party on the condition that those insurance intermediaries or insurance undertakings ensure that the reception or payment of such fees or benefits 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 disclose the existence, nature and amount of such third-party payments in accordance with Article 29.	‘ 2. Member States shall ensure that insurance ~~intermediaries~~ <u>undertakings</u> or insurance ~~undertakings~~ <u>intermediaries</u> , when distributing insurance-based investment products in accordance with Article 30(1), only receive or pay fees or benefits from or to a third-party on the condition that those insurance intermediaries or insurance undertakings ensure that the reception or payment of such fees or benefits 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 disclose the existence, nature and amount of such third-party payments in	~~22a~~ . Member States shall ensure that insurance intermediaries or insurance undertakings, when distributing insurance-based investment products in accordance with Article 30(1), ~~shall only- receive or pay fees or benefits from or to a third-party~~ <u>pay or accept and retain inducements</u> on the condition that those insurance intermediaries or insurance undertakings ensure that the reception or payment of such ~~fees or benefits~~ <u>inducements</u> 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 disclose the existence, nature and amount of such third-party payments in accordance with Article~~	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
		accordance with Article 29.	~~29.~~	
754a			<u>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:</u> <u>(a) the inducement takes into account qualitative criteria, such as compliance with applicable regulations and the quality of services provided to customers;</u> <u>(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;</u> <u>(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</u>	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
			<u>protection requirements set forth in this Directive;</u> <u>(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;</u> <u>(e) the inducement is based on a clear, comprehensible and transparent calculation method;</u> <u>(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.</u> <u>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.</u> <u>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</u>	

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 (Text with EEA relevance) 2023/0167(COD) 28-06-2024 at 13h45 144/183

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			<u>the results of those tests for each inducement or inducement scheme.</u>	
754b			<u>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).</u>	
754c			<u>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.</u>	
754d			<u>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</u>	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
			<u>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.</u>	
754e			<u>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.</u>	
755	3. Member States shall ensure that insurance intermediaries and	3. Member States shall ensure that insurance intermediaries and	3. Member States shall ensure that insurance intermediaries and	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
	insurance undertakings shall, where applicable, inform the customer on mechanisms for transferring to the customer any fee, commission, monetary or non-monetary benefit received in relation to the distribution of the insurance-based product.	insurance undertakings shall, where applicable, inform the customer on mechanisms for transferring to the customer any fee, commission, monetary or non-monetary benefit received in relation to the distribution of the insurance-based product.	insurance undertakings shall, where applicable, inform the customer on mechanisms for transferring to the customer any ~~fee, commission, monetary or non-monetary benefit~~ <u>inducement</u> received in relation to the distribution of the insurance-based product.	
756	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 fees, commissions or non-monetary benefits from third parties in relation to the provision of insurance advice.	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 fees, commissions or non-monetary benefits from third parties in relation to the provision of insurance advice.	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 ~~fees, commissions or non-monetary benefits from third parties~~ <u>inducements</u> in relation to the ~~provision of insurance advice~~ <u>distribution of insurance-based investment products</u> .	
757	Stricter requirements may include requiring any such fees, commissions or non-monetary benefits to be returned to the customers or offset against fees paid by the customer.	Stricter requirements may include requiring any such fees, commissions or non-monetary benefits to be returned to the customers or offset against fees paid by the customer.	Stricter requirements may include requiring any ~~such fees, commissions or non-monetary benefits~~ <u>inducements</u> to be returned to the customers or offset against fees paid by the customer.	
758				

	Commission Proposal	EP Mandate	Council Mandate	MS comments
	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.	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.	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.	
758a		<u>4a. Member States shall require that, where an insurance intermediary or insurance undertaking distributing insurance-based investment products informs the customer that advice is given on an independent basis, the insurance intermediary or insurance undertaking:</u>		
758b		<u>(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 are not limited to insurance products issued or provided by entities having close links with the insurance intermediary or</u>		

	Commission Proposal	EP Mandate	Council Mandate	MS comments
		<u>insurance undertaking;</u>		
758c		<u>(b) does not accept and retain fees, commissions or any monetary or non-monetary benefits 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.</u>		
758d		<u>This paragraph shall not prevent insurance intermediaries whose legal status qualifies them as independent, from presenting themselves as not contractually tied to a specific insurance undertaking if they indicate that they receive inducements.</u>		
759	5. The Commission shall be empowered to supplement this Directive by adopting delegated acts in accordance with Article 38 to further specify:	5. The Commission shall be empowered to supplement this Directive by adopting delegated acts in accordance with Article 38 to further specify:	5. The Commission shall be empowered to supplement this Directive by adopting delegated acts in accordance with Article 38 to further specify:	
760	(a) how insurance intermediaries and insurance undertakings are to comply with the principles set out in this Article;	(a) how insurance intermediaries and insurance undertakings are to comply with the principles set out in this Article;	(a) how insurance intermediaries and insurance undertakings are to comply with the principles set out in this Article;	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
761	(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.	(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.	(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.	
762	6. Three 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 third-party payments on retail investors, 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 Directive (EU) [OP Please introduce the number of the amending Directive] on retail investors. If necessary to prevent consumer detriment, the Commission shall propose legislative amendments to the European Parliament and the Council.	<i>deleted</i>	6. ~~Three~~ <u>Five</u> 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 ~~third-party payments on retail investors~~ <u>inducements on customers</u> , in particular in view of potential conflicts of interest and as regards the availability of <u>advice on an independent advice basis</u> ; and shall evaluate the impact of the relevant provisions of <u>this</u> Directive (EU) [~~OP Please introduce the number of the amending Directive]~~ <u>on retail investors on customers</u> . If necessary to prevent consumer detriment, the Commission shall propose legislative amendments to the European Parliament and the Council.	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
763	Article 29b	Article 29b	Article 29b	
764	Best interest of customers	Best interest of customers	Best interest of customers	
764a		<u>1. Member States shall require that, when providing investment services or, where appropriate, ancillary services to consumers, an insurance undertaking or an insurance intermediary acts honestly, fairly and professionally in accordance with the best interests of its consumers and complies, in particular, with the obligations set out in this Article and Article 17.</u>		
765	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 are under the obligation:	~~1a.~~ Member States shall ensure that in order to act in the best interest of the customer ~~in accordance with Article 17(1)~~ , when providing <u>investment</u> advice to customers on insurance-based investment products, insurance undertakings and insurance intermediaries are ~~under the obligation:~~ <u>obliged:</u>	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 ~~are under the obligation~~ <u>comply with the following requirements:</u>	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
766	(a) to provide such advice on the basis of an assessment of an appropriate range of insurance-based investment products and, where applicable, underlying investment assets;	(a) <u>to inform the customer of the range of insurance-based investment products or, where applicable, underlying investment options assessed by the insurance undertaking or insurance intermediary, and</u> to provide such advice on the basis of an assessment of an appropriate range of insurance-based investment products ~~and/or~~, where applicable, underlying investment ~~assets~~<u>options, suited to the customer's needs.</u> <u>The range of insurance-based investment products shall reflect the business model of the insurance undertaking or insurance intermediary.</u> <u>Where insurance undertakings and insurance intermediaries are tied by exclusive partnerships, they may build the appropriate range of insurance-based investment products among products or, where applicable, underlying investment options offered by only one insurance undertaking. In that case, customers shall be informed thereof in accordance with the applicable requirements, in particular Article 29(1), point (a)</u>	(a) to provide ~~such~~ advice on the basis of an assessment of an appropriate range of insurance-based investment products <u>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, ~~where~~ applicable, underlying investment assets to ensure that the customer's investment objectives and demands and needs can be met.</u> <u>This requirement can also be met by offering a single insurance-based investment product with an appropriate range of</u> underlying investment assets;	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
		(ii). ;		
767	(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;	(b) to recommend the most ~~cost-efficient~~ efficient insurance-based investment product ~~and/or~~ , where applicable, underlying investment ~~assets~~ options among the insurance-based investment products identified as suitable for the customer pursuant to Article 30(1) and offering similar features, taking into consideration its performance, level of risk, costs and charges reported pursuant to Article 25(1c) and, if an equivalent product with higher costs is recommended, to justify this on objective grounds and keep records of that justification ;	(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 ;	
768	(c) to recommend, among the range of insurance-based investment products identified as suitable for the customer pursuant to Article 30(1), one or several insurance-based investment products and, where applicable, underlying investment assets, a product or products, without additional features that are not necessary to the achievement of the customer's objectives and that give rise to extra costs;	<i>deleted</i>	<i>deleted</i>	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
768a		<u>(ca) (ca) not to place the financial or other interest of the insurance undertaking or insurance intermediary ahead of the interests of the client;</u>		
769	(d) to recommend an insurance-based investment products which insurance cover is consistent with the customer's insurance demands and needs.	(d) to recommend an insurance-based investment products which insurance cover is consistent with the customer's insurance demands and needs.	(d) to recommend ~~an~~ insurance-based investment products which insurance cover is consistent with the customer's insurance demands and needs. <u>;</u>	
769a		<u>1b. Where insurance undertakings and insurance intermediaries are subject to an inducement ban, the conditions of this Article shall be presumed to be fulfilled. The national competent authority may reverse that presumption if an insurance undertaking or insurance intermediary does not comply with the provisions of this Article.</u>		
769b		<u>1c. EIOPA may organise and conduct a mandatory peer review in cooperation with national</u>		

	Commission Proposal	EP Mandate	Council Mandate	MS comments
		<u>competent authorities regarding the implementation of the obligations laid down in this Article.</u>		
770	2. 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.	2. 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.	<i>deleted</i>	
771	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.;	Those delegated acts shall take into account the nature of the services offered or provided to the customer, the nature of the products, <u>and where applicable, underlying investment options</u> , being offered or considered, including different types of insurance-based investment products, <u>or where applicable, underlying investment options</u> .';	<i>deleted</i>	
772	(22) Article 30 is amended as follows:	(22) Article 30 is amended as follows:	(22) Article 30 is amended as follows:	
773				

	Commission Proposal	EP Mandate	Council Mandate	MS comments
	(a) the following paragraph -1 is inserted:	(a) the following paragraph -1 is inserted:	(a) the following paragraph -1 is inserted:	
774	‘ -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 demanded 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.	‘ -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~~<u>options</u> to be recommended to or demanded 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.	‘ -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 ~~demanded~~<u>requested</u> 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.	
775	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	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	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	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
	any information is requested from them. Member States shall ensure that insurance intermediaries and insurance undertakings distributing insurance-based investment products warn customers, in a standardised format, of all of the following:	any information is requested from them. Member States shall ensure that insurance intermediaries and insurance undertakings distributing insurance-based investment products warn customers, in a standardised format, of all of the following:	~~any~~ <u>the</u> information <u>necessary for this assessment</u> is requested from them. Member States shall ensure that insurance intermediaries and insurance undertakings distributing insurance-based investment products warn customers, ~~in a standardised format, of all of the~~ following <u>consequences</u> :	
776	(a) that the provision of inaccurate or incomplete information may impact negatively the quality of the assessment to be made by the insurance intermediary or insurance undertaking	(a) that the provision of inaccurate or incomplete information may impact negatively the quality of the assessment to be made by the insurance intermediary or insurance undertaking	(a) ~~that~~ the provision of inaccurate- ~~or incomplete~~ information may impact negatively the quality of the assessment to be made by the insurance intermediary or insurance undertaking;	
777	(b) that the absence of information prevents the insurance intermediaries and insurance undertakings distributing insurance-based investment products from determining whether the service or financial instrument envisaged is suitable or appropriate for the customer and from providing advice.	(b) that the absence of information prevents the insurance intermediaries and insurance undertakings distributing insurance-based investment products from determining whether the service or financial instrument envisaged is suitable or appropriate for the customer and from providing advice.	(b) ~~that~~ the absence of <u>the necessary</u> information, <u>including the provision of incomplete information</u> , prevents the insurance intermediaries and insurance undertakings distributing insurance-based investment products from determining whether the ~~service or financial instrument~~ <u>insurance-based investment product</u> envisaged is suitable or appropriate for the customer and from providing advice.	
777a				

	Commission Proposal	EP Mandate	Council Mandate	MS comments
			<u>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.</u> <u>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.</u>	
778	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 suitability or appropriateness assessment. That report shall be presented in a standardised format, as developed by EIOPA.	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 suitability or appropriateness assessment. That report shall be presented in a standardised format, as developed by EIOPA.	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 <u>purpose of the</u> suitability or appropriateness assessment. ~~That report shall be presented in a standardised format, as developed by EIOPA.~~	
779	EIOPA shall develop draft regulatory technical standards to	EIOPA shall develop draft regulatory technical standards to	EIOPA shall develop draft regulatory technical standards to	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
	determine the explanation and warning referred to in the second subparagraph and the format and content of the report referred to in the third subparagraph.	determine the explanation and warning referred to in the second subparagraph and the format and content of the report referred to in the third subparagraph.	determine the ~~explanation and~~ warning referred to in the second subparagraph ~~and the format and content of the report referred to in the third subparagraph.~~	
780	EIOPA shall submit those draft regulatory technical standards to the Commission by [OJ: insert date 18 months after the date of entry into force].	EIOPA shall submit those draft regulatory technical standards to the Commission by [OJ: insert date 18 months after the date of entry into force].	EIOPA shall submit those draft regulatory technical standards to the Commission by [OJ: insert date 18 months after the date of entry into force].	
781	Power is delegated to the Commission to adopt those regulatory technical standards in accordance with Article 10 of Regulation (EU) No 1094/2010.;	Power is delegated to the Commission to adopt those regulatory technical standards in accordance with Article 10 of Regulation (EU) No 1094/2010.;	Power is delegated to the Commission to adopt those regulatory technical standards in accordance with Article 10 of Regulation (EU) No 1094/2010.;	
782	(b) paragraphs 1, 2 and 3 are replaced by the following:	(b) paragraphs 1, 2 and 3 are replaced by the following:	(b) paragraphs 1, 2 and 3 are replaced by the following:	
783	‘ 1. Without prejudice to Article 20(1), when providing advice on insurance-based investment products, the insurance intermediary or insurance undertaking shall obtain the information regarding the	‘ 1. Without prejudice to Article 20(1), when providing advice on insurance-based investment products, the insurance intermediary or insurance undertaking shall obtain the information regarding:	‘ 1. Without prejudice to Article 20(1), when providing advice on insurance-based investment products, the insurance intermediary or insurance undertaking shall obtain the <u>necessary</u> information	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
	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, offered or demanded, that customer's financial situation, including 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 person and that, in particular, are in accordance with its risk tolerance, ability to bear losses and need for portfolio diversification.	<u>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~~ options, offered or demanded, ~~that customer and the client's~~ financial situation, - ~~including the composition of any existing portfolios,~~</u> <u>its ability to bear full or partial losses,</u> <u>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 person and that, in particular, ~~are in accordance with its~~ risk tolerance, ability to bear losses, <u>its sustainability preferences and the - and</u> need for ~~portfolio~~ diversification.</u>	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, ~~offered or demanded, that the~~ customer's financial situation, including, <u>to the extent possible,</u> 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 ~~person~~ <u>customer</u> and that, in particular, are in accordance with its risk tolerance, ability to bear losses and, <u>to the extent applicable,</u> need for portfolio diversification. <u>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.</u>	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
			<u>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.</u>	
784	When providing advice on an independent basis to retail customers restricted to well-diversified, non-complex, and cost-efficient insurance-based investment products, the insurance intermediary or insurance undertaking 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.	<i>deleted</i>	When providing advice on an independent basis to ~~retail~~ customers restricted to well-diversified, non-complex, and cost-efficient insurance-based investment products, the insurance intermediary ~~or insurance undertaking~~ 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.	
785	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	When providing advice that involves switching between underlying investment ~~assets~~ <u>options</u> , insurance intermediaries and insurance undertakings shall obtain the necessary information on the	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	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
	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.	customer's existing underlying investment ~~assets~~ <u>options</u> and the recommended new investment ~~assets~~ <u>options</u> 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.	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.	
786	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 demanded 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.	2. Without prejudice to Article 20(1), Member States shall ensure that, where ~~no advice is given in relation to an~~ insurance-based investment ~~products~~ <u>product is sold</u> <u>without advice</u> , 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 demanded 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.	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 demanded~~ <u>requested</u> 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.	

