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From:	Presidency
To:	Permanent Representatives Committee
Subject:	Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directives (EU) 2009/65/EC, 2009/138/EC, 2011/61/EU, 2014/65/EU and (EU) 2016/97 as regards the Union retail investor protection rules

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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)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 53(1) and Article 62 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee[1],

Acting in accordance with the ordinary legislative procedure,

Whereas:

[1] OJ C , , p. .

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

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

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

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

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

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

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

(3) ***'Inducements' meaning*** fees, commissions or any monetary or non-monetary benefits paid***, provided*** or received by investment firms and insurance undertakings and intermediaries***, to*** or from persons other than the client or customer, ***or a person acting on behalf of the client or the customer, which in the case of insurance-based investment products also includes payments between the insurance undertaking and the insurance distributor***, 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 ***2014/65/EU*** 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' ***and customers'*** best interests are protected uniformly across the Union. ▌ 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 ▌ .

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(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 ***2014/65/EU***, insurance intermediaries that indicate to their customers that they provide advice on an independent basis, ***should assess a sufficiently large number of insurance-based investment products available on the market and*** should not accept inducements for such advice. This rule should not prevent insurance intermediaries offering advice to customers from accepting inducements, provided that the advice is not presented as independent, ***that*** customers are informed of the inducements in line with applicable transparency requirements and that other legal requirements, including the ***safeguards*** to act in the best ***interests*** of the customer, are complied with. ***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.***

(6) The existing safeguards ***regarding*** the payment or receipt of inducements, which under Directive ***2014/65/EU*** 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 ***always*** been sufficiently effective in mitigating conflicts of interest. It is therefore appropriate to ▌ introduce a new, common ***"inducements"*** test, both in Directive ***2014/65/EU*** and Directive (EU) 2016/97, that further clarifies ***the criteria for inducements (including inducement schemes) which are considered not to impair compliance with the duty of investment firms, insurance undertakings and insurance intermediaries to act honestly, fairly and professionally in accordance with*** the best ***interests*** of the client ***or customer***. ***The aim*** of the ***new test is to better mitigate conflicts of interests related to inducements, including the risk that the provision of services*** to the client or customer ***could be biased or distorted as a result of the inducement***, ***and that investment firms, insurance undertakings and insurance intermediaries could offer or recommend a particular product or service despite the fact that they would be able to offer a different product or service which would better meet the client's or customer's needs. The analysis of the inducement*** should ***in any case be specific to the relevant insurance product or investment product or service and performed internally by the investment firm, insurance undertaking or insurance intermediary before any payment has been made or received.***

Compliance with the criteria under the inducements test does not in itself imply full compliance with the duty to act honestly, fairly and professionally in accordance with the best interest of their clients and customers and thus that inducements can be paid, or accepted and retained. Investment firms, insurance undertakings and insurance intermediaries are also to consider all other relevant elements which could potentially impair the compliance with their duty to act honestly, fairly and professionally in accordance with the best interest of their clients or customers.

In case of ongoing inducements, investment firms, insurance undertakings or insurance intermediaries, should fulfil the requirements of the inducements test on an ongoing basis as long as they continue to pay or accept and retain the inducement.

One of the criteria of the inducements test requires that inducements provide ***a tangible benefit to the client or customer. As regards inducements or inducements schemes in relation to financial instruments, a number of specific services could be considered to provide tangible benefit to the client, while other services could also be deemed suitable for providing*** such a ***benefit. In relation to*** insurance-based investment products, ***where advice provides a tangible benefit, it should not be relevant whether that advice has been made mandatory in accordance with Article 30(5a) of Directive (EU) 2016/97.***

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

(6a) In order to ensure a higher level of consumer protection, Member States that entirely prohibit the payment or acceptance of inducements by investment firms offering investment services that only consist of the execution or reception and transmission of orders with or without ancillary services should be allowed to require that such a prohibition has to be complied with by all investment firms acting in the territory of that Member State. As this measure only concerns a narrow scope of financial services and aims at ensuring a high level of consumer protection by mitigating potential conflicts of interest and providing more transparency about the costs of financial instruments and investment services, it should be considered as constituting a justified and proportionate safeguard in the context of the freedom to provide financial services.

(6b) Investment firms and insurance undertakings and insurance intermediaries are subject to a general duty to act honestly, fairly and professionally in accordance with the best interests of their clients and customers. That duty already requires them to recommend products that would be suitable for the client's or customer's objectives, financial situation, risk profile and preferences, while avoiding the imposition of unnecessary or unjustified costs. Acting in the client's or customer's best interest would include investment firms and insurance undertakings and insurance intermediaries considering the overall costs and charges of available product options and, where several products could appropriately meet the client's or customer's needs, recommending the most cost-efficient option, unless they could demonstrate that a more costly product might provide objectively greater benefits for that specific client or customer.

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

(8) In order to enable the development of ▌ advice at a reasonable cost, ***both independent and non-*** independent advisors should be allowed to provide advice to retail investors on well-diversified, non-complex and cost-efficient products based on a more limited set of data collected for the suitability assessment. The scope of such advice should be clearly disclosed to retail ***clients and customers*** in good time before the provision of the advice. Given the diversified nature of the advised products, ▌ advisors should not be required to obtain and assess information from the clients ***or customers*** relating to their knowledge and experience or existing portfolios. ***The product should be sufficiently simple that a client or customer can fully comprehend it.***

(8a) While the empowerments for the Commission to supplement the rules in the area of inducements are more narrowly framed under this Directive than before, certain rules on inducements have already been laid down in delegated acts, including the Commission Delegated Directive (EU) 2017/593 and or Commission Delegated Regulation MiFID 2017/565, which could also regard areas not directly impacted by this Directive. It is therefore appropriate that this Directive maintains the necessary empowerments for the Commission to supplement the rules on inducements in specific narrowly defined areas concerning investment advice on an independent basis and portfolio management services, investment research, underwriting and placing of financial instruments, in order to ensure consistency and legal certainty regarding the application of rules in these areas, while retaining, at a minimum, the current level of investor protection. The empowerment for the Commission to supplement the rules on inducements should also include the possibility to further specify the criteria laid down adopted in this Directive that relate to the assessment of tangible benefits and the assessment of proportionality of the inducement to the value of the product and the level of service. When adopting these delegated acts, the Commission should have regard to the overall objective of simplification and burden reduction and where relevant consider the sector specific aspects.

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

(10) The level of costs and charges***, including inducements,*** associated with investment and insurance-based investment products ***intended for distribution to retail investors*** can have a significant impact on investment returns, something that may not always be ***easy*** for retail investors ***to understand***. To ensure that products offer value for money ***to*** retail investors, Member States should ***require that manufacturers and, where applicable, distributors of packaged retail and insurance-based*** investment products ***as defined under Regulation (EU) No 1286/2014 of the European Parliament and of the Council***[7] ***have value for money assessment*** processes that enable a clear identification and quantification of all costs ***and charges, including inducements, their performance and other benefits of the product. In addition, as part of the value for money assessment process, manufacturers and where applicable distributors should assess whether the identified*** costs and charges***, including inducements,*** are justified and proportionate ***having regard to the performance, other benefits,*** characteristics, objectives, ***marketing or distribution*** strategy and ***strategy*** of the product.

The value-for-money assessment process, conducted at both the level of manufacturer and where applicable distributor should, as part of the product governance framework, enhance the existing concept that financial instruments and insurance-based investment products aimed at a particular target market should be designed to bring value to retail clients and customers.

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[7] ***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 (PRIIPs)***

A positive value for money assessment should not be understood as a guarantee that the financial instrument or insurance-based investment product will consistently deliver positive outcomes to retail clients and customers or that they will always be protected from poor outcomes compared to what was initially expected. The value for money assessment should rather represent an assessment that, compared to similar financial instruments and insurance-based investment products, the identified costs and charges, including inducements, are justified and proportionate, at the time of the value for money assessment or its regular review, having regard to the intended benefits for the retail client and customer.

(11) Since the charging structure of ▌ packaged retail ***and insurance-based*** investment ***products*** is designed by the manufacturer, it is ***first*** for the manufacturer to assess whether the costs and charges***, including the inducements,*** that are included in ***their financial instruments or insurance-based*** investment products are justified and proportionate. Building on those assessments ***of the manufacturer***, distributors should make ***their own value for money*** assessments ***of the financial instruments they distribute***, so that the ***total*** costs***, including*** distribution and ***any*** other costs not already ***taken into account by*** the manufacturer's assessment***,*** are additionally taken into account.

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(12a) A distributor of a financial instrument could 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 financial instrument is appropriate, taking into account the target market's needs and objectives.

(12b) Given the different legal and economic conditions in the design, manufacturing and marketing of insurance-based investment products, distributors of such products should not be required to carry out a value for money assessment, but their role should be limited to identifying any further costs and charges, including inducements, assessing whether the product meets the target market's objectives and needs and, in order to ensure that all costs are taken into consideration by the insurance undertaking or insurance intermediary manufacturing the insurance-based investment product, regularly providing them with all relevant information about the results of its assessments.

(12c) Manufacturers or distributors of financial instruments falling within the meaning of packaged retail investment products pursuant to Article 4(1) of Regulation (EU) No 1286/2014 of the European Parliament and of the Council, should as part of their value-for-money assessment process, include a comparison of the costs and charges and the performance of the financial instrument to a peer group of other financial instruments with similar characteristics which are marketed in the Member State or Member States where the relevant financial instrument will be distributed and, where feasible and proportional, in other Member States where comparable financial instruments are distributed.

Financial instruments selected for inclusion in a peer group should present similar characteristics in terms of recommended holding period, level of risk, investment strategy and objectives, distribution strategy target market, defined coupon and yield, sustainability features and type of management (active or passive) and limited additional criteria that may be necessary to ensure that the peer group comparison is accurate reliable and objective. The peer group comparison should enable an assessment as to whether the investment product is an outlier compared to the peer group. Outliers should be investment products that are at a significant distance from the average costs and performance of the peer group, to the detriment of the client and thereby have an increased risk of poor value for money. However, where financial instruments are not at a significant distance from the relevant peer group, it should not, in itself, automatically imply that such instruments offer value for money to clients.

Where the financial instrument is at a significant distance from the average costs and performance of the peer group to the detriment of the client, value for money should be substantiated through additional testing and further assessments. Where necessary, the manufacturer or the distributor should take appropriate actions to ensure value for money. Additional testing 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 group of financial instruments in the peer group. Appropriate actions to ensure value for money could, for instance, include the lowering of costs or the removal of costly features not necessary for the investors' objectives, 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 with respect to the actions to be taken, taking into account the features of the financial instrument and the interest of retail clients, provided that these actions can reasonably be considered to ensure that the financial instrument offers value for money. However where a manufacturer or a distributor cannot demonstrate, after remedial actions have been taken, that the financial instrument offers value for money, the manufacturer or distributor should not approve, manufacture, market or distribute that financial instrument. To ensure that the management body of investment firms is made aware of the results of the value for money assessments and takes appropriate actions where needed, the selection process, including the dataset that is the starting point for the selection and the selection filters, and the conclusions of any actions aimed to ensure an appropriate value for money assessment, should be adequately documented and described in the compliance report to the management body. Competent authorities should supervise the value for money process, and based on their supervisory powers carry out checks, analyse the data they receive and should they identify a significant investor protection concern, should carry out a supervisory action. Where they conclude that the peer groups are not justified or that the financial instrument does not offer value for money, they should require the investment firm to take measure to ensure compliance with the product governance requirements. If necessary, the competent authority should make appropriate use of its powers under Article 69.

The peer grouping process should compare financial instruments and not investment firms. The peer group comparison should be carried out without prejudice to the applicable competition rules and not be construed in a way that could raise competition concerns.

(13) ▌Competent authorities ***supervising the manufacturing and distribution of insurance-based investment products should be equipped*** with a tool allowing for an efficient ***identification of*** products ***with an increased risk of poor value for money.*** EIOPA should develop ***Union supervisory*** benchmarks ***to help competent authorities 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 facilitate a coherent application of binding value for money rules based on the supervisory powers laid down by Directive (EU) 2016/97. EIOPA should develop Union supervisory benchmarks*** based on data related to the cost and performance of ▌ products ***that fall into similar product clusters. The Union supervisory benchmarks*** should be ***made available to national competent authorities as a reference point for the supervision*** of the ▌ value for money ***of insurance-based*** investment products ***and the methodology for the benchmarks should be made publicly available***. ***Competent authorities should make benchmarks available to individual insurance undertakings or insurance intermediaries upon demand and in the context of a control or an enforcement proceeding relating to a value for money assessment of a particular insurance-based investment product.***

(13a) To ensure that supervisory expectations for insurance-based investment products are fully aligned with the distinct characteristics of national financial markets, Member States should be permitted, under strictly defined conditions, to provide national benchmarks for insurance-based investment products distributed exclusively within their own Member State. Member States should be permitted to develop those benchmarks during a period of four years following entry into force of this amending directive where national specificities of the insurance-based investment products distributed only in that Member State necessitate a more tailored supervisory framework to uphold a consistently high level of consumer protection. As supervisory benchmarks serve as instruments designed to foster supervisory convergence, the conditions under which those benchmarks are to be provided should ensure that national benchmarks may only be adopted where they are both necessary and proportionate, thereby avoiding undue fragmentation of the internal market and unjustified barriers to the cross-border distribution of insurance-based investment products.

(13b) A multi-option product (MOP) is a specific type of insurance-based investment product where the customer has a choice between a wide selection of investment funds or (pre-defined) investment strategies or model portfolios. Benchmarks should cover the MOP as a whole, i.e. both the insurance cover and the underlying investments, since what matters to the retail investor is that the product as a whole provides value for money. This should be the case, even where the benchmarks cover investment options developed by product manufacturers subject to value for money rules in the Directives 2014/65/EU, 2009/65/EC or 2011/61/EU.

MOPs can be designed to either allow consumers to choose between a wide array of individual investment options, or in a way that offers different combinations of investment options with a pre-determined investment allocation or strategy, either fixed or dynamic, which is defined by the insurance undertaking.

Given the specificities of MOPs, it might not be practically feasible for EIOPA to include each potential combination of an insurance cover with an underlying investment option in a benchmark. Accordingly, it is appropriate for EIOPA to develop value-for-money benchmarks based on a sufficiently granular methodology that covers insurance combined with a representative selection of the underlying investment options of the products, i.e. clusters of similar combinations of insurance cover and underlying investment options. Different investment options provide different value to customers and MOPs will continue to include a variety of underlying products with different investment strategies, including where this results in inherently more expensive products. The methodology should be able to take into account a variety of possible underlying investment options and strategies, including those focused on certain types of target assets (e.g. small-caps or SMEs, private equity, bond funds, real estate funds, growth assets or infrastructure), sectors (e.g. defence), or products that may be more expensive to manage.

When developing its benchmarks, EIOPA should, when such data is available and when possible, based on the way the data is structured, identify the costs of financial instruments embedded in MOPs and ensure that they can be clearly distinguished from the MOP's other cost components. EIOPA should, where possible, ensure that the assessment of value for money reflects, in a representative manner, the combination of the insurance cover and the selected underlying investment options.

In cases of financial instruments used as underlying investment options in insurance-based investment products that have been subject to a pricing process pursuant to Article 16-a of Directive 2014/65/EU, Article 14(1e) of Directive 2009/65/EC or Article 12(1e) of Directive 2011/61/EU, national competent authorities, when monitoring such insurance-based investment products, should to the extent possible liaise with the national competent authorities in charge of supervising Article 16-a of Directive 2014/65/EU, Article 14(1e) of Directive 2009/65/EC or Article 12(1e) of Directive 2011/61/EU. These authorities should to the extent possible cooperate with each other to ensure that the use of EIOPA benchmarks for supervisory purposes does not lead to unnecessarily duplicative requirements on firms and undertakings.

The national competent authority with competence to supervise the insurance-based product should be the point of entry for the insurance undertaking and the insurance intermediary.

(13c) In the context of product governance and value for money assessments, investment firms should be able to include all relevant information concerning the performance of the product at any given time to ensure that a product is consistent with the objectives and needs of the identified target market and continues to offer value for money. This could include past performance where it provides meaningful information, as well as forward-looking performance scenarios based on realistic data and plausible assumptions.

(13d) Neither the peer group comparisons nor the Union supervisory benchmarks to be used in the context of value for money assessments should amount to price regulation. The development of Union supervisory benchmarks and the peer group comparisons should not lead to a standardisation of products or limit innovation in the market. Prices of financial instruments and insurance-based investment products should be determined on the basis of competition and supply and demand in the various markets. At the same time, manufacturers and distributors should ensure that financial instruments and insurance-based investment products offer value for money relative to their costs and charges, their performance and other benefits and characteristics.

(13e) To limit, to the greatest extent possible, costs related to the new reporting obligations and to avoid unnecessary duplication, the peer-group comparisons and the Union supervisory benchmarks should be built using data sourced as much as possible from existing Union law disclosure and reporting obligations. Firms should establish peer groups on the basis of the information included in the key information document referred to in Article 1 of Regulation 1286/2014, data and statistics published by ESMA on costs and performance of EU retail investment products, or on data and statistics on costs and performance made available, on a non-discriminatory basis, to the firms, by professional associations. EIOPA should develop the Union supervisory benchmarks for insurance-based investment products using information included in the key information document referred to in Article 1 of Regulation 1286/2014, and data and reporting available under Directive 2009/138/EC.

In order to increase the objectivity and the comparability of peer groups, investment firms that offer or recommend financial instruments falling under the definition of packaged retail products in accordance with Article 4(1) of Regulation (EU) No 1286/2014 should be required to report annually data on the costs of distribution, including any costs related to the provision of advice or any inducement paid or received, to competent authorities, for onward transmission to ESMA.

ESMA should develop draft implementing technical standards to determine the content, format and data standards and the methods and arrangements for submitting data on distribution costs.

In particular, due consideration should be given to the technical regulatory and implementing standards on reporting under Directives 2009/65/EC, 2009/138/EC and 2011/61/EU. Where possible, necessary data should be added to these existing reporting frameworks. Standardization or specification of key information on investment products, including in relation to product categorization and, where relevant, distribution costs, should also be pursued to the extent feasible, with a view to achieving the overall objective to limit the extra reporting burden on manufacturers and distributors, when the standardization or specification at the same time contributes to the proper understanding by retail investors of the key features of investment products or allows retail investors to better compare investment products.

