



**2023/0167(COD)**

2.10.2023

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## **DRAFT REPORT**

on the proposal for a directive of the European Parliament and of the Council amending Directives (EU) 2009/65/EC, 2009/138/EC, 2011/61/EU, 2014/65/EU and (EU) 2016/97 as regards the Union retail investor protection rules

(COM(2023)0279 – C9-0182/2023 – 2023/0167(COD))

Committee on Economic and Monetary Affairs

Rapporteur: Stéphanie Yon-Courtin

### ***Symbols for procedures***

- \* Consultation procedure
- \*\*\* Consent procedure
- \*\*\*I Ordinary legislative procedure (first reading)
- \*\*\*II Ordinary legislative procedure (second reading)
- \*\*\*III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

### ***Amendments to a draft act***

#### **Amendments by Parliament set out in two columns**

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

#### **Amendments by Parliament in the form of a consolidated text**

New text is highlighted in ***bold italics***. Deletions are indicated using either the **■** symbol or strikeout. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

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## DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the proposal for a directive of the European Parliament and of the Council amending Directives (EU) 2009/65/EC, 2009/138/EC, 2011/61/EU, 2014/65/EU and (EU) 2016/97 as regards the Union retail investor protection rules (COM(2023)0279 – C9-0182/2023 – 2023/0167(COD))**

**(Ordinary legislative procedure: first reading)**

*The European Parliament,*

- having regard to the Commission proposal to Parliament and the Council (COM(2023)0279),
  - having regard to Article 294(2) and Articles 53(1) and 62 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C9-0182/2023),
  - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
  - having regard to Rule 59 of its Rules of Procedure,
  - having regard to the report of the Committee on Economic and Monetary Affairs (A9-0000/2023),
1. Adopts its position at first reading hereinafter set out;
  2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
  3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

### **Amendment 1**

#### **Proposal for a directive**

##### **Recital 3**

*Text proposed by the Commission*

(3) Third party payments, such as fees, commissions or any monetary or non-monetary benefits paid to or received by investment firms and insurance undertakings and intermediaries by or from persons other than the client or customer, also termed as ‘inducements’, play a

*Amendment*

(3) Third party payments, such as fees, commissions or any monetary or non-monetary benefits paid to or received by investment firms and insurance undertakings and intermediaries by or from persons other than the client or customer, also termed as ‘inducements’, play a

significant role in the distribution of retail investment products in the Union. The existing rules designed to manage conflicts of interests in Directives (EU) 2014/65 and (EU) 2016/97, including restrictions on and transparency around the payments of inducements, have not proven sufficiently effective in mitigating consumer detriment and have led to different levels of retail investor protection across product segments and distribution channels. It is therefore necessary to further strengthen the investor protection framework to ensure that retail clients' best interests are protected uniformly across the Union. ***In light of the potential disruptive impact caused by the introduction of a full prohibition of inducements***, it is appropriate to ***have a staged approach and first strengthen the requirements around the payment and receipt of inducements to address the potential conflicts of interest and ensure better protection of retail investors and, at a second stage, to review the effectiveness of the framework, and propose alternative measures in line with Better Regulation rules, including a potential ban on inducements, if appropriate.***

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' best interests are protected uniformly across the Union. It is appropriate to ***introduce rules that better frame the current advice environment, by ensuring that financial intermediaries provide more transparent, understandable and tailored advice to consumers. This should ensure that consumers are offered products suitable to their needs and should enable them to better understand the advice that they receive. A review, five years after the end of the transposition period of this Directive, should assess the effects of its measures on the advice environment in the Union. That assessment should be based on the potential conflict of interest associated with inducements, the evolution of costs, the overall level of retail investment in capital markets, consumer protection and the relevance of distribution rules.***

Or. en

## Amendment 2

### Proposal for a directive Recital 4

*Text proposed by the Commission*

***(4) In order to remove any consumer detriment as a consequence of the payment and receipt of inducements for***

*Amendment*

***deleted***

*non-advised sales, it is appropriate to prohibit the payment and receipt of such inducements. In the case of Directive (EU) 2014/65, such prohibition would cover the execution or reception and transmission of orders and in the case of Directive (EU) 2016/97, non-advised sales. To avoid restricting issuers' ability to raise funding, that prohibition should not apply to payments in relation to underwriting and placement services provided to an issuer, where the investment firm also provides an execution of order or reception and transmission of order service to an end-investor. Furthermore, investment advice is often combined with the provision of an execution or reception and transmission of order service. In such cases, the main service being investment advice, the prohibition should not apply to the execution or reception and transmission of order service relating to one or more transactions of that client covered by that advice. Minor non-monetary benefits which do not exceed 100 euros or are of a scale and nature that they could not be judged to impair compliance with the duty to act in the best interest of the retail investor should be allowed, to the extent that they are clearly disclosed.*

Or. en

### **Amendment 3**

#### **Proposal for a directive Recital 6**

##### *Text proposed by the Commission*

(6) The existing safeguards conditioning the payment or receipt of inducements, which under Directive (EU) 2014/65 require that the inducement is designed to enhance the quality of the service to the client, or under Directive

##### *Amendment*

(6) The existing safeguards conditioning 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 been sufficiently effective in mitigating conflicts of interest. It is therefore *appropriate* to remove those criteria and introduce a new, common test, both in Directive (EU) 2014/65 and Directive (EU) 2016/97, that further clarifies how financial advisors should apply the principle of acting in the best interest of the client. Financial advisors should base their advice on an appropriate range of financial products.

*After having identified suitable instruments for their clients, they should recommend the most cost-efficient of similar products to their clients.*

*Furthermore, financial advisors should also systematically recommend at least one product without features that may not be necessary for the achievement of the client's investment objective, so that retail investors are presented also with alternative and possibly cheaper options to consider. Such features may include, as an example, funds with an investment strategy which implies higher costs, a capital guarantee and structured products with hedging elements. If advisors choose to also recommend a product that carries additional features which carry extra costs to the client or customer, they should explicitly provide the reason for such a recommendation and disclose the extra costs incurred. In the case of insurance-based investment products, advisors should also ensure that the insurance cover included in the product is consistent with the customer's insurance demands and needs.*

(EU) 2016/97 should not have a detrimental effect on the quality of the service to the customer, have not been sufficiently effective in mitigating conflicts of interest. It is therefore *proposed* to remove those criteria and introduce a new, common test, both in Directive 2014/65/EU and Directive (EU) 2016/97, that further clarifies how financial advisors should apply the principle of acting in the best interest of the client. Financial advisors should base their advice on an appropriate range of financial products.

Or. en

#### **Amendment 4**

#### **Proposal for a directive Recital 6 a (new)**



*Text proposed by the Commission*

*Amendment*

***(6a) Financial advisors subject to Directive 2014/65/EU should base their advice on an appropriate range of financial products suitable to the client's needs. After having identified suitable instruments for their clients, those financial advisors should recommend the most cost-efficient financial products to their clients. Cost-efficiency should be determined, based on the investment firm's assessment of the instrument's net return expectations, taking into account all implicit and explicit costs and charges. Powers should be conferred upon ESMA to specify those requirements.***

Or. en

## **Amendment 5**

### **Proposal for a directive Recital 6 b (new)**

*Text proposed by the Commission*

*Amendment*

***(6b) Financial advisors subject to Directive (EU) 2016/97 should base their advice on an appropriate range of insurance-based investment products, or, where applicable, underlying investment options, suitable to the client's needs. After having identified suitable instruments for their customers, they should recommend the most efficient insurance-based investment products, or, where applicable, underlying investment options. That recommendation should be based on the performance, the level of risk and the costs of a given product or, where applicable, of an underlying investment option.***

Or. en

## Amendment 6

### Proposal for a directive Recital 9

*Text proposed by the Commission*

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

*Amendment*

(9) In order to assess the effectiveness of these measures, **five** years after the **end of the transposition period** of this Directive and after having consulted the European Securities and Markets Authority ('ESMA') and the European Insurance and Occupational Pensions Authority ('EIOPA'), the Commission should prepare a report on the **potential conflicts of interest associated with inducements, the evolution of costs, the overall level of retail investment in capital markets, consumer protection and the relevance of distribution rules.**