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787	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 and shall be recorded.	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 and shall be recorded.	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.~~ <u>The insurance intermediary or the insurance undertaking</u> ~~and shall be recorded~~ <u>keep a record of such warnings.</u>	
788	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 of service is not appropriate, 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. Both the demand of the customer and the acceptance by the insurance undertaking shall be recorded.	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 of service is not appropriate, 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. Both the demand of the customer and the acceptance by the insurance undertaking shall be recorded.	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 ~~of~~ service is not appropriate <u>or a warning indicating that the insurance intermediary or insurance undertaking cannot assess the appropriateness of the product or service</u> , 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. <u>The insurance intermediary and the insurance</u>	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
			<u>undertaking distributing insurance-based investment products shall keep a record of</u> both the demand of the customer and the acceptance by the insurance undertaking ~~shall be recorded~~ .	
789	EIOPA shall develop draft regulatory technical standards to determine the format and content of the warning referred to in the second subparagraph.	EIOPA shall develop draft regulatory technical standards to determine the format and content of the warning referred to in the second subparagraph.	EIOPA shall develop draft regulatory technical standards to determine the format and content of the warning referred to in the second subparagraph.	
790	EIOPA shall submit the draft regulatory technical standards to the Commission by [OJ: insert date 18 months after the date of entry into force].	EIOPA shall submit the draft regulatory technical standards to the Commission by [OJ: insert date 18 months after the date of entry into force].	EIOPA shall submit the draft regulatory technical standards to the Commission by [OJ: insert date 18 months after the date of entry into force].	
791	Power is conferred on the Commission to adopt those regulatory technical standards in accordance with 10 of Regulation (EU) No 1094/2010.	Power is conferred on the Commission to adopt those regulatory technical standards in accordance with 10 of Regulation (EU) No 1094/2010.	Power is conferred on the Commission to adopt those regulatory technical standards in accordance with Article 10 of Regulation (EU) No 1094/2010.	
792	3. Without prejudice to Article 20(1), where no advice is given in relation to insurance-based investment products, Member States	3. Without prejudice to Article 20(1), where no advice is given in relation to insurance-based investment products, Member States	3. Without prejudice to Article 20(1), where no advice is given in relation to insurance-based investment products, Member States	

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	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:	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:	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:	
793	(a) the insurance distribution activities relate to either of the following:	(a) the insurance distribution activities relate to either of the following:	(a) the insurance distribution activities relate to either of the following:	
794	(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;	(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;	(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;	
795	(ii) other non-complex insurance-based investment products for the purpose of this paragraph;	(ii) other non-complex insurance-based investment products for the purpose of this paragraph;	(ii) other non-complex insurance-based investment products for the purpose of this paragraph;	

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796	(b) the insurance distribution activity is carried out at the initiative of the customer;	(b) the insurance distribution activity is carried out at the initiative of the customer;	(b) the insurance distribution activity is carried out at the initiative of the customer;	
797	(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.	(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.	(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.	
798	(d) the insurance intermediary or insurance undertaking complies with its obligations under Articles 27 and 28.	(d) the insurance intermediary or insurance undertaking complies with its obligations under Articles 27 and 28.	(d) the insurance intermediary or insurance undertaking complies with its obligations under Articles 27 and 28.	
799	All insurance intermediaries or insurance undertakings, including those operating under the freedom to provide services or the freedom of establishment, when distributing	All insurance intermediaries or insurance undertakings, including those operating under the freedom to provide services or the freedom of establishment, when distributing	All insurance intermediaries or insurance undertakings, including those operating under the freedom to provide services or the freedom of establishment, when distributing	

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	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.	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.	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.	
800	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 develop draft regulatory technical standards to determine the format and content of warning referred to in the first subparagraph, point (c).	EIOPA shall develop draft regulatory technical standards to determine the format and content of warning referred to in the first subparagraph, point (c).	
801	EIOPA shall submit the draft regulatory technical standards to the Commission by [OJ: insert date 18 months after the date of entry into force].	EIOPA shall submit the draft regulatory technical standards to the Commission by [OJ: insert date 18 months after the date of entry into force].	EIOPA shall submit the draft regulatory technical standards to the Commission by [OJ: insert date 18 months after the date of entry into force].	
802	Power is conferred on the Commission to adopt those regulatory technical standards in accordance with 10 of Regulation (EU) No 1094/201039.;	Power is conferred on the Commission to adopt those regulatory technical standards in accordance with 10 of Regulation (EU) No 1094/201039.;	Power is conferred on the Commission to adopt those regulatory technical standards in accordance with 10 of Regulation (EU) No 1094/201039.;	
803	(c) paragraph 5 is replaced by the	(c) paragraph 5 is replaced by the	(c) paragraph 5 is replaced by the	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
	following:	following:	following:	
804	5. Member States shall ensure that insurance intermediaries or insurance undertakings provide the customer with adequate reports on the insurance distribution activities on a durable medium. Those reports shall contain periodic communications to customers, taking into account the type and the complexity of insurance-based investment products involved and the nature of the service provided to the customer and shall contain, where applicable, the costs associated with the transactions and services undertaken on behalf of the customer.	5. Member States shall ensure that insurance intermediaries or insurance undertakings provide the customer with adequate reports on the insurance distribution activities on a durable medium. Those reports shall contain periodic communications to customers, taking into account the type and the complexity of insurance-based investment products involved and the nature of the service provided to the customer and shall contain, where applicable, the costs associated with the transactions and services undertaken on behalf of the customer.	5. Member States shall ensure that insurance intermediaries ~~or insurance undertakings~~ provide the ~~customer~~<u>policyholder</u> with adequate reports on the insurance distribution activities ~~on a durable medium~~. Those reports shall contain periodic communications to ~~customers~~<u>policyholders</u>, taking into account the type and the complexity of insurance-based investment products involved and the nature of the ~~service provided to the customer~~<u>insurance distribution activities undertaken for the policyholder</u> and shall contain, ~~where applicable, the costs~~<u>if not already provided for in the annual statement referred to in Article 29, paragraphs 2 and 3, the fees</u> associated with ~~the transactions and services undertaken on behalf of the customer~~<u>those insurance distribution activities</u>.	
804a			<u>Insurance intermediaries that directly charge fees to the policyholder shall provide adequate reports on the insurance</u>	

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			<u><i>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.</i></u>	
805	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 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 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.	
806				

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	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:	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:	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:	
807	(a) the customer has consented to receiving the suitability statement without undue delay after the conclusion of the contract;	(a) the customer has consented to receiving the suitability statement without undue delay after the conclusion of the contract;	(a) the customer has consented to receiving the suitability statement without undue delay after the conclusion of the contract;	
808	(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.	(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.	(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.	
809	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	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	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	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
	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 retail customer.;	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 retail customer.;	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 ~~retail~~ customer.;	
810	(d) the following paragraphs 5a, 5b and 5c are inserted:	(d) the following ~~paragraphs 5a, 5b and 5c are~~ <u>paragraph is</u> inserted:	(d) the following paragraphs 5a, 5b and 5c are inserted:	
811	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.	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.	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.	
812	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	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	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	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
	provide services or the freedom of establishment, when concluding insurance contracts with customers having their habitual residence or establishment in that Member State.	provide services or the freedom of establishment, when concluding insurance contracts with customers having their habitual residence or establishment in that Member State.	provide services or the freedom of establishment, when concluding insurance contracts with customers having their habitual residence or establishment in that Member State.	
813	5b. Member States shall require that, where an insurance intermediary or insurance undertaking distributing insurance-based investment products informs the customer that advice is given on an independent basis, the insurance intermediary or insurance undertaking:	<i>deleted</i>	5b. Member States shall require that, where an insurance intermediary ~~or insurance undertaking~~ distributing insurance-based investment products informs the customer that advice is given on an independent basis, the insurance intermediary ~~or insurance undertaking~~ :	
814	(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 or insurance undertaking;	<i>deleted</i>	(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 ~~or insurance undertaking~~ ;	
815	(b) not accept and retain fees, commissions or any monetary or	<i>deleted</i>	(b) not accept and retain ~~fees, commissions or any monetary or~~	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
	non-monetary benefits 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.		~~non-monetary benefits~~ <u>inducements</u> 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.	
815a			<u><i>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.</i></u>	
816	5c. When providing investment advice to retail customers on an independent basis, the insurance intermediary or insurance undertaking 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 retail customer shall be duly informed about the possibility and conditions to get access to	<i>deleted</i>	5c. When providing investment advice to ~~retail~~ customers on an independent basis, the insurance intermediary ~~or insurance undertaking~~ 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 ~~retail~~ customer shall be duly informed about the possibility and conditions to get access to	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
	standard independent advice and the associated benefits and constraints.;		standard independent advice and the associated benefits and constraints.;	
817	(e) paragraph 6 is replaced by the following:	(e) paragraph 6 is replaced by the following:	(e) paragraph 6 is replaced by the following:	
818	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:	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:	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:	
819	(a) the information to be obtained when assessing the suitability and appropriateness of insurance-based investment products for their customers;	(a) the information to be obtained when assessing the suitability and appropriateness of insurance-based investment products for their customers;	(a) the information to be obtained when assessing the suitability and appropriateness of insurance-based investment products for their customers;	
820	(b) the criteria to assess non-complex insurance-based	(b) the criteria to assess non-complex insurance-based	(b) the criteria to assess non-complex insurance-based	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
	investment products for the purposes of paragraph 3, point (a) (ii), of this Article;	investment products for the purposes of paragraph 3, point (a) (ii), of this Article;	investment products for the purposes of paragraph 3, point (a) (ii), of this Article;	
821	(c) the content and format of records and agreements for the provision of services to customers and of periodic reports to customers on the services provided.	(c) the content and format of records and agreements for the provision of services to customers and of periodic reports to customers on the services provided.	(c) the content and format of records and agreements <u>in relation to the insurance distribution activities undertaken</u> for the ~~provision of services to~~ customers and of periodic reports to customers on ~~the services provided~~ <u>those insurance distribution activities</u> .	
821a		<u>(ca) (ca) the criteria for assessing the alignment of financial products with a client's sustainability preferences and outlining the procedures for tailoring a portfolio or investment product offering to align with a client's sustainability preferences.</u>		
822	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	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	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	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
	professional nature of the customer.;	professional nature of the customer.;	professional nature of the customer.;	
823	(23) Article 35(2) is amended as follows:	(23) Article 35(2) is amended as follows:	(23) Article 35(2) is amended as follows:	
824	(a) point (a) is replaced by the following:	(a) point (a) is replaced by the following:	(a) point (a) is replaced by the following:	
825	‘ (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.’ ;	‘ (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.’ ;	‘ (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.’ ;	
826	(b) the following subparagraph is added:	(b) the following subparagraph is added:	(b) the following subparagraph is added:	
827	‘ The specific procedures referred to in point (a) shall also include the creation, on the front page of each	‘ The specific procedures referred to in point (a) shall also include the creation, on the front page of each	‘ The specific procedures referred to in point (a) shall also include the creation, on the front page of each	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
	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;	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;	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;	
828	(24) the following Article 35a is inserted:	(24) the following Article 35a is inserted:	(24) the following Article 35a is inserted:	
829	‘ Article 35a	‘ Article 35a	‘ Article 35a	
830	Procedure to address activities offered through digital means without authorisation or registration	Procedure to address activities offered through digital means without authorisation or registration	Procedure to address activities offered through digital means without authorisation or registration	
831	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	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	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	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
	Article 14 of Directive 2009/138/EC, or where a competent authority to suspect that that entity 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.	Article 14 of Directive 2009/138/EC, or where a competent authority to suspect that that entity 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.	Article 14 of Directive 2009/138/EC, or where a competent authority <u>has reasonable grounds</u> to suspect that ~~that entity~~ <u>such natural or legal person</u> 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.	
831a		‘ <u>The first subparagraph shall also apply to any finfluencer that is remunerated or incentivised through non-monetary compensation by an insurance undertaking or insurance intermediary without being registered in accordance with Article 3 of this Directive or authorised in accordance with Article 14 of Directive</u>		

	Commission Proposal	EP Mandate	Council Mandate	MS comments
		<u>2009/138/EC, where such finfluencer promotes through public social media platforms services or insurance-based investment products or underlying investment options on behalf of such an insurance undertaking or insurance intermediary.</u>		
832	2. Member States shall provide that competent authorities publish any decision imposing a measure pursuant to paragraph 1 in compliance with Article 32.	2. Member States shall provide that competent authorities publish any decision imposing a measure pursuant to paragraph 1 in compliance with Article 32.	2. Member States shall provide that competent authorities publish any decision imposing a measure pursuant to paragraph 1 in compliance with Article 32.	
833	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	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	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	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
	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.;	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.;	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.;	
834	(25) Article 38 is replaced by the following:	(25) Article 38 is replaced by the following:	(25) Article 38 is replaced by the following:	
835	Article 38	Article 38	Article 38	
836	Delegated acts	Delegated acts	Delegated acts	
837	The Commission shall be empowered to adopt delegated acts in accordance with Article 39 concerning Articles 10, 25, 26a, 28, 29a, 29b and 30.;	The Commission shall be empowered to adopt delegated acts in accordance with Article 39 concerning Articles 10, 25, 26a, 28, 29a, 29b and 30.;	~~—~~ The Commission shall be empowered to adopt delegated acts in accordance with Article 39 concerning Articles 10, 25, 26a, 28, 29a, ~~29b~~ and 30.;	
838	(26) Article 39 is amended as follows:	(26) Article 39 is amended as follows:	(26) Article 39 is amended as follows:	
839				

	Commission Proposal	EP Mandate	Council Mandate	MS comments
	(a) the paragraphs 2 and 3 are replaced by the following:	(a) the paragraphs 2 and 3 are replaced by the following:	(a) the paragraphs 2 and 3 are replaced by the following:	
840	‘ 2. The power to adopt delegated acts referred to in Articles 10, 25, 26a, 28, 29a, 29b and 30 shall be conferred on the Commission for an indeterminate period of time from 22 February 2016.	‘ 2. The power to adopt delegated acts referred to in Articles 10, 25, 26a, 28, 29a, 29b and 30 shall be conferred on the Commission for an indeterminate period of time from 22 February 2016.	‘ 2. ~~The~~ power to adopt delegated acts referred to in Articles 10, 25, 26a, 28, 29a, ~~29b~~ and 30 shall be conferred on the Commission for an indeterminate period of time from 22 February 2016.	
841	3. The delegation of power referred to in Articles 10, 25, 26a, 28, 29a, 29b 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.;	3. The delegation of power referred to in Articles 10, 25, 26a, 28, 29a, 29b 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.;	3. The delegation of power referred to in Articles 10, 25, 26a, 28, 29a, ~~29b~~ 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.;	
842	(b) the following paragraph 3a is inserted:	(b) the following paragraph 3a is inserted:	(b) the following paragraph 3a is inserted:	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
843	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.;	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.;	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.;	
844	(c) paragraph 5 is replaced by the following:	(c) paragraph 5 is replaced by the following:	(c) paragraph 5 is replaced by the following:	
845	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.;	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.;	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.;	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
	,	,	,	
846	(27) Annex I is amended in accordance with Annex III to this Directive.	(27) Annex I is amended in accordance with Annex III to this Directive.	(27) Annex I is amended in accordance with Annex III to this Directive.	

RIS: Omnibus Directive

Part IV: MISCELLANEOUS

Deadline for comments: 16 August 2024 COB

	Commission Proposal	EP Mandate	Council Mandate	MS comments
847	Article 3 Amendments to Directive 2009/138/EC	Article 3 Amendments to Directive 2009/138/EC	Article 3 Amendments to Directive 2009/138/EC	
848	Section 5 of Title II, Chapter 1, of Directive (EU) 2009/138 is amended as follows:	Section 5 of Title II, Chapter 1, of Directive (EU) 2009/138 is amended as follows:	Section 5 of Title II, Chapter 1, of Directive (EU) 2009/138 is amended as follows:	
849	(1) the heading is replaced by the following:	(1) the heading is replaced by the following:	(1) the heading is replaced by the following:	
850	‘ Section 5	‘ Section 5	‘ Section 5	
851	Cancellation right; ,	Cancellation right; ,	Cancellation right; ,	
852	(2) the following text is deleted:	(2) the following text is deleted:	(2) the following text is deleted:	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
853	‘ Subsection 1	‘ Subsection 1	‘ Subsection ~~1~~ 2	
854	Non-life insurance; ,	Non-life insurance; ,	Non-life insurance; ,	
855	(3) Articles 183 and 184 are deleted;	(3) Articles 183 and 184 are deleted;	(3) Articles 183 and 184 are deleted;	
856	(4) the following text is deleted:	(4) the following text is deleted:	(4) the following text is deleted:	
857	‘ Subsection 1	‘ Subsection 1	‘ Subsection 1	
858	Life insurance; ,	Life insurance; ,	Life insurance; ,	
859	(5) Article 185 is deleted.	(5) Article 185 is deleted.	(5) Article 185 is deleted.	
860	Article 4 Amendments to Directive 2009/65/EC	Article 4 Amendments to Directive 2009/65/EC	Article 4 Amendments to Directive 2009/65/EC	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
861	Directive 2009/65/EC is amended as follows:	Directive 2009/65/EC is amended as follows:	Directive 2009/65/EC is amended as follows:	
862	(1) Article 14 is amended as follows:	(1) Article 14 is amended as follows:	(1) Article 14 is amended as follows:	
863	(a) the following paragraphs 1a to 1f are inserted:	(a) the following paragraphs 1a to 1f are inserted:	(a) the following paragraphs 1a to ~~1g~~ are inserted:	
864	‘ 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.	‘ 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.	‘ 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.	
865	The costs which comply with the following conditions shall be regarded as due:	The costs which comply with the following conditions shall be regarded as due:	The costs which comply with the following conditions shall be regarded as due:	
866	(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;	‘ (a) The costs ~~are in line with disclosures~~ <u>do not exceed the maximum amount disclosed</u> in the prospectus referred to in Article 69	(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;	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
		and the key investor information referred to in Article 78;		
867	(b) The costs are necessary for the UCITS to operate in line with its investment strategy and objective or to fulfil regulatory requirements;	(b) ~~The~~ ^{he} costs are ~~necessary~~ ^{properly incurred in connection with or} for the ~~UCITS to operate in line with its investment strategy and objective or to fulfil regulatory requirements;~~ ^{purposes of:}	(b) The costs are necessary for the UCITS to operate in line with its investment strategy and objective or to fulfil regulatory requirements;	
867a		<u>(i) the operation of the UCITS having regard to its structure, investment strategy, objective and policy, or</u>		
867b		<u>(ii) the compliance with legal regulatory requirements;</u>		
868	(c) The costs are borne by investors in a way that ensures fair treatment of investors.	(c) The costs are borne by investors in a way that ensures fair treatment of investors.	(c) The costs are borne by investors in a way that ensures fair treatment of investors.	
869	1b. Member States shall require management companies to maintain, operate and review an effective pricing process that allows	1b. Member States shall require management companies to maintain, operate and review an effective pricing process that allows for the	1b. Member States shall require management companies to ~~maintain, operate and review an effective pricing process that allows~~	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
	for the identification and quantification of all costs borne by the UCITS or its unit-holders. Before the authorisation of the UCITS and throughout its life, that pricing process shall ensure that the following conditions are fulfilled:	identification and quantification of all costs borne by the UCITS or its unit-holders. Before the authorisation of the UCITS and throughout its life, that pricing process shall ensure that the following conditions are fulfilled:	~~for the identification and quantification of~~ <u>identify and quantify</u> all costs borne by the UCITS or its unit-holders <u>and to maintain, operate and review effective undue costs and value-for-money processes</u> . Before the authorisation of the UCITS and throughout its life, ~~that pricing process~~ <u>management companies</u> shall ensure that the following conditions are fulfilled:	
870	(a) the costs are not undue;	(a) the costs are not undue;	(a) the costs are not undue;	
871	(b) the costs borne by retail investors are justified and proportionate, having regard to the characteristics of the UCITS, including its investment objective, strategy, expected returns, level of risks and other relevant characteristics.	(b) the costs borne by retail investors are justified and proportionate, <u>in the context of the overall value delivered to unit-holders</u> having regard to the characteristics of the UCITS, including its investment objective, <u>policy</u> , strategy, expected returns, level of risks and other relevant characteristics.	(b) <u>the UCITS offers value for money, by ensuring that</u> the costs borne by retail investors are justified and proportionate, having regard to the characteristics of the UCITS, including its investment objective, strategy, ~~expected returns~~ <u>performance</u> , level of risks and other ~~relevant characteristics~~ <u>benefits</u> .	
872	1c. Member States shall ensure that management companies are responsible for the effectiveness and quality of their pricing process. The pricing process shall be clearly	1c. Member States shall ensure that management companies are responsible for the effectiveness and quality of their pricing process. The pricing process shall be clearly	1c. Member States shall ensure that management companies are responsible for the effectiveness and quality of their ~~pricing process~~ . ~~The pricing process~~ <u>value-for-money</u>	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
	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 shall be based on objective criteria and methodology, including a comparison to market standards.	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 shall be based on objective criteria and methodology, ~~including~~ <u>and shall include</u> a comparison to market ~~standards~~ <u>products, such as UCITS with similar characteristics in terms of investment objective, strategy, level of risks and other relevant characteristics.</u>	<u>assessment and undue costs processes. The value-for-money assessment and undue costs processes</u> 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 <u>and value for money</u> shall be based on objective criteria and methodology, ~~including a comparison to market standards.~~	
873	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.	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.	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.	
874	Member States shall require management companies to reimburse investors where undue costs have been charged to the UCITS or its unit-holders.	Member States shall require management companies to reimburse investors <u>without undue delay</u> , where undue costs have been charged to the UCITS or its unit-holders, <u>or where costs have been miscalculated to the detriment of the UCITS or its unit-holders.</u>	Member States shall require management companies to reimburse investors <u>without undue delay</u> where undue costs have been charged to the UCITS or its unit-holders.	
875				