(14) ***In order*** to assist manufacturers and distributors ***of financial instruments that are subject to the obligation to perform value for money*** assessments, the ***power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union*** should be ▌ delegated ***to the Commission*** to specify the criteria to ***select eligible financial instruments for the composition of peer groups, the criteria to determine*** whether ***the financial instrument offers value for money to retail clients where there are no or very limited comparable financial instruments available, and the criteria to specify how the costs, charges and performance of the financial instrument compare to the costs, charges and performance of the relevant peer group, including the determination of whether the value for money of a financial instrument is at a significant distance from the average*** costs and performance ***of the financial instruments in the relevant peer group to the detriment of the retail client, with a view to determining whether the costs are proportionate and justified. This should increase the objectivity and the comparability of the peer group comparison.***

In developing the criteria for peer grouping, a fair and balanced comparison across financial instruments of their total costs and different components, as incurred by the retail client, should be ensured. In particular, the criteria 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 client to the distributor.

In order to assist insurance undertakings and insurance intermediaries in their assessments, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission to specify the criteria to determine whether the costs and charges of an insurance-based investment product are justified and proportionate ***for the purposes of the value-for-money assessment, taking into account in a proportionate way the activities performed, the nature of the insurance products sold and the nature of the distributor***.

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

(18) Directives 2009/65/EC and 2011/61/EU require alternative investment funds (AIFs) and undertakings for the collective investment in transferable securities (UCITS) management companies to act with due skill, care and diligence in the best interests of the investment fund they manage and of their investors. AIFs and UCITS management companies should therefore prevent undue costs from being charged to investment funds and their investors. AIFs and UCITS management companies should be required to establish a sound ***undue costs*** process which should comprise the identification, analysis and review of costs charged, directly or indirectly, to investment funds or their unit holders, and thus borne by investors. Costs should be considered to be due if they comply with UCITS and AIFs pre-contractual documents, are necessary to their functioning, and are borne by investors in a fair way. ***It is necessary for management companies to take all reasonable steps to identify unit-holders in order to reimburse any amounts unduly charged. In the event that the individual unit-holders cannot be identified or the cumulative costs of reimbursement to the unit-holders exceed the unduly charged amount, that unduly charged amount should be returned to the UCITS.***

(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, ▌ auditors of the investment funds and their managers, and the depositary of those funds thereof. To promote better enforcement and achieve concrete results for retail investors, harmonisation of Member States' administrative and sanctioning powers is necessary. The obligation to compensate investors should be added as a possible administrative measure and sanction so that this possibility exists in all Member States.

(20) The ***value for money assessment*** process under Directives 2009/65/EC and 2011/61/EU should ***be closely aligned with the value for money assessment process for manufacturers under Directive 2014/65/EU and should*** ensure that ***all*** costs ***and charges, including inducements*** borne by retail investors are justified and proportionate ***having regard*** to the ***performance, other benefits for retail investors, such as qualitative features, and if relevant services, that could impact the value and benefits to retail investors,*** characteristics***, objectives, marketing strategy,*** and strategy ▌ of the ***UCITS or AIFs,*** so that ***they*** deliver value for money to ***retail*** investors. UCITS and AIFs management companies should ***be*** responsible for the quality of their ***value-for-money assessment*** process. ***They should establish value for money through appropriate product testing and assessments, taking into account the specificities of the funds. As part of that product testing and those assessments***, they should ***include a peer group comparison to other*** funds ***in the Union*** with similar ▌ characteristics ***in terms of recommended holding periods, level of risk, investment strategy and objectives, marketing strategy, sustainability features and type of management (active or passive), and limited additional criteria that may be necessary to ensure that the peer group comparison is accurate, reliable and objective. The assessment should compare the costs and charges and the performance of the funds to the costs and charges of a peer group of funds in the Union with comparable features. Where the UCITS or the AIF is at a significant distance from the average of the peer group to the detriment of the client, value for money should be substantiated through additional testing 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. If, where relevant after remedial actions have been taken, the value for money of the fund could not be ensured, the fund should not be made*** available ***to retail investors. The peer group comparison should be based on appropriate and reliable data, from the information included in the key information document referred to in Article 1 of Regulation 1286/2014, data and statistics published by ESMA on costs and performance, or on data and statistics on costs and performance made available, on a non-discriminatory basis, to the*** management companies, ***by professional associations.***

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

(21a) In order to promote consistent supervision and enhance convergence across Member States with respect to value for money and undue costs, ESMA and EIOPA should ensure coordination of the competent authorities' supervisory practices and include, in the ESMA and EIOPA supervision handbooks, a section outlining the best supervisory practices on value for money assessments recommended by ESMA or EIOPA. ESMA should use its supervisory convergence powers to ensure a harmonised supervision and enforcement by competent authorities of costs and charges, including inducements, disclosure, selection of peer groups and value-for-money assessments conducted by firms and management companies and where necessary, issue guidelines to foster convergence in supervisory outcomes of competent authorities. EIOPA should use its supervisory convergence powers to ensure a harmonised supervision and enforcement by national competent authorities of value for money assessments by insurance undertakings and insurance intermediaries which manufacture insurance-based investment products.

(21b) 5 years after the date of application of this amending directive, Member States should communicate to the Commission, ESMA and EIOPA relevant information concerning the implementation of the value for money assessment framework. In consultation with ESMA and EIOPA, the Commission should carry out an evaluation of the effective implementation of the framework and assess the impact of the value for money assessment, including the peer group comparison and the application of supervisory benchmarks, for retail clients and customers.

(22) ***Enhancing the quality of the advice given by financial advisors is one of the main objectives of this Directive.*** Knowledge and competence of staff are key to ***better ensure the*** quality ***of*** advice ***given to consumers in the Union***. 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***. Member States should also be allowed to lay down additional requirements where necessary.***

Environmental, ***social and governance*** considerations ***are also increasingly important to clients and customers. It is therefore necessary to include requirements for knowledge and competence on these matters, including how to consider and integrate sustainability factors and clients' sustainability preferences into the advisory processes.***

Member States should require investment firms, and insurance and reinsurance distributors, to ensure that natural persons giving investment advice on behalf of the investment firm or as insurance intermediaries, and the employees concerned of insurance undertakings and insurance intermediaries, possess the knowledge and competence that is necessary to fulfil their obligations. To provide assurance to clients, customers and competent authorities that the level of knowledge and competence of such natural persons and insurance intermediaries and the employees of insurance undertakings and insurance intermediaries meet the required standards, such knowledge and competence should be proven by a certificate ***or equivalent proof. Comparable forms of evidence of knowledge may, for example, include academic degrees or professional certifications***. Regular professional development and training are important to ensure that the knowledge and competence of staff advising on or selling investment products to clients, or insurance-based investment products to customers, is maintained and updated. To that end, it is necessary to require that natural persons giving investment advice follow a minimum number of hours per year of professional training and development***, part of which should be dedicated to sustainability issues,*** and that they prove the successful completion of such training and development by a certificate ***or equivalent proof of completion of such training and development***.

To avoid imposing duplicative requirements on persons who are subject to both Directive (EU) 2016/97 and Directive (EU) 2014/65 in relation to professional training or development, any training or development that is compliant with the requirements of both Directives should be accepted within each framework.

(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. Member States should determine, and publish all relevant information on the types of certificates and comparable forms of evidence that they consider acceptable. It is appropriate that such relevant information include the practical aspects of demonstrating compliance with these requirements. Certificates could be issued by third parties, including universities and professional bodies, based on objective criteria determined by the Member States. Investment firms, insurance intermediaries and insurance undertakings should demonstrate compliance upon the request and at the discretion of the competent authorities.

(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 ***intermediaries and insurance undertakings*** 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.
Powers of the competent authorities ***to implement measures or request from a third party to implement measures in relation to online interfaces and domain names*** should ***be conferred and exercised in accordance with the freedom of expression and*** information***, including with national constitutional principles relating to freedom of expression in the media in a manner that is consistent with The Charter of Fundamental Rights of the European Union***.

(23a) Where competent authorities have well-founded reasons to believe that a natural or legal person is providing investment services or activities without being duly authorised or an insurance intermediary or insurance undertaking is distributing insurance-based investment products without being registered or authorised, they should take the necessary actions to prevent the provision of such services or activities or the distribution of such products. Such actions could relate to marketing communications, whether by the investment firm, insurance intermediary, insurance undertaking or by any third party acting on its behalf, such as a finfluencer.

(23b) When those actions concern a natural person, the publication of the decision made by the competent authority should remain subject to the case-by-case assessment of the proportionality of the publication of personal data provided under Article 71(1). The competent authorities should inform ESMA and EIOPA about such behaviour, and ESMA and EIOPA should consolidate and publish all related decisions issued by competent authorities so that such information is available to retail investors for them to be able to identify potential frauds. As regards natural persons, in order to avoid the disclosure of personal information deemed disproportionate by a competent authority when publishing the consolidated list of all decisions issued by competent authorities, ESMA and EIOPA should abstain from disclosing any additional information compared to that disclosed by the competent authority itself.

(23c) Digital transformation has introduced new opportunities in retail investment that support the objectives of the Savings and Investments Union. While these developments come with risks that must be addressed, using digitalisation can improve retail investor's understanding and provide easier and more user-friendly access to investment information and options. Rules designed for advice should enable both physical and online advice, as retail clients or customers may rely on either or both when seeking investment advice. Directive 2014/65/EU provides that technical provision pursuant to Article 4 be adjusted to technological developments, therefore delegated acts adopted by the Commission and supervisory briefings by ESMA regarding Article 4(1)(4) should ensure that there is clarity and legal certainty in the boundaries of advice, not only for physical advice but also online advice.

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

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

(26) To foster supervisory convergence and facilitate cooperation between competent authorities, ESMA should be able to set up ***collaboration*** platforms ▌ at the initiative of ***at least two*** competent authorities, where justified concerns exist about investor detriment related to the provision of cross-border investment services, and where such activities are significant with respect to the market of the host Member State. EIOPA, which already has the power to set up collaboration platforms under Article 152b of Directive 2009/138/EC, should have the ▌ power ***to set up collaboration platforms at its own initiative, or at the initiative of one or more competent authorities,*** 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 Council[8] and Regulation (EU) No 1094/2010 of the European Parliament and of the Council[9], 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.

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[8] 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).

[9] 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).

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

(28) To further increase transparency, retail clients and customers should receive a periodic overview of their investments. For that reason, firms that provide investment services together with a service of safekeeping and administration of financial instruments, or insurance intermediaries and insurance undertakings distributing insurance-based investment products, should provide an annual statement to their retail clients and customers which should include an overview of the products those clients and customers hold, of all costs, associated charges and ***inducements***, and of all payments, including dividends and the interests paid and received by the client and customer over a period of one year, together with an overview of the performance of those financial products. That annual statement should enable retail investors to get a better understanding of the impact of those elements on the performance of their portfolio. ▌ 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 ***projections*** adjusted ***to that*** individual ***insurance-based investment product,*** of the expected outcome at the end of the contract, or recommended holding period and a summary of the insurance cover.

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

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

(31) To address developments in marketing practices, including the use of third parties***, such as finfluencers,*** 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 ***and customers***, such marketing 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.

(31a) A certain type of third parties subject to the rules on marketing communications and practices are finfluencers. Finfluencers are playing an increasing role in promoting financial products and services due to their capacity to influence the decisions of retail clients, potential retail clients, and customers. Although the rise of finfluencers can be positive in terms of promoting financial education to a wider audience, they may be engaging in marketing communications or practices on behalf of investment firms, insurance undertakings and insurance intermediaries to actively communicate with a wider or smaller audience and affect the decisions of the audience by using the finfluencers' exposure, position, or relationship with the audience. It is essential to ensure certain safeguards regarding the use of finfluencers so as to create a reliable environment for each Union citizen. Trust in Union financial markets is a key factor in encouraging potential retail clients and customers to invest in them.

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

(32a) Where an investment firm, insurance undertaking or insurance intermediary uses the services of a finfluencer, that investment firm, insurance undertaking or insurance intermediary should establish a written agreement with the finfluencer determining the nature and scope of the activity to be carried out on its behalf.

(33) The suitability and appropriateness assessments are an essential element of investor protection. Investment firms, insurance undertakings and insurance intermediaries should assess the suitability or appropriateness of investment products and services recommended to or ***requested*** by the client, respectively, on the basis of information obtained from the client. Where necessary, the investment firm, insurance undertaking or insurance intermediary, may also use information that they may have obtained on the basis of other legitimate reasons, including existing relationships with the client or customer. The investment firms, insurance undertakings and insurance intermediaries should explain to their clients and customers the purpose of these assessments and the importance of providing accurate and complete information. They should inform their clients and customers ▌ that providing inaccurate ***or*** incomplete information may have negative consequences on the quality of the assessment ***or will prevent them from determining whether the product or service envisaged is suitable or appropriate for the client or customer and, in case of advice, from proceeding with the recommendation***.

(34) To ensure that, in the context of advised services, due consideration is given to portfolio diversification, financial advisors should be ▌ required to consider***, where possible,*** the needs of such diversification for their clients or customers, as part of the suitability assessments, including on the basis of information provided by those clients or customers on their existing portfolio of financial and non-financial assets. ***If clients or customers, following a request by the investment firm, insurance intermediary or insurance undertaking, do not provide information on their existing portfolio held with other investment firms or insurance undertakings, financial advisors should base the assessment of the need for portfolio diversification on the information that is available to that them.***

(35) To ***enhance the effectiveness of the warnings***, ▌ 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.

(35a) A requirement for investment firms to notify clients when the value of the client's overall portfolio or specific financial instruments depreciate in value could induce panic-selling. Experiencing fluctuations in the value of financial instruments are an inherent part of investing in such products and over the past years there have been several events that may have caused larger depreciations in the value of portfolios or instruments of at least 10 %. However, those fluctuations have turned out to be relatively short-term. Given that context, information on depreciation in value would not in and of itself assist the client in making prudent investment choices. Delegated acts supplementing Directive 2014/65/EU should not impose notification requirements related to the depreciation in value of an overall portfolio, or of certain financial instruments.

(36) A wide ***variety of insurance-based investment products and*** financial instruments can be offered to ***customers and*** retail ***clients. Each insurance-based investment product or, where applicable, underlying investment asset, and*** each financial instrument ***entails*** different levels of risks of potential losses. ***Customers and*** retail ***clients*** should therefore be able to easily identify ***insurance-based*** investment products ***and financial instruments*** that are particularly risky. It is therefore appropriate to require that ▌ insurance undertakings***,*** insurance intermediaries ***and investment firms*** identify those ***insurance-based*** investment products ***and financial instruments*** that are particularly risky and ***prominently display appropriate warnings on those risks*** in information ***materials***, including marketing communications, ***provided to customers and retail clients***. To assist ▌ insurance undertakings***,*** insurance intermediaries ***and investment firms*** in identifying such particularly risky products, ESMA and EIOPA should ***develop draft regulatory technical standards*** on how to identify such products ***and submit those regulatory technical standards to the Commission***, taking due account of the ***specificities of*** different types of ▌ insurance-based investment products ***and financial instruments .***

The specificities of the products may in particular relate to specific market risks, credit risks or liquidity risks of a financial instrument or insurance-based investment product or, where applicable, an underlying investment asset. Member States should empower competent authorities to impose the use of risk warnings for specific ***insurance-based*** investment products and ***financial instruments. In case of concerns regarding*** the use or ***the*** absence of ***use or the supervision of the*** use of those risk warnings ***in one or more Member States, that*** would create a material impact in terms of investor protection , ESMA and EIOPA ***may, after having consulted the competent authorities concerned, issue a recommendation addressed to the relevant competent authorities to require*** the use of ***risk*** warnings ***for specific insurance-based*** investment ***products and financial instruments***.

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(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. ***Financial literacy and education are of key importance in addressing the current deficiencies in the Savings and Investments Union (SIU) and in ensuring the adequate fulfilment of the SIU goals. Trust in Union financial markets is intrinsically linked to the level of participation in those markets by retail clients and customers.*** 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**.** ***Where appropriate those measures could take into account existing efforts such as the joint EU/OECD-INFE financial competences frameworks and those of entrepreneurs via the European entrepreneurship competence framework (EntrComp) and the work developed with the Member States under the Technical Support Instrument (TSI)***. Investing responsibly refers to retail investors' ability to make informed investment decisions in line with their personal and financial objectives, provided that they are aware of the range of available investment products and services, their key features, and the risks and benefits involved with investing, and provided that they understand the investment advice they receive and are able to react to it appropriately. Prospective retail investors should be able to access educational material that supports their financial literacy at all times, and the material should in particular take account of differences in age, education levels and the technological capabilities of retail investors. That is in particular relevant for retail clients and customers that access financial instruments, investment services, and insurance-based investment products for the first time, and those using digital tools.

(37a) Managers and directors of credit institutions, insurance companies, pension funds, investment firms and collective investment schemes, as well as management companies of such funds and schemes, should be regarded as professional clients when they are directly involved in the entity's investment activity, such as portfolio management, asset allocation or investment strategy, which ensures that they possess knowledge and experience comparable to that of professional investors.

(37b) Employees of alternative investment fund managers (AIFMs), who are professionally involved in the management or the marketing of alternative investment funds, possess a level of knowledge and experience regarding those funds that would be comparable to that of professional clients. This includes individuals directly participating in portfolio management or risk management functions, as well as employees engaged in the distribution or sales of the funds who are required to understand their features, risks and investment strategies in order to market them to investors. Where such employees hold or acquire units in the specific alternative investment funds which they manage or market in the course of their employment at the AIFM, they should be treated as professional clients solely in respect of those investments.

(38) It is necessary to ensure that the criteria for determining whether a client possesses the necessary experience, knowledge and expertise to be treated as a professional client where such client requests such treatment, are appropriate and fit for purpose. The identification criteria should therefore also take into account ***relevant*** experience gathered outside the financial services sector and certified training and education that the client has completed. The ***relevance*** of the ***certified training or education can be assessed by the investment firm on a case-by-case basis, depending on the transactions or services envisaged. Specialised higher education degrees as well as certified courses and accreditations that are relevant when working in the field of finance could be considered examples of relevant education and training. Investment firms*** should ***be able to demonstrate why they consider the certified training and education courses and accreditations to be relevant***.

(38aa) The criterion on the number of transactions should reflect an ongoing experience. In order to better reflect the investment profile of sophisticated investors active in less liquid private markets, such as business angels, and enable those investors to demonstrate ongoing experience in a manner consistent with their typical investment behaviour, a further variation of the transaction frequency threshold should be provided to account for these characteristics.

Recurrent transactions in an investment plan should generally be considered as only one transaction, unless it can be demonstrated that the amounts are of significant size.