Or. en

## Amendment 7

### Proposal for a directive Recital 10

*Text proposed by the Commission*

(10) The level of costs and charges associated with investment and insurance-based investment products can have a significant impact on investment returns, something that may not always be evident for retail investors. To ensure that products offer Value for Money for retail investors, Member States should ensure that firms authorised under Directive (EU) 2014/65 or Directive (EU) 2016/97 to manufacture or distribute investment products have clear pricing processes that enable a clear identification and quantification of all costs charged to retail investors and are designed

*Amendment*

(10) The level of costs and charges, **as well as other more qualitative elements, such as environmental, social and governance (ESG) factors and financial guarantees, that are** associated with investment and insurance-based investment products can have a significant impact on investment returns, something that may not always be evident for retail investors. To ensure that products offer Value for Money for retail investors, Member States should ensure that firms authorised under Directive 2014/65/EU or Directive (EU) 2016/97 to manufacture or distribute

to ensure that the costs and charges that are included in investment products or that are linked to their distribution are justified and proportionate in respect of the characteristics, objectives, strategy and expected performance of the product.

investment products have clear pricing processes that enable a clear identification and quantification of all costs charged to retail investors and are designed to ensure that the costs and charges that are included in investment products or that are linked to their distribution are justified and proportionate in respect of the characteristics, objectives, strategy and expected performance of the product.

Or. en

## Amendment 8

### Proposal for a directive Recital 10 a (new)

*Text proposed by the Commission*

*Amendment*

***(10a) The access to, use of and cost of financial and non-financial market data necessary to provide investment services and to manufacture and distribute financial products are an important portion of the costs borne by investment firms, representing therefore a significant proportion of the total charges paid by retail investors. Financial and non-financial market data are essential to the correct functioning of financial markets, and to the provision of quality investment services to retail investors. Those data should be reliable and accessible under fair conditions. Investment firms depend on data providers to provide their services and to comply with Union regulators. In addition, as they are used in almost all investment decisions and to meet the many regulatory reporting requirements, those data should be of high quality, reliable and subject to very strict control procedures.***

Or. en

## Amendment 9

### Proposal for a directive Recital 13

*Text proposed by the Commission*

*Amendment*

**(13)** *To make the pricing process more objective and to equip manufacturers, distributors and competent authorities with a tool allowing for an efficient comparison of costs among investment products from the same product type, both ESMA and EIOPA should develop benchmarks, based on data related to the cost and performance of investment products, which should be taken into consideration by manufacturers and distributors in their pricing processes. If the result of the comparison with a relevant benchmark indicates that the costs and performance for investors are not aligned to the benchmark, the product should not be marketed to retail investors, unless additional testing and further assessments have established that the product nevertheless offers Value for Money to the target market, for example in the case of a product containing additional special features that would be considered relevant for a particular group of investors with identified specific needs and objectives, but which are not reflected in the description of the group of investment products for which the benchmark was developed.* **deleted**

Or. en

## Amendment 10

### Proposal for a directive Recital 15

*Text proposed by the Commission*

*Amendment*

**(15)** *To enable ESMA and EIOPA to* **deleted**

*develop reliable benchmarks, based on reliable data, manufacturers and distributors of investment products should be required to report necessary data to competent authorities, for onward transmission to ESMA and EIOPA. To limit, to the greatest extent possible, costs related to the new reporting obligations and to avoid unnecessary duplication, data sets should as far as possible be based on disclosure and reporting obligations stemming from EU law. ESMA and EIOPA should develop regulatory technical standards to determine the data sets, data standards and methods and formats for the information to be reported.*

Or. en

#### **Amendment 11**

##### **Proposal for a directive Recital 17**

*Text proposed by the Commission*

*Amendment*

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

*deleted*

Or. en

#### **Amendment 12**

##### **Proposal for a directive Recital 20**

*Text proposed by the Commission*

(20) The pricing process under Directives 2009/65/EC and 2011/61/EU should ensure that costs borne by retail investors are justified and proportionate to the characteristics of the product, and in particular to the investment objective and strategy, level of risk and expected returns of the funds, so that UCITS and AIFs deliver Value for Money to investors. UCITS and AIFs management companies should remain responsible for the quality of their pricing process. In particular, they should ensure that costs are comparable to market standards, including by comparing the costs of funds with similar investment strategies and characteristics available on publicly available databases. ***However, to make the pricing process more objective and to equip UCITS and AIFs management companies, and competent authorities with a tool allowing for an efficient comparison of costs among investment products from the same product type, ESMA should develop benchmarks, based on data related to the cost and performance of investment products that ESMA receives as part of the supervisory reporting, against which an assessment of Value for Money can be carried out, in addition to the other criteria included in the pricing process of UCITS and AIFs management companies. Considering the Commission's priority to avoid unnecessary administrative burdens and to simplify reporting requirements, those benchmarks should build on existing data from public disclosures and supervisory reporting, unless additional data are exceptionally necessary. Investment funds offering poor Value for Money or deviating from ESMA's benchmarks should not be marketed to retail investors unless further assessment has established that the product nevertheless offers Value for Money. The assessment and the***

*Amendment*

(20) The pricing process under Directives 2009/65/EC and 2011/61/EU should ensure that costs borne by retail investors are justified and proportionate to the characteristics of the product, and in particular to the investment objective and strategy, level of risk and expected returns of the funds, so that UCITS and AIFs deliver Value for Money to investors. UCITS and AIFs management companies should remain responsible for the quality of their pricing process. In particular, they should ensure that costs are comparable to market standards, including by comparing the costs of funds with similar investment strategies and characteristics available on publicly available databases.

*measures taken should be documented and provided to competent authorities upon their request.*

Or. en

## Amendment 13

### Proposal for a directive Recital 22

#### *Text proposed by the Commission*

(22) Knowledge and competence of staff are key to **ensuring good** quality advice. The standards of what is considered necessary vary significantly between advisors operating under Directive 2014/65/EU, Directive (EU) 2016/97 and under non-harmonised national law. To improve the quality of advice and to ensure a level playing field across the EU, strengthened minimum common standards on the necessary knowledge and competence requirements should be laid down. That is particularly relevant given the increased complexity and continuous innovation in the design of financial instruments and insurance-based investment products, and the increasing importance of sustainability-related considerations. Member States should require investment firms, and insurance and reinsurance distributors, to ensure that natural persons giving investment advice on behalf of the investment firm or as insurance intermediaries, and the employees concerned of insurance undertakings and insurance intermediaries, possess the 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

#### *Amendment*

(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 Union consumers.** The standards of what is considered necessary vary significantly between advisors operating under Directive 2014/65/EU, Directive (EU) 2016/97 and under non-harmonised national law. To improve the quality of advice and to ensure a level playing field across the EU, strengthened minimum common standards on the necessary knowledge and competence requirements should be laid down. That is particularly relevant given the increased complexity and continuous innovation in the design of financial instruments and insurance-based investment products, and the increasing importance of sustainability-related considerations. Member States should require investment firms, and insurance and reinsurance distributors, to ensure that natural persons giving investment advice on behalf of the investment firm or as insurance intermediaries, and the employees concerned of insurance undertakings and insurance intermediaries, possess the 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

required standards, such knowledge and competence should be proven by a certificate. Regular professional development and training are important to ensure that the knowledge and competence of staff advising on or selling investment products to clients, or insurance-based investment products to customers, is maintained and updated. To that end, it is necessary to require that natural persons giving investment advice follow a minimum number of hours per year of professional training and development and that they prove the successful completion of such training and development by a certificate.

persons and insurance intermediaries and the employees of insurance undertakings and insurance intermediaries meet the required standards, such knowledge and competence should be proven by a certificate. Regular professional development and training are important to ensure that the knowledge and competence of staff advising on or selling investment products to clients, or insurance-based investment products to customers, is maintained and updated. To that end, it is necessary to require that natural persons giving investment advice follow a minimum number of hours per year of professional training and development and that they prove the successful completion of such training and development by a certificate.