	Commission Proposal	EP Mandate	Council Mandate	MS comments
	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.	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.	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.	
876	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 pricing process and include a comparison with the relevant benchmark on costs and performance published by ESMA in accordance with paragraph 1f.	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 pricing process ~~and include a comparison with the relevant benchmark on costs and performance published by ESMA in accordance with paragraph 1f.~~	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 ~~pricing~~ <u>value-for-money assessment</u> process and ~~include a~~ <u>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</u> ~~relevant benchmark on~~ costs and <u>charges as well as the</u> performance ~~published by ESMA in accordance with~~ <u>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</u>	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
			<u>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.</u> <u>The peer-group comparison shall be performed using data made available according to</u> paragraph ~~1g~~ <u>and included in information to be published according to Union law.</u>	
877	When a UCITS or its share classes, when they have different cost structures, deviate from the relevant benchmark referred to in paragraph 1f, the management company shall perform additional testing and further assessments and establish whether costs and charges are nevertheless justified and proportionate. If justification and proportionality of costs and charges cannot be demonstrated or if the UCITS or its share classes do not	deleted	When a UCITS or its share classes, when they have different cost structures, ~~deviate~~ <u>is at a significant distance</u> from the ~~relevant benchmark referred to in paragraph 1f, the management company~~ <u>average of the peer group to the detriment of the client, the value for money</u> shall ~~perform~~ <u>be substantiated through</u> additional testing and further assessments ~~and establish whether costs and charges are nevertheless justified and~~	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
	comply with other criteria set out by the management company in the pricing process that UCITS or its share classes shall not be marketed to retail investors by the management company.		~~proportionate. If justification and proportionality of costs and charges cannot be demonstrated or if,~~ <u>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</u>~~do not comply with other criteria set out by the,~~ <u>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.</u> <u>Member States may provide for a possibility for a</u> management company ~~in the pricing to opt, for the purpose of the market comparison in its value-for-money assessment~~ process, <u>to compare a-</u> ~~that~~ UCITS or its share classes, <u>when they have different cost structures, with the relevant Union supervisory benchmark as referred to in paragraph 1f instead of a peer group.</u> <u>If the management company opted to compare a UCITS or its share classes, when they have different</u>	

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			<u>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 ~~not be marketed to retail investors~~ take appropriate actions to ensure value for money. The content of appropriate actions shall be determined</u> by the management company <u>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.</u>	
878	1f. After consulting EIOPA and competent authorities, ESMA shall, where appropriate, develop and make publicly available benchmarks to enable the comparative assessment of costs and performance of UCITS, or their	1f. <u>ESMA shall, no later than four years</u> after ~~consulting EIOPA and~~ <u>the entry into force of Directive (EU) .../... [OP Please introduce the number of this amending Directive], organise and conduct a peer review in cooperation with</u>	1f. ~~After consulting~~ <u>In consultation with</u> EIOPA and <u>relevant stakeholders and in close and thorough cooperation with the</u> competent authorities <u>throughout the entire development and testing process</u>, ESMA shall, where	

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	share classes where they have different cost structures, to be used for the assessment set out in paragraph 1e.	<u><i>national</i></u> competent authorities, ~~ESMA shall, where appropriate, develop and make publicly available benchmarks to enable the comparative assessment of~~ <u>regarding the implementation of the obligations described in this Article, including the</u> costs ~~and performance of UCITS, or their share classes where they have different cost structures, to be used for the assessment set out in paragraph 1e~~ <u>associated with reimbursements to individual investors.”</u>;	appropriate <u>and feasible</u>, develop ~~and make publicly available~~ <u>Union supervisory benchmarks. Those</u> benchmarks ~~to enable the comparative assessment of costs and performance~~ <u>shall be developed per product cluster that contains a significant number</u> of UCITS, or their share classes where they have different cost structures, ~~to be used~~ <u>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</u> for the <u>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</u> assessment ~~set out in paragraph 1e~~ <u>process of management</u>	

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			<u>companies complies with the product governance requirements under paragraphs 1b, 1c, 1e and 2(e).</u> <u>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.</u> <u>ESMA shall regularly update the Union supervisory benchmarks.</u>	
879	Common benchmarks shall be developed, where it is feasible to do so, for UCITS, or their share classes where they have different cost structures, marketed to retail investors that present similar levels of performance, risk, strategy, objectives, or other characteristics.	<i>deleted</i>	<i>deleted</i>	
880	These benchmarks shall display a range of costs and performance, especially cases where costs and performance depart significantly from the average. These benchmarks shall be updated on a	<i>deleted</i>	<i>deleted</i>	

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	regular basis.;			
880a			<u>Ig. 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.</u> <u>The data shall be sourced from disclosure and reporting under Union law, including the reporting referred to in Article 20a.</u> <u>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.</u> <u>ESMA shall provide access to this data to the following entities, to the extent necessary to fulfil their respective responsibilities, mandates and obligations:</u> <u>(a) any Union institution.</u>	

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			<u>body, office or agency;</u> <u>(b) any competent authority designated by a Member State pursuant to a Union legislative act;</u> <u>(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;</u> <u>(d) any governmental institution, body or agency of a Member State;</u> <u>(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.</u> <u>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</u>	

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			<u>shall submit those draft regulatory technical standards to the Commission by [OJ: insert date of entry into force of the amending Directive + 24 months].</u> <u>Power is conferred on the Commission to adopt those regulatory technical standards in accordance with Article 10 of Regulation (EU) No 1095/2010.</u> <u>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.'</u>	
881	(b) paragraph 2 is amended as follows:	(b) paragraph 2 is amended as follows:	(b) paragraph 2 is amended as follows:	
882	(i) The introductory wording is replaced by the following:	(i) The introductory wording is replaced by the following:	(i) The introductory wording is replaced by the following:	
883	Without prejudice to Article 116, the Commission shall adopt, by means of delegated acts in accordance with Article 112a, measures to ensure that the	Without prejudice to Article 116, the Commission shall adopt, by means of delegated acts in accordance with Article 112a, measures to ensure that the	Without prejudice to Article 116, the Commission shall adopt, by means of delegated acts in accordance with Article 112a, measures to ensure that the	

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	management company complies with the duties set out in paragraphs 1 to 1e in particular to;;	management company complies with the duties set out in paragraphs 1 to 1e in particular to;;	management company complies with the duties set out in paragraphs 1 to 1e in particular to;;	
884	(ii) point (b) is replaced by the following:	(ii) point (b) is replaced by the following:	(ii) point (b) is replaced by the following:	
885	‘ (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;	‘ (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;	‘ (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;	
886	(iii) the following points (d) and (e) are added:	(iii) the following points (d) and (e) are added:	(iii) the following points (d) and (e) are added:	
887	‘ (d) specify the minimum requirements for the pricing process to prevent undue costs from being charged to the UCITS and its unit-holders, in particular, by:	‘ (d) specify the minimum requirements for the pricing process to prevent undue costs from being charged to the UCITS and its unit-holders, in particular, by:	‘ (d) specify the minimum requirements for the ~~pricing~~ <u>undue costs</u> process to prevent undue costs from being charged to the UCITS and its unit-holders, in particular, by:	

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888	(i) ensuring that costs are correctly identified and quantified, and comply with the requirements set out in paragraph 1a, point (a);	(i) ensuring that costs are correctly identified and quantified, and comply with the requirements set out in paragraph 1a, point (a);	(i) ensuring that costs are correctly identified and quantified, and comply with the requirements set out in paragraph 1a, point (a);	
889	(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);	(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);	(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);	
890	(iii) identifying potential conflict of interests and measures to mitigate the occurrence of conflicts of interest;	(iii) identifying potential conflict of interests and measures to mitigate the occurrence of conflicts of interest;	(iii) identifying potential conflict of interests and measures to mitigate the occurrence of conflicts of interest;	
891	(iv) establishing a procedure to determine the level of compensation where undue costs have been charged to investors.;	(~~iv~~ point iiiia) establishing a procedure to determine the level of compensation where undue costs have been charged to investors.;	(iv) establishing a procedure to determine the level of compensation where undue costs have been charged to investors.;	

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891a		<u>(v) establishing a procedure which will be triggered when the amount unduly charged is material and exceeds a threshold to be determined on the basis of existing national competent authorities' guidelines on indemnification procedures;</u>		
892	(e) provide for criteria to determine whether costs are justified and proportionate in accordance with paragraph 1b, point (b), and for taking corrective measures mentioned in paragraph 1e and specify the methodology used by ESMA to develop its benchmarks.;	(e) provide for criteria to determine whether costs are justified and proportionate in accordance with paragraph 1b, point (b), ~~and for taking corrective measures mentioned in paragraph 1e and specify the methodology used by ESMA to develop its benchmarks.~~;	(e) ~~provide for criteria to determine whether costs are justified and proportionate in accordance with paragraph 1b, point (b), and for taking corrective measures mentioned in paragraph 1e and~~ specify the methodology <u>to be</u> used by ~~ESMA to develop its benchmarks~~ <u>management companies to perform the peer-group comparison.</u>;	
893	(c) the following paragraph 4 is added:	(c) the following paragraph 4 is added:	(c) the following paragraph 4 is added:	
894	4. By ...[OP: please insert the date = five years from the date referred to in Article 7(2) of this Directive],	4. By ...[OP: please insert the date = five years from the date referred to in Article 7(2) of this Directive],	4. By <del>...</del>~~[OP: please insert the date = five years from the date referred to in Article 7(2) of this Directive]~~ <u>date of application of this amending</u>	

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	after consulting ESMA, the Commission shall submit a report to Council and Parliament on the implementation of this Article. The report shall evaluate at least the following:	after consulting ESMA, the Commission shall submit a report to Council and Parliament on the implementation of this Article. The report shall evaluate at least the following:	<u><i>Directive</i></u> referred to in Article ~~7(2)~~<u>6(2) + 5 years</u>], <u><i>competent authorities shall report to ESMA on:</i></u> <u><i>(a) the impact and the added value of the peer-group comparison on the value for money of UCITS;</i></u> <u><i>(b) the impact and the added value of Union supervisory benchmarks on the supervision of the value-for-money assessment process;</i></u> <u><i>(c) the application of Union supervisory benchmarks in the value-for-money assessment process of management companies; and</i></u> <u><i>(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.</i></u> <u><i>By [OJ: insert date date of application of this amending Directive referred to in Article 6(2) + 6 years], -after consulting ESMA, shall submit to the Commission a report analysing:</i></u> <u><i>(a) the impact and the added value of the peer-group comparison and the Union supervisory benchmarks on the</i></u>	

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			<u>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;</u> <u>(b) the application of Union supervisory benchmarks in the value-for-money assessment process of management companies;</u> <u>(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</u> <u>(d) whether and how to modify the approach to the data that is made available in accordance with paragraph 1g.</u> <u>When drafting the report, ESMA shall coordinate with EIOPA.</u> <u>By [OJ: insert date of application of this amending Directive referred to in Article 6(2) + 7 years], the</u> Commission shall submit a report to <u>the</u> Council and <u>the European</u> Parliament ~~on the implementation of this Article~~ <u>presenting the conclusions of the review. If appropriate,</u> the report shall ~~evaluate at least the following: be~~ <u>accompanied by legislative proposals.</u>’;	

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895	(a) whether this Article has had a positive impact on the costs and performance of UCITS offered to retail investors and to which extent;	(a) whether this Article has had a positive impact on the costs and performance of UCITS offered to retail investors and to which extent;	<i>deleted</i>	
896	(b) whether the assessment set out in paragraph 1e is proportionate in terms of complexity and costs incurred by management companies.;	(b) whether the assessment set out in paragraph 1e is proportionate in terms of complexity and costs incurred by management companies.;	<i>deleted</i>	
896a		<u>(ba) whether there could be other mechanisms to address high costs incurred by investors at Union level, including legislative and non-legislative measures.</u> ;		
897	(2) the following Article 20a is inserted:	(2) the following Article 20a is inserted:	(2) the following <u>point (f) is added to the second paragraph of</u> Article 20a ~~is inserted~~ :	
898	Article 20a	Article 20a	<i>deleted</i>	

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899	In respect of each UCITS it manages, a management company shall provide to the competent authority of its home Member State information on the costs borne by investors and 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.;	In respect of each UCITS it manages, a management company shall provide to the competent authority of its home Member State information on the costs borne by investors and 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.;	~~In respect of each UCITS it manages, a management company shall provide to the competent authority of its home Member State~~ '(f) Information on the costs borne by investors and <u>data on other characteristics, in particular the</u> 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.';	
899a			<u>(2a.) In Article 20a, the fifth paragraph, point (a) is replaced by the following:</u>	
899b			<u>'(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;';</u>	
900	(3) in Article 30, the second paragraph is replaced by the following:	(3) in Article 30, the second paragraph is replaced by the following:	(3) in Article 30, the second paragraph is replaced by the following:	

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901	‘ 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). ’,	‘ 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). ’,	‘ 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). ’,	
902	(4) in Article 90, the following paragraph is added:	(4) in Article 90, the following paragraph is added:	(4) in Article 90, the following paragraph is added:	
903	‘ This Article applies without prejudice to the application of Article 14.; ’,	‘ This Article applies without prejudice to the application of Article 14.; ’,	‘ This Article applies without prejudice to the application of Article 14.; ’,	
904	(5) in Article 98(2), the following point (n) is added:	(5) ~~in Article 98(2), the following point (n) is added~~ <u>is amended as follows:</u>	(5) in Article 98(2), the following point (n) is added:	
904a		<u>(i) the following point is inserted:</u>		
904b		‘		

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		<u>ea) in accordance with Article 69a of Directive 2014/65/EU, carry out regular checks of the alignment of the qualitative and quantitative features of the UCITS on the market with the relevant benchmarks and, when necessary, take corrective actions;</u>		
904c		<u>(ii) the following point is added:</u>		
905	‘ (n) require compensation to investors where undue costs have been charged to UCITS or its unit-holders.;’	‘ (n) <u>(n) without prejudice to any reimbursement made pursuant to Article 14(1d),</u> require compensation to investors where undue costs have been charged to UCITS or its unit-holders.÷’	‘ (n) require compensation to investors where undue costs have been charged to UCITS or its unit-holders.;’	
906	(6) in Article 99(6), the following point is added:	(6) in Article 99(6), the following point is added:	(6) in Article 99(6), the following point <u>(n)</u> is added:	
907	‘ (h) requirement to compensate investors where undue costs have been charged to UCITS or its unit-holders.;’	‘ (h) <u>‘(h) without prejudice to any reimbursement made pursuant to Article 14(1d), a</u> requirement to compensate investors where undue	‘ ~~(h)~~ <u>(n) requirement to-</u> ~~compensate~~ <u>require compensation to</u> investors where undue costs have been charged to UCITS or its unit-	

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		costs have been charged to UCITS or its unit-holders, <u>or where costs have been miscalculated to the detriment of the UCITS or its unit-holders, while taking into account that procedures for compensation are to be proportionate to the unduly charged amount, in particular from a technical and operational standpoint.</u> ;	holders.;	
908	(7) in Article 112a(2), the following subparagraph is inserted after the fourth subparagraph:	(7) in Article 112a(2), the following subparagraph is inserted after the fourth subparagraph:	(7) in Article 112a(2), the following subparagraph is inserted after the fourth subparagraph:	
909	‘ 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].;’	‘ 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].;’	‘ 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].;’	
910	Article 5 Amendments to Directive 2011/61/EU	Article 5 Amendments to Directive 2011/61/EU	Article 5 Amendments to Directive 2011/61/EU	
911				

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	Directive 2011/61/EU is amended as follows:	Directive 2011/61/EU is amended as follows:	Directive 2011/61/EU is amended as follows:	
912	(1) Article 12 is amended as follows:	(1) Article 12 is amended as follows:	(1) Article 12 is amended as follows:	
913	(a) the following paragraphs 1a to 1f are inserted:	(a) the following paragraphs 1a to 1f are inserted:	(a) the following paragraphs 1a to ~~#1g~~ are inserted:	
914	“ 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.	“ 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.	“ 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.	
915	The costs which comply with the following conditions shall be regarded as due:	The costs which comply with the following conditions shall be regarded as due:	The costs which comply with the following conditions shall be regarded as due:	
916	(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	“ (a) <u>they do not exceed the maximum amount disclosed</u> ~~The costs are in line with disclosures~~ in the prospectus referred to in Article 23(3), the fund rules or instruments	(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	

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	information document referred to in Article 5(1) of Regulation (EU) No 1286/2014;	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;	referred to in Article 5(1) of Regulation (EU) No 1286/2014;	
917	(b) The costs are necessary for the AIF to operate in line with its investment strategy and objective or to fulfil regulatory requirements;	(b) ~~The costs are necessary~~ <u>they are properly incurred in connection with or</u> for the ~~AIF to operate in line with its investment strategy and objective or to fulfil regulatory requirements;~~ <u>purposes of:</u>	(b) The costs are necessary for the AIF to operate in line with its investment strategy and objective or to fulfil regulatory requirements;	
917a		<u>(i) the operation of the AIF having regard to its structure, investment strategy, objective and policy, or</u>		
917b		<u>(ii) the compliance with legal or regulatory requirements;</u>		
918	(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.	(c) ~~The costs~~ <u>they</u> 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.	(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.	