(38ab) When assessing whether a client transaction is of a significant size, investment firms should, inter alia, take into account the size of transactions on the relevant market. For the purpose of determining the relevant threshold, the scope of the analysis should not be limited to (the size of) transactions previously carried out by the relevant client or by clients of the relevant investment firm on the relevant market. To assess whether transactions are of a significant size, investment firms should consider whether the transactions were individually large enough to provide the client with meaningful exposure to the relevant market so that it contributed to the client's acquiring the required expertise, experience and knowledge of the transactions or services envisaged. In relation to leveraged positions or financial instruments for which a margin is deposited, it is considered likely that the typical notional value of transactions in such financial instruments will be commensurately higher than in non-leveraged products, and therefore would expect firms to assess significant size at a level appropriate to that market. In the case of derivatives, a firm may also need to consider if the relevant market should be distinguished by the underlying asset class, index or reference price to which exposure is provided to ensure significant size is appropriately assessed.

(38ac) The identification criteria should also be proportionate and not discriminatory with respect to the Member State of residence of the client. The criterion based on size of legal entity should therefore be amended. The threshold in the criterion based on wealth should be lowered to EUR 250,000 to account for clients residing in Member States with lower average GDP per capita. In order to assess the average value of the client's financial instrument portfolio over the last three years, the investment firm could use the last three annual statements that include the client's relevant information at the end of each of the last three calendar years preceding that client's request to be classified as professional. Where such annual statements are not available or if any other more recent statement is available, the investment firm could 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.

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

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

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

(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,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Amendments to Directive 2014/65/EU

Directive 2014/65/EU is amended as follows:

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

‘(a) Article 9(3), Article 14, and Article 16(2), (3)***, (3a), (6) and (7a), Article 16-a(1), Article 16-a(2)***, Article 16-a ***(2a)***, Article 16-a(3), Article 16-a(4), ***Article 16-a(5), Article 16-a(6)***, Article 16-a(7), (8) ***third subparagraph,*** and Article 16-a(***12a***)***;’***

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

'(a) conditions and procedures for authorisation and on-going supervision as established 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;

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

(c) organisational requirements as laid down in the Article 16(3), ***(3a), (7a)***, Article 16-a***(1), Article 16-a(2), Article 16-a(2a) and (2b)***, Article 16-a(3), Article 16-a(4), ***Article 16-a(5), Article 16-a(6)***, Article 16-a(7) ▌ , ***Article 16-a***(8) ***third subparagraph,*** Article 16***-a(9), Article 16-a*** (***12a***), ▌ and the corresponding delegated acts adopted by the Commission in accordance with Article 89.'

(3) in Article 4(1), the following points ▌ are added:

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

(a) by an investment firm or a third party that ***receives fees, commissions or any monetary or*** non-monetary ***benefits paid or provided*** by such investment firm;

(b) to natural or legal persons;

(c) in any form and by any means;

(67) 'marketing practice' means any strategy, use of a tool or technique***, including online targeting of clients or potential clients,*** applied by an investment firm, or by any third party that ***receives fees, commissions or any monetary or*** non-monetary ***benefits paid or provided*** by such investment firm to:

(a) directly or indirectly disseminate marketing communications;

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

(c) promote in any way investment firms, financial instruments or investment services;

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

(68a) ‘finfluencer’ means any natural or legal person with the capacity to influence the behaviour, opinion, or investment decisions of retail clients or potential retail clients due to exposure, position or relationship with the audience and who engages in marketing communications or marketing practices on behalf of an investment firm.

(68b) ‘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;

(68c) 'inducement scheme’ means a set of arrangements governing the payment, provision and receipt of inducements, including the conditions under which the inducements are paid or received;’

(4) the following Article 5a is inserted:

‘Article 5a

Procedure to address unauthorised activities offered through digital means

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

▌

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

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

▌

(6) Article 8 is amended as follows:

(a) the second paragraph is replaced by the following:

'Every withdrawal of authorisation shall be notified to ESMA***, without undue delay***. The competent authority shall inform ESMA about the reasons for withdrawing the authorisation.**'**

(b) the following paragraph is added:

'ESMA shall ***establish and make available to competent authorities a list of*** 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.'

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

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

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

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

'(d) a policy on marketing communications and practices, ▌ to ensure compliance with obligations set out in Article 24c.**'**

(8) Article 16 is amended as follows:

(a) paragraph 1 is replaced by the following:

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

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

(c) the following paragraph 3a is inserted:

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

(d) the following paragraph 7a is inserted:

‘7a. Member States shall ensure that investment firms establish appropriate procedures and arrangements, including electronic communication channels, to ensure that ***clients’*** rights under this Directive can be exercised without restriction and that ▌ complaints ***from clients and consumer and investor associations***, are dealt with properly ***and that there are no restrictions on exercising their rights under this Directive.***

Those procedures ***and arrangements*** shall allow ***clients and consumer and investor associations*** to register complaints in ***the same*** language in which ***information pursuant to this Directive, marketing communications or any contractual documents*** were provided ***to clients. Investment firms shall take a decision on the complaint and communicate their decision to the complainant as quickly as possible, and in any event no later than 40 working days from the date on which the complaint was received by the investment firm.***

Where, in exceptional situations, the decision on a complaint cannot be communicated within the period referred to in second subparagraph, investment firms 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 investment firms under this paragraph that is addressed to a complainant, shall be made in the language ***in which the complainant filed its complaint****.'*

▌

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

‘Article 16-a

Product governance requirements

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

The product approval process shall contain all of the following:

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

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

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

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

(da) an identification of the level of knowledge and experience needed to understand the financial instrument and the ability to bear losses;

(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 ▌ , ***the value-for-money*** assessment ***consisting of:***

(i) a clear identification and quantification of all costs and charges related to the financial instrument, its performance and, if any, an identification and, where possible, a quantification of its benefits for a retail client other than the financial performance. Where distribution costs and charges, including inducements, are included in the manufacturer's costs, a clear and separate identification and quantification of such costs and charges, including inducements, and

(ii) an assessment of whether the financial instrument offers value for money to a retail client, by determining whether the identified costs and charges are justified and proportionate, having regard to the performance, other benefits for a retail client, such as qualitative features and services that could impact the value and benefits to investors, characteristics, objectives, the identified target market, distribution strategy, and strategy of the financial instrument.

An investment firm shall regularly review the financial instruments it manufactures, during the whole duration of their distribution, taking into account any event or risk that could materially affect the identified target market and their performance, to assess whether the financial instruments and pricing process remain consistent with the objectives and needs of the identified target market, whether the intended distribution strategy remains appropriate and whether the financial instruments referred to in point (e) of the second subparagraph continue to offer value for money. In case it emerges from the review that a financial instrument is no longer consistent with the objectives and needs of the identified target market, or the intended distribution strategy is no longer appropriate, or if that financial instrument referred to in point (e) of the second subparagraph does not continue to offer value for money, the investment firm shall take appropriate action to prevent future detriment to existing and prospective clients. Any potential claim from a client shall be subject to relevant national rules and Union law.

The ***value for money assessment conducted and developed by an investment firm for a financial instrument, as*** referred to in ***this paragraph,*** shall ***be documented and*** include ***how the*** costs***, charges*** and performance ***of that financial instrument compare to the costs, charges and performance of the financial instruments included in the relevant peer group. That peer group of financial instruments shall consist of an appropriate range of financial instruments which are comparable, as regards the criteria set out in*** paragraph ***2a, to the financial instrument that is subject to the value for money assessment. The peer group shall include a representative number of financial instruments, which are marketed in the Member State or Member States where the relevant financial instrument will be distributed and, where feasible and proportional, in other Member States where comparable financial instruments are distributed. The peer group comparison shall, in addition to the total identified costs, include comparison with individual cost components.***

An investment firm which manufactures financial instruments shall make available to distributors and if applicable to insurance undertakings and insurance intermediaries that manufacture insurance-based investment products, all relevant information on the financial instrument and its product approval process that is needed to fully understand that financial instrument and the elements taken into consideration during the product approval process, including complete and accurate information on the value for money assessment of that financial instrument.

▌

2. 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, to understand the characteristics and identified target market of each financial instrument and the manufacturer's product approval process, including for the financial instrument referred to in point (e) of the second subparagraph of paragraph 1 the value for money assessment of that financial instrument by the manufacturer.***

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 value for money assessment:

(a) ***a clear identification and quantification of the*** costs ***of distribution*** of the financial instrument ***and any further costs and charges***, including ***inducements, of the*** financial instrument ***not already taken into account by the manufacturer of that financial instrument***;

(b) ***an assessment of whether the financial instrument offers value for money, by determining whether the total costs and charges, including inducements, are justified and proportionate taking into account the value for money assessment of the manufacturer, having regard to the performance, other benefits for a retail client, such as qualitative features and services that could impact the value and benefits to retail clients,*** characteristics***, objectives, the identified target market, distribution strategy, and, if relevant, strategy*** of the financial instrument***.***

An investment firm shall ***regularly review financial instruments it offers or recommends, during the whole duration of their distribution, taking into account any event or risk that could materially affect the identified target market and their performance, to assess at least whether the financial instrument and pricing process remains consistent with the objectives and needs of the identified target market, whether the intended distribution strategy remains appropriate and whether the financial instrument*** referred to in ***the second subparagraph continues to offer value for money***.

In case it emerges from the review that a financial instrument is no longer consistent with the objectives and needs of the identified target market, or the intended distribution strategy is no longer appropriate, or if that financial instrument does not continue to offer value for money, the investment firm shall take appropriate action to prevent future detriment to existing and prospective clients. Any potential claim from a client shall be subject to relevant national rules and Union law.

The value for money assessment conducted and developed by an investment firm for a financial instrument referred to in this paragraph shall be documented and include a specification how the costs, charges and performance of the financial instrument compare to the costs, charges and performance of the financial instruments included in the relevant peer group. That peer group shall consist of an appropriate range of financial instruments which are comparable, as regards the criteria set out in in paragraph 2a, to the financial instrument that is subject to the value for money assessment. The peer group shall include a representative number of financial instruments which are offered or recommended in the relevant Member State or Member States where the relevant financial instrument will be distributed and, where feasible and proportional, in other Member States where comparable financial instruments are distributed. The peer group comparison shall, in addition to the total identified costs, include comparison with individual cost components.

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 the latter takes into account all costs and charges, including inducements, related to the distribution. In such a case, the investment firm shall assess whether the financial instrument meets the target market's objectives and needs.

The previous subparagraph shall not apply when an investment firm offers or recommends financial instruments manufactured by entities that are not subject to Directive 2009/65/EC, Directive 2011/61/EU or Directive 2014/65/EU.

2a. In order to assess whether financial instruments have features comparable to those of a financial instrument subject to a value for money assessment, and therefore are eligible for the composition of a relevant peer group, investment firms shall use the following criteria, where relevant for the financial instrument, to ensure the accuracy, reliability and objectivity of the peer group comparisons:

(a) Recommended holding period;

(b) Risk;

(c) Investment strategy;

(d) Distribution strategy;

(e) Investment objectives;

(f) Target market;

(g) Defined coupon and yield;

(h) Sustainability features;

(i) Active and passive management.

Investment firms may use limited additional criteria to those listed in the first subparagraph provided such additional criteria are necessary to ensure that the peer group comparison is accurate, reliable and objective.

The peer group shall be established on the basis of appropriate and reliable data, from the information included in the key information document referred to in Article 1 of Regulation 1286/2014, data and statistics published by ESMA on costs and performance of EU retail investment products, or on data and statistics on costs and performance made available, on a non-discriminatory basis, to the firms, by professional associations.

2b. For derivatives as defined by article 2(1)(29) of Regulation (EU) No 600/2014 the peer-group comparison shall only be made in relation to costs and charges, including inducements.

3. An investment firm ***which manufactures and*** offers or recommends ***the*** financial instrument ***may establish a single value for money assessment relating to both manufacturing and distribution stages, in line with the requirements under paragraphs 1 and 2***.

4. ***When, in its value for money assessment,*** an investment firm ***determines that the value for money of a financial instrument that it intends to manufacture, offer or recommend, is at a significant distance from the average costs and performance of*** financial instruments ***in the relevant peer group to the detriment of a retail client, the investment firm shall substantiate in a detailed way, through additional testing and further assessments, how*** the financial instrument ***is to deliver value for money to retail clients. Where necessary, the investment firm shall take*** appropriate ***actions to ensure that the financial instrument delivers value for money to retail clients***. ***The substantiated assessment shall be recorded and kept by the investment firm in accordance with the rules set out in paragraphs 6 and 7.***

If the value for money of a financial instrument cannot be ensured at the time of approval, the investment firm ***shall not approve the*** financial ***instrument. If the value for money cannot be ensured after remedial actions have been taken, the*** investment ***firm*** shall ***not manufacture, offer or recommend that financial instrument.***

▌

5. ***The management body of*** an investment firm***, whether acting as a manufacturer or as a distributor, shall define, oversee and be accountable for the implementation of the governance arrangements that ensure the adequacy and effectiveness of the product approval process. Compliance reports to the management body shall include information on value for money assessments and any remedial actions taken to ensure those*** instruments ***offer value for money to*** retail ***clients. Investment firms*** shall ***make those reports available to their*** competent ***authority upon request***.

▌

6. An investment firm ***shall document all assessments made and shall, upon request, provide such assessments*** to the ***relevant*** competent ***authority, including*** the following***, where applicable***:

(a) ***the dataset from which the relevant peer group of financial instruments was selected and the criteria used for the selection of the peer group, relevant information on the selected financial instruments within the peer group and the results of the comparison of the*** financial instrument ***to the relevant peer group;***

(b) ***any substantiated assessment demonstrating how the financial instrument shall offer value for money despite being at a significant distance from the average*** of the ***peer group of*** financial instruments ***and any appropriate actions to ensure value for money;***

(ba) any remedial actions taken by the investment firm, following the initial value for money assessment, to ensure that the financial instrument offers value for money to retail clients.

▌

7. ***Member States shall ensure that*** investment ***firms keep the record of value for money*** assessments ***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.***

▌

8. ***Competent authorities shall carry out checks based on evidence provided by*** investment ***firms and other information they deem relevant to ensure that investment firms select relevant peer groups of*** financial ***instruments and conduct value for money assessments in accordance with paragraphs 1, 2, 2a and 3. Competent authorities shall analyse the data they receive according to this Article***. ***Should they identify a significant investor protection concern as regards the value for money assessments, they shall carry out a supervisory action to further evaluate the relevant financial instruments offered in the relevant market.***

Where the competent authority concludes that the evidence has not been provided or that the relevance of peer groups of financial instruments is not justified or the financial instrument does not offer value for money, it shall require the investment firm to take measures to ensure compliance with the product governance requirements. In the absence of such measures, the competent authority shall make appropriate use of its powers under Article 69.

Where financial instruments are not at a significant distance from the relevant peer group, as referred to in paragraph 4, it shall not, in itself, automatically imply that such instruments offer value for money to clients.

9. ***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, on an annual basis, details of the costs of distribution, including any costs related to the provision of advice or any inducement paid or received. The competent authorities shall transmit such details of costs of*** distribution ***to ESMA***.

▌

10. ***ESMA shall publish, on an annual basis a report on costs and performance, including, where relevant, anonymised or aggregated data on costs and charges, including inducements, relating to the financial instruments*** referred to in ***paragraphs 1, 2 and 3, and any related investment services, based on data already available to ESMA, which includes information on costs, charges and inducements transmitted by the competent authorities, key information documents required*** under ***Regulation 1286/2014, and any relevant information on costs and charges accessible on the European Single Access Point (ESAP)***.

11. ***ESMA shall ensure coordination of the competent authorities' supervisory practices on value for money assessments. It shall promote consistent supervision on value for money assessments and enhance convergence across Member States. ESMA shall include, in the ESMA supervision handbook, a section outlining the best supervisory practices on value for money assessments recommended by ESMA.***

▌

12. ESMA ***shall use its supervisory convergence powers to ensure a harmonised supervision and enforcement by*** competent authorities ***of costs and charges, including inducements, disclosure, selection of peer groups of financial instruments and value for money assessments conducted by investment firms. Where necessary***, ***ESMA*** shall ***issue guidelines to foster convergence in supervisory outcomes of competent authorities.***

▌

▌

12a. The policies, processes and arrangements referred to in paragraphs 1 to 12 shall be without prejudice to all other requirements under this Directive and Regulation (EU) No 600/2014, including those relating to disclosure, suitability or appropriateness, identification and management of conflicts of interests, and inducements.

12b. The Commission is empowered to supplement this Directive by adopting delegated acts in accordance with Article 89 to further specify the product governance requirements referred to in paragraphs 1, 2, 2a and 3, including:

(a) the criteria to select eligible financial instruments for the composition of peer groups to ensure a representative number of financial instruments in those peer groups in the Member State or Member States where the relevant financial instrument will be distributed, and, where feasible and proportional, in other Member States where comparable financial instruments are distributed, taking into account that this should not require a union wide comparison, but a limited comparison with comparable financial instruments, and taking into account the market size;

(b) the criteria to determine whether the financial instrument offers value for money to retail clients where there are no or very limited comparable financial instruments available, and therefore no relevant peer group can be identified;

(c) the criteria to specify how the costs, charges and performance of the financial instrument compare to the costs, charges and performance of the relevant peer group, including the determination of whether the value for money of a financial instrument is at a significant distance from the average costs and performance of the financial instruments in the relevant peer group to the detriment of a retail client, also with a view to determining whether the costs are proportionate and justified.

12d. ESMA shall develop draft implementing technical standards specifying:

(a) the content, format and data standards for the reports referred to in paragraph 9;
(b) the methods and arrangements for submitting the reports referred to in paragraph 9.

ESMA shall submit those draft implementing technical standards to the Commission by [OJ please insert date = 12 months after entry into force]. 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 1095/2010.

12e. By ... [OJ please insert date = five years after the date of application of this amending Directive], Member States shall communicate to the Commission and ESMA relevant information concerning the implementation of this Article by investment firms.

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 the impact of the value for money assessment, including the peer group comparison, for retail clients. The Commission shall carry out this evaluation alongside the evaluation in Article 25(12a) of Directive (EU) 2016/97.'

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

'Article 16a

Exemptions from product governance requirements

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

(11) in Article 21, the following paragraphs ▌ are added:

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

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

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

(12) Article 24 is amended as follows:

(a) paragraph 1 is replaced by the following:

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

▌

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

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

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

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

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

(d) paragraph 3 is replaced by the following:

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

(e) paragraph 4 is amended as follows:

(i) the first subparagraph is amended as follows:

- the introductory wording is replaced by the following:

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

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

'(iv) ▌ whether ***or not*** the range of financial instruments that ***are considered for the advice*** is restricted ▌ to well-diversified, non-complex as referred to in Article 25(4)(a) and cost-efficient financial instruments ▌ ;

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

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

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

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

- the following point (d) is added:

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

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

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

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

(f) paragraph 5 is replaced by the following:

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

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

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

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

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

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

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

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

ESMA shall ▌ develop ***draft regulatory technical standards to further specify*** the concept of particularly risky financial instruments, taking due account of the specificities of the different types of ***financial*** instruments.