Or. en

## **Amendment 14**

### **Proposal for a directive Recital 24 a (new)**

*Text proposed by the Commission*

*Amendment*

***(24a) The Capital Markets Union enables undertakings established in the Union to exercise their rights under the freedom to provide services and the freedom of establishment, provided that they comply with certain conditions. To avoid any abuses of those principles, rules should be introduced to establish an anti-forum shopping principle in Directives 2014/65/EU and (EU) 2016/97.***

Or. en



## Amendment 15

### Proposal for a directive Recital 24 b (new)

*Text proposed by the Commission*

*Amendment*

***(24b) Recital 46 of Directive 2014/65/EU clarifies that Member States should not grant or should withdraw authorisation where factors such as the content of programmes of operations, the geographical distribution or the activities actually carried out clearly indicate that an investment firm has opted for the legal system of one Member State for the purpose of avoiding the stricter standards or supervisory enforcement in another Member State within the territory of which it intends to carry out or does carry out the greater part of its activities. The Member States should therefore effectively ensure, both at the authorisation stage and on an ongoing basis, that investment firms do not solely provide services and carry out activities in Member States other than the one where they have obtained authorisation. That criterion should be considered not to be fulfilled where the scope of activity in the home Member State is so limited that it clearly indicates an intention to circumvent the application of the provisions of this Directive.***

Or. en

#### *Justification*

*The current Recital 46 of MiFID II establishes an anti-forum-shopping principle by requiring that an investment firm operates effectively in its home Member State. Until now, it has been a 'floating' recital, with no corresponding provision in the MiFID II articles. This requirement should become more explicit.*

## Amendment 16

### Proposal for a directive Recital 31 a (new)

*Text proposed by the Commission*

*Amendment*

***(31a) Younger generations are the most vulnerable to mis-selling practices arising from digitalisation. Although the rise of so-called "finfluencers" can be positive in terms of promoting financial education to a wider audience, it is essential to ensure sufficient safeguards so as to create a safe investment environment for each Union citizen. Trust in Union financial markets is a key factor in encouraging potential investors to invest in them.***

Or. en

## Amendment 17

### Proposal for a directive Recital 32 a (new)

*Text proposed by the Commission*

*Amendment*

***(32a) Investment firms, insurance undertakings and insurance intermediaries which make use of so-called "finfluencers" to carry out their marketing communication should comply with a number of requirements. Those investment firms, insurance undertakings and insurance intermediaries should establish a written agreement with the "finfluencers" laying out the content of their contractual relationship (scope and nature of the activities carried out). They should provide the competent authority upon request with the identity and contact details of the "finfluencers" whose services they rely on, and should regularly operate controls over the activities carried out by the "finfluencers" to ensure their compliance with this Directive.***

## **Amendment 18**

### **Proposal for a directive Recital 37 a (new)**

*Text proposed by the Commission*

*Amendment*

*(37a) Financial literacy is of key importance in addressing the current deficiencies in the Capital Markets Union. Trust in Union financial markets is linked intrinsically to the level of retail participation in them. Education and knowledge are tools to empower each citizen to make informed investment decisions. This Directive should lay the ground for increasing the level of financial education in each Member State. In view of the limited competences conferred upon the Union in that area, it is the responsibility of each Member State to ensure that proper adjustments are made, particularly in their education systems, to comply with this Directive. Member States should take ambitious steps to fulfil the obligations laid down in this Directive.*

Or. en

## **Amendment 19**

### **Proposal for a directive Article 1 – paragraph 1 – point 3 Directive 2014/65/EU Article 4 – paragraph 1 – point 68 a (new)**

*Text proposed by the Commission*

*Amendment*

*(68a) 'financial and non-financial market data' means:*

*(i) raw market data from trading platforms received through specialist real-*

*time providers;*

*(ii) data relating to third parties attached to securities (for instance issuers) and financial instruments, aggregated and sold by data providers, which feed into the market data repository of financial institutions;*

*(iii) data provided by credit rating agencies or ESG rating agencies, mainly based on an analysis of the quality of the issuer's rating and/or perceived sustainability;*

*(iv) data provided by index administrators;*

*(v) all other data derived from financial analysis (for instance research);*

Or. en

## **Amendment 20**

### **Proposal for a directive**

#### **Article 1 – paragraph 1 – point 3**

Directive 2014/65/EU

Article 4 – paragraph 1 – point 68 b (new)

*Text proposed by the Commission*

*Amendment*

*(68b) 'data provider' means a legal person whose occupation includes the offering and distribution of financial and non-financial market data on a professional basis.*

Or. en

## **Amendment 21**

### **Proposal for a directive**

#### **Article 1 – paragraph 1 – point 3 a (new)**

Directive 2014/65/EU

Article 5 – paragraph 4 – point a

*Present text*

*Amendment*

(a) any investment firm which is a legal person **have** its head office in the same Member State as its registered office;

**(3a) in Article 5(4), point (a) is replaced by the following:**

(a) any investment firm which is a legal person **has** its head office in the same Member State as its registered office **and does not provide investment services or perform investment activities solely in other Member States;**

Or. en

(32014L0065)

*Justification*

*Recital 46 of MiFID II establishes an anti-forum-shopping principle by requiring that an investment firm operates effectively in its home Member State. Until now, it has been a 'floating' recital, with no corresponding provision in the MiFID II articles. There should be an explicit requirement in Article 5 on authorisation to avoid the situation where a firm chooses a Home Member State for the sole purpose of providing its services in the rest of the EU (except in the Home Member State) via the passport.*

## **Amendment 22**

### **Proposal for a directive**

#### **Article 1 – paragraph 1 – point 4**

Directive 2014/65/EU

Article 5a – paragraph 1 – subparagraph 1 a (new)

*Text proposed by the Commission*

*Amendment*

***The first subparagraph shall also apply to any third party (“finfluencers”) that is remunerated or incentivised through non-monetary compensation by a firm which is not authorised under Article 5(1) or national law, where such third party promotes through public social media platforms services or financial instruments on behalf of such a firm.***

Or. en

## Amendment 23

### Proposal for a directive

#### Article 1 – paragraph 1 – point 9

Directive 2014/65/EU

Article 16-a – paragraph 1 – subparagraph 3

*Text proposed by the Commission*

*Amendment*

***The pricing process referred to in point (e) shall include a comparison with the relevant benchmark, where available, on costs and performance published by ESMA in accordance with paragraph 9.***

***deleted***

Or. en

## Amendment 24

### Proposal for a directive

#### Article 1 – paragraph 1 – point 9

Directive 2014/65/EU

Article 16-a – paragraph 1 – subparagraph 4

*Text proposed by the Commission*

*Amendment*

***When a financial instrument deviates from the relevant benchmark referred to in paragraph 9, the investment firm shall perform additional testing and further assessments and establish whether costs and charges are nevertheless justified and proportionate. If justification and proportionality of costs and charges cannot be demonstrated, the financial instrument shall not be approved by the investment firm.***

***deleted***

Or. en

## Amendment 25

### Proposal for a directive

#### Article 1 – paragraph 1 – point 9

Directive 2014/65/EU  
Article 16-a – paragraph 4 – subparagraph 3

*Text proposed by the Commission*

*Amendment*

***The pricing process, as referred to in points (a) and (b), shall include a comparison with the relevant benchmark, when available, on costs and performance published by ESMA in accordance with paragraph 9.***

***deleted***

Or. en

## **Amendment 26**

### **Proposal for a directive**

#### **Article 1 – paragraph 1 – point 9**

Directive 2014/65/EU

Article 16-a – paragraph 4 – subparagraph 4

*Text proposed by the Commission*

*Amendment*

***When a financial instrument, together with costs of services incurred by the client in order to purchase that instrument, deviates from the relevant benchmark referred to in paragraph 9, the investment firm which offers or recommends a financial instrument shall perform additional testing and further assessments and establish whether costs and charges are nevertheless justified and proportionate. If justification and proportionality of costs and charges cannot be demonstrated, the financial instrument shall not be offered or recommended by the investment firm.***