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919	1b. Member States shall require AIFMs to maintain, operate and review an effective pricing process that allows for the identification and quantification of all costs borne by the AIFs or their unitholders. That pricing process shall ensure that the following conditions are fulfilled:	1b. Member States shall require AIFMs to maintain, operate and review an effective pricing process that allows for the identification and quantification of all costs borne by the AIFs or their unitholders. That pricing process shall ensure that the following conditions are fulfilled:	1b. Member States shall require AIFMs to <u>identify and quantify all costs borne by the AIF or its unitholders, and to</u> maintain, operate and review ~~an effective pricing process that allows for the identification and quantification of all~~ <u>undue</u> costs ~~borne by the AIFs or their unitholders. That pricing process and value-for-money processes.~~ AIFMs shall ensure that the following conditions are fulfilled:	
920	(a) the costs are not undue;	(a) the costs are not undue;	(a) the costs are not undue;	
921	(b) the costs borne by retail investors are justified and proportionate, having regard to the characteristics of the AIF, including its investment objective, strategy, expected returns, level of risks and other relevant characteristics.	(b) the costs borne by retail investors are justified and proportionate, <u>in the context of the overall value delivered to unitholders and</u> having regard to the characteristics of the AIF, including its investment objective, <u>policy</u> , strategy, expected returns, level of risks and other relevant characteristics.	(b) <u>the AIF offers value for money, by ensuring that</u> the costs borne by retail investors are justified and proportionate, having regard to the characteristics of the AIF, including its investment objective, strategy, ~~expected returns~~ <u>performance</u> , level of risks and other ~~relevant characteristics~~ <u>benefits</u> .	
922	1c. Member States shall ensure that AIFMs are responsible for the effectiveness and quality of their	1c. Member States shall ensure that AIFMs are responsible for the effectiveness and quality of their	1c. Member States shall ensure that AIFMs are responsible for the effectiveness and quality of their	

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	pricing process. The pricing process 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 shall be based on objective criteria and methodology, including a comparison to market standards.	pricing process. The pricing process 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 shall be based on objective criteria and methodology, ~~including~~ <u>and shall include</u> a comparison to market ~~standards~~ <u>products, such as AIFs with similar characteristics in terms of investment objective, strategy, level of risks and other relevant characteristics.</u>	~~pricing process. The pricing process~~ <u>value-for-money assessment and undue costs processes. The value-for-money assessment and undue costs processes</u> 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 <u>and value for money</u> shall be based on objective criteria and methodology, ~~including a comparison to market standards.~~	
923	1d. Member States shall require AIFMs to assess at least annually whether undue costs have been charged to AIF or its unit holders.	1d. Member States shall require AIFMs to assess ~~at least~~ annually whether undue costs have been charged to AIF or its unit holders.	1d. Member States shall require AIFMs to assess at least annually whether undue costs have been charged to AIF or its unit holders.	
924	Member States shall require AIFMs to reimburse investors where undue costs have been charged to the or its AIF unit-holders.	Member States shall require AIFMs to reimburse investors <u>without undue delay</u> , where undue costs have been charged to the or its AIF unit-holders, <u>or where costs have been miscalculated to the detriment of the AIF or its unit-holders.</u>	Member States shall require AIFMs to reimburse investors <u>without undue delay</u> where undue costs have been charged to the or its AIF unit-holders.	
925	Member States shall require AIFMs	Member States shall require AIFMs	Member States shall require AIFMs	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
	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.	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.	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.	
926	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 pricing process and, for AIFs marketed to retail investors, include a comparison with the relevant benchmark on costs and performance published by ESMA in accordance with paragraph 1f.	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 pricing process ~~and, for AIFs marketed to retail investors, include a comparison with the relevant benchmark on costs and performance published by ESMA in accordance with paragraph 1f.~~	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 <u>pricing value-for-money assessment</u> process and, for AIFs marketed to retail investors, ~~include a~~ <u>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</u>	

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			<u>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.</u> <u>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.</u> <u>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</u>	

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			<u>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.</u> <u>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,</u> with the relevant <u>Union supervisory benchmark</u> ~~on costs and performance published by ESMA in accordance with~~ <u>as referred to in paragraph 1f instead of a peer-group.</u> <u>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</u>	

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			<u>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.</u>	
927	When an AIF or its share classes, when they have different cost structures, deviate from the relevant benchmark referred to in paragraph 1f, the AIFM shall perform additional testing and further assessments and establish whether costs and charges are nevertheless justified and proportionate. If justification and proportionality of costs and charges cannot be demonstrated, or if the AIF or its share classes do not comply with other criteria set out by the AIFM in the pricing process, that AIF or its share class shall not be marketed to retail investors by the AIFM.	<i>deleted</i>	~~When an AIF or its share classes, when they have different cost structures, deviate from the relevant benchmark referred to in paragraph 1f, the AIFM shall perform additional testing and further assessments and establish whether costs and charges are nevertheless justified and proportionate. If justification and proportionality of costs and charges cannot be demonstrated, or if the AIF or its share classes do not comply with other criteria set out by the AIFM in the pricing process, that AIF or its share class shall not be marketed to retail investors by the AIFM.~~	
928	1f. After having consulted EIOPA and competent authorities, ESMA	1f. <u>ESMA shall organise and conduct a peer review, no later</u>	1f. ~~After having consulted~~ <u>In consultation with</u> EIOPA and	

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	shall, where appropriate, develop and make publicly available benchmarks to enable the comparative assessment of costs and performance of AIFs, or their share classes where they have different cost structures, to be used for the assessment set out in paragraph 1e.	<u>than four years</u> after ~~having consulted EIOPA and~~ <u>the entry into force of Directive (EU) [OP Please introduce the number of this amending Directive], in cooperation with national competent authorities, ESMA shall, where appropriate, develop and make publicly available benchmarks to enable the comparative assessment of costs and performance of AIFs, or their share classes where they have different cost structures, to be used for the assessment set out in paragraph 1e regarding the implementation of the obligations described in this Article.”:-</u>	<u>relevant stakeholders and in close and thorough cooperation with the competent authorities throughout the entire development and testing process</u>, ESMA shall, where appropriate <u>and feasible</u>, develop <u>and make publicly available 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</u> ~~to enable the comparative assessment of costs and performance~~ of AIFs, or their share classes where they have different cost structures, ~~to be used~~ <u>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</u> for the <u>supervision of the value for money</u>	

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			<u>of AIFs, or their share classes where they have different cost structures, by identifying outliers in the market.</u> <u>Competent authorities shall verify that the value-for-money assessment ~~set out in paragraph 1e~~ process of AIFMs complies with the product governance requirements under paragraphs 1b, 1c, 1e and 3(b).</u> <u>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.</u> <u>ESMA shall regularly update the Union supervisory benchmarks.</u>	
928a			<u>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</u>	

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			<u>comparison. Where appropriate, data that is not publicly available shall be anonymised or aggregated. ESMA shall regularly review the data.</u> <u>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:</u> <u>(a) any Union institution, body, office or agency;</u> <u>(b) any competent authority designated by a Member State pursuant to a Union legislative act;</u> <u>(c) any member of the European Statistical System as defined in Article 4 of Regulation (EC) No 223/2009 of the European</u>	

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			<u>Parliament and of the Council:</u> <u>(d) any governmental institution, body or agency of a Member State;</u> <u>(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.</u> <u>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.</u> <u>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.</u> <u>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].</u>	

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			<u>Power is conferred on the Commission to adopt those regulatory technical standards in accordance with Article 10 of Regulation (EU) No 1095/2010.</u> <u>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.';</u>	
929	Common benchmarks shall be developed, where it is feasible to do so, for AIFs, or their share classes where they have different cost structures, marketed to retail investors that present similar levels of performance, risk, strategy, objectives, or other characteristics.	<i>deleted</i>	<i>deleted</i>	
930	These benchmarks shall display a range of costs and performance, especially cases where costs and performance depart significantly from the average. The benchmarks shall be updated on a regular basis.;	<i>deleted</i>	<i>deleted</i>	
931				

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	(b) paragraph 3 is replaced by the following:	(b) paragraph 3 is replaced by the following:	(b) paragraph 3 is replaced by the following:	
932	‘ 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:	‘ 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:	‘ 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:	
933	(a) specify the minimum requirements for the pricing process to prevent undue costs from being charged to the AIF and its unit-holders, in particular, by:	(a) specify the minimum requirements for the pricing process to prevent undue costs from being charged to the AIF and its unit-holders, in particular, by:	(a) specify the minimum requirements for the ~~pricing~~ <u>undue costs</u> process to prevent undue costs from being charged to the AIF and its unit-holders, in particular, by:	
934	(i) ensuring that costs are correctly identified and quantified, and comply with the condition set out in paragraph 1a, point (a);	(i) ensuring that costs are correctly identified and quantified, and comply with the condition set out in paragraph 1a, point (a);	(i) ensuring that costs are correctly identified and quantified, and comply with the condition set out in paragraph 1a, point (a);	
935				

	Commission Proposal	EP Mandate	Council Mandate	MS comments
	(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);	(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);	(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);	
936	(iii) identifying potential conflict of interests and measures to mitigate the occurrence of conflicts of interest;	(iii) identifying potential conflict of interests and measures to mitigate the occurrence of conflicts of interest;	(iii) identifying potential conflict of interests and measures to mitigate the occurrence of conflicts of interest;	
937	(iv) establishing a procedure to determine the level of compensation in case undue costs have been charged to investors.	(iv) establishing a procedure to determine the level of compensation in case undue costs have been charged to investors; <u>establishing a procedure which will be triggered when the amount unduly charged is material and exceeds a threshold to be determined on the basis of existing guidelines from national competent authorities on indemnification procedures.</u>	(iv) establishing a procedure to determine the level of compensation in case undue costs have been charged to investors.	

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938	(b) provide for criteria to determine whether costs are justified and proportionate in accordance with paragraph 1b, point (b) and for taking corrective measures mentioned in paragraph 1e and specify the methodology used by ESMA to develop its benchmarks.;	(b) provide for criteria to determine whether costs are justified and proportionate in accordance with paragraph 1b, point (b) ~~and for taking corrective measures mentioned in paragraph 1e and specify the methodology used by ESMA to develop its benchmarks.;~~ <u>;</u>	(b) ~~provide for criteria to determine whether costs are justified and proportionate in accordance with paragraph 1b, point (b) and for taking corrective measures mentioned in paragraph 1e and~~ specify the methodology <u>to be</u> used by ~~ESMA to develop its benchmarks~~ <u>AIFMs to perform the peer-group comparison.</u> ;	
939	(c) the following paragraph 4 is added:	(c) the following paragraph 4 is added:	(c) the following paragraph 4 is added:	
940	4. By ...[OP: please insert the date = five years from the date referred to in Article 7(2) of this Directive] after consulting ESMA, the Commission shall submit a report to Council and Parliament on the implementation of this Article. The report shall evaluate at least the following:	4. By ...[OP: please insert the date = five years from the date referred to in Article 7(2) of this Directive] after consulting ESMA, the Commission shall submit a report to Council and Parliament on the implementation of this Article. The report shall evaluate at least the following:	4. By ~~...~~ <u>[OPQJ: please insert the date = five years from the date of application of this amending Directive referred to in Article 7(2) 6(2) + 5 years]</u> , <u>competent authorities shall report to ESMA on:</u> <u>(a) the impact and the added value of the peer-group comparison on the value for money of AIFs;</u> <u>(b) the impact and the added value of Union supervisory benchmarks on the supervision of the value-for-money assessment process;</u>	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
			<u>(c) the application of Union supervisory benchmarks in the value-for-money assessment process of AIFMs; and</u> <u>(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.</u> <u>By ... [date of application of this amending Directive] after consulting ESMA referred to in Article 6(2) + 6 years], ESMA shall submit to the Commission a report analysing:</u> <u>(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;</u> <u>(b) the application of Union supervisory benchmarks in the value-for-money assessment process of AIFMs;</u> <u>(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</u>	

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			<u>(d) whether and how to modify the approach to the data that is made available in accordance with paragraph 1g.</u> <u>When drafting the report, ESMA shall coordinate with EIOPA.</u> <u>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 ~~on the implementation of this Article~~ presenting the conclusions of the review. If appropriate, the report shall evaluate at least the following: be accompanied by legislative proposals. ';</u>	
941	(a) whether this Article has had a positive impact on the costs and performance of AIF offered to retail investors and to which extent;	(a) whether this Article has had a positive impact on the costs and performance of AIF offered to retail investors and to which extent;	deleted	
942	(b) whether the assessment set out in paragraph 1e is proportionate in terms of complexity and costs incurred by AIFMs.;	(b) whether the assessment set out in paragraph 1e is proportionate in terms of complexity and costs incurred by AIFMs.;	deleted	

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942a		<u>(ba) (ba) whether there could be other mechanisms to address high costs incurred by investors at Union level, including legislative and non-legislative measures.’;</u>		
943	(2) in Article 24(2), the following point (f) is added:	(2) in Article 24(2), the following point (f) is added:	(2) in Article 24(2), the following point ~~(f)~~ (g) is added:	
944	‘ (f) information on the costs borne by investors and 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.;’	‘ (f) information on the costs borne by investors and 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.;’	‘ ~~(f)~~ (g) information on the costs borne by investors and <u>data on other characteristics, in particular the</u> 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.’;	
944a			<u>(2a) In Article 24(5a), point (a) is replaced by the following:</u>	
944b			<u>‘(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);’;</u>	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
945	(3) in Article 46(2), the following point (n) is added:	(3) in Article 46(2), the following ~~point (n) is~~ <u>points are</u> added:	(3) in Article 46(2), the following point (n) is added:	
945a		-1. <u>(ea) in accordance with Articles 69a of the Directive 2014/65/EU, carry out regular checks of the alignment of the qualitative and quantitative features of the UCITS on the market with the relevant benchmarks and, when necessary, take corrective actions;</u>		
946	(n) require to compensate investors where undue costs have been charged to the AIF or its unit-holders..	(n) <u>without prejudice to any reimbursement made pursuant to Article 12(1d),</u> require ~~to~~ <u>be compensated</u> where undue costs have been charged to <u>AIF or its unit-holders, or where costs have been miscalculated to the detriment of the AIF or its unit-holders;</u> ~~while~~ <u>taking into account that procedures for compensation are to be proportionate to the amount unduly charged, in particular from a technical and operational standpoint.</u>	(n) require to compensate investors where undue costs have been charged to the AIF or its unit-holders..	

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947	(4) in Article 56(1), the following sentence is inserted after the first sentence:	(4) in Article 56(1), the following sentence is inserted after the first sentence:	(4) in Article 56(1), the following sentence is inserted after the first sentence:	
948	‘ 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].;’	‘ 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].;’	‘ 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].;’	
949	Article 6 Transposition	Article 6 Transposition	Article 6 Transposition	
950	1. Member States shall adopt and publish, by ... [OP please insert the date = 12 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.	1. Member States shall adopt and publish, by ... [OP please insert the date = 12 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.	1. Member States shall adopt and publish, by ... [~~OP~~ ~~OJ~~ please insert the date = ~~12~~ <u>30</u> 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.	