The level of risk may, in particular, relate to specific product features or risk exposures such as market risks, credit risks and liquidity risks.

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

Power is delegated to the Commission to ***supplement this Directive by adopting those*** regulatory technical standards ▌ in accordance with ***Articles 10 to 14*** of Regulation (EU) No 1095/2010.

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

(ga) in paragraph 7, point (b) is amended as follows:

'(b) 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 clients. 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 are excluded from this point.'

(h) the following ***paragraphs are*** inserted:

'7a. When providing investment advice to ▌ clients on an independent basis, the investment firm may ***propose to*** 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). ▌

7aa. Before advice is provided pursuant to Article 24(4)(a)(iv) the client shall be duly informed about the possibility and conditions to also get access to investment advice on other financial instruments and the associated benefits and constraints of such advice.'

(i) paragraphs 8 ***and 9*** are deleted

(ia) in paragraph 12, the first subparagraph is amended as follows:

'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.'

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

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

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

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

'(d) the criteria to assess compliance of firms providing investment advice to retail clients ▌ with the obligation to act in the best interest of their clients as set out in ***paragraph 1***.'

(13) the following Articles ▌ are inserted:

'Article 24a

Inducements

1. Member States shall ensure that investment firms, when providing portfolio management, do not ***accept and retain any inducement in relation to*** the provision of such service ▌ .

▌

3. ***Where the investment firm is not prohibited from paying or accepting and retaining inducements, in relation to services provided to its clients, it*** shall ***ensure that the retention or payment of such inducements does not impair compliance with the investment firm's duty to act honestly, fairly and professionally in accordance with the best interest of its clients.*** Investment firms ***shall be considered not to comply with their duty to act honestly, fairly and professionally in accordance with the best interest of their clients if their inducements or inducements schemes do not meet the following criteria:***

(a) the inducement is based on a clear, comprehensible and transparent calculation method;
(b) the inducement provides a tangible benefit to the client;
(c) the level of inducement paid or accepted and retained is proportionate to the value of the financial instrument and the level of service provided to clients;
(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 of a specific product, category of products or total sales;
(e) the inducement can be identified separately from other fees, commissions or non-monetary benefits, such as fees relating to services for other clients, and payments or benefits which are necessary for the provision of services.

For the purposes of points (b) and (c) of the first subparagraph, the assessment to fulfil the criteria shall not necessarily be carried out for each individual client, but shall be carried out for homogenous groups of clients receiving similar benefits. For the purposes of point (b), an inducement or inducement scheme can only be considered to provide tangible benefit to the client where it is justified by the provision of one of the following services:

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

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

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

Other services may be deemed suitable for providing a tangible benefit to the client.

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

▌

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

▌

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

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

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

Member States shall ensure that where an investment firm 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, that tool 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 to retail clients financial instruments for which the investment firm does not pay or receive inducements, it shall prominently state this in the filtering tool.

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

8a. Without prejudice to paragraph 1 of this Article and Article 24(7), Member States may, in exceptional cases, 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. Such prohibitions or restrictions 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.

When these conditions are met and a Member State entirely prohibits the payment or acceptance of inducements by investment firms offering investment services that only consist of execution or reception and transmission of clients orders with or without ancillary services, the Member State may require that such a prohibition has to be complied with by all investment firms acting in the territory of the Member State imposing the prohibition.

Member States shall notify the Commission and ESMA of any prohibition or restriction that they intend to impose in accordance with this paragraph without undue delay and at least two months before entry of into force of that prohibition or restriction. The notification shall include a justification for that prohibition or restriction. The Commission shall within two months from the notification referred to in the second subparagraph provide its opinion on the proportionality of and justification for the prohibition or restriction.

The Commission shall communicate to Member States and make public on its website the prohibitions and restrictions imposed in accordance with this paragraph.

Member States may retain requirements or prohibitions or restrictions that were notified to the Commission in accordance with Article 4 of Directive 2006/73/EC before 2 July 2014 provided that the conditions laid down in that Article are met.

8b. The Commission shall be empowered to supplement this Directive by adopting delegated acts in accordance with Article 89 to further specify:

(a) the criteria for assessing compliance of firms receiving inducements with the obligation to act honestly, fairly and professionally in accordance with the best interest of the client, in respect of investment advice on an independent basis or portfolio management services, investment research, underwriting and placing of financial instruments;
(b) the criteria for assessing whether the inducement provides tangible benefit to the client, as referred to in paragraph 2, point (b);
(c) the criteria for assessing whether the inducement is proportionate to the value of the financial instrument and the level of service provided to the client, as referred to on paragraph 2, point (c).

Article 24b

Information on costs, associated charges and ***inducements***

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

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

(a) all explicit and implicit ***costs***, and associated charges***, including all costs and charges relating to the distribution of the financial instrument, and the cost of advice, where relevant***, charged by the investment firms or other parties where the client has been directed to such other parties, for the investment services ***or*** ancillary services provided to ***or investment activities performed for*** the client or potential client;

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

(c) any ***inducements in relation to*** the investment services ***or ancillary services*** provided to***, or investment activities performed for*** the client or potential client;

(d) ***which amount and percentage, and options on*** how the client ***pays*** for them.

Member States shall ensure that investment firms aggregate the information on all costs***,*** associated charges ***and inducements*** to enable the ***client or potential*** client to understand the overall ***costs linked to*** the financial instruments***, investment services and activities, and inducements and their*** cumulative effect on ***returns on*** investment. Member States shall ensure that investment firms express the overall ***costs*** in monetary terms and percentages calculated up to the maturity date of the financial instrument or for financial instruments without a maturity date, the holding period recommended by the investment firm, or in the absence thereof, holding periods of 1 ▌ and 5 years. Where the ***client or potential*** client so requests, investment firms shall provide an itemised breakdown.
Investment firms shall inform their clients or potential clients that they have the right to receive an itemised breakdown of the cost data.

The ***inducements in relation to*** the investment ***services and activities*** provided to the ***client or potential*** client shall be itemised separately. ***For retail clients,*** the investment firm shall disclose the cumulative impact of such ***inducements***, including any recurring ***inducements***, on the net return over the holding period as mentioned in the preceding subparagraph. The purpose of the ***inducements*** and their impact on the net return shall be explained in a standardised way and ***using easy-to-understand*** language for ***a*** retail client. ***The investment firm shall explicitly inform the retail client of the existence of any inducements.***

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

▌

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

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

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

ESMA shall submit those draft regulatory technical standards to the Commission by [OJ: ***12*** months after the date of entry into force].

Power is delegated to the Commission to ***supplement this Directive by adopting*** those regulatory technical standards in accordance with ***Articles 10 to 14*** of Regulation ▌ (EU) No 1095/2010.

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

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

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

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

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

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

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

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

      (iii) ***inducements,*** if any, ***in relation to*** the investment ***or ancillary*** services provided to the retail client;

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

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

(d) the ▌ market value ▌ or estimated value ▌ when the market value is not available, ***at the end of the reporting period*** of each financial instrument included in the retail client's portfolio;

(e) the net annual performance of the ▌ retail client***'s entire portfolio held with the investment firm during the reporting period, and, for each financial instrument included in that portfolio, its net*** annual performance ***during the reporting period, as at the end of that period***.

Where providing an investment service without a service of safekeeping and administration of financial instruments for the account of the retail client, the investment firm shall provide an annual statement ***with the*** applicable information ***under*** point (a).

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 ***with the*** applicable information ***under points*** (a), (b), (c) and (d).

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

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

The annual statement on costs and performance for retail clients shall be presented in an easy-to-understand way for ***a*** retail client. Information on costs, associated charges and any ***inducements*** shall be presented using the terminology***,*** explanations***, format and calculation method specified in the regulatory technical standards referred in*** paragraph 2 of this Article.

5. ***It shall not be necessary to provide*** the annual statement referred to in paragraph 4 ***if*** the investment firm provides its retail clients with access to an online system, which qualifies as a durable medium, where up-to-date statements with the relevant disclosure per instrument as required under paragraph 4 can be easily accessed by the retail client and the firm has evidence that the client has accessed those statements at least once ***during the previous 12 months and where the client has provided consent not to receive an annual statement***.

Article 24c

Marketing Communications and Practices

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

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

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

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

3. Member States shall ensure that marketing practices are developed and used in a manner that is fair***, clear*** and not misleading, and shall be appropriate for the target ***market, in accordance with paragraph 2***.

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

Where an investment firm ***that*** 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.

4a. Where an investment firm uses the services of a finfluencer, that investment firm shall establish a written agreement with the finfluencer determining the nature and scope of the activity to be carried out on behalf of the firm.

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

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

7. Records to be kept by the investment firm according to Article 16(6) shall include all marketing communications provided or made accessible to retail clients or potential retail clients ▌ by the investment firm or any third party ***that receives fees, commissions or any monetary or*** non-monetary ***benefits paid or provided*** by the investment firm.

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

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

   (a) the content of the marketing communication;

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

   (c) the date and duration of the marketing comm--unication including relevant starting and end times;

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

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

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

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

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

(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 ***a*** retail client, regardless of the means of communication;

(b) the conditions with which marketing communications and marketing practices should comply in order to be fair, clear, not misleading, balanced in terms of presentation of ***benefits*** and risks, and appropriate in terms of content and distribution channels for the target ▌ market.

Article 24d

Professional requirements

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

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

For the purpose of the first subparagraph, Member States shall have in place mechanisms, as determined and published by their 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 ***evidenced by a certificate or equivalent proof,*** as well as the yearly successful completion of the ***continuing*** professional training and development***, which*** shall be ***evidenced*** by a certificate ***or equivalent proof of completion of such training and development***.

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

(14) Article 25 is amended as follows:

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

'1. ***The investment firm shall assess the appropriateness of the relevant financial instrument or investment service offered to or requested by its client or potential client in good time before the execution or reception and transmission of the order.*** The investment firm shall assess the suitability ▌ of the relevant financial ***instrument*** or investment ***service*** to be recommended to, or ***requested by, its*** client or potential client in good time before ▌ the provision of the investment advice or portfolio management ▌ . Each of these assessments shall be ***carried out*** on the basis of ***proportionate and necessary*** information about the client or potential client as obtained by the investment firm, in accordance with the ▌ requirements ***set out in this Article***.

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

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

(b) the absence of ***the necessary*** information***, including the provision of incomplete information, prevents*** the firm ***from determining*** whether the ***investment*** service or financial instrument envisaged is suitable or appropriate for ***the client or the potential client and, in case of investment advice, from proceeding*** with the recommendation***. The investment firm shall keep a record of the warning provided to its client for at least the duration of its relationship with*** the client ▌ . ▌

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

▌

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***'s*** or potential client's***:***

(a) knowledge and experience in the investment field relevant to the specific type of financial instrument or investment service,

(b) financial situation, including: (i) to the extent possible, the composition of any existing portfolios, (ii) the ability to bear full or partial losses,

(c) investment needs and objectives including sustainability preferences, if any, and

(d) risk tolerance;

so as to enable the investment firm to recommend to the client or potential client, or to undertake on the client's behalf, the transactions in financial instruments that are suitable for that client, and, in particular, are in accordance with its risk tolerance, ability to bear losses and, to the extent applicable, need for portfolio diversification.

Where the client or potential 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.

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

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

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

3. Member States shall ensure that investment firms, when providing investment services other than those referred to in paragraph 2, ask the 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 ***requested*** so as to enable the investment firm to assess whether the investment ***services*** or financial ***instruments*** envisaged ***are*** appropriate for the client.

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

Where the investment firm assesses**,** on the basis of the information received under the first subparagraph, that the ***financial instrument or investment*** service is not appropriate to the client or potential client, the investment firm shall warn the client or potential client. ***The investment firm*** shall ***keep a record of such warnings***.

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

▌

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

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

(d) paragraph 8 is replaced by the following:

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

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

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

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

▌

The reporting obligations to clients to be specified in the delegated acts adopted pursuant to this paragraph shall not include obligations to inform the client in case of depreciation of the overall value of the portfolio or of each financial instrument held by the client.'

(14a) In Article 29a, paragraph 1 is replaced by the following:

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

(15) Article 30 is amended as follows:

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

'Member States shall ensure that investment firms authorised to execute orders on behalf of clients, and/or to deal on own account, and/or to receive and transmit orders have the possibility of bringing about or entering into transactions with eligible counterparties without being obliged to comply with Article 16(3a), Article 24 with the exception of ***paragraph 5a***, Article 24a, Article 24b, ▌ Article 24c, ***Article 24d***, Article 25, Article 27 and Article 28(1), in respect of those transactions or in respect of any ancillary service directly relating to those transactions. ▌ '

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

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

(15a) paragraph 8 of Article 35 is replaced by the following:

'8. The competent authority of the Member State in which the branch is located shall assume responsibility for ensuring that the services provided by the branch within its territory comply with the obligations laid down in Articles 24 to 24d, 25, 27, 28, of this Directive and Articles 14 to 26 of Regulation (EU) No 600/2014 and the measures adopted pursuant thereto by the host Member State where allowed in accordance with Article 24(12).

The competent authority of the Member State in which the branch is located shall have the right to examine branch arrangements and to request such changes as are strictly needed to enable the competent authority to enforce the obligations under Articles 24 to 24d, 25, 27, 28 of this Directive and Articles 14 to 26 of Regulation (EU) No 600/2014 and measures adopted pursuant thereto with respect to the services or activities provided by the branch within its territory.'

(16) the following Article 35a is inserted:

'Article 35a

Reporting of cross-border activities

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

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

(b) the type, scope and scale of ***those*** services provided and ***those*** activities carried out in each host Member State ***under*** the freedom to provide ▌ services;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

'(ca) carry out mystery shopping activities;'

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

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

(c) the following points ▌ are inserted:

'(v) take all necessary measures***, respecting the freedom of expression and the freedom of the press***, including by requesting a third party or other public authority to implement such measures, whether on a temporary or permanent basis, to:

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

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

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

(w) ▌ impose the use of risk warnings ***on*** investment firms in information materials, including marketing communications ***provided or made accessible to retail clients or potential retail clients,*** related to particularly risky financial instruments where those instruments could pose a serious threat to investor protection***, or prohibit the use of risk warnings when those financial instruments are not particularly risky***.;

(wa) use webscraping techniques and tools to collect online data for monitoring, surveillance, detection and investigation purposes.'

(d) the following subparagraphs are added:

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

The implementation and the exercise of powers set out in this paragraph shall be proportionate and shall comply with Union and national law ▌ and with ▌ 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.'

(da) in Article 69, paragraph 2, point (t) is replaced by the following:

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

(18) in Article 70(3), point (a), the following points are added:

'(xxxvii) Article 16-a(1) to (8);

(xxxviii) Article 24(5a) ***and (5c)***;

(xxxix) Article 24a(1) to (2) and (6) to (7);

(xxxx) Article 24b(1), (3) and (4);

(xxxxi) Article 24c(1) to (5) and (7);

(xxxxii) Article 35a(1);'

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

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

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

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

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

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

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

(20) Article 86 is amended as follows:

(a) paragraph 1 is replaced by the following:

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

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

The competent authority of the home Member State shall, without undue delay and at the latest 30 working days after the ***competent*** authority ***of the host Member State*** has referred its findings, take the necessary measures or begin the necessary administrative process aimed at taking such measures. The competent ***authorities may extend that deadline by mutual agreement. The competent*** authority of the home Member State shall communicate all necessary information on any measure taken to the ***competent*** authority ***of the host Member State***, as well as to ESMA and to the competent authorities of all other Member States on the territory of which the investment firm is active.

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

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

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

(b) the following paragraphs ▌ are inserted:

'1a. Where the ***competent*** authority ***of the host Member State*** 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 ***competent*** authority ***of the host Member State***, adopt highly similar or identical measures with respect to that firm, provided that that competent authority also has reasonable grounds for believing that a similar infringement has occurred in its territory.

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

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

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

(21) the following Article ***87b*** is inserted:

‘Article ***87b***

Collaboration platforms

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

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

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

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

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

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

(22) the following Title VIa is inserted:

'TITLE VIa

FINANCIAL EDUCATION

Article 88a

Financial education of retail clients and prospective retail clients

Member States shall promote measures that support the ***financial literacy and financial*** education of retail clients and prospective retail clients in relation to responsible investment when accessing investment services or ancillary services. ***Where appropriate, the measures shall target the needs of specific age groups and of other specific target groups and shall build on and take into account ongoing efforts to improve financial literacy.***

The Commission shall facilitate the exchange of knowledge and best practices related to financial literacy and financial education among the Member States and relevant stakeholders. ESMA shall use its powers and tools pursuant to Regulation (EU) No 1095/2010 to support the Commission and Member States.

▌

Article 88b

Financial education and marketing communication

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

(23) Article 89 is replaced by the following:

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

2. The delegation of power referred to in Article 2(3), Article 2(4), Article 4(1)(2), second subparagraph, Article 4(2), Article 13(1), Article 16(12), Article 16-a (***12b***), ▌ Article 23(4), Article 24(5c), Article 24(13), ***Article 24a(8b),*** Article24b(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 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 ▌ from 2 July 2014.

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

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

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

6. A delegated act adopted pursuant to Article 2(3), Article 2(4), ***Article 4(1)(2),*** second subparagraph ▌ , Article 4(2), Article 13(1), Article 16(12), Article 16-a (***12b***), Article 23(4), Article 24(5c), Article 24(13***), Article 24a(8b***), Article24b(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 ▌ 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.'

(23a) in Article 90, the following paragraph is inserted:

'1b. The Commission, after consulting ESMA, shall assess, once the European Single Access Point is fully operational and only provided that the relevant data is easily accessible, whether broader comparisons can be incorporated into the value-for-money framework within the scope of Article 16-a of this Directive.'