***deleted***

Or. en

## **Amendment 27**

### **Proposal for a directive**

#### **Article 1 – paragraph 1 – point 9**

Directive 2014/65/EU  
Article 16-a – paragraph 7 – point a

*Text proposed by the Commission*

*Amendment*

**(a) where relevant, the results of the comparison of the financial instrument to the relevant benchmark;** *deleted*

Or. en

## **Amendment 28**

### **Proposal for a directive**

#### **Article 1 – paragraph 1 – point 9**

Directive 2014/65/EU

Article 16-a – paragraph 7 – point b

*Text proposed by the Commission*

*Amendment*

**(b) where applicable, the reasons justifying a deviation from the benchmark;** *deleted*

Or. en

## **Amendment 29**

### **Proposal for a directive**

#### **Article 1 – paragraph 1 – point 9**

Directive 2014/65/EU

Article 16-a – paragraph 9

*Text proposed by the Commission*

*Amendment*

**9. After having consulted EIOPA and the competent authorities, ESMA shall, where appropriate, develop and make publicly available common benchmarks for financial instruments that present similar levels of performance, risk, strategy, objectives, or other characteristics, to help investment firms to perform the comparative assessment of the cost and performance of financial** *deleted*



*instruments, falling under the definition of packaged retail investment products, both at the manufacturing and distribution stages.*

*The benchmarks shall display a range of costs and performance, in order to facilitate identification of financial instruments whose costs and performance depart significantly from the average.*

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

*ESMA shall regularly update the benchmarks.*

Or. en

### **Amendment 30**

#### **Proposal for a directive**

#### **Article 1 – paragraph 1 – point 9**

Directive 2014/65/EU

Article 16-a – paragraph 11 – point a

*Text proposed by the Commission*

*Amendment*

*(a) the methodology used by ESMA to develop benchmarks referred to in paragraph 9;* *deleted*

Or. en

### **Amendment 31**

#### **Proposal for a directive**

#### **Article 1 – paragraph 1 – point 9**

Directive 2014/65/EU  
Article 16-a – paragraph 12 – subparagraph 1 – introductory part

*Text proposed by the Commission*

ESMA, after having consulted EIOPA and the competent authorities **and taking into consideration the methodology referred to in paragraph 11, point (a)**, shall develop draft regulatory technical standards specifying the following:

*Amendment*

ESMA, after having consulted EIOPA and the competent authorities, shall develop draft regulatory technical standards specifying the following:

Or. en

### **Amendment 32**

#### **Proposal for a directive**

#### **Article 1 – paragraph 1 – point 9**

Directive 2014/65/EU  
Article 16-a – paragraph 12 – subparagraph 2

*Text proposed by the Commission*

ESMA shall submit those draft regulatory technical standards to the Commission by [18 months] after **adoption of the delegated act referred to in paragraph 11**.

*Amendment*

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

Or. en

### **Amendment 33**

#### **Proposal for a directive**

#### **Article 1 – paragraph 1 – point 10 a (new)**

Directive 2014/65/EU  
Article 16a a (new)

*Text proposed by the Commission*

*Amendment*

**(10a) the following article is inserted:**

**“Article 16aa**

**Data providers**

**1. Data providers shall comply with the following requirements:**

***(a) the provision of financial and non-financial market data shall be fair, reasonable, non-discriminatory, and transparent. In that regard, the following shall apply:***

***(i) transparency requires the disclosure of the methodologies and data sources or estimates used in providing financial and non-financial market data to the public. Data providers shall disclose on their website the methodologies and data sources or estimates they use in the provision of their services. Such transparency requirement shall also apply to their data pricing and licence policies applicable to the users to which they market their financial and non-financial market data. Price methodologies shall be clear, accessible and easily comparable across data providers;***

***(ii) financial and non-financial data shall be made accessible without discrimination. To facilitate fair competition in the financial and non-financial data market, data providers shall also ensure that fees charged to users for the provision of financial and non-financial data are not discriminatory and are based on actual costs;***

***(b) regarding the quality of the data, the following shall apply:***

***(i) data providers shall adopt all measures necessary to ensure that the information they use for financial and non-financial data is of sufficient quality and from reliable sources;***

***(ii) data providers shall adopt and implement sound administrative and accounting procedures, internal control mechanisms, and effective control and safeguard arrangements for information processing systems;***

***(c) regarding supervision, control, and conflicts of interest, the following shall apply:***

**(i) ESMA shall be entrusted with the authorisation and supervision of data providers, including administrative sanctions. The supervisory regime shall require third-country data providers who wish to provide services for Union clients to have a permanent establishment in the Union;**

**(ii) data providers shall establish appropriate internal policies and procedures in relation to employees and other persons involved in the provision of their services. Such policies and procedures shall include internal control mechanisms and a compliance function;**

**(iii) data providers shall be submitted to annual external audits, ensuring the external oversight of all aspects of the provision of financial and non-financial market data;**

**(iv) the terms of the licence agreement concluded between data providers (combining data and price policies) shall be standardised and simplified. The definitions shall be harmonised to avoid any unjustified complexity;**

**(v) data providers shall take all reasonable measures to prevent, identify, manage and monitor conflicts of interest that may adversely affect the fair, reasonable, non-discriminatory, and transparent provision of financial and non-financial market data.**

Or. en

### *Justification*

*Investment firms depend on Data providers to provide their services and to comply with EU regulators. Used in almost all investment decisions and to meet the EU's regulatory reporting requirements, these data must be of high quality, reliable and subject to very strict control procedures. The access, use and cost of financial and non-financial market data necessary to provide investment services and to manufacture and distribute financial products are an important portion of the costs borne by investment firms, thus a significant proportion of the total charges paid by retail clients. Data providers that provide financial and non-financial market data should be required to do so under fair, reasonable, non-discriminatory, and transparent commercial basis.*

## Amendment 34

### Proposal for a directive

#### Article 1 – paragraph 1 – point 12 – point b

Directive 2014/65/EU

Article 24 – paragraph 1 a – point a

*Text proposed by the Commission*

(a) to provide advice on the basis of an assessment of an appropriate range of financial instruments;

*Amendment*

(a) ***to inform the client of the range of financial instruments assessed by the investment firm, and*** to provide advice on the basis of an assessment of an appropriate range of financial instruments, ***suitable to the client's needs;***

Or. en

## Amendment 35

### Proposal for a directive

#### Article 1 – paragraph 1 – point 12 – point b

Directive 2014/65/EU

Article 24 – paragraph 1a – point c

*Text proposed by the Commission*

(c) ***to recommend, among the range of financial instruments identified as suitable to the client pursuant to Article 25(2), a product or products without additional features that are not necessary to the achievement of the client's investment objectives and that give rise to extra costs.;***

*Amendment*

*deleted*

Or. en

## Amendment 36

### Proposal for a directive

#### Article 1 – paragraph 1 – point 12 – point b

Directive 2014/65/EU  
Article 24 – paragraph 1a – subparagraph 1 a (new)

*Text proposed by the Commission*

*Amendment*

*The cost efficiency referred to in the first subparagraph, point (b), shall be determined on the basis of the investment firm's assessment of the instrument's net return expectations taking into account all implicit and explicit costs and charges.*

Or. en

### **Amendment 37**

#### **Proposal for a directive**

#### **Article 1 – paragraph 1 – point 12 – point b**

Directive 2014/65/EU  
Article 24 – paragraph 1a a (new)

*Text proposed by the Commission*

*Amendment*

*1aa. ESMA shall develop draft regulatory technical standards specifying:*

*(i) the criteria for the assessment of an appropriate range of financial instruments, and how those criteria are to be fulfilled where investment advice is provided on a non-independent basis and only financial instruments manufactured within the group of the investment firm providing advice are assessed;*

*(ii) for different categories of financial instruments, how return expectations are determined for the purpose of paragraph 1a, second subparagraph, of this Article, and whether and when past performances or simulated future performances are to be used where applicable.*

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

***The Commission is empowered to adopt delegated acts supplementing this Directive by adopting the regulatory technical standards referred to in the first subparagraph of this Article in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.***