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951	2. They shall apply those provisions from ... [OP please insert the date = 18 months after the date of entry into force of this Directive].	2. They shall apply those provisions from ... [OP please insert the date = 18 months after the ~~date of entry into force of this~~ <u>publication in the Official Journal of the European Union of the delegated acts referred to in Articles 89 of Directive 2014/65/EU, Article 38 of Directive 2016/97, Article 112a(2) of Directive 2009/65/EC and Article 56 of Directive 2011/61/EC</u>].	2. They shall apply those provisions from ... [~~OP~~ <u>QJ</u>] please insert the date = ~~18~~ <u>36</u> months after the date of entry into force of this Directive].	
951a			<u>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.</u>	
952	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	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	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	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
	publication. Member States shall determine how such reference is to be made.	publication. Member States shall determine how such reference is to be made.	publication. Member States shall determine how such reference is to be made.	
953	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.	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.	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.	
954	Article 7 Entry into force	Article 7 Entry into force	Article 7 Entry into force	
955	This Directive shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.	This Directive shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.	This Directive shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.	
956	Article 8 Addressees	Article 8 Addressees	Article 8 Addressees	
957	This Directive is addressed to the Member States.	This Directive is addressed to the Member States.	This Directive is addressed to the Member States.	
958	Done at Brussels,	Done at Brussels,	Done at Brussels,	

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959	For the European Parliament	For the European Parliament	For the European Parliament	
960	The President	The President	The President	
961	For the Council	For the Council	For the Council	
962	The President	The President	The President	
963	Annex I	Annex I	Annex I	
963a			<u><i>In Annex II to Directive 2014/65/EU, the third subparagraph of section I is replaced by the following:</i></u>	
963b			<u><i>'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</i></u>	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
			<u>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.';</u>	
964	In Annex II to Directive 2014/65/EU, section II.1 is amended as follows:	In Annex II to Directive 2014/65/EU, section II.1 is amended as follows:	In Annex II to Directive 2014/65/EU, Section II.1 is amended as follows:	
965	(1) the fourth subparagraph is replaced by the following:	(1) the fourth subparagraph is replaced by the following:	(1) the fourth ~~subparagraph~~ <u>paragraph</u> is replaced by the following:	
966	‘ The fitness test applied to managers and directors of entities authorised under the present Directive or other	‘ The fitness test applied to managers and directors of entities authorised under the present Directive or other	‘ The fitness test applied to managers and directors of entities authorised under the present	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
	EU Directives in the financial field could be regarded as an example of the assessment of expertise and knowledge. In the case of small entities, the person subject to that assessment shall be the person authorised to carry out transactions on behalf of the entity.;	EU Directives in the financial field could be regarded as an example of the assessment of expertise and knowledge. In the case of small entities, the person subject to that assessment shall be the person authorised to carry out transactions on behalf of the entity.;	Directive or other EU Directives in the financial field could be regarded as an example of the assessment of expertise and knowledge. ~~In the case of small entities, the person subject to that assessment shall be the person authorised to carry out transactions on behalf of the entity.;~~	
967	(2) subparagraph 5 is amended as follows:	(2) subparagraph 5 is amended as follows:	(2) ~~subparagraph 5~~ <u>the fifth paragraph</u> is amended as follows:	
968	(1) the second and third indents are replaced by the following:	(1) the <u>first</u> , second and third indents are replaced by the following: In EP final report, this point is split into 2. For consistency reasons it is better, however, to keep it in one line, as Council did.	(1) the <u>first</u> , second and third indents are replaced by the following:	
968a		<u>(1) '— the client has carried out transactions, in significant size, on the relevant market on a regular basis. ESMA shall develop draft regulatory technical standards to determine the frequency and the size of the transactions that need to</u>	<u>'- 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;</u>	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
		<u>be carried out for relevant market categories.</u> <u>ESMA shall submit those draft regulatory technical standards to the Commission by [OJ: insert date 6 months after the date of entry into force of this amending Directive].</u> <u>Power is delegated to the Commission to adopt those regulatory technical standards in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.’;</u>		
969	‘ - the size of the client’s financial instrument portfolio, defined as including cash deposits and financial instruments exceeds EUR 250 000 on average during the last 3 years,’;	‘ - the size of the client’s financial instrument portfolio, defined as including cash deposits and financial instruments exceeds EUR 250 000 on average during the last 3 years,’;	‘ -- <u>the size of the client’s financial instrument portfolio, defined as including cash deposits and financial instruments ~~exceeds~~ EUR 250 000, has</u> on average <u>during over</u> the last ~~3~~ <u>three</u> years, ~~’~~ <u>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;</u>	
970	— the client works or has worked	‘	— <u>-</u> the client works or has	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
	in the financial sector or undertaken capital market activities requiring 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.;	— the client works or has worked in the financial sector or <u>in another relevant sector in relation to the investment decision or has</u> undertaken capital market activities requiring 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.;	worked in the financial sector or undertaken capital market activities requiring <u>them</u> 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, <u>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.</u> ;	
971	(2) the following indent is added:	(2) the following indent is added:	<i>deleted</i>	
972	‘ - the client can provide the firm with proof of a recognised education or training that evidences his/her understanding of the relevant transactions or services envisaged and his/her ability to evaluate adequately the risks.;’	‘ — the client can provide the firm with proof of a recognised education or training that evidences his/her understanding of the relevant transactions or services envisaged and — his/her ability to evaluate adequately the risks. <u>This criterion shall not be combined exclusively with the criteria on the size of the client’s financial portfolio.</u> ;	<i>deleted</i>	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
973	(3) the following subparagraphs are added:	(3) the following subparagraphs are added:	(3) the following ~~subparagraphs are added~~ <u>paragraphs are inserted after the fifth paragraph</u> :	
974	‘ Where the client is a legal entity, as a minimum, two of the following criteria shall be met:	‘ Where the client is a legal entity, as a minimum, two of the following criteria shall be met:	‘ Where the client is a legal entity, as a minimum, two of the following criteria shall be met:	
975	- balance sheet total: EUR 10 000 000	- balance sheet total: EUR 10 000 000	- balance sheet total: EUR 10 000 000	
976	- net turnover: EUR 20 000 000	- net turnover: EUR 20 000 000	- net turnover: EUR 20 000 000	
977	- own funds: EUR 1 000 000	- own funds: EUR 1 000 000	- own funds: EUR 1 000 000	
978	The investment firm shall assess that the legal representative of that legal entity or the person responsible for the investment transactions on behalf of that legal entity, understands the relevant transactions or services envisaged, is capable of making investment	The investment firm shall assess that the legal representative of that legal entity or the person responsible for the investment transactions on behalf of that legal entity, understands the relevant transactions or services envisaged, is capable of making investment	The investment firm shall assess ~~that the legal representative of that~~ <u>whether the natural persons which represent the</u> legal entity ~~or the person responsible for the investment transactions on behalf of that legal entity,~~ <u>understands</u> <u>understand</u> the relevant	

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 (Text with EEA relevance) 2023/0167(COD) 28-06-2024 at 13h45 54/65

	Commission Proposal	EP Mandate	Council Mandate	MS comments
	decisions in line with the legal entity's objectives, needs and financial capacity and is able to evaluate adequately the risks..	decisions in line with the legal entity's objectives, needs and financial capacity and is able to evaluate adequately the risks..	transactions ~~or~~ <u>and investment</u> services ~~envisaged, is, are~~ <u>authorised and</u> capable of making investment decisions in line with the legal entity's objectives, <u>corporate purposes,</u> needs and financial capacity and ~~is~~ <u>are</u> able to evaluate <u>the risks</u> adequately. <u>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</u> ~~the risks.~~ <u>The investment firm shall keep a record of this policy.'</u>	
979	Annex II	Annex II	Annex II	
979a		<u>Annex V to Directive 2014/65/EU is amended as follows:</u>		
980				

	Commission Proposal	EP Mandate	Council Mandate	MS comments
	Annex V	Annex V	Annex V	
981	Minimum professional knowledge and competence requirements	Minimum professional knowledge and competence requirements	Minimum professional knowledge and competence requirements	
982	(as referred to in Article 24d(2))	(as referred to in Article 24d(2))	(as referred to in Article 24d(2))	
983	(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;	(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;	(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;	
984	(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;	(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;	(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;	
985	(c) understand how the type of investment product provided by the	(c) understand how the type of investment product provided by the	(c) understand how the type of investment product provided by the	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
	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;	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;	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;	
986	(d) understand how financial markets function and how they affect the value and pricing of financial instruments offered or recommended to clients;	(d) understand how financial markets function and how they affect the value and pricing of financial instruments offered or recommended to clients;	(d) understand how financial markets function and how they affect the value and pricing of financial instruments offered or recommended to clients;	
987	(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;	(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;	(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;	
988	(f) understand the difference between past performance and future performance scenarios as well as the limits of forecasting;	(f) understand the difference between past performance and future performance scenarios as well as the limits of forecasting;	(f) understand the difference between past performance and future performance scenarios as well as the limits of forecasting;	
989	(g) understand the general implications of the main elements of the financial regulatory framework;	(g) understand the general implications of the main elements of the financial regulatory framework;	(g) understand the general implications of the main elements of the financial regulatory framework;	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
990	(h) assess data relevant to financial instruments offered or recommended to clients such as key information documents, prospectuses, financial statements, or financial data;	(h) assess data relevant to financial instruments offered or recommended to clients such as key information documents, prospectuses, financial statements, or financial data;	(h) assess data relevant to financial instruments offered or recommended to clients such as key information documents, prospectuses, financial statements, or financial data;	
991	(i) understand specific market structures for the type of financial instruments offered or recommended to clients;	(i) understand specific market structures for the type of financial instruments offered or recommended to clients;	(i) understand specific market structures for the type of financial instruments offered or recommended to clients;	
992	(j) understand the valuation principles 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;	(j) understand the valuation principles for the type of financial instruments offered or recommended to clients;	
993	(k) understand the fundamentals of managing a portfolio, including being able to understand the implications of diversification regarding individual investment alternatives;	(k) understand the fundamentals of managing a portfolio, including being able to understand the implications of diversification regarding individual investment alternatives;	(k) understand the fundamentals of managing a portfolio, including being able to understand the implications of diversification regarding individual investment alternatives;	
994	(l) understand the concept of sustainable investment and how to consider and integrate sustainability factors and client's sustainability	(l) understand the concept of sustainable investment <u>contributing to an environmental or social</u>	(l) understand the concept of sustainable investment and how to consider and integrate sustainability factors and client's sustainability	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
	preferences into the advisory processes.	<u>objective</u> and how to consider and integrate sustainability factors and client's sustainability preferences into the advisory processes.	preferences into the advisory processes.	
995	Annex III	Annex III	Annex III	
995a		<u>In part I of Annex I to Directive (EU) 2016/97, the following point is added:</u>		
995b		<u>'ha) for insurance-based investments products, minimum necessary knowledge of sustainable investments contributing to an environmental or social objective, including how to consider and integrate sustainability factors and clients' sustainability preferences into the advisory processes.'</u>		
996	(1) Part II of Annex I to Directive (EU) 2016/97 is amended as follows: point (a) is replaced by the following:	(1) Part II of Annex I to Directive (EU) 2016/97 is amended as follows: ~~point (a) is replaced by the following:~~	(1) Part II of Annex I to Directive (EU) 2016/97 is amended as follows: point (a) is replaced by the following:	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
996a		<u>1. (1) point (a) is replaced by the following:</u>		
997	‘ (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;; ,	‘ (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;; ,	‘ (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;; ,	
998	(2) the following point (aa) is inserted:	(2) the following point (aa) is inserted:	(2) the following point (aa) is inserted:	
999	‘ (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;;	‘ (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;;	‘ (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;;	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
	,	,	,	
1000	(3) point (c) is replaced by the following:	(3) point (c) is replaced by the following:	(3) point (c) is replaced by the following:	
1001	‘ (c) minimum necessary financial competency, including:	‘ (c) minimum necessary financial competency, including:	‘ (c) minimum necessary financial competency, including:	
1002	(i) understanding how financial markets function and how they affect the value and pricing of financial instruments offered or recommended to clients;	(i) understanding how financial markets function and how they affect the value and pricing of financial instruments offered or recommended to clients;	(i) understanding how financial markets function and how they affect the value and pricing of financial instruments offered or recommended to clients;	
1003	(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;	(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;	(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;	
1004	(iii) understanding of the difference between past performance and future performance scenarios as well as the limits of forecasting;	(iii) understanding of the difference between past performance and future performance scenarios as well as the limits of forecasting;	(iii) understanding of the difference between past performance and future performance scenarios as well as the limits of forecasting;	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
1005	(iv) understanding of specific market structures for the type of financial instruments offered or recommended to clients;	(iv) understanding of specific market structures for the type of financial instruments offered or recommended to clients;	(iv) understanding of specific market structures for the type of financial instruments offered or recommended to clients;	
1006	(v) understanding of the valuation principles 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;;	(v) understanding of the valuation principles for the type of financial instruments offered or recommended to clients;;	
1007	(4) the following points (fa) and (fb) are inserted:	(4) the following points (fa) and (fb) are inserted:	(4) the following points (fa) and (fb) are inserted:	
1008	‘ (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;	‘ (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;	‘ (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;	
1009	(fb) minimum necessary knowledge of the general implications of the main elements of the financial regulatory framework;;	(fb) minimum necessary knowledge of the general implications of the main elements of the financial regulatory framework;;	(fb) minimum necessary knowledge of the general implications of the main elements of the financial regulatory framework;;	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
1010	(5) point (i) is replaced by the following:	(5) point (i) is replaced by the following:	(5) point (i) is replaced by the following:	
1011	‘ (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;; ,	‘ (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;; ,	‘ (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;; ,	
1012	(6) the following point (ia) is inserted:	(6) the following point (ia) is inserted:	(6) the following point (ia) is inserted:	
1013	‘ (ia) understanding the concept of sustainable investment and how to consider and integrate sustainability factors and customer’s sustainability preferences into the advisory processes; ,	‘ (ia) understanding the concept of sustainable investment and how to consider and integrate sustainability factors and customer’s sustainability preferences into the advisory processes; ,	‘ (ia) understanding the concept of sustainable investment and how to consider and integrate sustainability factors and customer’s sustainability preferences into the advisory processes; ,	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
1013a		<u>(6a) the following point (ka) is inserted:</u>		
1013b		<u>(ka) for insurance-based investment products, minimum necessary knowledge of sustainable investments contributing to an environmental or social objective, including how to consider and integrate sustainability factors and clients' sustainability preferences into the advisory processes.:</u>		
1014	(7) point (l) is deleted.	(7) point (l) is deleted.	(7) point (l) is deleted.	
1014a		<u>In part III of Annex I to Directive (EU) 2016/97, the following point is added:</u>		
1014b		<u>(ia) for insurance-based investment products, minimum necessary knowledge of sustainable investments contributing to an environmental or social objective, including how to consider and</u>		

	Commission Proposal	EP Mandate	Council Mandate	MS comments
		<u><i>integrate sustainability factors and clients' sustainability preferences into the advisory processes.</i></u>		

PRIIPs REGULATION

Deadline for comments: 16 August 2024 COB

	Commission Proposal	EP Mandate	Council Mandate	MS comments
1	2023/0166 (COD)	2023/0166 (COD)	2023/0166 (COD)	
2	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulation (EU) No 1286/2014 as regards the modernisation of the key information document (Text with EEA relevance)	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulation (EU) No 1286/2014 as regards the modernisation of the key information document (Text with EEA relevance)	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulation (EU) No 1286/2014 as regards the modernisation of the key information document (Text with EEA relevance)	
3	THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,	THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,	THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,	
4	Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,	Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,	Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,	
5				

Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulation (EU) No 1286/2014 as regards the modernisation of the key information document (Text with EEA relevance) 2023/0166(COD) 17-06-2024 at 15h04 1/48

	Commission Proposal	EP Mandate	Council Mandate	MS comments
	Having regard to the proposal from the European Commission,	Having regard to the proposal from the European Commission,	Having regard to the proposal from the European Commission,	
6	After transmission of the draft legislative act to the national parliaments,	After transmission of the draft legislative act to the national parliaments,	After transmission of the draft legislative act to the national parliaments,	
7	Acting in accordance with the ordinary legislative procedure,	Acting in accordance with the ordinary legislative procedure,	Acting in accordance with the ordinary legislative procedure,	
8	Whereas:	Whereas:	Whereas:	
9	(1) A core objective of the Capital Markets Union (CMU) is to ensure that consumers can fully benefit from the investment opportunities offered by capital markets. To be able to do so, consumers must be supported by a regulatory framework that empowers 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, including those in the area of information available to retail	(1) A core objective of the Capital Markets Union (CMU) is to ensure that consumers can fully benefit from the investment opportunities offered by capital markets. To be able to do so, consumers must be supported by a regulatory framework that empowers 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, including those in the area of information available to retail	(1) A core objective of the Capital Markets Union (CMU) is to ensure that consumers can fully benefit from the investment opportunities offered by capital markets. To be able to do so, consumers must be supported by a regulatory framework that empowers 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, including those in the area of information available to retail	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
	investors.	investors.	investors.	
9a		<u><i>(1a) The Capital Markets Union (CMU) will only achieve its goals if citizens understand what it entails and, to that end, it is essential to guarantee high levels of financial literacy and investor protection. Levels of financial literacy differ significantly across Member States and Union legislation is necessary to ensure that access to the financial markets is facilitated not only through proportionate and clear rules, but also by concrete steps towards simplification.</i></u>		
10	(2) Article 4, point (1), of Regulation(EU) No 1286/2014 defines packaged retail investment products or ‘PRIIPs’ as investments where, regardless of the legal form of the investment, the amount repayable to the retail investor is subject to fluctuations because of exposure to reference values or to the performance of one or more assets that are not directly purchased by the retail investor. The ability for the manufacturer to redeem the investment early by triggering a make-whole clause should not in itself be considered as	(2) Article 4, point (1), of Regulation(EU) No 1286/2014 defines packaged retail investment products or ‘PRIIPs’ as investments where, regardless of the legal form of the investment, the amount repayable to the retail investor is subject to fluctuations because of exposure to reference values or to the performance of one or more assets that are not directly purchased by the retail investor. The ability for the manufacturer to redeem the investment early by triggering a make-whole clause should not in itself be considered as	(2) Article 4, point (1), of Regulation(EU) No 1286/2014 defines packaged retail investment products or ‘PRIIPs’ as investments where, regardless of the legal form of the investment, the amount repayable to the retail investor is subject to fluctuations because of exposure to reference values or to the performance of one or more assets that are not directly purchased by the retail investor. The ability for the manufacturer to redeem the investment early by triggering a make-whole clause should not in itself be considered as	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
	such a fluctuation. That fact should be reflected in the definition of PRIIPs.	such a fluctuation. That fact should be reflected in the definition of PRIIPs.	such a fluctuation. That fact should be reflected in the definition of PRIIPs.	
11	(3) In the case PRIIPs offer the retail investor a range of options for investments, the information on those various options may be contained in different documents. That makes it difficult for retail investors interested in purchasing such PRIIPs to identify the total costs of the PRIIPs. It is therefore necessary to provide retail investors with tools, including simulation tools, to access and compare the total costs of such PRIIPs before they select one particular investment option. More detailed rules to use of these tools should ensure better visibility of the total costs of these products while allowing a certain degree of flexibility when using simulation tools.	(3) In the case PRIIPs offer the retail investor a range of options for investments, the information on those various options may be contained in different documents. That makes it difficult for retail investors interested in purchasing such PRIIPs to identify the total costs of the PRIIPs. It is therefore necessary to provide retail investors with tools, including simulation tools, to access and compare the total costs of such PRIIPs before they select one particular investment option. More detailed rules to use of these tools should ensure better visibility of the total costs of these products while allowing a certain degree of flexibility when using simulation tools.	(3) In the case PRIIPs offer the retail investor a range of options for investments, the information on those various options may be contained in different documents. That makes it difficult for retail investors interested in purchasing such PRIIPs to identify the total costs of the PRIIPs. It is therefore necessary to provide retail investors with tools, including simulation tools, to access and compare the total costs of such PRIIPs before they select one particular investment option. More detailed rules ~~to~~ <u>on the</u> use of these tools should ensure better visibility of the total costs of these products while allowing a certain degree of flexibility when using simulation tools.	
11a		<u><i>(3a) The Key Information Document (KID) aims to ensure comparability between PRIIPs. So far, it has been difficult for retail investors to compare PRIIPs by using the KID. Retail investors should however be able to easily</i></u>		