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

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

Article 2

Amendments to Directive (EU) 2016/97

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

▌

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

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

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

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

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

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

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

(c) the following points ▌ are added:

'(19) ▌ 'electronic format' means ***electronic format as defined in Article 4, point (62a), of Directive 2014/65/EU***;

(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 ▌ and that is made:

(a) by an insurance undertaking or insurance intermediary ▌ or by a third party that ***receives fees***, ***commissions or any monetary or*** non-monetary ***benefits paid or provided*** by such insurance undertaking or insurance intermediary;

(b) to natural or legal persons;

(c) in any form and by any means;

(20a) 'finfluencer' means any natural or legal person with the capacity to influence the behaviour, opinion, or decisions of customers due to exposure, position or relationship with the audience and who engages in marketing communications or marketing practices on behalf of an insurance distributor;

(21) ‘marketing practice’ means any strategy, use of a tool or technique***, including online targeting of customers,*** applied by an insurance undertaking or insurance intermediary, or by any third party that ***receives fees, commissions or any monetary or*** non-monetary ***benefits paid or provided*** by such insurance ***undertaking*** or insurance intermediary to:

(a) directly or indirectly disseminate marketing communications;

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

(c) promote in any way the insurance undertakings, insurance intermediaries or insurance products;

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

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

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

(2) Article 3 is amended as follows:

▌

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

'Where applicable, the home Member State shall inform the host Member State of such removal immediately.'

(b) in paragraph 5, the following subparagraph is added:

'▌ Where an insurance, reinsurance or ancillary insurance intermediary is removed from the register, the competent authority shall communicate its decision to the ▌ insurance, reinsurance or ancillary insurance intermediary concerned in a well-reasoned document and inform EIOPA about the reasons for such ▌ removal ▌ .'

(c) the following paragraph 5a is inserted:

'5a. EIOPA shall establish and make available to competent authorities a list of all insurance, reinsurance or ancillary insurance intermediaries whose registration has been ▌ removed from the register by a competent authority.

The list referred to in the first subparagraph shall contain, ▌ the reasons for ▌ the removal from the register and shall be updated on ***a*** regular basis.'

▌

(3) Article 5 is amended as follows:

(a) paragraph 1 is replaced by the following:

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

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

After having assessed the information received pursuant to the first subparagraph, the competent authority of the home Member State shall, where applicable, take appropriate measures to remedy the situation at the earliest opportunity, and at the latest 30 working days after having received the communication from the competent authority of the host Member State***. The competent authorities may extend that deadline by mutual agreement***. The competent authority of the home Member State shall inform the competent authority of the host Member State of any such measures taken. The competent authority of the home Member State shall communicate to the competent authority of the host Member State, and to the competent authorities of all other Member States on the territory of which the insurance, reinsurance or ancillary insurance intermediary is acting under the freedom to provide services, all relevant information on the measure taken.

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

(b) paragraph 3 is replaced by the following:

'3. The competent authorities of the host Member State shall communicate to the insurance, reinsurance or ancillary insurance intermediary concerned any measure adopted under paragraphs 1 and 2in a well-reasoned document and notify those measures to the competent authority of the home Member State without undue delay.

The competent authority of the host Member State shall also notify those measures to the Commission, EIOPA and to the competent authorities of the host Member States where the insurance, reinsurance or ancillary insurance intermediary is acting under the freedom to provide services.'

(c) the following paragraph 4 is added:

'4. Where, within ***a 12 month period***, 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 ***collaboration*** platform in accordance with Article 12b.'

(4) the following Article 9a is inserted:

‘Article 9a

Reporting of cross-border activities

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

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

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

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

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

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

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

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

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

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

Power is delegated to the Commission to ***supplement this Directive by adopting*** the regulatory technical standards referred to in the first subparagraph in accordance with Article 10 ***to 14*** of Regulation (EU) No 1094/2010.

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

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

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

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

(5) Article 10 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. Home Member States shall ensure that insurance and reinsurance 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.

▌

For the purpose of the first subparagraph, home Member States shall have in place mechanisms, as determined and published by their competent authority, to assess compliance with the criteria set out in Annex I evidenced by a certificate or equivalent proof.’

(b) paragraph 2 is amended as follows:

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

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

For the purpose of the first subparagraph, home Member States shall have in place ▌ mechanisms***, as determined and published by their competent authority, to*** assess the ***successful completion of*** at least 15 hours of professional training or development per year, taking into account the nature of the products sold, the type of distributor, the role ***performed, and*** the activity carried out within the insurance or reinsurance distributor.

Home Member States shall require that compliance with the criteria set out in Annex I, as well as the yearly successful completion of ▌ continuous professional training and development ***be evidenced*** by a certificate ***or equivalent proof of completion***.***'***

(ii) the following subparagraph is added:

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

▌

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

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

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

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

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

(d) carry out mystery shopping activities;

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

(f) require the temporary prohibition of professional activity;

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

(h) refer matters for criminal prosecution;

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

(j) suspend***,*** for a maximum duration of 1 year***, renewable for further periods not exceeding one year at a time if the grounds for the temporary suspension continue to be applicable,*** marketing communications or practices used ***by an insurance undertaking or insurance intermediary***, where there are reasonable grounds ***to believe*** that this Directive has been infringed***'***;

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

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

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

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

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

(p) take all the necessary measures***, respecting the freedom of expression and the freedom of the press***, including by requesting a third party or other public authority to implement such measures, whether on a temporary or permanent basis, to:

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

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

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

(q) impose the use of risk warnings for insurance-based investment products ***on insurance undertakings or insurance intermediaries*** in information materials, including marketing communications, ***provided or made accessible to customers concerning*** particularly risky insurance-based investment products and, where applicable, underlying investment assets ***or prohibit the use of risk warnings when*** those ***insurance-based investment*** products ***are not particularly risky***. ▌ ;

(qa) use webscraping techniques and tools to collect online data for monitoring, surveillance, detection and investigation purposes.

(qb) suspend the distribution of insurance products where the manufacturer of the insurance product has not developed or applied an effective product approval process in accordance with Article 25 or otherwise failed to comply with that Article.

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 ▌ .

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

▌

(7) the following Articles ▌ are inserted:

‘Article 12 a

Cooperation and exchange of information with EIOPA

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

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

Article 12b

Collaboration platforms

1. EIOPA may, in the case of justified concerns about negative effects on ***customers***, 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 ***intermediary or an ancillary insurance intermediary*** 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 ***customers***.

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

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

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

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

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

(8) Article 14 is replaced by the following:

‘Article 14

Complaints

1. Member States shall ensure that insurance ▌ 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.

2. Those procedures and arrangements shall allow customers and other interested parties to register complaints ▌ in the same language in which ***information pursuant to this Directive, marketing communications*** or any contractual documents were provided ***to customers. Insurance distributors*** shall ***take a decision on the complaint and communicate their decision to the complainant as quickly as possible, and in any event no later than*** 40 working days ***from the date on which the complaint was received by the insurance distributor***.

3. Where, in exceptional situations, the decision on a complaint cannot be communicated within the period referred to in paragraph 2, insurance distributors shall inform the complainant of the reasons for the delay and indicate a reasonable timeframe in which the decision will be communicated.

4. Any communication made by the insurance distributors under this Article that is addressed to a complainant, shall be made in the language in which the complainant filed its complaint.’

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

‘Article 16a

Financial education of customers

Member States shall promote measures that support the ***financial literacy and financial*** education of customers in relation to the responsible purchase of insurance products when accessing insurance ***distribution activities. Where appropriate, the measures shall target the needs of specific age groups and of other specific target groups and shall build on and take into account ongoing efforts to improve financial literacy***.

The Commission shall facilitate the exchange of knowledge and best practices related to financial literacy and financial education among the Member States and relevant stakeholders. EIOPA shall use its powers and tools pursuant to Regulation (EU) No 1094/2010 to support the Commission and Member States.

Article 16b

Financial education of customers and marketing communication

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

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

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

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

(11) Article 18 is replaced by the following:

‘Article 18

General information to be provided to the customer

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3. Where the insurance contract is proposed by an insurance undertaking ***which is not party to the proposed contract***, that insurance undertaking shall, in good time before the customer is bound by the contract or offer, ***provide, in addition to the information laid down in paragraph 1,*** the following ▌ information to the customer:

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

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

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

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

▌

(12) Article 19 is amended as follows:

(a) the title is replaced by the following:

'Disclosures'

(b) paragraph 1 is amended as follows:

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

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

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

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

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

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

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

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

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

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

(iv) point (e) is deleted

(c) paragraph 4 is replaced by the following:

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

(13) Article 20 is amended as follows:

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

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

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

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

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

5. In relation to the distribution of non-life insurance products as listed in Annex I to Directive 2009/138/EC and to life insurance products as listed in Annex II to Directive 2009/138/EC other than insurance-based investment products ***and occupational pension schemes falling under the scope of Directive 2016/2341***, the information referred to in paragraph 4 of this Article shall be provided to ▌ customers by way of a standardised insurance product information document ▌ .***'***

(ba) paragraph 6 is replaced by the following:

'(6) The manufacturer of the insurance product shall draw up the insurance product information document referred to in paragraph 5 and shall publish the document on its website.'

(c) paragraph 8 is amended as follows:

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

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

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

'(j) the law applicable to the ***insurance*** contract where the 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 ***where the insurance undertaking may be sued***.'

(d) the following ***paragraphs are*** inserted:

'8a. For life insurance products other than insurance-based investment products ***and occupational pension schemes falling under the scope of Directive 2016/2341***, the insurance product information document shall contain the following:

(a) information about the type of insurance;

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

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

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

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

(f) main exclusions where claims cannot be made;

(g) obligations at the start of the contract;

(h) obligations during the term of the contract;

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

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

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

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

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

(n) the means of terminating the contract;

(o) the law applicable to the ***insurance*** 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 ***where the insurance undertaking may be sued***.

For life insurance products referred to in Article 2(2) points (b), (e), (f), (g) and (h) of Regulation (EU) No 1286/2014, other than officially recognised occupational pension schemes falling under the scope of Directive (EU) 2016/2341, and where the customer assumes the investment risk, the insurance product information document shall also include a description of the main features of any underlying investment assets, including appropriate information on, and warnings of, the risks associated with the insurance product and any underlying investment assets.'

(e) paragraph 9 is amended as follows:

(i) ▌ the first subparagraph ▌ is replaced by ***the following:***

'9. EIOPA, after consulting national authorities and after consumer testing, shall develop draft implementing technical standards regarding a standardised presentation format of the insurance product information document specifying the details of the presentation of the information referred to in paragraphs 8 and 8a.'

(ii) ▌ the second subparagraph ▌ is replaced by ***the following:***

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

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

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

_____

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

(15) Article 23 is replaced by the following:

‘Article 23

Electronic distribution***, means of distance communication,*** and other durable means

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

   A layered presentation of information provided in an electronic format shall be permitted only when it is possible to obtain the relevant information in one single document.

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

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

3. Insurance distributors shall inform ***their*** existing ▌ customers ***who receive the information in paper format*** that they have the choice either to continue receiving the information free of charge on paper or to receive the information only in electronic format. Insurance distributors shall ***also*** inform ***such*** customers that ***if they do not indicate a choice, the paper format will remain until the customer consents to an*** electronic format***.*** The information ***from the insurance distributor and the choice of the customer may be transmitted in an*** electronic format ▌ .

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

The guidelines referred to in the first subparagraph shall specify:

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

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

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

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

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

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

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

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

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

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

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

(e) the existence or absence of a right of withdrawal and, where a right of withdrawal exists, information on the withdrawal period and the conditions for exercising that right, including information on the amount which the customer may be required to pay, as well as the consequences of non-exercise of that right. As regards compliance with the requirements laid down in this paragraph, the burden of proof shall be on the insurance distributor.'

(16) Article 25 is replaced by the following:

‘Article 25

Product oversight and governance requirements

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

The product approval process shall specify an identified target market for each product, ensure that all relevant risks to such identified target market are assessed and that the intended distribution strategy is consistent with the identified target market, and take reasonable steps to ensure that the insurance product is distributed to the identified target market.

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

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

(b) a clear identification of ***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;

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

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

(ea) in relation to insurance-based investment products, an identification of the level of knowledge and experience needed to understand the product and the ability to bear losses;

(eb) 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;

(f) in relation to insurance-based investment products, a ***value-for-money*** assessment ***consisting of:***

(i) a clear identification and quantification of all costs and charges related to the insurance-based investment product, of its performance and of its benefits for the customer;

(ii) an assessment of whether the insurance-based investment product, and where applicable underlying investment options, offers value for money to the customer by determining, on the basis of appropriate testing and assessments, whether the identified costs and charges are justified and proportionate, having regard to the performance and other benefits for the identified target market, including the guarantees and insurance coverage of biometric and other risks, characteristics, objectives, the identified target market, distribution strategy and strategy of the insurance-based investment product.

▌

2. ***Where an insurance undertaking or insurance intermediary which manufactures insurance-based investment products cannot demonstrate, as a result of the value-for-money assessment, that the costs and charges of*** an insurance-based investment product ***that it intends to manufacture, market or distribute to customers,*** are justified and proportionate and that the product meets the ▌ objectives and needs ***of the identified target market, the insurance undertaking or insurance intermediary shall not approve, manufacture, market or distribute that insurance-based investment product***.

3. Insurance undertakings and ***insurance*** intermediaries which manufacture insurance products ▌ shall understand and regularly review the insurance products they offer ***or market***, taking into account any event or risk that could materially affect the identified target market ***to*** assess whether the ***insurance*** product remains consistent with the objectives and needs of the identified target market***,*** whether the intended distribution strategy remains appropriate ***and, in the case of insurance-based investment products, whether the products continue to offer value for money***. ***In the event that it emerges from the review that an insurance product is no longer consistent with the needs of the identified target market, that the intended distribution strategy is no longer appropriate, or that an insurance-based investment product does not continue to offer value for money, the insurance undertaking or insurance intermediary shall take appropriate action to mitigate the situation and prevent future detriment to the existing and prospective policyholders. Any potential claim from a policy holder shall be subject to relevant national rules and Union law.***

▌

4. Insurance undertakings and insurance intermediaries which manufacture ***insurance*** products shall ***make available to insurance distributors all information on the insurance product and the product approval process that is needed to fully understand that insurance product and the elements taken into consideration during the product approval process, including complete and accurate details on the identified target market and any costs and charges, features and objectives*** of the ***insurance product.***

▌

The ***information*** shall ***also contain complete and accurate information on the value-for-money assessment of insurance-based investment products, and where applicable underlying investments options***.

5. ▌ Insurance ***distributors that advise*** on or ***propose*** insurance products which ***they do*** not manufacture, shall have in place adequate arrangements to obtain the information referred to in paragraph ***4***, ▌ to understand the characteristics and identified target market of each insurance product***, and the manufacturer's product approval process***.

Insurance intermediaries ***and*** insurance undertakings distributing insurance-based investment products ***which they do not manufacture*** shall:

(a) ***obtain and*** make sure that they ▌ fully understand the information referred to in paragraph ***1***, third subparagraph***, point (f)***;

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

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

(ca) provide the insurance undertaking or insurance intermediary manufacturing the insurance-based investment product regularly with all relevant information about the results of its assessments under points (b) and (c) of this subparagraph. Where the distributor finds that there are costs and charges, in particular distribution costs, that have not been fully taken into account in the manufacturer's value-for-money assessment, it shall immediately inform the manufacturer. The manufacturer shall, where they have not yet been included, take these costs and charges into account in its value-for-money assessment for the relevant insurance-based investment product.

▌

7. ▌Insurance ***undertakings and*** insurance ***intermediaries*** which ***manufacture*** insurance-based investment products shall document ***the value-for-money*** assessments made ***in accordance with paragraph 1, third subparagraph point (f) and shall, upon request, provide such documentation to the relevant competent authority.***

▌

Member States shall ensure that insurance undertakings and insurance intermediaries which manufacture insurance-based investment products keep records of their value-for-money assessments for a period of seven years. Those records shall be retrievable by the insurance intermediary or insurance undertaking upon request of the competent authority.

8. EIOPA, after having consulted ESMA and the competent authorities, shall ▌ develop and make ▌ available ***to the competent authorities Union supervisory*** benchmarks for insurance-based investment products ***based on data available under Regulation (EU) 1286/2014 and Directive 2009/138/EC. These benchmarks shall be used by competent authorities as a reference point for the supervision*** of the ***value for money*** of insurance-based investment products***, unless a competent authority has developed and uses national benchmarks in accordance with the conditions laid down in paragraph 8a for insurance-based investment products distributed only in its Member State to reflect the national specificities of those products***.

EIOPA shall make the methodology for the Union supervisory benchmarks publicly available.

Competent authorities shall, on an individual basis, and following supervisory practices make the Union supervisory benchmarks ***available to insurance undertakings and insurance intermediaries upon demand and in the context of a check or an enforcement proceeding relating to the value for money assessment of a particular*** insurance-based investment ***product.***

The ***Union supervisory*** benchmarks shall ***be developed on the basis of precise and relevant*** product ***clusters containing a significant number of insurance-based investment products that present similar characteristics, including, where relevant, similar levels of performance, risk, guarantee, investment strategy, objectives, recommended holding periods, sustainability features, premium frequency, biometric risk coverage or other characteristics.***

The Union supervisory benchmarks ***shall display a range of costs and performance, in order to facilitate the identification of insurance-based investment products, and where applicable underlying investment options, whose costs and performance depart significantly from the average***.

The data on costs used for the development of Union supervisory benchmarks shall, in addition to the total product cost, also include all costs of distribution, including inducements. When developing the Union supervisory benchmarks, EIOPA shall ensure that the assessment of value for money reflects, in a representative manner, the combination of the insurance cover and the selected underlying investment options. Where possible based on sufficiently available data, the Union supervisory benchmarks shall display a breakdown of different cost components, in particular clearly differentiating those coming from the insurance aspects of insurance-based investment product, and those coming from the investment aspects of the insurance-based investment product. They shall allow comparison with individual cost components.

EIOPA shall regularly update the Union supervisory benchmarks, taking into account the developments in the market.

8a. The development and use of national supervisory benchmarks in relation to insurance-based investment products shall be subject to the following conditions:

(a) the national supervisory benchmarks only apply to insurance based-investment products that are distributed in only the Member State whose competent authority has developed and uses them;

(aa) the methodology for the national supervisory benchmarks is comparable with the methodology for the Union supervisory benchmarks and any differences between them 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 customers;

(b) the competent authorities communicate to EIOPA those national specificities, and the reasons why national supervisory benchmarks are needed to protect customers and why the Union supervisory benchmarks are not appropriate;

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

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

(e) the national supervisory benchmarks are made public.

Competent authorities shall not be allowed to introduce new national supervisory benchmarks as of [OJ please insert date = 4 years after the entry into force of this amending Directive]. National supervisory benchmarks that have been introduced before [OJ please insert date = 4 years after the entry into force of this amending Directive] may continue to be used.

Member States whose competent authorities decide to use national supervisory benchmarks shall notify the Commission and EIOPA thereof without undue delay. Where necessary and after consulting competent authorities and other stakeholders, EIOPA shall issue guidelines to support the development and use of methodologies for national supervisory benchmarks to ensure their comparability with the methodology for the Union supervisory benchmarks.