Or. en

*Justification*

*We suggest to clarify the "cost efficiency" criterion, to be assessed in practice with the notion of net performance, i.e. taking into account the level of return and not just costs. The question of using past or future performance scenarios will depend on the type of financial instrument (ESMA shall draw up guidelines to provide flexibility on this point, rather than setting it at Level I). We suggest that ESMA defines the practical meaning of "appropriate range of financial instruments" and how to fulfil this obligation in case of closed architecture (non-independent advice).*

**Amendment 38**

**Proposal for a directive**

**Article 1 – paragraph 1 – point 12 – point i**

*Text proposed by the Commission*

(i) ***paragraphs 8, 9 and 9a are deleted;***

*Amendment*

(i) ***paragraph 9a is deleted;***

Or. en

**Amendment 39**

**Proposal for a directive**

**Article 1 – paragraph 1 – point 13**

Directive 2014/65/EU

Article 24a – paragraph 1

*Text proposed by the Commission*

1. Member States shall ensure that investment firms, when providing portfolio management, ***do not pay or receive any fee or commission, or provide or are provided***

*Amendment*

1. Member States shall ensure that investment firms, when providing portfolio management, ***do not accept and retain fees, commissions or any monetary or***

*with any non-monetary benefit, in connection with the provision of such service, to or by any party except the client or a person on behalf of the client.*

*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.*

Or. en

## Amendment 40

### Proposal for a directive

#### Article 1 – paragraph 1 – point 13

Directive 2014/65/EU

Article 24a – paragraph 2

*Text proposed by the Commission*

*Amendment*

**2. Member States shall ensure that investment firms, when providing reception and transmission of orders or execution of orders to or on behalf of retail clients, do not pay or receive any fee or commission, or provide or are provided with any non-monetary benefit in connection with the provision of such services, to or from any third-party responsible for the creation, development, issuance or design of any financial instrument on which the firm provides such execution or reception and transmission services, or any person acting on behalf of that third-party.**

*deleted*

Or. en

### *Justification*

*Execution-only transactions are not subject to a conflict of interest stemming from the remuneration of the distributor by the manufacturer. The absence of advice means any nudge have little to no influence on the client's choice. In the absence of a clear and precise definition of the reception and transmission of orders (RTO), the actual scope of the ban remains unclear. Finally, RTO is first and foremost used by knowledgeable clients, which means a ban will not foster participation of retail investors to financial markets.*



## **Amendment 41**

### **Proposal for a directive**

#### **Article 1 – paragraph 1 – point 13**

Directive 2014/65/EU

Article 24a – paragraph 3

*Text proposed by the Commission*

*Amendment*

**3. Paragraph 2 shall not apply to investment firms, when providing investment advice on a non-independent basis relating to one or more transactions of that client covered by that advice.**

**deleted**

Or. en

## **Amendment 42**

### **Proposal for a directive**

#### **Article 1 – paragraph 1 – point 13**

Directive 2014/65/EU

Article 24a – paragraph 4

*Text proposed by the Commission*

*Amendment*

**4. Paragraph 2 shall not apply to fees or any other remuneration received from or paid to an issuer by an investment firm performing for that issuer one of the services referred to in Annex I, Section A, points 6 and 7, where the investment firm also provides to retail clients any of the investment services referred to in paragraph 2 and relating to the financial instruments subject to the placing or underwriting services.**

**deleted**

***This paragraph shall not apply to financial instruments that are packaged retail investment products as referred to Article 4, point (1), of Regulation (EU) No 1286/2014.***

Or. en

## Amendment 43

### Proposal for a directive

#### Article 1 – paragraph 1 – point 13

Directive 2014/65/EU

Article 24a – paragraph 5

*Text proposed by the Commission*

5. **Paragraphs 1 and 2** shall not apply to the minor non-monetary benefits of a total value below EUR 100 per annum or of a scale and 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.

*Amendment*

5. **Paragraph 1** shall not apply to the minor non-monetary benefits of a total value below EUR 100 per annum 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.

Or. en

## Amendment 44

### Proposal for a directive

#### Article 1 – paragraph 1 – point 13

Directive 2014/65/EU

Article 24a – paragraph 8

*Text proposed by the Commission*

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

*Amendment*

8. **Five** years after the **end of the transposition period** of Directive (EU) [OP Please introduce the number of the amending Directive] and after having consulted ESMA and EIOPA, the Commission shall assess the impact of the relevant provisions of Directive (EU) [OP Please introduce the number of the amending Directive] on **the potential conflicts of interest associated with inducements, the evolution of costs, the overall level of retail investment in capital markets, consumer protection and the relevance of distribution rules.**

*Justification*

*A 3-year period is far too short to assess the changes introduced by the RIS given the number of modifications and the time required for their implementation. Additional hindsight is necessary for the Commission to have an accurate view on the impact of the RIS. Moreover, the review should not only focus on the question of inducements but be more exhaustive to cover the same range of topics addressed by the directive (e.g., conflicts of interest, evolution of costs after the implementation of value for money, the relevance of distribution rules given new business models in the sector).*

**Amendment 45****Proposal for a directive****Article 1 – paragraph 1 – point 13**

Directive 2014/65/EU

Article 24c – paragraph 4 – subparagraph 1

*Text proposed by the Commission*

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

*Amendment*

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.

*Justification*

*Alignment with Article 26a of Directive (EU) 2016/97.*

**Amendment 46****Proposal for a directive****Article 1 – paragraph 1 – point 13**

Directive 2014/65/EU

Article 24c – paragraph 4 – subparagraph 2

*Text proposed by the Commission*

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

*Amendment*

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.

Or. en

*Justification*

*Alignment with Article 26a of Directive (EU) 2016/97.*

**Amendment 47**

**Proposal for a directive**

**Article 1 – paragraph 1 – point 13**

Directive 2014/65/EU

Article 24c – paragraph 4 a new

*Text proposed by the Commission*

*Amendment*

**4a.** *Where an investment firm uses the services of a third party that is remunerated or incentivised through non-monetary compensation by such investment firm, in order to promote investments in one or several financial instruments or the use of investment or ancillary services, and where such third party carries out such promotion through public social media platforms (“finfluencer”), the investment firm shall comply with the following obligations:*

*(a) it 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;*

*(b) upon request, it shall provide the competent authority with the identity and*

*contact details of all finfluencers whose services it relies on;*

*(c) it shall regularly check that the activity of the finfluencers whose services it relies on complies with paragraphs 1 to 4.*

Or. en

## **Amendment 48**

### **Proposal for a directive**

#### **Article 1 – paragraph 1 – point 13**

Directive 2014/65/EU

Article 24c – paragraph 6

#### *Text proposed by the Commission*

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.

#### *Amendment*

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 *laid down in* paragraphs 1 to 3.

Or. en

#### *Justification*

*Alignment with Article 26a of Directive (EU) 2016/97.*

## **Amendment 49**

### **Proposal for a directive**

#### **Article 1 – paragraph 1 – point 13**

Directive 2014/65/EU

Article 24c – paragraph 8 – introductory part

#### *Text proposed by the Commission*

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

#### *Amendment*

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

*Justification**Alignment with Article 26a of Directive (EU) 2016/97.***Amendment 50****Proposal for a directive****Article 1 – paragraph 1 – point 16**

Directive 2014/65/EU

Article 35a – paragraph 1 – subparagraph 1 – point b

*Text proposed by the Commission*

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

*Amendment*

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

Or. en

*Justification*

*All information contained in the reporting is useful also as regards the Home Member State, since Home NCAs will find it useful to have the full picture of the firm's activity, including in its home jurisdiction.*

**Amendment 51****Proposal for a directive****Article 1 – paragraph 1 – point 16**

Directive 2014/65/EU

Article 35a – paragraph 1 – subparagraph 1 – point c

*Text proposed by the Commission*

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

*Amendment*

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

*Justification*

*All information contained in the reporting is useful also as regards the Home Member State, since Home NCAs will find it useful to have the full picture of the firm's activity, including in its home jurisdiction.*

**Amendment 52**

**Proposal for a directive**

**Article 1 – paragraph 1 – point 16**

Directive 2014/65/EU

Article 35a – paragraph 1 – subparagraph 1 – point d

*Text proposed by the Commission*

*Amendment*

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

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

*Justification*

*All information contained in the reporting is useful also as regards the Home Member State, since Home NCAs will find it useful to have the full picture of the firm's activity, including in its home jurisdiction.*