	Commission Proposal	EP Mandate	Council Mandate	MS comments
		<u>access reliable and independent sources of information, in order to be able to make informed investment decisions on the basis of a comprehensive comparison of the different investment options available in the Union. While online tools already exist in some Member States, their availability varies among Member States. It is therefore necessary to enable ESMA and EIOPA to develop an independent Union online comparison tool, based on key information document data that will be available under the European Single Access Point. This should allow retail investors to compare products, provided that they are comparable. The comparison tool should allow the retail investor to filter categories of products by Member State. A link to this tool should be disclosed in the KID once the tool is available. This tool should facilitate the participation of retail investors in capital markets as it would provide them with a more convenient, transparent and reliable source of information regarding all the relevant qualitative features, costs, risk and return on investment of each commercialised product.</u>		
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	Commission Proposal	EP Mandate	Council Mandate	MS comments
	(4) Retail investors increasingly seek information on the sustainability performance of investment products, including PRIIPs. Recent Union legislative acts have introduced several disclosure obligations that could be leveraged to inform retail investors, in particular Regulation (EU) 2019/2088 of the European Parliament and of the Council¹ and Regulation (EU) 2020/852 of the European Parliament and of the Council². Such disclosures may, however, not be sufficiently visible to retail investors. It is therefore necessary to add certain information about the sustainability profile of PRIIPs to the key information document. To avoid additional reporting costs, that ESG information should be taken from the disclosures provided by product manufacturers pursuant to Regulation (EU) 2019/2088 and Regulation (EU) 2020/852. 1. Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector (OJ L 317, 9.12.2019, p. 1). 2. Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088 (OJ L 198, 22.6.2020, p. 13).	(4) Retail investors increasingly seek information on the sustainability performance of investment products, including PRIIPs. Recent Union legislative acts have introduced several disclosure obligations that could be leveraged to inform retail investors, in particular Regulation (EU) 2019/2088 of the European Parliament and of the Council¹ and Regulation (EU) 2020/852 of the European Parliament and of the Council². Such disclosures may, however, not be sufficiently visible to retail investors. It is therefore necessary to add certain information about the sustainability profile of PRIIPs to the key information document. To avoid additional reporting costs, that ESG information should be taken from the disclosures provided by product manufacturers pursuant to Regulation (EU) 2019/2088 and Regulation (EU) 2020/852. 1. Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector (OJ L 317, 9.12.2019, p. 1). 2. Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088 (OJ L 198, 22.6.2020, p. 13).	(4) Retail investors increasingly seek information on the sustainability performance of investment products, including PRIIPs. Recent Union legislative acts have introduced several disclosure obligations that could be leveraged to inform retail investors, in particular Regulation (EU) 2019/2088 of the European Parliament and of the Council¹ and Regulation (EU) 2020/852 of the European Parliament and of the Council². Such disclosures may, however, not be sufficiently visible to retail investors. It is therefore necessary to add certain information about the sustainability profile of PRIIPs to the key information document. To avoid additional reporting costs, that ESG information should be taken from the disclosures provided by product manufacturers pursuant to Regulation (EU) 2019/2088 and Regulation (EU) 2020/852. 1. Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector (OJ L 317, 9.12.2019, p. 1). 2. Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088 (OJ L 198, 22.6.2020, p. 13).	

Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulation (EU) No 1286/2014 as regards the modernisation of the key information document (Text with EEA relevance) 2023/0166(COD) 17-06-2024 at 15h04 6/48

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12a		<u>(4a) In order to avoid undermining the comprehensibility and meaningfulness of the information, the ESAs should allow for more flexibility in their recommendations on the nature of the information to be provided in the performance section of the KID. In the majority of cases, the KID should include forward-looking performance scenarios. However, in a limited number of cases, when such scenarios could be misleading, past performance should be included in the KID for relevant PRIIPs.</u>		
13	(5) Increased digitalisation provides opportunities to present key features of PRIIPs in a more attractive way. Regulation (EU) No 1286/2014 does not, however, provide sufficient flexibility for the use of digital means for displaying key information to investors such as presenting information from PRIIPs key information documents in a layered way and in a personalised manner that would reduce the visual overload of retail investors and facilitate their understanding of the PRIIP concerned. It is therefore necessary to introduce more flexibility in the use of the	(5) Increased digitalisation <u>provides opportunities to modernise and simplify the provision on making PRIIPs KIDs available by establishing a preference for KIDs to be provided in electronic format, while clarifying that the client may request a paper version of the PRIIPs KID free of charge. For the purposes of this Regulation, a website that fulfils certain requirements could be considered as a durable medium.</u> Increased digitalisation also provides opportunities to present key features of PRIIPs in a more attractive way. Regulation (EU) No 1286/2014	(5) Increased digitalisation provides opportunities to present key features of PRIIPs in a more attractive way. Regulation (EU) No 1286/2014 does not, however, provide sufficient flexibility for the use of digital means for displaying key information to investors ~~such as~~. Presenting information from PRIIPs key information documents in a layered way ~~and in a personalised manner that~~ would reduce the visual overload of retail investors and facilitate their understanding of the PRIIP concerned. It is therefore necessary to introduce more flexibility in the use of the	

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	electronic format so that investors can fully benefit from the potential offered by the provision of a key information document in an electronic format, including by customising the amount they wish to invest or the holding period, according to their preferences. That personalisation does not imply an assessment by the PRIIPs provider of the individual characteristics of the potential retail investor. The three-page key information document should always be drawn up in accordance with Article 8 and available on the manufacturer's website. However, the key information it contains could be provided to retail investors in a flexible and personalised way, as long as retail investors are informed that they can download the complete key information document.	does not, however, provide sufficient flexibility for the use of digital means for displaying key information to investors such as presenting information from PRIIPs key information documents in a layered way and in a personalised manner that would reduce the visual overload of retail investors and facilitate their understanding of the PRIIP concerned. It is therefore necessary to introduce more flexibility in the use of the electronic format so that investors can fully benefit from the potential offered by the provision of a key information document in an electronic format, including by customising the amount they wish to invest or the holding period, according to their preferences. That personalisation does not imply an assessment by the PRIIPs provider of the individual characteristics of the potential retail investor. The three-page key information document should always be drawn up in accordance with Article 8 and available on the manufacturer's website. However, the key information it contains could be provided to retail investors in a flexible and personalised way, as long as retail investors are informed that they can download the complete key information document.	electronic format so that investors can fully benefit from the potential offered by the provision of a key information document in an electronic format, ~~including by customising the amount they wish to invest or the holding period, according to their preferences. That personalisation does not imply an assessment by the PRIIPs provider of the individual characteristics of the potential retail investor. The three-page key information document should always be drawn up in accordance with Article 8 and available on the manufacturer's website. However, the key information it contains could be provided to~~ Retail investors ~~in a flexible and personalised way, as long as retail investors are~~ <u>should be</u> informed ~~that~~ <u>where</u> they can download the complete key information document.	

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14	(6) The European Securities and Markets Authority, the European Banking Authority and the European Insurance and Occupational Pensions Authority (the 'ESAs') should develop the draft regulatory technical standards as regards the content of the dashboards and the principles for the use of layering and digital options using an electronic format. The Commission should adopt those draft regulatory technical standards, or further amend them, by means of delegated acts pursuant to Article 290 TFEU and in accordance with Articles 10 to 14 of Regulations (EU) No 1093/2010¹, (EU) 1094/2010² and Regulation (EU) 1095/2010 of the European Parliament and of the Council³. 1. Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12). 2. 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	(6) The European Securities and Markets Authority, the European Banking Authority and the European Insurance and Occupational Pensions Authority (the 'ESAs') should develop the draft regulatory technical standards as regards the content of the dashboards and the principles for the use of layering and digital options using an electronic format. The Commission should adopt those draft regulatory technical standards, or further amend them, by means of delegated acts pursuant to Article 290 TFEU and in accordance with Articles 10 to 14 of Regulations (EU) No 1093/2010¹, (EU) 1094/2010² and Regulation (EU) 1095/2010 of the European Parliament and of the Council³. 1. Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12). 2. 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	(6) The European Securities and Markets Authority, the European Banking Authority and the European Insurance and Occupational Pensions Authority (the 'ESAs') should develop the draft regulatory technical standards as regards the content of the dashboards and the principles for the use of layering and digital options using an electronic format. The Commission should adopt those draft regulatory technical standards, or further amend them, by means of delegated acts pursuant to Article 290 TFEU and in accordance with Articles 10 to 14 of Regulations (EU) No 1093/2010¹, (EU) 1094/2010² and Regulation (EU) 1095/2010 of the European Parliament and of the Council³. 1. Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12). 2. 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	

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	(OJ L 331, 15.12.2010, p. 48). 3. 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).	(OJ L 331, 15.12.2010, p. 48). 3. 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).	(OJ L 331, 15.12.2010, p. 48). 3. 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).	
15	(7) To ensure that retail investors make an informed investment decision at all times, the key information document should be kept up to date. Draft regulatory technical standards should specify the conditions under which the key information document should be revised, distinguishing between PRIIPs that are still made available to retail investors and PRIIPs that are no longer made available. Keeping the key information document updated should be without prejudice to the fact that manufacturers should comply with the pre-contractual information contained in the key information document provided to retail investors before their investment.	(7) To ensure that retail investors make an informed investment decision at all times, the key information document should be kept up to date. Draft regulatory technical standards should specify the conditions under which the key information document should be revised, distinguishing between PRIIPs that are still made available to retail investors and PRIIPs that are no longer made available. Keeping the key information document updated should be without prejudice to the fact that manufacturers should comply with the pre-contractual information contained in the key information document provided to retail investors before their investment.	(7) To ensure that retail investors make an informed investment decision at all times, the key information document should be kept up to date. ~~Draft regulatory technical standards should specify the conditions under which the key information document should be revised, distinguishing between~~ <u>for PRIIPs that are still made available to retail investors and PRIIPs that are no longer made available open to new subscriptions or that can be purchased on a secondary market.</u> Keeping the key information document updated should be without prejudice to the fact that manufacturers should comply with the pre-contractual information contained in the key information document provided to retail investors before their investment.	
15a			<u>(7a) Regulation (EU) No 1286/2014 applies to all products</u>	

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			<u>that qualify as a PRIIP according to Chapter 1 of Regulation (EU) No 1286/2014. When assessing whether a product falls within the scope of Regulation (EU) No 1286/2014, the sector or industry to which the manufacturer belongs is irrelevant. This means that products manufactured by non-financial companies and which qualify as a PRIIP according to Chapter 1 of Regulation No 1286/2014 fall within the scope of the said Regulation.</u>	
15b			<u>(7b) Pension products, that consist of immediate annuities and do not have an accumulation phase are not meant to fall under the scope of Regulation (EU) No 1286/2014, as they are not considered as investment products. Annuities are regulated by Directive 2009/138/EC and may therefore only be offered by insurance undertakings in accordance with that Directive. To fall under the new exclusion from Regulation (EU) No 1286/2014, a product should consist of annuities in accordance with Directive 2009/138/EC and those annuities should be immediately payable, without being preceded by an accumulation phase during which</u>	

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			<u><i>the amounts paid by the investors are invested to generate a return.</i></u>	
15c			<u><i>(7c) The key information document is meant to be a concise document. A three-page limit has been set in Regulation (EU) No 1286/2014 in order to achieve this goal. This Regulation requires two new sections to be included in the key information document. At the same time, the key information document should remain clear and easy to read. This entails streamlining the content and presentation of the key information document in such a way as to avoid any non-essential or redundant information.</i></u>	
15d			<u><i>(7d) For PRIIPs offering a range of options for investment, given that the information documents relating to the investment products backing the underlying investment options supplements the information contained in key information document of the PRIIP, those documents should also be submitted to the relevant collection body.</i></u>	

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16	(8) Regulation (EU) No 1286/2014 should therefore be amended accordingly.	(8) Regulation (EU) No 1286/2014 should therefore be amended accordingly.	(8) Regulation (EU) No 1286/2014 should therefore be amended accordingly.	
17	(9) Sufficient time needs to be provided to European Supervisory Authorities to draft specifications for key elements of the amended rules and for the PRIIPs manufacturers to familiarise themselves with these specifications. Therefore, the date application of this Regulation should be deferred,	(9) Sufficient time needs to be provided to European Supervisory Authorities to draft specifications for key elements of the amended rules and for the PRIIPs manufacturers to familiarise themselves with these specifications. Therefore, the date application of this Regulation should be deferred,	(9) Sufficient time needs to be provided to European Supervisory Authorities to draft specifications for key elements of the amended rules and for the PRIIPs manufacturers to familiarise themselves with these specifications. Therefore, the date application of this Regulation should be deferred,	
18	HAVE ADOPTED THIS REGULATION:	HAVE ADOPTED THIS REGULATION:	HAVE ADOPTED THIS REGULATION:	
19	Article 1 Amendments to Regulation (EU) 1286/2014	Article 1 Amendments to Regulation (EU) 1286/2014	Article 1 Amendments to Regulation (EU) 1286/2014	
20	Regulation (EU) 1286/2014 is amended as follows:	Regulation (EU) 1286/2014 is amended as follows:	Regulation (EU) 1286/2014 is amended as follows:	
21	(1) Article 2(2) is amended as	(1) Article 2(2) is amended as	(1) Article 2(2) is amended as	

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	follows:	follows:	follows:	
22	(a) point (d) is replaced by the following:	(a) point (d) is replaced by the following:	(a) point (d) is replaced by the following:	
23	‘ (d) securities as referred to in Article 1(2), points (b) to (e), and point (g) of Regulation (EU) 2017/1129 of the European Parliament and the Council*;; ’	‘ (d) securities as referred to in Article 1(2), points (b) to (e), and point (g) of Regulation (EU) 2017/1129 of the European Parliament and the Council*;; ’	‘ (d) securities as referred to in Article 1(2), points (b) to ~~(e)~~, and ~~point (g)~~ <u>(f)</u> of Regulation (EU) 2017/1129 of the European Parliament and the Council*; <u>* Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC (OJ L 168, 30.6.2017, p. 12).;</u> ’	
24	(b) the following point (h) is added:	(b) the following point (h) is added:	(b) the following point (h) is added:	
25	‘ (h) pension products, including immediate annuities without a	‘ (h) <u>‘(h)</u> pension products, ~~including~~ <u>that are annuities and do not have</u>	‘ (h) pension products <u>that consist of annuities, as referred to in Article</u>	

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	redemption phase, which, under national law, are recognised as having the primary purpose of providing the investor with an income in retirement and which entitle the investor to certain benefits;’;	<u>an accumulation phase</u> (immediate annuities ~~without a redemption phase, which, under national law, are recognised as having the primary purpose of providing the investor with an income in retirement and which entitle the investor to certain benefits;’;~~ <u>’;</u>);	<u>2(3), subparagraph a, point (ii) of Directive 2009/138/EC, which are,</u> including immediate annuities ~~without a redemption~~ <u>and do not have an accumulation</u> phase, ~~which, under national law, are recognised as having the primary purpose of providing the investor with an income in retirement and which entitle the investor to certain benefits;’;~~ <u>’;</u>);	
26	* Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC (OJ L 168, 30.6.2017, p. 12).;	* Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC (OJ L 168, 30.6.2017, p. 12).;	deleted	
27	(2) in Article 3, paragraph 1 is replaced by the following :	(2) in Article 3, paragraph 1 is replaced by the following :	(2) in Article 3, paragraph 1 is replaced by the following :	
28	‘ 1. Where PRIIPs manufacturers subject to this Regulation are also subject to Regulation (EU)	‘ 1. Where PRIIPs manufacturers subject to this Regulation are also subject to Regulation (EU)	‘ 1. Where PRIIPs manufacturers subject to this Regulation are also subject to Regulation (EU)	