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

8ba. Competent authorities shall monitor the insurance-based investment products offered on their market and evaluate them against the Union supervisory benchmarks, unless a competent authority has developed and uses national benchmarks in accordance with the conditions laid down in paragraph 8a, in which case that competent authority shall evaluate those products against the national supervisory benchmarks.

Where a competent authority decides to check an insurance-based investment product for any reason, including on the basis of a deviation from the applicable benchmark, it shall require the insurance undertaking or insurance intermediary manufacturing that product to provide evidence that, as a result of the value-for-money assessment carried out in accordance with paragraph 1, the costs and charges of the product are justified and proportionate and the product meets the objectives and needs of the target market.

Where the competent authority concludes that the evidence has not been provided or that the costs and charges of the product are not justified and proportionate or the product does not meet the objectives of the target market, it shall require the insurance undertaking or insurance intermediary manufacturing the insurance-based investment product to take measures to ensure compliance with the product oversight and governance requirements. In the absence of such measures, the competent authority shall make appropriate use of its powers under Article 12(3).

8bb. Compliance of an insurance-based investment product with the applicable benchmark shall not necessarily constitute sufficient evidence that such product offers value for money to customers.

8c. By [OJ: insert date = five years after date of application of this amending Directive], the competent authorities shall report to EIOPA on:

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

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

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

By [OJ: insert date = six years after date of application of this amending Directive], EIOPA shall submit to the Commission a report analysing:

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

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

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

When drafting the report, EIOPA shall coordinate with ESMA.

By [OJ insert date = seven years after date of application of this amending Directive], 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.

8d. Where financial instruments used as underlying investment options in insurance-based investment products have been subject to a pricing process pursuant to Article 16-a of Directive 2014/65/EU, Article 14(1e) of Directive 2009/65/EC or Article 12(1e) of Directive 2011/61/EU, competent authorities, when monitoring such insurance-based investment products, shall, to the extent possible, liaise with the competent authorities within the same Member State in charge of supervising Article 16-a of Directive 2014/65/EU, Article 14(1e) of Directive 2009/65/EC or Article 12(1e) of Directive 2011/61/EU to enquire about the effectiveness of the value-for-money assessment performed by the investment firms or the management companies which manufactured such financial instruments. While taking into account a risk-based approach, they shall, to the extent possible, cooperate with the latter authorities to ensure efficient supervision and non-duplicative supervisory outcomes when using Union supervisory benchmarks or national supervisory benchmarks.

To ensure a simple and efficient value-for-money assessment process and to avoid administrative burden, insurance undertakings and insurance intermediaries manufacturing insurance-based investment products with underlying investment options in the form of financial instruments that have been subject to a pricing process pursuant to Article 16-a of Directive 2014/65/EU, Article 14(1e) of Directive 2009/65/EC or Article 12(1e) of Directive 2011/61/EU shall be contacted solely by the competent authorities responsible for supervision under this Directive. Subject to data availability and when possible, based on the way the data is structured, the competent authorities shall strive to take into account the costs of financial instruments embedded in insurance-based investment products and distinguish them from the other cost components.

8da. Where insurance-based investment products comply with the applicable benchmark it shall not, in itself, automatically imply that such products offer value for money to customers.

9. The Commission shall be empowered to supplement this Directive by adopting delegated acts in accordance with Article 38 to further specify the principles set out in this Article, including, with regard to insurance-based investment products, ***the criteria to determine whether the costs and charges of an insurance-based investment product are justified and proportionate for the purposes of the value-for-money assessment referred to in paragraph 1, third subparagraph, point (f).***

[redacted]

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

10. EIOPA ***shall ensure coordination of*** the competent authorities***' supervisory practices on value for money assessments for insurance-based investment products. It*** shall ***promote consistent supervision on value for money assessments and enhance convergence across Member States. EIOPA shall include, in the EIOPA supervision handbook, a section outlining the best supervisory practices on value for money assessments recommended by EIOPA.***

[redacted]

10a. EIOPA shall use its supervisory convergence powers to ensure a harmonised supervision and enforcement by competent authorities of costs and charges, including inducements, disclosure and value for money assessments conducted by insurance undertakings and insurance intermediaries which manufacture insurance-based investment products. Where necessary, EIOPA shall issue guidelines to foster convergence in supervisory outcomes of competent authorities.

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

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

12a. By ... [OJ please insert date = five years after the date of application of this amending Directive], Member States shall communicate to the Commission and EIOPA relevant information concerning the implementation of this Article by insurance undertakings and insurance intermediaries manufacturing insurance-based investment products.

On the basis of the information provided by Member States, the Commission, in consultation with EIOPA and ESMA, shall carry out an evaluation of the effective implementation of this Article and assess the impact of the value for money assessment, including the supervisory benchmarks on customers. The Commission shall carry this evaluation alongside the evaluation in Article 16-a (12e) of Directive 2014/65/EU. '

(17) Article 26 is replaced by the following:

‘Article 26

Scope of additional requirements

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

Insurance-based investment products may only be distributed by:

(a) an insurance intermediary;

(b) an insurance undertaking.’

(18) the following Article 26a is inserted:

‘Article 26a

Marketing communications and practices

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

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

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

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

3. Member States shall ensure that marketing practices are developed and used in a manner that is fair***, clear*** and not misleading, and shall be appropriate for the target ***market***.

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

4a. Where an insurance undertaking or insurance intermediary uses the services of a finfluencer, the insurance undertaking or insurance intermediary shall establish a written agreement with the finfluencer determining the nature and scope of the activity to be carried out on behalf of the insurance undertaking or insurance intermediary.

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

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

7. Member States shall ensure that insurance undertakings and insurance intermediaries keep records of all their marketing communications of insurance-based investment products, ***and all*** marketing communications ***of insurance-based investment products*** made by any third party ***that receives fees, commissions or any monetary or*** non-monetary ***benefits paid or provided by the insurance undertaking or insurance intermediary***.

Such records shall be kept for a period of ▌ seven years. Those records shall be retrievable by the insurance undertaking or insurance ***intermediary*** upon request by the competent authority.

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

(a) the content of the marketing communication;

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

(c) the date and duration of the marketing communication, including relevant starting and end times;

(d) the targeted customer segments or profiling determinants;

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

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

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

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

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

(b) the conditions with which marketing communications and marketing practices of insurance-based investment products should comply in order to be fair, clear, not misleading, balanced in terms of ▌ presentation of ***benefits*** and risks, and appropriate in terms of content and distribution channels for the target ▌ market. ▌ ’

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

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

(20) Article 29 is replaced by the following:

‘Article 29

Information to customers and policyholders

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

(a) where advice is provided;

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

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

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

(iv) ▌ whether the range of insurance-based investment products that are recommended is restricted ▌ to well-diversified, non-complex ▌ and cost-efficient insurance-based investment products***, as referred to in Article 30(5c), in the event that the insurance intermediary or insurance undertaking provides advice on an independent basis to a customer***;

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

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

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

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

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

(e) ***the law applicable to the insurance contract where the 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 ***where the insurance undertaking may be sued.***;

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

(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.

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

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

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

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

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

The insurance intermediary or insurance undertaking shall explicitly inform the customer of the existence of any inducements.

2. Member States shall ensure that ***insurance undertakings and insurance intermediaries, manufacturing*** insurance-based investment products***,*** draw up a concise personalised document containing key information to be provided annually to each ***policyholder of an insurance-based investment*** product ('annual statement').

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

The information in the annual statement shall be accurate and up to date.

It shall not be necessary to provide the annual statement ▌ where the ***insurance undertaking or insurance intermediary, manufacturing insurance-based investment products,*** provides its ▌ policyholders with access to an online system, which qualifies as ***an electronic format***, where up-to-date statements with the relevant information set out in paragraph 3 can be easily accessed and the ***insurance undertaking or insurance intermediary, manufacturing insurance-based investment products,*** has evidence that the ▌ policyholder has accessed those statements at least once during the previous 12 months ***and where the policyholder has provided consent not to receive an annual statement***.

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

(a) the total costs***,*** charges and ***inducements***, expressed in an itemised way in monetary terms and percentages, paid or borne, directly or indirectly, by the ▌ policyholder over the previous 12 months and on a ***cumulative*** basis since the start of the contract term in ***relation to the insurance-based investment product.***

The information on inducements paid or accepted and retained by the insurance intermediary or insurance undertaking in relation to the provision or distribution of the insurance-based investment product shall also disclose the cumulative impact of such inducements, including any recurring inducements, on the net return since the start of the contract term in relation to the insurance-based investment product;

(b) the annual performance of each of the underlying ***investments*** of the insurance-based investment product and the annual ***overall*** performance of the ***product***, each compared with past performance***, where available,*** over previous years***;***

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

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

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

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

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

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

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

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

(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.

(ic) Without prejudice to the requirements in this paragraph, where some key information is not available for an insurance contract in force on 23 May 2023 in spite of reasonable efforts made by the insurance undertaking or insurance intermediary manufacturing insurance-based investment products to obtain this information, it shall not be required to include that information in the annual statement. In this case it shall provide in the annual statement appropriate explanations and, if possible, an estimate of the non-available information to the policy holder. It shall also inform the competent authority of the insurance contracts to which this applies.

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

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

(a) the relevant format for the provision of the information***, also when made available in an electronic format,*** listed in paragraphs 1 and 3, including the form and the length of the document, and the content of each of the elements of information;

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

EIOPA shall submit those draft regulatory technical standards to the Commission by [OJ: insert date ***12*** months after the date of entry into force].

Power is ***delegated to*** the Commission to supplement this Directive by adopting the regulatory technical standards referred to in the ***second*** subparagraph in accordance with Article 10 ***to 14*** of Regulation (EU) No 1094/2010.

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

▌

EIOPA shall develop regulatory technical standards to further specify the ***concept of particularly risky insurance-based investment products and*** taking due account of the specificities of the different types of insurance-based investment products***.***

The level of risk of an insurance-based investment product or, where applicable, the underlying investment assets, may, in particular, relate to specific product features or risk exposures such as market risks, credit risks or liquidity risks.

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

Power is delegated to the Commission to ***supplement this Directive by adopting those*** regulatory technical standards ▌ in accordance with ***Articles 10 to 14*** of Regulation (EU) No 1094/2010.

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

(21) the following ***Article 29a is*** inserted:

‘Article 29a

Inducements

1. ***Where the insurance intermediary or insurance undertaking is not prohibited from paying or accepting and retaining inducements, in relation to the distribution of insurance-based investment products, it*** shall ensure that ***the retention or payment of such inducements does not impair compliance with the insurance intermediary’s or insurance undertaking’s duty to act honestly, fairly and professionally in accordance with the best interests of its customers.***

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

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

(b) the inducement provides a tangible benefit to the customer;

(c) the level of inducements paid or accepted and retained is proportionate to the value of the insurance-based investment product and the level of service provided to the customer;

(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 of a specific product, category of products or total sales. Sales targets within a remuneration system that take adequately into account qualitative and quantitative factors may be considered permissible, to the extent they comply with Article 17(3);

(e) an appropriate mechanism exists, where applicable, 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 customer have been harmed as a result of non-compliance of the insurance intermediary or insurance undertaking with investor protection requirements.

(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.

For the purposes of points (b) and (c) of the first subparagraph, the assessment to fulfil the criteria shall not necessarily be carried out for each individual customer, but shall be carried out for homogenous groups of customers receiving similar benefits.

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

Insurance intermediaries and insurance undertakings shall keep an internal list of all inducements paid or accepted and retained in relation to the provision of manufacturing or distribution of insurance-based investment products ***and keep records of the inducements test performed*** in accordance with ***this*** Article ▌ .

▌

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

2c. Paragraph 1 shall not apply to minor non-monetary benefits of a total value below EUR 100 per annum per party other than the customer or of a scale and nature such that those benefits do not impair compliance with the insurance intermediary's or insurance undertaking's duty to act in the best interests of their customer provided those benefits have been clearly disclosed to the customer.

2d. Any payment or benefit which enables or is necessary for the provision of services, including regulatory levies or legal fees, and which by its nature cannot give rise to conflicts with the insurance intermediary's or insurance undertaking's duty to act honestly, fairly and professionally in accordance with the best interests of their customers, shall not be subject to the requirements laid down in paragraph 1.

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 does not offer to customers insurance-based investment products for which the insurance intermediary or insurance undertaking does not pay or receive inducements, it shall prominently state this in the filtering tool.

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

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

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

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

[redacted]

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

[redacted]

(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***, in respect of advice given on an independent basis;***

(ba) the criteria for assessing whether the inducement provides a tangible benefit to the customer, as referred to in paragraph 1, point (b);

(bb) the criteria for assessing whether the inducement is proportionate to the value of the insurance-based investment product and the level of service, as referred to in paragraph 1, point (c);

(bc) the criteria to have an appropriate mechanism, as referred to in paragraph 1, point (e).

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

▌

(22) Article 30 is amended as follows:

(a) the following paragraph -1 is inserted:

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

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

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

(b) ▌ the absence of ***the necessary*** information***, including the provision of incomplete information,*** prevents the insurance intermediaries and insurance undertakings distributing insurance-based investment products from determining whether the ***insurance-based investment product*** envisaged is suitable or appropriate for the customer and from providing advice.

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

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

▌

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

‘1. Without prejudice to Article 20(1), when providing advice on insurance-based investment products, the insurance intermediary or insurance undertaking shall obtain the ***necessary*** information regarding***:***

(a) the customer’s knowledge and experience in the investment field relevant to the specific type of insurance-based investment product or, where applicable, underlying investment assets, ***the*** customer’s financial situation, including***, to the extent possible,*** the composition of any existing portfolios***;***

(b) its ability to bear full or partial losses***;***

(c) investment needs and objectives, including any sustainability preferences, and risk tolerance***;***

so as to enable the insurance intermediary or the insurance undertaking to recommend to the customer the insurance-based investment products that are suitable for that ***customer*** and that, in particular, are in accordance with its risk tolerance, ability to bear losses and***, to the extent applicable,*** need for portfolio diversification. ***Where the customer is not willing to provide information on existing portfolios held with third parties, the insurance intermediary or insurance undertaking shall base the assessment of the need for portfolio diversification on the information available to it.***

When ▌ advice ***provided to*** customers ***is*** 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.

When providing advice that involves switching between underlying investment assets, insurance intermediaries and insurance undertakings shall obtain the necessary information on the customer's existing underlying investment assets and the recommended new investment assets and shall analyse the expected costs and benefits of the switch, so that they are reasonably able to demonstrate that the benefits of switching are expected to be greater than the costs.

2. Without prejudice to Article 20(1), Member States shall ensure that, where no advice is given in relation to insurance-based investment products, the insurance intermediary or insurance undertaking shall ask the customer to provide information regarding that person's knowledge and experience in the investment field relevant to the specific type of insurance-based investment product or, where applicable, underlying investment assets, offered or ***requested*** so as to enable the insurance intermediary or the insurance undertaking to assess whether the insurance-based investment product or products envisaged are appropriate for the customer.

Where the insurance intermediary or insurance undertaking considers, on the basis of the information received under the first subparagraph, that the product is not appropriate for the customer, the insurance intermediary or insurance undertaking shall warn the customer. ***The insurance intermediary or the insurance undertaking*** shall ***keep a record of such warnings***.

The insurance intermediary or insurance undertaking shall not proceed with the distribution of an insurance-based investment product subject to a warning indicating that the product ***or*** service is not appropriate ***or a warning indicating that the insurance intermediary or insurance undertaking cannot assess the appropriateness of the product or service***, unless the customer asks to proceed with it despite such warning and the insurance undertaking accepts to conclude the contract at the ***request*** of the customer. ***The insurance intermediary and the insurance undertaking distributing insurance-based investment products shall keep a record of*** both the demand of the customer and the acceptance by the insurance undertaking [redacted] .

[redacted]

3. Without prejudice to Article 20(1), where no advice is given in relation to insurance-based investment products, Member States may derogate from the obligations referred to in paragraph 2 of this Article, allowing insurance intermediaries or insurance undertakings to carry out insurance distribution activities in relation to insurance-based investment products within their territories without the need to obtain the information or make the determination provided for in paragraph 2 of this Article where all of the following conditions are met:

(a) the insurance distribution activities relate to either of the following:

(i) insurance-based investment products which only provide investment exposure to the financial instruments deemed non-complex under Directive 2014/65/EU and do not incorporate a structure which makes it difficult for the customer to understand the risks involved;

(ii) other non-complex insurance-based investment products for the purpose of this paragraph;

(b) the insurance distribution activity is carried out at the initiative of the customer;

(c) the customer has been clearly informed that, in the provision of the insurance distribution activity, the insurance intermediary or the insurance undertaking is not required to assess the appropriateness of the insurance-based investment product or insurance distribution activity provided or offered and that the customer does not benefit from the corresponding protection of the relevant conduct of business rules. ▌

(d) the insurance intermediary or insurance undertaking complies with its obligations under Articles 27 and 28.

All insurance intermediaries or insurance undertakings, including those operating under the freedom to provide services or the freedom of establishment, when distributing insurance-based investment products to customers having their habitual residence or establishment in a Member State which does not make use of the derogation referred to in this paragraph shall comply with the applicable provisions in that Member State.'

(c) paragraph 5 is replaced by the following:

'5. Member States shall ensure that insurance ***undertakings and insurance*** intermediaries ***manufacturing insurance-based investment products,*** provide the ***policyholder*** with adequate reports on the insurance distribution activities . Those reports shall contain periodic communications to ***policyholders***, taking into account the type and the complexity of insurance-based investment products involved and the nature of the ***insurance distribution activities undertaken for the policyholder*** and shall contain, ***if not already provided for in the annual statement referred to in Article 29, paragraphs 2 and 3***, the costs associated with ***those insurance distribution activities***.

Insurance intermediaries that directly charge fees to the policyholder shall provide adequate reports on the insurance distribution activities undertaken for the policyholder. Such a report shall include the nature of the insurance distribution activities undertaken by the insurance intermediary for the policyholder during the reporting period and the fees associated with those insurance distribution activities.

Member States shall ensure that insurance intermediaries or insurance undertakings, when providing advice on insurance-based investment products, provide the customer sufficiently before the conclusion of the contract ▌, with a suitability statement specifying the advice given and how that advice meets the preferences, objectives and other characteristics of the customer. The provision of such statement shall be made sufficiently in advance before the customer is bound by an insurance contract or offer to ensure that the customer gets enough time to review it, and where necessary, obtain additional information or clarifications from the insurance intermediary or insurance undertaking.

