



Council of the
European Union

Brussels, 25 May 2023
(OR. en)

**Interinstitutional File:
2023/0167 (COD)**

**9671/23
ADD 1**

**EF 145
ECOFIN 459
CODEC 931**

PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	25 May 2023
To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2023) 279 final
Subject:	ANNEXES to the 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

Delegations will find attached document COM(2023) 279 final.

Encl.: COM(2023) 279 final



EUROPEAN
COMMISSION

Brussels, 24.5.2023
COM(2023) 279 final

ANNEXES 1 to 3

ANNEXES

to the 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

{SEC(2023) 330 final} - {SWD(2023) 278 final} - {SWD(2023) 279 final}

ANNEX I

In Annex II to Directive 2014/65/EU, section II.1 is amended as follows:

- (1) the fourth subparagraph is replaced by the following:

‘The fitness test applied to managers and directors of entities authorised under the present Directive or other EU Directives in the financial field could be regarded as an example of the assessment of expertise and knowledge. 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.’;

- (2) subparagraph 5 is amended as follows:

- (1) the second and third indents are replaced by the following:

‘- 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 client works or has worked 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.’;

- (2) the following indent is added:

‘- 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.’;

- (3) the following subparagraphs are added:

‘Where the client is a legal entity, as a minimum, two of the following criteria shall be met:

- balance sheet total: EUR 10 000 000
- net turnover: EUR 20 000 000
- own funds: EUR 1 000 000

The investment firm shall assess 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 decisions in line with the legal entity’s objectives, needs and financial capacity and is able to evaluate adequately the risks.’.

ANNEX II

‘Annex V

Minimum professional knowledge and competence requirements

(as referred to in Article 24d(2))

- (a) understand the key characteristics, risks and features of the financial instruments being offered or recommended, including any general tax implications to be incurred by the client in the context of transactions;
- (b) understand the total costs and charges to be incurred by the client in the context of the type of investment product being offered or recommended and the costs related to the provision of the advice and any other related services being provided;
- (c) understand how the type of investment product provided by the firm may not be suitable for the client, having assessed the relevant information provided by the client against changes that have occurred since the relevant information was gathered;
- (d) understand how financial markets function and how they affect the value and pricing of financial instruments offered or recommended to clients;
- (e) understand the impact of macro-economic developments, national/regional/global events on financial markets and on the value of financial instruments being offered or recommended to clients;
- (f) understand the difference between past performance and future performance scenarios as well as the limits of forecasting;
- (g) understand the general implications of the main elements of the financial regulatory framework;
- (h) assess data relevant to financial instruments offered or recommended to clients such as key information documents, prospectuses, financial statements, or financial data;
- (i) understand specific market structures for the type of financial instruments offered or recommended to clients;
- (j) understand the valuation principles for the type of financial instruments offered or recommended to clients;
- (k) understand the fundamentals of managing a portfolio, including being able to understand the implications of diversification regarding individual investment alternatives;
- (l) understand the concept of sustainable investment and how to consider and integrate sustainability factors and client’s sustainability preferences into the advisory processes.’

ANNEX III

- (1) Part II of Annex I to Directive (EU) 2016/97 is amended as follows: point (a) is replaced by the following:

‘(a) minimum necessary knowledge of the key characteristics, risks and features of insurance-based investment products, including terms and conditions and net premiums and, where applicable, guaranteed and non-guaranteed benefits as well as the financial risks borne by policyholders and any general tax implications to be incurred by the client;’;

- (2) the following point (aa) is inserted:

‘(aa) minimum necessary knowledge of the total costs and charges to be incurred by the client in the context of the type of insurance-based investment product being offered or recommended and the costs related to the provision of the advice and any other related services being provided;’;

- (3) point (c) is replaced by the following:

‘(c) minimum necessary financial competency, including:

(i) understanding how financial markets function and how they affect the value and pricing of financial instruments offered or recommended to clients;

(ii) understanding the impact of macro-economic developments, national/regional/global events on financial markets and on the value of financial instruments being offered or recommended to clients;

(iii) understanding of the difference between past performance and future performance scenarios as well as the limits of forecasting;

(iv) understanding of specific market structures for the type of financial instruments offered or recommended to clients;

(v) understanding of the valuation principles for the type of financial instruments offered or recommended to clients;’;

- (4) the following points (fa) and (fb) are inserted:

‘(fa) minimum necessary knowledge to assess data relevant to the insurance-based investment products offered or recommended to clients such as key information documents, prospectuses, financial statements, or financial data;

(fb) minimum necessary knowledge of the general implications of the main elements of the financial regulatory framework;’;

- (5) point (i) is replaced by the following:

‘(i) minimum necessary knowledge of assessing customer needs, including understanding of how the type of insurance-based investment product provided

by the firm may not be suitable for the client, having assessed the relevant information provided by the client against changes that have occurred since the relevant information was gathered;’;

(6) the following point (ia) is inserted:

‘(ia) understanding the concept of sustainable investment and how to consider and integrate sustainability factors and customer’s sustainability preferences into the advisory processes;’

(7) point (l) is deleted.