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	2017/1129, this Regulation and Regulation (EU) 2017/1129 shall both apply.;	2017/1129, this Regulation and Regulation (EU) 2017/1129 shall both apply.;	2017/1129, this Regulation and Regulation (EU) 2017/1129 shall both apply.;	
29	(3) Article 4 is amended as follows:	(3) Article 4 is amended as follows:	(3) Article 4 is amended as follows:	
30	(a) in point (1), the following text is added after the last sentence:	(a) in point (1), the following text is added after the last sentence:	(a) ~~in~~ point (1); is replaced by the following ~~text is added after the last sentence~~ ;	
31	“ , except if those fluctuations are only attributed to the inclusion of a make whole clause as defined in Article 4(1)(44a) of Directive 2014/65/EU. ”	“ , except if those fluctuations are only attributed to the inclusion of a make whole clause as defined in Article 4(1)(44a) of Directive 2014/65/EU. ”	“ <u>1. ‘packaged retail investment product’ or ‘PRIP’ means an investment, including instruments issued by special purpose vehicles as defined in point (26) of Article 13 of Directive 2009/138/EC or securitisation special purpose entities as defined in point (an) of Article 4(1) of the Directive 2011/61/EU of the European Parliament and of the Council (**), where, regardless of the legal form of the investment, the amount repayable to the retail investor is subject to fluctuations because of exposure to reference values or to the performance of one or more assets which are not directly purchased by the retail investor</u> ”	

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			except if those fluctuations are only attributed to the inclusion of a make whole clause as defined in Article 4(1)(44a) of Directive 2014/65/EU. <u>** 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).’;</u>	
31a		<u>(ab) (aa) point (5) is replaced by the following:</u>		
31b		<u>(5) ‘PRIIP distributor’ means a person advising on, offering, selling or concluding a PRIIP contract with a retail investor;</u>		
32	(b) The following point (7a) is inserted:	(b) The following point (7a) is inserted:	(b) The following point (7a) is inserted:	
33	,	,	,	

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	(7a) ‘electronic format’ means any durable medium other than paper;;	(7a) ‘electronic format’ means ~~any- durable medium other than paper;~~ <u>electronic format as defined in Article 4, point (62a), of Directive 2014/65/EU;</u>	(7a) ‘electronic format’ means any durable medium other than paper;;	
34	(4) in Article 6 paragraph 3 is replaced by the following:	(4) ~~in~~ Article 6 ~~paragraph 3 is replaced by the following~~ <u>is amended as follows:</u>	(4) in Article 6 paragraph 3 is replaced by the following:	
34a		<u>(4a) (a) paragraph 2 is replaced by the following:</u>		
34b		<u>“2. The key information document shall be a stand-alone document, clearly separate from marketing materials. It shall not contain cross-references to marketing material or any investment recommendations. It may contain cross-references to other documents including a prospectus where applicable, but only where the cross-reference is related to the information required to be included in the key information document by this Regulation.”;</u>		
34c				

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		<u>(4b) (b) paragraph 3 is replaced by the following:</u>		
35	“ 3. By way of derogation from paragraph 2, where a PRIIP offers the retail investor a range of options for investments, such that all information required in Article 8(3) with regard to each investment option cannot be provided within a single, concise stand-alone document, the key information document shall provide a generic description of the underlying investment options, and the costs of the PRIIP other than the costs for the investment option, provided that:	“ 3. By way of derogation from ~~paragraph 2~~ <u>paragraphs 2 and 4</u>, where a PRIIP <u>manufacturer</u> offers the retail investor a range of options for ~~investments, such that all information required in Article 8(3) with regard to each investment option cannot be provided within a single, concise stand-alone document, the key information document, the PRIIP manufacturer~~ shall provide a generic description of the <u>investment options and may provide the information required by Article 8(3) with regard to the different investment options in separate documents. The information provided relating to each</u> underlying investment ~~options, and the costs of the PRIIP other than the costs for the investment option, provided that:~~	“ 3. By way of derogation from paragraph 2, where a PRIIP offers the retail investor a range of options for investments, such that all information required in Article 8(3) with regard to each investment option cannot be provided within a single, concise stand-alone document, the key information document shall provide <u>at least</u> a generic description of the underlying investment options, and the costs of the PRIIP other than the costs for the investment option, provided that:	
36	(a) PRIIPs manufacturers provide investors with tools adapted to retail investors that facilitate research and comparison among the different investment options, including on costs;	(a) ~~PRIIPs manufacturers provide investors with tools adapted to retail investors that facilitate research and comparison among the different~~ <u>(a) may include only the costs for the underlying</u>	(a) PRIIPs manufacturers provide investors with tools adapted to retail investors that facilitate research and comparison among the different investment options <u>that they offer, including on costs of the underlying</u>	

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		<u>investment option, provided that the overall costs of the PRIIP relating to that investment options, including on-costs option are separately included in the key information document to the retail investor;</u>	<u>investment options and, where technically feasible, on (i) the total cost of the PRIIPs relating to those investment options, including the costs relating to the insurance contract, referred to under point (c) and (ii) the risks and performance;</u>	
37	(b) Retail investors have easy access to the pre-contractual information documentation relating to the investment products backing the underlying investment options;	(b) ~~Retail investors have easy access to the pre-contractual information documentation relating to the investment products backing the (b)~~ <u>shall consist of no more than four sides of A4-sized paper when printed. In addition, PRIIP manufacturers shall facilitate comparison between different underlying investment options through the use of a summary table or other comparison tools, such as a filtering mechanism.</u> ”;	(b) ~~Retail investors have easy access~~ <u>The tools referred to in point (a) contain a link</u> to the pre-contractual information documentation relating to the investment products backing the underlying investment options;	
38	(c) PRIIPs manufacturers provide investors, upon their request and in good time before retail investors are bound by any contract or offer to invest in a given investment option, the complete costs of the PRIIP relating to this investment option. ”	(c) PRIIPs manufacturers provide investors, upon their request and in good time before retail investors are bound by any contract or offer to invest in a given investment option, the complete costs of the PRIIP relating to this investment option. ”	(c) PRIIPs manufacturers provide investors <u>with the total costs of the PRIIP relating to the investment options, including the costs relating to the insurance contract,</u> ~~upon their request and~~ in good time before retail investors are bound by any contract or offer to invest in a given investment option, ~~the complete.~~ <u>This condition shall be</u>	

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			<u>also deemed satisfied when the total costs of the PRIIP relating to ~~this~~the investment ~~option~~options, including the costs relating to the insurance contract, are provided to the investor in an electronic format via the tools referred to in point (a).’;</u>	
38a		<u>(4c) (c) paragraph 4 is replaced by the following:</u>		
38b		<u>“4. The key information document shall be a short document written in a concise manner and shall consist of no more than four sides of A4-sized paper when printed, which promotes comparability. It shall:</u>		
38c		<u>(a) be presented and laid out in a way that is easy to read, using characters of readable size;</u>		
38d		<u>(b) focus on the key information that retail investors need;</u>		

	Commission Proposal	EP Mandate	Council Mandate	MS comments
38e		<u>(c) be clearly expressed and written in clear, succinct and comprehensible language and in a style that facilitate the understanding of the information.”;</u>		
39	(5) Article 8 is amended as follows:	(5) Article 8 is amended as follows:	(5) Article 8 is amended as follows:	
40	(a) in paragraph 3, point (aa) is added:	(a) in paragraph 3, point (aa) is added:	(a) in paragraph 3, point (aa) is added:	
41	‘ (aa) under a section titled ‘Product at a glance’ a dashboard with summarised information about all of the following:	‘ (aa) under a section titled ‘Product at a glance’ a dashboard with summarised information about all of the following:	‘ (aa) under a section titled ‘Product at a glance’ a dashboard with summarised information about all of the following:	
42	(i) the type of the PRIIP, as referred to in point (c)(i);	(i) the type of the PRIIP, as referred to in point (c)(i);	(i) the type of the PRIIP, as referred to in point (c)(i);	
43	(ii) the summary risk indicator referred to in point (d)(i);	(ii) the summary risk indicator referred to in point (d)(i);	(ii) the summary risk indicator referred to in point (d)(i);	
44	(iii) the total costs of the PRIIP;	(iii) the total costs of the PRIIP;	(iii) the total costs of the PRIIP;	

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45	(iv) the recommended holding period referred to in point (g)(ii);	(iv) the recommended holding period referred to in point (g)(ii);	(iv) the recommended holding period referred to in point (g)(ii);	
46	(v) whether the PRIIP offers the insurance benefits referred to in point (c) (iv);	(v) whether the PRIIP offers the insurance benefits referred to in point (c) (iv), <u>including whether the PRIIP offers financial guarantees</u> ;	(v) whether the PRIIP offers the insurance benefits referred to in point (c) (iv);	
47	(b) in paragraph 3, point (b) is deleted.	(b) in paragraph 3, point (b) is ~~deleted~~ <u>replaced by the following:</u>	(b) in paragraph 3, point (b) is deleted.	
47a		<u>(b) where applicable, appropriate warnings about the specific risks of potential losses associated with particularly risky or complex financial instruments in accordance with Article 24(5c) of Directive 2014/65/EU or with particularly risky or complex insurance-based investment products in accordance with Article 29(5) of Directive (EU) 2016/97;</u>		
47b				

	Commission Proposal	EP Mandate	Council Mandate	MS comments
		<u>(ba) In order to facilitate consultation and comparison of data, ESMA and EIOPA, in cooperation with NCAs, shall develop an independent online comparison tool for packaged retail and insurance-based investment products. That tool shall at least include information related to the performance, risk level, recommended holding period and the cost and fees of a PRIIP, and mention its qualitative features.</u>		
47c		<u>The comparison tool shall be developed using the key information document data provided by the European Single Access Point as established by Regulation (EU) xxxx/xxxx (ESAP). In developing the independent online comparison tool, ESMA and EIOPA shall carry out consumer testing.</u> <u>The independent comparison tool shall be available at the latest 12 months after key information documents are available on the European Single Access Point. A link to the independent online comparator, once available, shall be added to the key information document. Management</u>		

	Commission Proposal	EP Mandate	Council Mandate	MS comments
		<u><i>companies, investment firms and insurance intermediaries shall promote the use of the online comparison tool on their websites, including in relevant marketing material.;</i></u>		
48	(c) in paragraph 3, point (c), point (ii) is replaced by the following:	(c) in paragraph 3, point (c), point (ii) is replaced by the following:	(c) in paragraph 3, point (c), point (ii) is replaced by the following:	
49	“(ii) the PRIIP’s financial objectives and the means for achieving those objectives, and in particular whether those objectives will be achieved by means of direct or indirect exposure to the underlying investment assets, including all of the following information:	“(ii) the PRIIP’s financial objectives and the means for achieving those objectives, and in particular whether those objectives will be achieved by means of direct or indirect exposure to the underlying investment assets, including all of the following information:	“(ii) the PRIIP’s financial objectives and the means for achieving those objectives, and in particular whether those objectives will be achieved by means of direct or indirect exposure to the underlying investment assets, including all of the following information:	
50	(1) a description of the underlying instruments or reference values;	(1) a description of the underlying ~~instruments~~ <u>investment assets</u> or reference values;	(1) a description of the underlying instruments or reference values;	
51	(2) a specification of the markets the PRIIP invests in;	(2) a specification of the markets the PRIIP invests in;	(2) a specification of the markets the PRIIP invests in;	
52				

	Commission Proposal	EP Mandate	Council Mandate	MS comments
	(3) information about how the return is determined;;	(3) information about how the return is determined;;	(3) information about how the return is determined;;	
52a		<u>(3a) (ca) in paragraph 3, the following points are inserted:</u>		
52b		<u>(3b) '(ca) for PRIIPs in respect of which financial market participants are to disclose pre-contractual information pursuant to Article 8 and 9 of Regulations (EU) 2019/2088 of the European Parliament and of the Council, under a section titled 'How environmentally sustainable is this product?', the following information:</u>		
52c		<u>(3c) (i) the minimum proportion of the investment of the PRIIP that is associated with economic activities that qualify as environmentally sustainable in accordance with Articles 5 and 6 of Regulation (EU) 2020/852 of the European Parliament and of the Council;</u> <u>(ii) the greenhouse gas emissions intensity associated with the PRIIP pursuant to Delegated</u>		

	Commission Proposal	EP Mandate	Council Mandate	MS comments
		<u>Regulation (EU) 2022/1288, if applicable to the product;'</u>		
52d		<u>(3d) (iii) whether, in relation to the PRIIP, the PRIIP manufacturer has considered the principal adverse impacts of the investment decision on sustainability factors pursuant to Regulation (EU) 2019/2088;</u>		
52e		<u>(3e) (cb) for products covered by Article 8 or 9 of Regulation (EU) 2019/2088, a link to relevant additional disclosure information provided under Article 10(1)(c) of Regulation (EU) 2019/2088;';</u>		
52f		<u>(3f) (cb) in paragraph 3, point (d), point (iii) is amended as follows:</u>	<u>(3a) in paragraph 3, point (d), point (iii) is replaced by the following:</u>	
52g		<u>(3g) "(iii) appropriate information on performance and the assumptions made to produce it. Where information on future performance is provided, it shall be based on performance scenarios;";</u>	<u>(iii) appropriate information on performance and, where relevant, the assumptions made to produce them;';</u>	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
53	(d) the following point (ga) is inserted:	<i>deleted</i>	(d) the following point (ga) is inserted:	
54	‘ (ga) for PRIIPs on which financial market participants are to disclose pre-contractual information pursuant to Regulation (EU) 2019/2088 of the European Parliament and of the Council** and Commission Delegated Regulation 2022/1288***, under a section titled ‘How environmentally sustainable is this product?’, the following information:	<i>deleted</i>	‘ (ga) for PRIIPs on which financial market participants are to disclose pre-contractual information pursuant to Regulation (EU) 2019/2088 of the European Parliament and of the Council** and Commission Delegated Regulation 2022/1288***, under a section titled ‘How ~~environmentally~~ sustainable is this product?’, the following information:	
55	(i) the minimum proportion of the investment of the PRIIP that is associated with economic activities that qualify as environmentally sustainable in accordance with Articles 5 and 6 of Regulation (EU) 2020/852 of the European Parliament and of the Council****;	<i>deleted</i>	(i) <u>where relevant</u> , the minimum proportion of the investment of the PRIIP that is associated with economic activities that qualify as environmentally sustainable in accordance with Articles 5 and 6 of Regulation (EU) 2020/852 of the European Parliament and of the Council(<u>*****</u>) ~~*****~~ ;	
56	(ii) the expected greenhouse gas emissions intensity associated with the PRIIP pursuant to Delegated Regulation 2022/1288;;	<i>deleted</i>	(ii) ~~the expected greenhouse gas emissions intensity associated with the PRIIP pursuant to~~ <u>a link to specific information disclosures</u>	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
			<u>made in accordance with Commission Delegated Regulation 2022/1288</u> ;	
56a			<u>By way of derogation from the first subparagraph, point (ga), where a PRIIP offers the retail investor a range of options for investments, the key information document which provides a generic description of the underlying options, as referred to in Article 6(3), shall contain a statement that indicates that information on sustainability can be found in the pre-contractual information documentation relating to the investment products backing the underlying investment option.</u> ;	
57	(e) Paragraph 4 is deleted.	(e) Paragraph 4 is deleted.	(e) Paragraph 4 is deleted.	
57a		<u>(ea) in paragraph 5, the first and second subparagraphs are replaced by the following:</u>	<u>(ea) In paragraph 5, the first subparagraph is replaced by the following:</u>	
57b		<u>(eb) “In order to ensure consistent application of this Article, after</u>	<u>5. In order to ensure consistent application of this Article and</u>	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
		<u>conducting consumer testing, the ESAs shall, through the Joint Committee of the European Supervisory Authorities ('Joint Committee'), develop draft regulatory technical standards specifying:</u> <u>(a) the details of the presentation and the content of each of the elements of information referred to in paragraph 3;</u> <u>(b) the methodology underpinning the presentation of risk and reward as referred to in points (d) (i) and (iii) of paragraph 3; and</u> <u>(c) the methodology for the calculation of costs, including the specification of summary indicators, as referred to in point (f) of paragraph 3.</u> <u>When developing the draft regulatory technical standards, the ESAs shall take into account the various types of PRIIPs, the differences between them and the capabilities of retail investors as well as the features of the PRIIPs so as to allow the retail investor to select between different underlying investments or other options provided for by the product, including where this selection can be undertaken at different points in</u>	<u>Article 6(3), after conducting consumer testing, the ESAs shall, through the Joint Committee of the European Supervisory Authorities ('Joint Committee'), develop draft regulatory technical standards specifying:'</u>	

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		<u>time, or changed in the future. Where appropriate, in order to provide fair, clear and non-misleading information to retail investors, different approaches should be taken for different types (i.e., groups or categories) of products.</u> <u>In relation to the presentation and content of the information referred to in paragraph 3, point (ca), the ESAs shall take into account the financial product disclosures made in accordance with Regulation (EU) 2019/2088 and Delegated Regulation (EU) 2022/1288. Alignment with the present Regulation shall be ensured to the extent needed in order to meet the KIDs' objectives and preserve the readability of the information to potential retail investors.</u>		
57c			<u>(ec) In paragraph 5, point (d) is added:</u>	
57d			<u>(d) the minimum requirements for implementing the derogation in paragraph (3) of Article 6.'</u>	
57e				