Member States shall ensure that where the insurance contract is concluded by means of distance communication which prevents the prior delivery of the suitability statement, the insurance intermediary or the insurance undertaking may provide the suitability statement ▌ immediately after the customer is bound by an insurance contract, provided that both of the following conditions are met:

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

(b) the insurance intermediary or insurance undertaking has given the customer the option of delaying the conclusion of the contract to receive the suitability statement in advance of such conclusion.

Member States shall ensure that where an insurance intermediary or an insurance undertaking has informed the customer that it will carry out a periodic assessment of suitability, the periodic report shall contain an updated statement of how the insurance-based investment product meets the customer's preferences, objectives and other characteristics of the ▌ customer.'

(d) the following paragraphs 5a, 5b and 5c are inserted:

'5a. Member States may impose stricter requirements on distributors in respect of the matters covered by this Article. In particular, Member States may make the provision of advice referred to in Article 30 mandatory for the sales of any insurance-based investment products, or for certain types of them.

Member States shall ensure that their stricter requirements referred to in the first subparagraph are complied with by all insurance intermediaries or insurance undertakings, including those operating under the freedom to provide services or the freedom of establishment, when concluding insurance contracts with customers having their habitual residence or establishment in that Member State.

5b. Member States shall require that, where an insurance intermediary ▌ distributing insurance-based investment products informs the customer that advice is given on an independent basis, the insurance intermediary ▌ :

(a) assesses a sufficiently large number of ***insurance-based investment*** products available on the market which are sufficiently diversified with regard to their type and ▌ providers to ensure that the customer's objectives can be suitably met and shall not be limited to ***insurance-based investment*** products issued or provided by entities having close links with the insurance intermediary***;***

(b) not accept and retain ***inducements*** paid or provided by any ▌ party or a person acting on behalf of ***any*** party in relation to the provision of the service to customers. ***Minor non-monetary benefits of a total value below EUR 100 per annum per party or of a scale and nature such that they could not be judged to impair compliance with the insurance intermediaries duty to act in the best interest of the customer, provided that they have been clearly disclosed to the customer are excluded from this point.***

This paragraph shall not prevent insurance intermediaries that are not employed by or contractually tied to an insurance undertaking, but receive inducements from the insurance undertaking and that fall within the scope of Article 29a, from presenting themselves as not contractually tied to a specific insurance undertaking.

5c. When providing ▌ advice to ▌ customers on an independent basis, the insurance intermediary ▌ may limit the assessment in relation to the type of insurance-based investment products mentioned in paragraph 5b, point (a), to well-diversified, cost-efficient and non-complex insurance-based investment products. ▌

5ca. Before advice is provided pursuant to paragraph 1, second subparagraph, the customer shall be duly informed about the possibility and conditions to also get access to advice on other insurance-based investment products and the associated benefits and constraints of such advice.'

(e) paragraph 6 is replaced by the following:

'6. The Commission shall be empowered to supplement this Directive by adopting delegated acts in accordance with Article 38 to further specify how insurance intermediaries and insurance undertakings are to comply with the principles set out in this Article when carrying out insurance distribution activities in relation to insurance-based investment products, including with regard to:

(a) the information to be obtained when assessing the suitability and appropriateness of insurance-based investment products for their customers;

(b) the criteria to assess non-complex insurance-based investment products for the purposes of paragraph 3, point (a)(ii), of this Article;

(c) the content and format of records and agreements ***in relation to the insurance distribution activities undertaken*** for the ▌ customers and of periodic reports to customers on ***those insurance distribution activities;***

(ca) criteria and conditions and the insurance-based investment products that qualify as well-diversified, non-complex and cost-efficient for the purpose of the provision of advice pursuant to paragraph 1, second subparagraph.

Those delegated acts shall take into account the nature of the services offered or provided to the customer, the nature of the products being offered or considered, including different types of insurance-based investment products and the retail or professional nature of the customer.'

(23) Article 35(2) is amended as follows:

(a) point (a) is replaced by the following:

‘(a) specific procedures for the receipt of reports on potential or actual infringements and their follow-up, including the establishment of secure communication channels for such reports.’

(b) the following subparagraph is added:

‘The specific procedures referred to in point (a) shall also include the creation, on the front page of each competent authority’s website, of a link to a simple reporting form allowing any person to report potential or actual infringements to Union law. Member States shall require competent authorities to analyse, without undue delay, all reports submitted via that reporting form.’

(24) the following Article 35a is inserted:

‘Article 35a

Procedure to address activities offered through digital means without authorisation or registration

1. Member States shall ensure that where a natural or legal person is pursuing insurance distribution activities online targeting customers within its territory without being registered in accordance with Article 3 of this Directive or authorised in accordance with Article 14 of Directive 2009/138/EC, or where a competent authority ***has reasonable grounds*** to suspect that ***such natural or legal person*** pursues such activities without being registered in accordance with Article 3 of this Directive or authorised in accordance with Article 14 of Directive 2009/138/EC, the competent authority takes all appropriate and proportionate measures to prevent the pursuit of these distribution activities, including related marketing communication, by resorting to the supervisory powers referred to in Article 12(3). Any such measures shall respect the principles of cooperation between Member States set out in this Directive.

2. Member States shall provide that competent authorities publish any decision imposing a measure pursuant to paragraph 1 in compliance with Article 32.

Competent authorities shall inform EIOPA of any decision referred to in paragraph 2 without undue delay. EIOPA shall establish an electronic database containing the decisions submitted by competent authorities, which shall be accessible to all competent authorities. EIOPA shall publish a list of all existing decisions, describing the natural or legal persons concerned and the types of services or products provided. The list shall be accessible to the public through a link on EIOPA's website. As regards natural persons, this list shall not lead to the publication of more personal data of those natural persons than that published by the competent authority pursuant to the first subparagraph, and in accordance with Article 32.

(25) Article 38 is replaced by the following:

'Article 38

Delegated acts

▌ The Commission shall be empowered to adopt delegated acts in accordance with Article 39 concerning Articles 10, 25, 26a, 28, 29a ▌ and 30.'

(26) Article 39 is amended as follows:

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

‘2. ▌ The power to adopt delegated acts referred to in Articles 10, 25, 26a, 28, 29a ▌ and 30 shall be conferred on the Commission for an indeterminate period of time from 22 February 2016.

3. The delegation of power referred to in Articles 10, 25, 26a, 28, 29a ▌ and 30 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.’

(b) the following paragraph 3a is inserted:

‘3a. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016.’

(c) paragraph 5 is replaced by the following:

'5. A delegated act adopted pursuant to Articles 10, 25, 26a, 28, 29a, ▌ 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.'

(26a) in Article 41, the following paragraph 9 is added:

'9. By [OP please insert the date = 3 years after entry into force of this Omnibus Directive], the Commission shall, after consulting EIOPA, and based on information provided by Member States, review the impact of the Member States' laws as laid down in subparagraph 2 of Article 1(6) with regard to insurance and reinsurance distribution activities pursued by insurance and reinsurance undertakings or intermediaries established in a third country and operating in the European Union. The review shall include an evaluation of the need to introduce a requirement on third-country insurance and reinsurance intermediaries to establish a branch in the Union. The review shall be accompanied, where appropriate, by a legislative proposal.

The review shall include an assessment of:

(a) the extent of insurance and reinsurance distribution activities pursued by insurance and reinsurance undertakings or intermediaries established in a third country and operating in the European Union;

(b) the extent of 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 intermediary;

(c) the Member States' law and experiences in respect of activities under point (a) and (b);

(d) the impact from having different national regimes on cross-border cooperation and customer protection.'

(27) Annex I is amended in accordance with Annex III to this Directive.

Article 3

Amendments to Directive 2009/138/EC

Section 5 of Title II, Chapter 1, of Directive (EU) 2009/138 is amended as follows:

(1) the heading is replaced by the following:

‘Section 5

Cancelation right’

(2) the following text is deleted:

‘Subsection 1

Non-life insurance’

(3) Articles 183 and 184 are deleted

(4) the following text is deleted:

‘Subsection ***2***

Life insurance’

(5) Article 185 is deleted.

Article 4

Amendments to Directive 2009/65/EC

Directive 2009/65/EC is amended as follows:

(1) Article 14 is amended as follows:

(a) the following paragraphs ▌ are inserted:

‘1a. For the purpose of paragraph 1, Member States shall require management companies to act in such a way as to prevent undue costs from being charged to the UCITS and its unit-holders.

The costs which comply with the following conditions shall be regarded as due:

(a) The costs are in line with disclosures in the prospectus referred to in Article 69 and the key investor information referred to in Article 78;

(b) The costs are necessary for the UCITS to operate in line with its investment strategy and objective or to fulfil regulatory requirements;

(c) The costs are borne by investors in a way that ensures fair treatment of investors.

1b. Member States shall require management companies to ***establish,*** maintain, operate and review an effective ***undue costs assessment and, in relation to UCITS made available to retail investors in accordance with Article 5 of Regulation (EU) No 1286/2014 of the European Parliament and of the Council, a value-for-money assessment.***

The requirements set out in this Article shall apply at the level of the UCITS, or when the UCITS has share classes with different cost structures, at the level of each share class.

Before the authorisation of the UCITS and throughout its life cycle, Member States shall ensure that management companies identify and quantify all costs ***to be*** borne by the UCITS or its unit-holders ***and that such costs are not undue***.

In relation to UCITS made available to retail investors as specified under the first subparagraph, before the authorisation of the UCITS and throughout its life ***cycle, management companies*** shall ***perform a value for money assessment, consisting of***:

(a) ***a clear identification and quantification of all costs and charges borne by retail investors, the performance of the UCITS and, if any, an identification and, where possible, a quantification of the benefits for the retail investors other than the financial performance. Where marketing costs and charges, including inducements, are included in*** the costs ***borne by the UCITS or its retail investors, management companies shall separately identify and quantify such costs and charges, including inducements***; ***and***

(b) ***an assessment of whether the UCITS offers value for money to retail investors, by determining whether the identified*** costs ***and charges*** borne by ***the*** retail investors are justified and proportionate, having regard to the ***performance***, ▌ other ***benefits for retail investors, such as qualitative features, and if*** relevant ***services, that could impact the value and benefits to retail investors,*** characteristics***, objectives, marketing strategy, and strategy of the UCITS***.

1c. ***The value-for-money assessment referred to in paragraph 1b, fourth subparagraph, shall include how the costs and charges borne by retail investors of the UCITS and the performance of the UCITS compare to the costs and charges borne by retail investors and the performance of the UCITS included in the relevant peer group. That peer group of UCITS shall consist of an appropriate range of UCITS which are comparable, as regards the criteria set out in paragraph 1ca, to the UCITS that is subject to the value for money assessment. The peer group shall include a representative number of UCITS, which are marketed in the Member State or*** Member States ***where the relevant UCITS will be marketed and, where feasible and proportional, in other Member States where comparable UCITS are marketed. The peer group comparison*** shall***, in addition to the total identified*** costs***, include*** comparison ***with individual cost components***.

1ca. In order to assess whether UCITS have features comparable to those of a UCITS subject to a value for money assessment, and therefore are eligible for the composition of a relevant peer group, management companies shall use the following criteria, where relevant for the UCITS, to ensure accuracy, reliability and objectivity of the peer group comparisons:

(a) Recommended holding period;

(b) Risk;

(c) Investment strategy;

(d) Marketing strategy;

(e) Investment objectives;

(f) Sustainability features;

(g) Active and passive management.

Management companies may use limited additional criteria to those listed in the first subparagraph provided such additional criteria are necessary to ensure that the peer group comparison is accurate, reliable and objective. The peer group shall be established on the basis of appropriate and reliable data, from the information included in the key information document referred to in Article 1 of Regulation 1286/2014, data and statistics published by ESMA on costs and performance, or on data and statistics on costs and performance made available, on a non-discriminatory basis, to the management companies, by professional associations.

1d. Member States shall require management companies to assess ▌ annually whether undue costs have been charged to the UCITS or its unit-holders.

Member States shall require management companies to reimburse ***unit-holders without undue delay*** where undue costs have been charged to the UCITS or its unit-holders. ***Where the cumulative costs of reimbursement to the unit-holders exceed the unduly charged amount, or where the individual unit-holders cannot be identified, that unduly charged amount shall be returned to the UCITS.***

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 ▌ auditors of the UCITS, situations where undue costs have been charged to the UCITS or its unit-holders.

1e. Member States shall require ***that*** management companies ***regularly review*** the conditions mentioned in paragraph 1b, ***fourth subparagraph, as long as a UCITS is made available to retail investors, taking*** into account ***any event or risk that could materially affect the*** performance ***of the UCITS, to assess whether the intended marketing strategy remains appropriate and whether the UCITS continues to offer value for money. In case it emerges from the review that the intended marketing strategy is no longer appropriate or that the UCITS does not continue to offer value for money, the management company shall take appropriate action to prevent future detriment to existing and prospective unit-holders***. ***Any potential claim from a retail investor shall be subject to relevant national rules and Union law.***

1ea. When, in its value for money assessment a management company determines that the value for money of a UCITS to be made available to retail investors is at a significant distance from the average costs borne by retail investors and performance of UCITS in the relevant peer group to the detriment of the retail investors, the management company shall substantiate in a detailed way, through additional testing and further assessments, how the UCITS is to deliver value for money to retail investors. Where necessary, the management company shall take appropriate actions to ensure that the UCITS delivers value for money to retail investors. The substantiated assessment shall be recorded and kept by the management company in accordance with the rules set out in paragraph 1g.

If, where relevant after remedial actions have been taken, the value for money of the UCITS cannot be ensured, the UCITS shall not be made available to retail investors.

1f. ***Member States*** shall ***ensure that management companies are responsible for the effectiveness and quality of their value-for-money assessments and undue*** costs ***assessments. The value-for-money assessments and undue costs assessments shall be clearly documented and shall be based on objective criteria and methodology.***

The management body of the management company shall define, oversee and be accountable for the ***implementation of the requirements that ensure the adequacy and effectiveness of the undue costs*** assessment ***and value-for-money assessment.***

The management body of the management company shall receive from the compliance function information on value-for-money assessments and any remedial actions taken to ensure those UCITS offer value for money to retail investors. Management companies shall make that information available to their competent authority upon request.

▌

1g. A management company shall, upon request, provide the value-for-money assessments to the relevant competent authority, including the following, where applicable:

(a) the dataset from which the relevant peer group of UCITS was selected and the criteria used for the selection of the peer group, relevant information on the selected UCITS within the peer group and the results of the comparison of the UCITS to the relevant peer group;
(b) any substantiated assessment demonstrating how the UCITS shall offer value for money despite being at a significant distance from the average of the peer group of UCITS and any appropriate actions to ensure value for money;
(c) any remedial actions taken by the management company, following the initial value for money assessment, to ensure that the UCITS offers value for money to retail investors.

Member States shall ensure that management companies keep the record of value-for-money assessments 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 management company upon request of the competent authority.

A management company shall make available to its distributors and, if applicable, to insurance undertakings and insurance intermediaries that manufacture insurance-based investment products and with which the management company has an agreement to include the UCITS as an underlying investment option in an insurance-based investment product, all relevant information on the UCITS and its value-for-money assessment that is needed to fully understand that UCITS and the elements taken into consideration during the value-for-money assessment.

1h. Competent authorities shall carry out checks based on evidence provided by management companies and other information they deem relevant to ensure that management companies select relevant peer groups of UCITS and conduct value for money assessments in accordance with this Article. Competent authorities shall analyse the data they receive according to this Article. Should they identify a significant investor protection concern as regards the value for money assessments, they shall carry out a supervisory action to further evaluate the relevant UCITS offered in the relevant market.

Where the competent authority concludes that the evidence has not been provided or that the relevance of peer groups of UCITS is not justified or the UCITS does not offer value for money, it shall require the management company to take measures to ensure compliance with the value for money requirements. In the absence of such measures, the competent authority shall make appropriate use of its powers under Articles 98 and 99.
Where UCITS are not at a significant distance from the relevant peer group, as referred to in paragraph 1ea, it shall not, in itself, automatically imply that such UCITS offer value for money to retail investors.

1i. ESMA shall ensure coordination of the competent authorities' supervisory practices on value for money assessments. It shall promote consistent supervision on value for money assessments and enhance convergence across Member States. ESMA shall include, in the ESMA supervision handbook, a section outlining the best supervisory practices on value for money assessments recommended by ESMA.

ESMA, shall use its supervisory convergence powers to ensure a harmonised supervision and enforcement by competent authorities of costs and charges, including inducements, disclosure, selection of peer groups of UCITS and value-for-money assessments conducted by management companies. Where necessary, ESMA shall issue guidelines to foster convergence in supervisory outcomes of competent authorities.'

(b) paragraph 2 is amended as follows:

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

'Without prejudice to Article 116, the Commission shall adopt, by means of delegated acts in accordance with Article 112a, measures to ensure that the management company complies with the duties set out in paragraphs 1 to ***1h*** in particular to:'

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

'(b) specify the principles required to ensure that management companies employ effectively the resources and procedures that are necessary for the proper performance of their business activities;'

(iii) the following points (d) and (e) are added:

'(d) specify the minimum requirements for the ***undue costs*** process to prevent undue costs from being charged to the UCITS and its unit-holders, in particular, by:

(i) ensuring that costs are correctly identified and quantified, and comply with the requirements set out in paragraph 1a, point (a);

(ii) identifying which costs can be charged to the UCITS and its unit-holders taking into account the level of the costs and the nature of the costs by reference to a list of eligible costs that meet the conditions set out in paragraph 1a, points (b) and (c) , and the conditions under which competent authorities may authorise on a case-by-case basis costs which are not included in the list of eligible costs but that meet the conditions set out in paragraph 1a, points (b) and (c);

(iii) identifying potential conflict of interests and measures to mitigate the occurrence of conflicts of interest;

(iv) establishing a procedure to determine the level of compensation where undue costs have been charged to investors;

(e) specify the value for money requirements referred to in this Article, including:

(i) the criteria to select eligible UCITS for the composition of peer groups to ensure a representative number of UCITS in those peer groups in the Member State or Member States where the relevant UCITS will be marketed, and, where feasible and proportional, in other Member States where comparable UCITS are marketed, taking into account that this should not require a union wide comparison, but a limited comparison with comparable UCITS, and taking into account the market size;

(ii) the criteria to determine whether ***the UCITS offers value for money to retail investors where there are no or very limited comparable UCITS available, and therefore no relevant peer group can be identified;***

(iii) the criteria to specify how the costs, charges and performance of the UCITS compare to the costs, charges and performance of the relevant peer group, including the determination of whether the value for money of a UCITS is at a significant distance from the average costs and performance of the UCITS in the relevant peer group to the detriment of retail investors, also with a view to determining whether the costs are ▌ proportionate ***and justified***. ▌ ’

(c) the following paragraph 4 is added:

‘4. By **...** [***OJ*** please insert ▌ date = five years ***after*** the date ***of application*** of this ***amending*** Directive], ***Member States shall communicate to*** the Commission ***and ESMA relevant information concerning*** the implementation of this Article ***by management companies***.