**Amendment 53**

**Proposal for a directive**

**Article 1 – paragraph 1 – point 16**

Directive 2014/65/EU

Article 35 a – paragraph 1 – subparagraph 1 – point e

*Text proposed by the Commission*

*Amendment*

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

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

*Justification*

*All information contained in the reporting is useful also as regards the Home Member State, since Home NCAs will find it useful to have the full picture of the firm's activity, including in its home jurisdiction.*

**Amendment 54**

**Proposal for a directive**

**Article 1 – paragraph 1 – point 17 – point c**

Directive 2014/65/EU

Article 69 – paragraph 2 – subparagraph 1 – point w

*Text proposed by the Commission*

(w) to impose the use of risk warnings by investment firms in information materials, including marketing communications, ***related to particularly risky financial instruments*** where those instruments could pose a serious threat to investor protection.;

*Amendment*

(w) to impose the use of risk warnings by investment firms in information materials, including marketing communications, where those instruments could pose a serious threat to investor protection.;

Or. en

*Justification*

*This power should be broader and not be limited to 'risky products' only. NCAs may need to impose risk warnings for other reasons than excessive risk (e.g., excessive complexity of certain products).*

**Amendment 55**

**Proposal for a directive**

**Article 1 – paragraph 1 – point 17 – point c**

Directive 2014/65/EU

Article 69 – paragraph 2 – subparagraph 1 – point w a (new)

*Text proposed by the Commission*

*Amendment*

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

Or. en



### *Justification*

*National competent authorities should be enabled to use webscraping tools in order to perform their monitoring, surveillance, detection and investigation activities in view of the new models of communication emerging from social networks and, more broadly, online platforms. This will in particular make them fit to detect online scams and frauds, as well as false rumours aimed at price manipulation.*

### **Amendment 56**

#### **Proposal for a directive**

#### **Article 1 – paragraph 1 – point 21**

Directive 2014/65/EU

Article 87a – paragraph 6

#### *Text proposed by the Commission*

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

#### *Amendment*

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 *decide to initiate and coordinate joint on-site inspections.* ESMA shall invite the competent authority of the home Member State *as well as* other *relevant* competent authorities *of the collaboration platform to participate in such* joint on-site inspection.

Or. en

### *Justification*

*In the circumstances covered by paragraph 6 (disagreement, serious threat), it is justified and legitimate to empower ESMA to initiate and coordinate a joint on-site inspection. This will be much more efficient than a mere recommendation to the Home NCA, as the Commission proposes.*

### **Amendment 57**

#### **Proposal for a directive**

#### **Article 2 – paragraph 1 – point 2 – point c a (new)**

Directive (EU) 2016/97  
Article 3 – paragraph 7 a (new)

*Text proposed by the Commission*

*Amendment*

*(ca) the following paragraph is added:*

*“7a. Member States shall ensure that competent authorities refuse registration if an insurance, reinsurance or ancillary insurance intermediary, which is a legal person, has its head office in the same Member State as its registered office but provides or performs investment activities solely in other Member States.”;*

Or. en

*Justification*

*Introducing an anti-forum shopping principle in line with Article 5(4)(a) in Directive 2014/65/EU.*

## **Amendment 58**

### **Proposal for a directive**

#### **Article 2 – paragraph 1 – point 4**

Directive (EU) 2016/97

Article 9a – paragraph 1 – subparagraph 1 – point b

*Text proposed by the Commission*

*Amendment*

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

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

Or. en

*Justification*

*All information contained in the reporting is useful also as regards the Home Member State, since Home NCAs will find it useful to have the full picture of the firm’s activity, including in its home jurisdiction.*

## **Amendment 59**

### **Proposal for a directive**

#### **Article 2 – paragraph 1 – point 4**

Directive (EU) 2016/97

Article 9a – paragraph 1 – subparagraph 1 – point c

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

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

Or. en

#### *Justification*

*All information contained in the reporting is useful also as regards the Home Member State, since Home NCAs will find it useful to have the full picture of the firm's activity, including in its home jurisdiction.*

## **Amendment 60**

### **Proposal for a directive**

#### **Article 2 – paragraph 1 – point 4**

Directive (EU) 2016/97

Article 9a – paragraph 1 – subparagraph 1 – point d

#### *Text proposed by the Commission*

#### *Amendment*

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

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

Or. en

#### *Justification*

*All information contained in the reporting is useful also as regards the Home Member State, since Home NCAs will find it useful to have the full picture of the firm's activity, including in its home jurisdiction.*

## **Amendment 61**

### **Proposal for a directive**

#### **Article 2 – paragraph 1 – point 4**

Directive (EU) 2016/97

Article 9a – paragraph 1 – subparagraph 1 – point e

*Text proposed by the Commission*

*Amendment*

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

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

Or. en

*Justification*

*All information contained in the reporting is useful also as regards the Home Member State, since Home NCAs will find it useful to have the full picture of the firm's activity, including in its home jurisdiction.*

**Amendment 62**

**Proposal for a directive**

**Article 2 – paragraph 1 – point 6**

Directive (EU) 2016/97

Article 12 – paragraph 3 – subparagraph 1 – point q

*Text proposed by the Commission*

*Amendment*

(q) impose the use of risk warnings for insurance-based investment products in information materials, including marketing communications, **related to particularly risky insurance-based investment products and, where applicable, underlying investment assets**, where those products and **assets** could pose a serious threat to investor protection.’;

(q) impose the use of risk warnings for insurance-based investment products, **and, where applicable, underlying investment options** in information materials, including marketing communications, where those products and **underlying investment options** could pose a serious threat to investor protection.’;

Or. en

*Justification*

*This power should be broader and not be limited to ‘risky products’ only. NCAs may need to impose risk warnings for other reasons than excessive risk.*

**Amendment 63**

**Proposal for a directive**

**Article 2 – paragraph 1 – point 6**

Directive (EU) 2016/97

Article 12 – paragraph 3 – subparagraph 1 – point q a (new)

*Text proposed by the Commission*

*Amendment*

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

Or. en

*Justification*

*National competent authorities should be enabled to use webscraping tools in order to perform their monitoring, surveillance, detection and investigation activities in view of the new models of communication emerging from social networks and, more broadly, online platforms. This will in particular make them fit to detect online scams and frauds, as well as false rumours aimed at price manipulation.*

#### **Amendment 64**

##### **Proposal for a directive**

##### **Article 2 – paragraph 1 – point 7**

Directive (EU) 2016/97

Article 12b – paragraph 6

*Text proposed by the Commission*

*Amendment*

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

6. In the event of disagreement within the platform and where there are serious concerns about negative effects on policyholders or about the content of an action or inaction to be taken in relation to an insurance or reinsurance distributor, EIOPA may ***decide to initiate and coordinate joint on-site inspections. In that case, EIOPA shall invite the competent authority of the home Member State, as well as other relevant competent authorities of the collaboration platform, to participate in such joint on-site inspection.***

Or. en

## Justification

*In the circumstances covered by paragraph 6 (disagreement, serious threat), it is justified and legitimate to empower EIOPA to initiate and coordinate a joint on-site inspection. This will be much more efficient than a mere recommendation to the Home NCA, as the Commission proposes.*

### Amendment 65

#### Proposal for a directive

#### Article 2 – paragraph 1 – point 16

Directive (EU) 2016/97

Article 25 – paragraph 1 – subparagraph 3

*Text proposed by the Commission*

*Amendment*

*The pricing process referred to in point (f) shall contain a comparison with the relevant benchmark, where available, on costs and performance published by EIOPA in accordance with paragraph 8.*      *deleted*

Or. en

### Amendment 66

#### Proposal for a directive

#### Article 2 – paragraph 1 – point 16

Directive (EU) 2016/97

Article 25 – paragraph 2

*Text proposed by the Commission*

*Amendment*

*2. When an insurance-based investment product which deviates from the relevant benchmark referred to in paragraph 8, the manufacturer shall perform additional testing and further assessments and establish whether costs and charges are nevertheless justified and proportionate. If justification and proportionality of costs and charges cannot be demonstrated, the insurance-based investment product shall not be approved by the manufacturer. Where no relevant benchmark exists for an*      *deleted*