	Commission Proposal	EP Mandate	Council Mandate	MS comments
			<u>(ee) In paragraph 5, the second subparagraph the following sentence is added:</u>	
57f			<u>'Where appropriate in order to provide fair, clear and not misleading information to retail investors, different approaches may be taken between different types of products.'</u>	
58	(f) In paragraph 5, the third subparagraph is replaced by the following:	(f) In paragraph 5, the third subparagraph is replaced by the following:	(f) In paragraph 5, the third subparagraph is replaced by the following:	
59	‘ The ESAs shall submit those draft regulatory technical standards to the Commission by ... [PO please insert the date= one year after the date of entry into force of this amending Regulation].’	‘ The ESAs shall submit those draft regulatory technical standards to the Commission by ... [PO please insert the date= one year after the date of entry into force of this amending Regulation].’	‘ <u>When developing the draft regulatory technical standards,</u> the ESAs shall ~~submit those~~ <u>assess the circumstances under which it is technically feasible to include (i) the total costs of the PRIIP relating to the investment option, including the costs relating to the insurance contract; and (ii) the risk and performance information in the tool referred to in point (a) of Article 6(3), paying due regard to the implementation costs for companies. This assessment shall also cover cases of risk and</u>	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
			<u>performance information relating to the combination of different underlying investment options. Based on their conclusions, the ESAs shall specify in the</u> draft regulatory technical standards ~~to~~ ~~the~~ <u>when the inclusion of the total cost and of the risk and performance in the tool is considered as technically feasible. Where the ESAs conclude that technical feasibility is limited or implementation costs disproportionate, they may propose a simplification of calculation or other technical parameters that would allow to display the level of total cost, the risks and performance.</u> <u>When developing the draft regulatory technical standards, the ESAs shall specify to which specific information disclosures defined in</u> Commission ~~by ... [PO- please insert the date= one year- after the date of entry into force]~~ <u>Delegated Regulation 2022/1288 a link should be inserted in the section “How sustainable is this product?” in accordance with paragraph 3, point (ga). In addition, the ESAs shall specify in which case the information referred to in paragraph 3(ga)(i) of this</u> ~~amending Regulation]~~ <u>Article is considered relevant.”</u>	

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			<u>When developing the draft regulatory technical standards, the ESAs shall ensure that the appropriate information on performance is adequately comparable across different types of PRIIPs. Information on performance in the form of performance scenarios and presented in the KID for all types of PRIIPs could, if considered relevant for certain types of PRIIPs, be combined with information on performance in the form of past performance. Such an approach shall be implemented in a way that prioritises the clarity and simplicity that is required when presenting key information to the investor. In particular, the draft regulatory standards should avoid an overload of information and, where relevant, the investor should easily understand how performance scenarios and past performance relate to each other.</u>	
59a		<u>(fa) in paragraph 5, the following subparagraph is added:</u>	<u>(fa) In paragraph 5, the following new subparagraph is inserted before the fourth subparagraph:</u>	
59b				

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		<u>“Five years after the date of application of Regulation (EU) .../... [OP Please introduce the number of this amending Regulation] and after having consulted ESMA and EIOPA, the Commission shall assess the degree of alignment between the pre-contractual disclosure of information referred to in paragraph 3, point (ca), of this Regulation and the pre-contractual disclosure framework contained in Articles 8 and 9 of Regulation (EU) 2019/2088. The Commission shall present a report on its main findings to the European Parliament, the Council and the European Economic and Social Committee. Where appropriate, the report shall be accompanied by a legislative proposal ensuring such alignment to the extent that it is compatible with the KIDs’ objectives.”</u>	<u>The ESAs shall submit those draft regulatory technical standards to the Commission by ... [PO please insert the date = one year after the date of entry into force of this amending Regulation].</u>	
59c		<u>(5a) Article 10(1) is amended as follows:</u>	<u>(5a) In Article 10, paragraph 1 the following sentence is added:</u>	
59d		<u>“1. The PRIIP manufacturer shall review the information contained in the key information document regularly and shall revise the</u>	<u>‘The requirement to review and revise the key information document shall cease to apply where the PRIIP is no longer open to new subscriptions and cannot be</u>	

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		<u>document where the review indicates that changes need to be made. The revised version shall be made available promptly.</u>	<u>purchased on a secondary market.'</u>	
59e		<u>By derogation from the first subparagraph, the requirement to review and revise the key information document shall cease to apply where the PRIIP is no longer open to new subscriptions and cannot be purchased on a secondary market.”;</u>		
60	_____	_____	_____	
61	** Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector (OJ L 317, 9.12.2019, p. 1).	** Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector (OJ L 317, 9.12.2019, p. 1).	** Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector (OJ L 317, 9.12.2019, p. 1).	
62	*** Commission Delegated Regulation (EU) 2022/1288 of 6 April 2022 supplementing Regulation (EU) 2019/2088 of the European Parliament and of the Council with regard to regulatory	*** Commission Delegated Regulation (EU) 2022/1288 of 6 April 2022 supplementing Regulation (EU) 2019/2088 of the European Parliament and of the Council with regard to regulatory	*** Commission Delegated Regulation (EU) 2022/1288 of 6 April 2022 supplementing Regulation (EU) 2019/2088 of the European Parliament and of the Council with regard to regulatory	

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	technical standards specifying the details of the content and presentation of the information in relation to the principle of ‘do no significant harm’, specifying the content, methodologies and presentation of information in relation to sustainability indicators and adverse sustainability impacts, and the content and presentation of the information in relation to the promotion of environmental or social characteristics and sustainable investment objectives in pre-contractual documents, on websites and in periodic reports (OJ L 196, 25.7.2022, p. 1).	technical standards specifying the details of the content and presentation of the information in relation to the principle of ‘do no significant harm’, specifying the content, methodologies and presentation of information in relation to sustainability indicators and adverse sustainability impacts, and the content and presentation of the information in relation to the promotion of environmental or social characteristics and sustainable investment objectives in pre-contractual documents, on websites and in periodic reports (OJ L 196, 25.7.2022, p. 1).	technical standards specifying the details of the content and presentation of the information in relation to the principle of ‘do no significant harm’, specifying the content, methodologies and presentation of information in relation to sustainability indicators and adverse sustainability impacts, and the content and presentation of the information in relation to the promotion of environmental or social characteristics and sustainable investment objectives in pre-contractual documents, on websites and in periodic reports (OJ L 196, 25.7.2022, p. 1).	
63	****Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088 (OJ L 198, 22.6.2020, p. 13).’;	****Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088 (OJ L 198, 22.6.2020, p. 13).’;	****Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088 (OJ L 198, 22.6.2020, p. 13).’;	
64	(6) Article 10(2) is amended as follows:	(6) <u>in Article 10(2), <i>point (b) is replaced by the following</i></u> ~~is amended as follows:~~	<i>deleted</i>	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
65	(a) point (b) is replaced by the following :	(a) ~~point (b) is replaced by the following :-~~	<i>deleted</i>	
66	‘ (b) the conditions under which the key information document must be revised, distinguishing between PRIIPs that are still made available to retail investors and PRIIPs that are no longer made available; ”	‘ (b) ~~(b)~~ the conditions under which the key information document must be revised, distinguishing between PRIIPs that are still made available to retail investors and PRIIPs that are no longer ~~made available~~ <u>open to new subscriptions and cannot be purchased on a secondary market;</u> ”	<i>deleted</i>	
67	(b) the second and third subparagraphs are replaced by the following:	(b) the second and third subparagraphs are replaced by the following:	<i>deleted</i>	
68	“ The ESAs shall take into account situations where a PRIIP is no longer made available to retail investors. The ESAs shall submit those draft regulatory technical standards to the Commission by ... [PO please insert the date = one year after date of entry into force of this amending Regulation].	“ The ESAs shall take into account situations where a PRIIP is no longer made available to retail investors. The ESAs shall submit those draft regulatory technical standards to the Commission by ... [PO please insert the date = one year after date of entry into force of this amending Regulation].	<i>deleted</i>	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
69	Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010 and of Regulation (EU) No 1095/2010.;	Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010 and of Regulation (EU) No 1095/2010.;	<i>deleted</i>	
69a		<u>(6a) Article 13 is amended as follows:</u>		
69b		<u>(a) paragraph 1 is replaced by the following:</u>		
69c		<u>“1. A PRIIP distributor shall provide retail investors with the key information document in good time before those retail investors are bound by any contract or offer relating to that PRIIP. In any case where marketing communication about the PRIIP is provided by the financial adviser to the retail investor on paper or in a digital format, the key information document shall be provided to the retail investor at the latest at the same time, together with an</u>		

	Commission Proposal	EP Mandate	Council Mandate	MS comments
		<u>explanation of the regulatory nature of such document.”;</u>		
69d		<u>(b) paragraph 4 is replaced by the following:</u>		
69e		<u>4. Where successive transactions regarding the same PRIIP are carried out on behalf of a retail investor in accordance with instructions given by that retail investor to the person selling the PRIIP prior to the first transaction, the obligation to provide a key information document under paragraph 1 shall apply only to the first transaction, and a detailed description shall be provided where the key information document has been revised in accordance with Article 10.</u>		
69f		<u>Additionally, prior to an additional subscription, the latest revised version of the key information document shall be provided to the retail investor upon request.”;</u>		
70	(7) Article 14 is replaced by the	(7) Article 14 is replaced by the	(7) Article 14 is replaced by the	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
	following :	following :	following :	
71	‘ Article 14	‘ Article 14	‘ Article 14	
72	(1) The person advising on, or selling, a PRIIP shall provide the key information document to retail investors free of charge. The information shall be provided in an electronic format, unless the retail investor has requested to receive the key information document on paper. The person advising on, or selling a PRIIP shall inform the retail investors about their right to receive the key information document on paper free of charge.	(1) The person advising on, or selling, a PRIIP shall provide the key information document to retail investors free of charge. The information shall be provided in an electronic format, unless the retail investor has requested to receive the key information document on paper. The person advising on, or selling a PRIIP shall inform the retail investors about their right to receive the key information document on paper free of charge. <u>The content of the key information document in an electronic format and on paper must be the same, with adequate adaptations to guarantee access to all relevant information referred to therein.</u>	~~(1)~~ <u>L</u> . The person advising on, or selling, a PRIIP shall provide the key information document to retail investors free of charge. The information shall be provided in an electronic format, unless the retail investor has requested to receive the key information document on paper. The person advising on, or selling a PRIIP shall inform the retail investors about their right to receive the key information document on paper free of charge.	
73	(2) The electronic format of the key information document may be provided by means of an interactive tool that enables the retail investor to generate personalised key information based on the	(2) The electronic format of the key information document may be provided by means of an interactive tool ~~that enables the retail investor to generate personalised~~ <u>to make the</u> key information ~~based~~	<i>deleted</i>	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
	information in the key information document or the information underlying it. That tool shall respect the following conditions:	~~on~~ <u>document more comprehensible and easier to read. The tool shall base</u> the information ~~in~~ <u>on</u> the key information document or the information underlying it. ~~That tool shall respect the following conditions:~~ <u>and may allow information to be displayed based on personal preferences in an interactive way.</u>		
74	(a) the interactive tool, or its use, shall not alter the understanding of the key information document;	(a) the interactive tool, or its use, shall not alter the understanding of the key information document;	<i>deleted</i>	
75	(b) all key information shall be presented;	(b) all key information shall be presented;	<i>deleted</i>	
76	(c) the key information document shall be easily accessible through a link next to the interactive tool, and the link shall be accompanied by the following message "It is recommended to download and store the key information document";	(c) the key information document shall be easily accessible through a link next to the interactive tool, and the link shall be accompanied by the following message "It is recommended to download and store the key information document";	<i>deleted</i>	
77	(d) the interactive tool shall allow investors to simulate costs over the	(d) the interactive tool shall allow investors to simulate costs over the	<i>deleted</i>	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
	recommended holding period.	recommended holding period.		
77a		<u>(da) (da) where the PRIIP manufacturer offers the retail investor a range of options for investments:</u>		
77b		<u>(i) the information provided shall reflect the combination of investment options that the retail investor is considering;</u>		
77c		<u>(ii) the pre-contractual information documentation relating to the underlying investment assets backing the investment options shall be easily accessible through a link next to the interactive tool.</u>		
78	Where the key information document is provided in accordance with the first subparagraph, its format may be adapted compared to the presentation of the key information document referred to in Article 8.	Where the key information document is provided in accordance with the first subparagraph, its format may be adapted compared to the presentation of the key information document referred to in Article 8.	<i>deleted</i>	

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79	(3) The ESAs shall develop draft regulatory technical standards specifying the modalities for personalising the information as referred to in paragraph 2, the first subparagraph, and the conditions for adapting the formatting of the information, as referred to in paragraph 2, the second subparagraph.	(3) <u>After conducting consumer testing</u> , the ESAs shall develop draft regulatory technical standards specifying the modalities for personalising the information as referred to in paragraph 2, the first subparagraph, and the conditions for adapting the formatting of the information, as referred to in paragraph 2, the second subparagraph.	<i>deleted</i>	
80	In addition to the modalities referred to in the first subparagraph, the regulatory technical standards shall include the conditions for personalising the key investor information in the following manners:	In addition to the modalities referred to in the first subparagraph, the regulatory technical standards shall include the conditions for personalising the key investor information in the following manners:	<i>deleted</i>	
81	(a) the conditions for personalising the information to allow investors to simulate costs over a holding period that is different from the recommended holding period;	(a) the conditions for personalising the information to allow investors to simulate costs over a holding period that is different from the recommended holding period;	<i>deleted</i>	
82	(b) the conditions for personalising the information to allow investors to compare different PRIIPs;	(b) the conditions for personalising the information to allow investors to compare different PRIIPs;	<i>deleted</i>	

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83	(c) the conditions for personalising the information to make it accessible to persons with disabilities.	(c) the conditions for personalising the information to make it accessible to persons with disabilities.	<i>deleted</i>	
84	(4) The key information document may be presented in a layered format. In that case, the dashboard referred to in Article 8(3), point (aa) shall appear in the first layer.	(4) The key information document may be presented in a layered format. In that case, the dashboard referred to in Article 8(3), point (aa) shall appear in the first layer.	~~(4)~~ ^{2.} The key information document may be presented in a layered format. In that case, the dashboard referred to in Article 8(3), point (aa) shall appear in the first layer.	
85	(5) The retail investor shall be notified electronically, or in written form, of the address of the website, and the place on the website where the key information document can be accessed.	(5) The retail investor shall be notified electronically, or in written form, of the address of the website, and the place on the website where the key information document can be accessed.	~~(5)~~ ^{3.} The retail investor shall be notified electronically, or in ~~written~~ ^{paper} form, of the address of the website, and the place on the website where the key information document can be accessed.	
86	(6) The key information document shall remain accessible on the website of the person advising or selling the PRIIPS, and shall remain capable of being downloaded and stored in a durable medium, for such period of time as the retail investor may need to consult it. Where the PRIIP manufacturer has revised the key information document as referred to in Article	(6) <u>The latest version of</u> the key information document shall remain <u>easily and publicly</u> accessible <u>to all retail investors</u> on the website of the ~~person advising or selling the PRIIPS, and~~ <u>PRIIPs manufacturer and, with regard to the relevant PRIIPs that are sold or subject to investment advice, on the website of the PRIIPs distributor.</u> <u>The key information document</u>	~~(6)~~ ^{4.} The key information document shall remain accessible on the website of the ~~person advising or selling the PRIIPS~~ <u>manufacturer</u> , and shall remain capable of being downloaded and stored in a durable medium, for such period of time as the retail investor may need to consult it. Where the PRIIP manufacturer has revised the key information document as referred to	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
	10, the PRIIP manufacturer shall provide the retail investors with previous versions upon request.	shall remain capable of being downloaded and stored in a durable medium, for such period of time as the retail investor may need to consult it. <u><i>If the key information document is not available on the website of the distributor, the distributor shall provide it to the retail investor upon request within 2 working days.</i></u> Where the PRIIP manufacturer has revised the key information document as referred to in Article 10, the PRIIP manufacturer shall provide the retail investors with previous versions <u><i>of the document</i></u> upon request.	in Article 10, the PRIIP manufacturer shall provide the retail investors with previous versions upon request. ~~2~~	
86a		<u><i>6a. (8) Article 16(2), point (c) is replaced by the following:</i></u>		
86b		<u><i>6b. "(c) competent authorities have not taken action to address the threat, the actions that have been taken do not adequately address the threat, or the product concerned is marketed in multiple Member States making it difficult for the distribution authority of the home Member State to oversee product distribution issues and for</i></u>		

	Commission Proposal	EP Mandate	Council Mandate	MS comments
		<u>competent authorities of the host Member State to oversee the manufacturing process."</u>		
86c			<u>(8) Article 30 is modified as follows:</u>	
86d			<u>In the second, third and fifth paragraph the words "in Article 8(4)" are deleted.</u>	
87	Article 2 Entry into force and application	Article 2 Entry into force and application	Article 2 Entry into force and application	
88	This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union. It shall apply from [PO please insert the date = 18 months after the date of entry into force of this amending Regulation].	This Regulation shall enter into force on the twentieth day following that of its publication in the <u>Official Journal of the European Union</u> ~~Official Journal of the European Union~~ . It shall apply from ... [PO please insert the date = 18 months after the ~~date of entry into force of this amending~~ <u>publication in the Official Journal of the European Union of the delegated acts referred to in Article 10(2) of Regulation (EU) No 1286/2014 or the adoption by the Commission of</u>	This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union. It shall apply from [PO please insert the date = ~~18~~ <u>24</u> months after the date of entry into force of this amending Regulation].	

	Commission Proposal	EP Mandate	Council Mandate	MS comments
		<u>the regulatory technical standards referred to in Article 8(5) of Regulation (EU) No 1286/2014, whichever happens last</u> .		
89	This Regulation shall be binding in its entirety and directly applicable in all Member States.	This Regulation shall be binding in its entirety and directly applicable in all Member States.	This Regulation shall be binding in its entirety and directly applicable in all Member States.	
90	Done at Brussels,	Done at Brussels,	Done at Brussels,	
91	For the European Parliament	For the European Parliament	For the European Parliament	
92	The President	The President	The President	
93	For the Council	For the Council	For the Council	
94	The President	The President	The President	