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 the impact of the value for money assessment, including the peer group comparison, for retail investors.***

The Commission shall carry out this evaluation alongside the evaluation in Article 25(12a) of Directive (EU) 2016/97, Article 16-a (12e) Directive (EU) 2014/65 and Article 12(4) of Directive 2011/61/EU.’

▌

(2) the following ***point (f) is added to the second paragraph of*** Article 20a ▌ :▌

▌

'(f) information on the costs ***and charges, including inducements,*** borne by investors and ***data on other characteristics, in particular the*** performance of the UCITS ▌ at the level of each fund, or at the level of the UCITS share classes where those share classes have different cost structures.***'***

(2a.) In Article 20a, the fifth paragraph, point (a) is replaced by the following:

'(a) the details of the information to be reported in accordance with paragraph 1, paragraph 2, points (a), (b), (c), (e) and (f), and paragraph 4;'

(3) in Article 30, the second paragraph is replaced by the following:

'For the purpose of the Articles referred to in the first paragraph, 'management company' means 'investment company', with the exception of the second paragraph of Article 14(1d).'

(4) in Article 90, the following paragraph is added:

'This Article applies without prejudice to the application of Article 14.'

(5) in Article 98(2), the following point (n) is added:

'(n) require compensation ***be paid*** to investors where undue costs have been charged to UCITS or its unit-holders.'

(6) in Article 99(6), the following point is added:

'(h) ***require compensation be paid to*** investors where undue costs have been charged to UCITS or its unit-holders.'

(7) in Article 112a(2), the following subparagraph is inserted after the fourth subparagraph:

'The power to adopt the delegated acts referred to in Article 14 shall be conferred on the Commission for a period of four years from [OJ: insert date of entry into force of this amending Directive].'

Article 5

Amendments to Directive 2011/61/EU

Directive 2011/61/EU is amended as follows:

(1) Article 12 is amended as follows:

(a) the following paragraphs ▌ are inserted:

"1a. For the purposes of paragraph 1, Member States shall require AIFMs to act in such a way as to prevent undue costs from being charged to the AIFs and their unitholders ***or shareholders***.

The costs which comply with the following conditions shall be regarded as due:

(a) The costs are in line with disclosures in the prospectus referred to in Article 23(3), the fund rules or instruments of incorporation as referred to in Article 23(1) and the key information document referred to in Article 5(1) of Regulation (EU) No 1286/2014;

(b) The costs are necessary for the AIF to operate in line with its investment strategy and objective or to fulfil regulatory requirements;

(c) The costs are borne by investors in a way that ensures fair treatment of investors, except for cases mentioned in Article 12 (1) where AIF rules or instruments of incorporation provide for a preferential treatment.

1b. Member States shall require AIFMs to ***establish,*** maintain, operate and review an effective ***undue*** costs ***assessment and, in relation to AIFs made available to retail investors in accordance with Article 5 of Regulation (EU) No 1286/2014 of the European Parliament and of the Council, a value-for-money assessment.***

The requirements set out in this Article shall apply at the level of the AIF, or when the AIF has share classes with different cost structures, at the level of each share class.

Before the authorisation of the AIF, where applicable, and throughout its life cycle, Member States shall ensure that ***AIFMs identify and quantify all costs to be borne by the AIF or its unit-holders or shareholders and that such costs are not undue.***

In relation to AIFs made available to retail investors as specified under the first subparagraph, before the authorisation of the AIF, where applicable, and throughout its life cycle, AIFMs shall perform a value for money assessment, consisting of:

(a) ***a clear identification and quantification of all costs and charges borne by retail investors, the performance of the AIF and, if any, an identification and, where possible, a quantification of the benefits for the retail investors other than the financial performance. Where marketing costs and charges, including inducements, are included in*** the costs ***borne by the AIF or its retail investors, AIFMs shall separately identify and quantify such costs and charges, including inducements***; ***and***

(b) ***an assessment of whether the AIF offers value for money to retail investors, by determining whether the identified*** costs ***and charges*** borne by ***the*** retail investors are justified and proportionate, having regard to the ***performance***, ▌ other ***benefits for retail investors, such as qualitative features, and if*** relevant ***services, that could impact the value and benefits to retail investors,*** characteristics***, objectives, marketing strategy, and strategy of the AIF***.

1c. ***The value-for-money assessment referred to in paragraph 1b, fourth subparagraph, shall include how the costs and charges borne by retail investors of the AIF and the performance of the AIF compare to the costs and charges borne by retail investors and the performance of the AIFs included in the relevant peer group. That peer group of AIFs shall consist of an appropriate range of AIFs which are comparable, as regards the criteria set out in paragraph 1ca, to the AIF that is subject to the value for money assessment. The peer group shall include a representative number of AIFs, which are marketed in the Member State or*** Member States ***where the relevant AIF will be marketed and, where feasible and proportional, in other Member States where comparable AIFs are marketed. The peer group comparison*** shall***, in addition to the total identified*** costs***, include*** comparison ***with individual cost components***.

1ca. In order to assess whether AIFs have features comparable to those of an AIF subject to a value for money assessment, and therefore are eligible for the composition of a relevant peer group, AIFMs shall use the following criteria, where relevant for the AIF, to ensure accuracy, reliability and objectivity of the peer group comparisons:

(a) Recommended holding period;

(b) Risk;

(c) Investment strategy;

(d) Marketing strategy;

(e) Investment objectives;

(f) Sustainability features;

(g) Active and passive management.

AIFMs may use limited additional criteria to those listed in the first subparagraph provided such additional criteria are necessary to ensure that the peer group comparison is accurate, reliable and objective.

The peer group shall be established on the basis of appropriate and reliable data, from the information included in the key information document referred to in Article 1 of Regulation 1286/2014, data and statistics published by ESMA on costs and performance, or on data and statistics on costs and performance made available, on a non-discriminatory basis, to the AIFMs, by professional associations.

1d. Member States shall require AIFMs to assess ▌ annually whether undue costs have been charged to AIF or its ***unit-holders or shareholders***.

Member States shall require AIFMs to reimburse ***unit-holders or shareholders without undue delay*** where undue costs have been charged to the ***AIF*** or its ▌ unit-holders ***or shareholders***.

Where the cumulative costs of reimbursement to the unit-holders or shareholders exceed the unduly charged amount, or where the individual unit-holders or shareholders cannot be identified, that unduly charged amount shall be returned to the AIF.

Member States shall require AIFMs to report to the competent authorities, of their home Member State, to the competent authority of the home Member State of the AIF, where applicable, to the depositary and to the financial auditors of the AIFMs and the AIF, where applicable, situations where undue costs have been charged to the AIF or its unit-holders ***or shareholders***.

1e. Member States shall require ***that*** AIFMs ***regularly review*** the conditions mentioned in paragraph 1b, ***fourth subparagraph, as long as an AIF is made available*** to retail investors, ***taking into account any event or risk that could materially affect the*** performance ***of the AIF, to assess whether the intended marketing strategy remains appropriate and whether the AIF continues to offer value for money. In case it emerges from the review that the intended marketing strategy is no longer appropriate or that the AIF does not continue to offer value for money, the AIFM shall take appropriate action to prevent future detriment to existing and prospective unit-holders or shareholders***. ***Any potential claim from a retail investor shall be subject to relevant national rules and Union law.***

▌

1ea. When, in its value for money assessment an AIFM determines that the value for money of an AIF to be made available to retail investors is at a significant distance from the average costs borne by retail investors and performance of AIFs in the relevant peer group to the detriment of the retail investors, the AIFM shall substantiate in a detailed way, through additional testing and further assessments, how the AIF is to deliver value for money to retail investors. Where necessary, the AIFM shall take appropriate actions to ensure that the AIF delivers value for money to retail investors. The substantiated assessment shall be recorded and kept by the AIFM in accordance with the rules set out in paragraph 1g.

If, where relevant after remedial actions have been taken, the value for money of the AIF cannot be ensured, the AIF shall not be made available to retail investors.

1f. ***Member States*** shall ***ensure that AIFMs are responsible for the effectiveness and quality of their value-for-money assessments and undue costs assessments. The value-for-money assessments and undue*** costs ***assessments shall be clearly documented and shall be based on objective criteria and methodology.***

The management body of the AIFM shall define, oversee and be accountable for the ***implementation of the requirements that ensure the adequacy and effectiveness of the undue costs*** assessment ***and value-for-money assessment.***

The management body of the AIFM shall receive from the compliance function information on value-for-money assessments and any remedial actions taken to ensure those AIFs value for money to retail investors. AIFMs shall make that information available to their competent authority upon request.

1g. An AIFM shall, upon request, provide the value-for-money assessments to the relevant competent authority, including the following, where applicable:

(a) the dataset from which the relevant peer group of AIFs was selected and the criteria used for the selection of the peer group, relevant information on the selected AIFs within the peer group and the results of the comparison of the AIF to the relevant peer group;
(b) any substantiated assessment demonstrating how the AIF shall offer value for money despite being at a significant distance from the average of the peer group of AIFs and any appropriate actions to ensure value for money;
(c) any remedial actions taken by the AIFM, following the initial value for money assessment, to ensure that the AIF offers value for money to retail investors.

Member States shall ensure that AIFMs keep the record of value-for-money assessments 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 AIFM upon request of the competent authority.

An AIFM shall make available to its distributors and, if applicable, to insurance undertakings and insurance intermediaries that manufacture insurance-based investment products and with which the AIFM has an agreement to include the AIF as an underlying investment option in an insurance-based investment product, all relevant information on the AIF and its value-for-money assessment that is needed to fully understand that AIF and the elements taken into consideration during the value-for-money assessment.

1h. ***Competent authorities*** shall ***carry out checks based on evidence provided by AIFMs and other information they deem relevant to ensure that AIFMs select relevant peer groups of AIFs and conduct value for money assessments in accordance with this Article. Competent authorities shall analyse the data they receive according to this Article. Should they identify a significant investor protection concern as regards the value for money assessments, they shall carry out a supervisory action to further evaluate the relevant AIFs offered in the relevant market.***

Where the competent authority concludes that the evidence has not been provided or that the relevance of peer groups of AIFs is not justified or the AIF does not offer value for money, it shall require the AIFM to take measures to ensure compliance with the value for money requirements. In the absence of such measures, the competent authority shall make appropriate use of its powers under Articles 46 and 48.

Where AIFs are not at a significant distance from the relevant peer group, as referred to in paragraph 1ea, it shall not, in itself, automatically imply that such AIFs offer value for money to retail investors ▌ .

1i. ***ESMA*** shall ***ensure coordination of the competent authorities' supervisory practices on value for money assessments. It shall promote consistent supervision on value for money assessments and enhance convergence across Member States. ESMA shall include, in the ESMA supervision handbook, a section outlining the best supervisory practices on value for money assessments recommended by ESMA.***

ESMA, shall use its supervisory convergence powers to ensure a harmonised supervision and enforcement by competent authorities of costs and ***charges, including inducements, disclosure, selection of peer groups of AIFs and value-for-money assessments conducted by AIFMs.*** Where ***necessary, ESMA*** shall ***issue guidelines to foster convergence in supervisory outcomes of competent authorities***.▌'

(b) paragraph 3 is replaced by the following:

'3. The Commission shall adopt, by means of delegated acts in accordance with Article 56 and subject to the conditions of Articles 57 and 58, measures specifying the criteria to be used by the relevant competent authorities to assess whether AIFMs comply with their obligations under paragraph 1 of this Article and measures to ensure that the AIFM complies with the duties set out in paragraphs 1 to 1e of this Article, in particular to:

(a) specify the minimum requirements for the ***undue costs*** process to prevent undue costs from being charged to the AIF and its unit-holders ***or shareholders***, in particular, by:

(i) ensuring that costs are correctly identified and quantified, and comply with the condition set out in paragraph 1a, point (a);

(ii) identifying which costs can be charged to the AIF and its unit-holders ***or shareholders*** taking into account the level of the costs and the nature of the costs by reference to a list of eligible costs that meet the conditions set out in paragraph 1a, points (b) and (c), and the conditions under which competent authorities may authorise on a case-by-case basis costs which are not included in the list of eligible costs but that meet the conditions set out in paragraph 1a, points (b) and (c);

(iii) identifying potential conflict of interests and measures to mitigate the occurrence of conflicts of interest;

(iv) establishing a procedure to determine the level of compensation in case undue costs have been charged to investors.

(b) ***specify the value for money requirements referred to in this Article, including:***

(i) the criteria to select eligible AIFs for the composition of peer groups to ensure a representative number of AIFs in those peer groups in the Member State or Member States where the relevant AIFs will be marketed, and, where feasible and proportional, in other Member States where comparable AIFs are marketed, taking into account that this should not require a union wide comparison, but a limited comparison with comparable AIFs, and taking into account the market size;

(ii) the criteria to determine whether ***the AIF offers value for money to retail investors where there are no or very limited comparable AIFs available, and therefore no relevant peer group can be identified;***

(iii) the criteria to specify how the costs, charges and performance of the AIF compare to the costs, charges and performance of the relevant peer group, including the determination of whether the value for money of an AIF is at a significant distance from the average costs and performance of the AIFs in the relevant peer group to the detriment of retail investors, also with a view to determining whether the costs are ▌ proportionate ***and justified***. ▌ ’

(c) the following paragraph 4 is added:

‘4. By ***...*** [***OJ*** please insert ▌ date = five years ***after*** the date ***of application*** of this ***amending*** Directive]***, Member States shall communicate to*** the Commission ***and ESMA relevant information concerning*** the implementation of this Article ***by AIFMs***.

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 the impact of the value for money assessment, including the peer group comparison, for retail investors.***

The Commission shall carry out this evaluation alongside the evaluation in Article 25(12a) of Directive (EU) 2016/97, Article 16-a(12e) Directive (EU) 2014/65 and Article 14(4) of Directive 2009/65/EC.’

▌

(2) in Article 24(2), the following point***(g)*** is added:

‘(g) information on the costs ***and charges, including inducements,*** borne by investors and ***data on other characteristics, in particular the*** performance of the AIF ▌ at the level of each ***fund,*** or at the level ***of*** the AIF’s share classes where those share classes have different cost structures. ▌ ’

(2a) In Article 24(5a), point (a) is replaced by the following:

'(a) the details of the information to be reported in accordance with paragraph 1 and with paragraph 2, points (a), (b), (c), (e), (f) and (g);'

(3) in Article 46(2), the following point (n) is added:

'(n) require ***compensation be paid*** to ▌ investors where undue costs have been charged to the AIF or its unit-holders ***or shareholders***.'

(4) in Article 56(1), the following sentence is inserted after the first sentence:

'The powers to adopt delegated acts referred to in Article 12 shall be conferred on the Commission for a period of 4 years from [OJ: insert date of entry into force of the amending Directive].'

Article 6

Transposition

1. Member States shall adopt and publish, by … [OP please insert the date = ***24*** months after the date of entry into force of this Directive] at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.

2. They shall apply those provisions from … [OP please insert the date = ***30*** months after the date of entry into force of this Directive].

3. When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

4. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 7

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

Article 8

Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President

Annex I

In Annex II to Directive 2014/65/ EU, Section I is amended as follows:

(1) in the first paragraph, the following point is inserted:

'(3a) Managers and directors of credit institutions, insurance companies, pension funds and investment firms and collective investment schemes and management companies of such funds and schemes who are directly involved in the entity's investment activity.'

(2) the second subparagraph of section I is replaced by the following:

'Employees of AIFMs responsible for the management or the marketing of AIFs, as defined in Article 4(1)(x) of Directive 2011/61/EU (AIFMD) are regarded as professionals only in respect of investments in these specific AIFs.

The investment firm shall inform the client 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. The investment firm shall inform the client of its rights laid down in this paragraph. The clients referred to in the first and the second paragraph shall be allowed to request non-professional treatment and investment firms may agree to provide a higher level of protection. Where the request is made by the client who is a natural person, the investment firm shall not regard that client as a professional client. In case of an ongoing relationship, the client shall be clearly informed of any change in the categorisation during the relationship and the consequences thereof, including, when the client is considered to be a professional client, their right to request non-professional treatment.'

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

(1) the fourth ***paragraph*** is replaced by the following:

'The fitness test applied to managers and directors of entities authorised under ***this*** Directive or other ▌ 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) ***In the fifth paragraph, the first, second and third indents are replaced by the following***:

'***- the client has carried out, in significant size, on the relevant market at least:***

a) 15 transactions per year over the last three years, or

b) 30 transactions over the previous year, or

c) 10 transactions directly in unlisted companies over the last 5 years where each transaction amounts to at least EUR 30 000.

Recurrent transactions in an investment plan are considered as only one transaction, unless they are of significant size;

- the size of the client's financial instrument portfolio, defined as including cash deposits and financial instruments***, has*** on average ***over*** the last ***three*** years, ***preceding that client's request to be classified as professional client, exceeded EUR 250 000, as demonstrated by annual statements or, where not available, other periodic statements of financial position***;

- the client works or has worked in the financial sector or undertaken capital market activities requiring ***the client*** to buy and sell financial instruments and/or to manage a portfolio of financial instruments for at least one year in a professional position, which requires knowledge of the transactions or services envisaged***, or the client can provide the firm with a certificate or equivalent proof of completion of recognised education or training that evidences an understanding of the relevant transactions or services envisaged and the ability to evaluate the risks adequately. Education or training shall not be combined exclusively with the criteria on the size of the client's financial portfolio***.'

▌

(3) the following ***paragraph is inserted after the fifth paragraph***:

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

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

▌

Annex II

The following Annex to Directive 2014/65/EU is inserted:

'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: ▌

(1) 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 ***customer***; ▌ ’

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

‘(aa) minimum necessary knowledge of the total costs and charges to be incurred by the ***customer*** 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 ▌ 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 ***underlying investments*** offered or recommended to ***customers***;

(ii) understanding the impact of macro-economic developments, ***national, regional or global*** events on financial markets***,*** and on the value of ***underlying investments*** being offered or recommended to ***customers***;

(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 ***underlying investments*** offered or recommended to ***customers***;

(v) understanding of the valuation principles for the type of ***underlying investments*** offered or recommended to ***customers***; [redacted] ’

(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 ***insurance intermediary or insurance undertaking*** may not be suitable for the ***customer***, having assessed the relevant information provided by the ***customer*** against changes that have occurred since the relevant information was gathered; [redacted] ’

(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.