*insurance-based investment product, a manufacturer shall approve the product only if it has established through product testing and assessments that the costs and charges are justified and proportionate and that the product meets the target market's objectives and needs.*

Or. en

#### **Amendment 67**

##### **Proposal for a directive**

##### **Article 2 – paragraph 1 – point 16**

Directive (EU) 2016/97

Article 25 – paragraph 5 – subparagraph 3

*Text proposed by the Commission*

*Amendment*

*The pricing process referred to in point (c) shall include, where available, a comparison with the relevant benchmark on costs and performance published by EIOPA in accordance with paragraph 8.* **deleted**

Or. en

#### **Amendment 68**

##### **Proposal for a directive**

##### **Article 2 – paragraph 1 – point 16**

Directive (EU) 2016/97

Article 25 – paragraph 6

*Text proposed by the Commission*

*Amendment*

**6.** *When an insurance-based investment product deviates from the relevant benchmark referred to in paragraph 8, the insurance intermediary or insurance undertaking distributing insurance-based investment products shall perform additional testing and further assessments and establish whether costs and charges are nevertheless* **deleted**

*justified and proportionate. If justification and proportionality of costs and charges cannot be demonstrated, the insurance intermediary or insurance undertaking shall not advise on or propose the insurance-based investment product to retail customers. Where no relevant benchmark exists for an insurance-based investment product, distributors shall only advise on or propose the product, if they have established through product testing and assessments that the costs and charges are justified and proportionate and that the product meets the target market's objectives and needs.*

Or. en

#### **Amendment 69**

##### **Proposal for a directive**

##### **Article 2 – paragraph 1 – point 16**

Directive (EU) 2016/97

Article 25 – paragraph 7 – point a

*Text proposed by the Commission*

*Amendment*

*(a) where relevant, the results of the comparison of the insurance-based investment product to the relevant benchmarks,* **deleted**

Or. en

#### **Amendment 70**

##### **Proposal for a directive**

##### **Article 2 – paragraph 1 – point 16**

Directive (EU) 2016/97

Article 25 – paragraph 7 – point b

*Text proposed by the Commission*

*Amendment*

*(b) where applicable, the reasons justifying a deviation from the benchmark* **deleted**



## Amendment 71

### Proposal for a directive

#### Article 2 – paragraph 1 – point 16

Directive (EU) 2016/97

Article 25 – paragraph 8

*Text proposed by the Commission*

*Amendment*

**8. EIOPA, after having consulted ESMA and the competent authorities, shall, where appropriate, develop and make publicly available common benchmarks for insurance-based investment products that present similar levels of performance, risk, strategy, objectives, or other characteristics to help insurance undertakings and insurance intermediaries manufacturing or distributing insurance-based investment products to perform the comparative assessment of the cost and performance of insurance-based investment products.**

*deleted*

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

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

**EIOPA shall regularly update those benchmarks.**

## Amendment 72

### Proposal for a directive

#### Article 2 – paragraph 1 – point 16

Directive (EU) 2016/97

Article 25 – paragraph 9 – subparagraph 1 – point a

*Text proposed by the Commission*

*Amendment*

(a) *the methodology to be used by EIOPA to develop the benchmarks referred to in paragraph 8;* *deleted*

Or. en

## Amendment 73

### Proposal for a directive

#### Article 2 – paragraph 1 – point 16

Directive (EU) 2016/97

Article 25 – paragraph 10 – subparagraph 1 – introductory part

*Text proposed by the Commission*

*Amendment*

EIOPA, after having consulted ESMA and the competent authorities and after industry testing, *and taking into consideration the methodology referred to in paragraph 9, point (a)*, shall develop draft regulatory technical standards to determine the following:

EIOPA, after having consulted ESMA and the competent authorities and after industry testing, shall develop draft regulatory technical standards to determine the following:

Or. en

## Amendment 74

### Proposal for a directive

#### Article 2 – paragraph 1 – point 16

Directive (EU) 2016/97

Article 25 – paragraph 10 – subparagraph 2

*Text proposed by the Commission*

*Amendment*

EIOPA shall submit those draft regulatory technical standards to the Commission by

EIOPA shall submit those draft regulatory technical standards to the Commission by

[9 months after the *adoption of the delegated act referred to in paragraph 2*].

... [9 months after the *date of entry into force of this Directive*].

Or. en

## **Amendment 75**

### **Proposal for a directive**

#### **Article 2 – paragraph 1 – point 18**

Directive (EU) 2016/97

Article 26a – paragraph 4 – subparagraph 1

#### *Text proposed by the Commission*

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

#### *Amendment*

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.

Or. en

#### *Justification*

*Alignment with article 24c of Directive 2014/65/EU.*

## **Amendment 76**

### **Proposal for a directive**

#### **Article 2 – paragraph 1 – point 18**

Directive (EU) 2016/97

Article 26a – paragraph 4 a (new)

#### *Text proposed by the Commission*

#### *Amendment*

**4a. Where an insurance undertaking or insurance intermediary uses the services of a third party that is**

*remunerated or incentivised through non-monetary compensation by such insurance undertaking or insurance intermediary, in order to promote investments in one or several insurance-based investment products, or underlying investment options, and where such third party carries out such promotion through public social media platforms (“finfluencer”), the insurance undertaking or insurance intermediary shall comply with the following obligations:*

*(a) it 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;*

*(b) upon request, it shall provide to the competent authority with the identity and contact details of all finfluencers whose services it relies on;*

*(c) it shall regularly check that the activity of the finfluencers whose services it relies on complies with paragraphs 1 to 4.*

Or. en

## **Amendment 77**

### **Proposal for a directive**

#### **Article 2 – paragraph 1 – point 18**

Directive (EU) 2016/97

Article 26a – paragraph 7 – subparagraph 1

#### *Text proposed by the Commission*

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

#### *Amendment*

Member States shall ensure that insurance undertakings and insurance intermediaries keep records of all their marketing communications of insurance-based investment products ***provided or made accessible to retail customers or potential retail customers***, or their marketing

monetary compensation.

communications *provided or made accessible to retail customers or potential retail customers that is* made by any third party remunerated or incentivised through non-monetary compensation.

Or. en

*Justification*

*Alignment with article 24c MiFID.*

**Amendment 78**

**Proposal for a directive**

**Article 2 – paragraph 1 – point 20**

Directive (EU) 2016/97

Article 29 – paragraph 1 – subparagraph 1 – point a – point ii

*Text proposed by the Commission*

(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;

*Amendment*

(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 *options*, 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;

Or. en

**Amendment 79**

**Proposal for a directive**

**Article 2 – paragraph 1 – point 20**

Directive (EU) 2016/97

Article 29 – paragraph 1 – subparagraph 1 – point b

*Text proposed by the Commission*

(b) a description of the main features of the proposed insurance-based investment product and, where applicable, any recommended underlying investment **assets** and investment strategies, including appropriate guidance on, and warnings of, the risks associated with the insurance-based investment products and, where applicable, the recommended underlying investment **assets** or in respect of particular investment strategies followed by that product;

*Amendment*

(b) a description of the main features of the proposed insurance-based investment product and, where applicable, any recommended underlying investment **options** and investment strategies, including appropriate guidance on, and warnings of, the risks associated with the insurance-based investment products and, where applicable, the recommended underlying investment **options** or in respect of particular investment strategies followed by that product;

Or. en

**Amendment 80**

**Proposal for a directive**

**Article 2 – paragraph 1 – point 20**

Directive (EU) 2016/97

Article 29 – paragraph 1 – subparagraph 4 a (new)

*Text proposed by the Commission*

*Amendment*

***If the disclosure of third-party payments cannot be ascertained at the pre-contractual stage, the method for calculating the amount shall be clearly disclosed to the client in a manner that is comprehensible, accurate and understandable for an average retail client.***

Or. en

*Justification*

*Alignment with modifications introduced by the Omnibus directive to Mifid II .*

## Amendment 81

### Proposal for a directive

#### Article 2 – paragraph 1 – point 20

Directive (EU) 2016/97

Article 29 – paragraph 3 – point b

*Text proposed by the Commission*

(b) the annual performance of each of the underlying investment *assets* of the insurance-based investment product and the annual global performance of the portfolio, each compared with past performance over previous years:

*Amendment*

(b) the annual performance of each of the underlying investment *options* of the insurance-based investment product and the annual global performance of the portfolio, each compared with past performance over previous years:

Or. en

## Amendment 82

### Proposal for a directive

#### Article 2 – paragraph 1 – point 20

Directive (EU) 2016/97

Article 29 – paragraph 3 – point d

*Text proposed by the Commission*

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

*Amendment*

(d) where applicable, the market or estimated value when the market value is not available of the underlying investment *options* of the insurance-based investment product;

Or. en

## Amendment 83

### Proposal for a directive

#### Article 2 – paragraph 1 – point 20

Directive (EU) 2016/97

Article 29 – paragraph 5 – subparagraph 1

*Text proposed by the Commission*

Member States shall ensure that insurance

*Amendment*

Member States shall ensure that insurance

intermediaries and insurance undertakings distributing insurance-based investment products display appropriate warnings in information material, including marketing communications, provided to retail customers to alert them on the specific risks of potential losses carried by particularly risky insurance-based investment products and, where applicable, underlying investment *assets*.

intermediaries and insurance undertakings distributing insurance-based investment products display appropriate warnings in information material, including marketing communications, provided to retail customers to alert them on the specific risks of potential losses carried by particularly risky insurance-based investment products and, where applicable, underlying investment *options*.

Or. en

## Amendment 84

### Proposal for a directive

#### Article 2 – paragraph 1 – point 21

Directive (EU) 2016/97

Article 29a – paragraph 1

*Text proposed by the Commission*

*Amendment*

**1. Member States shall ensure that insurance intermediaries or insurance undertakings that manufacture insurance-based investment products or distribute such products in accordance with Article 30(2) and (3) do not pay or receive any fee or commission, or provide or are provided with any non-monetary benefit with regard to the provision or distribution of an insurance based investment product, to or by any party except the customer or a person on behalf of the customer.**

*deleted*

**The prohibition contained in the first subparagraph shall not apply to minor non-monetary benefits of a total value below EUR 100 per annum or of a scale and nature such that those benefits do not impair compliance with the insurance intermediary's or insurance undertaking's duty to act in the best interests of their customer provided those benefits have been clearly disclosed to the customer.**



*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 set out in the first subparagraph.*

Or. en

## **Amendment 85**

### **Proposal for a directive**

#### **Article 2 – paragraph 1 – point 21**

Directive (EU) 2016/97

Article 29a – paragraph 4 – subparagraph 1

#### *Text proposed by the Commission*

Member States may impose stricter requirements on insurance intermediaries and insurance undertakings in respect of the matters covered by this Article. In particular, Member States may **additionally** prohibit or **further** restrict the offer or acceptance of fees, commissions or non-monetary benefits from third parties in relation to the provision of insurance advice.

#### *Amendment*

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 prohibit or restrict the offer or acceptance of fees, commissions or non-monetary benefits from third parties in relation to the provision of insurance advice.

Or. en

## **Amendment 86**

### **Proposal for a directive**

#### **Article 2 – paragraph 1 – point 21**

Directive (EU) 2016/97

Article 29a – paragraph 6

*Text proposed by the Commission*

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

*Amendment*

6. **Five** years after the **end of the transposition period** of Directive (EU) [OP Please introduce the number of the amending Directive] and after having consulted ESMA and EIOPA, the Commission shall assess the impact of the relevant provisions of Directive (EU) [OP Please introduce the number of the amending Directive] on **the potential conflicts of interest associated with inducements, the evolution of costs, the overall level of retail investment in capital markets, consumer protection and the relevance of distribution rules.**

Or. en

*Justification*

*A 3-year period is far too short to assess the changes introduced by the RIS given the number of modifications and the time required for their implementation. Additional hindsight is necessary for the Commission to have an accurate view on the impact of the RIS. Moreover, the review should not only focus on the question of inducements but be more exhaustive to cover the same range of topics addressed by the directive (e.g., conflicts of interest, evolution of costs after the implementation of value for money, the relevance of distribution rules given new business models in the sector).*

**Amendment 87**

**Proposal for a directive**

**Article 2 – paragraph 1 – point 21**

Directive (EU) 2016/97

Article 29b – paragraph 1 – point a

*Text proposed by the Commission*

(a) to provide such advice on the basis of an assessment of an appropriate range of insurance-based investment products **and**, where applicable, underlying investment assets;

*Amendment*

(a) **to inform the customer of the range of insurance-based investment products or, where applicable, underlying investment options assessed by the insurance undertaking or insurance**

*intermediary, and* to provide such advice on the basis of an assessment of an appropriate range of insurance-based investment products *or*, where applicable, underlying investment *options, suitable to the client's needs*;

Or. en

## Amendment 88

### Proposal for a directive

#### Article 2 – paragraph 1 – point 21

Directive (EU) 2016/97

Article 29b – paragraph 1 – point b

#### *Text proposed by the Commission*

(b) to recommend the most *cost-efficient* insurance-based investment product *and*, where applicable, underlying investment *assets* among the insurance-based investment products identified as suitable for the customer pursuant to Article 30(1) and offering similar features;

#### *Amendment*

(b) to recommend, *taking into consideration its performance, level of risk, costs and charges reported pursuant to Article 25(1c)*, the most *efficient* insurance-based investment product *or*, where applicable, underlying investment *options* among the insurance-based investment products identified as suitable for the customer pursuant to Article 30(1) and offering similar features;

Or. en

## Amendment 89

### Proposal for a directive

#### Article 2 – paragraph 1 – point 21

Directive (EU) 2016/97

Article 29b – paragraph 1 – point c

#### *Text proposed by the Commission*

(c) *to recommend, among the range of insurance-based investment products identified as suitable for the customer pursuant to Article 30(1), one or several insurance-based investment products and,*

#### *Amendment*

*deleted*

*where applicable, underlying investment assets, a product or products, without additional features that are not necessary to the achievement of the customer's objectives and that give rise to extra costs;*

Or. en

## **Amendment 90**

### **Proposal for a directive**

#### **Article 2 – paragraph 1 – point 21**

Directive (EU) 2016/97

Article 29b – paragraph 1 a (new)

*Text proposed by the Commission*

*Amendment*

***1a. Insurance undertakings and insurance intermediaries tied by exclusive partnerships may build the appropriate range of insurance-based investment products referred to in paragraph 1, point (a), among products or, where applicable, underlying investment options offered by only one insurance undertaking. In that case, customers shall be informed in accordance with the applicable requirements.***

Or. en

## **Amendment 91**

### **Proposal for a directive**

#### **Article 2 – paragraph 1 – point 21**

Directive (EU) 2016/97

Article 29b – paragraph 2 – subparagraph 2

*Text proposed by the Commission*

*Amendment*

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-

Those delegated acts shall take into account the nature of the services offered or provided to the customer, the nature of the products, ***and where applicable, underlying investment options***, being

based investment products.;

offered or considered, including different types of insurance-based investment products, *or where applicable, underlying investment options*;

Or. en

## **Amendment 92**

### **Proposal for a directive**

#### **Article 2 – paragraph 1 – point 22 – point a**

Directive (EU) 2016/97

Article 30 – paragraph -1 – subparagraph 1

#### *Text proposed by the Commission*

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

#### *Amendment*

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 *options* to be recommended to or demanded by customers in good time before the customers are bound by an insurance contract or offer. Each of these assessments shall be carried out on the basis of proportionate and necessary information about the customer as obtained by the insurance intermediary or insurance undertaking in accordance with the requirements set out in this Article.

Or. en

## **Amendment 93**

### **Proposal for a directive**

#### **Article 2 – paragraph 1 – point 22 – point b**

Directive (EU) 2016/97

Article 30 – paragraph 1 – subparagraph 1

*Text proposed by the Commission*

Without prejudice to Article 20(1), when providing advice on insurance-based investment products, the insurance intermediary or insurance undertaking shall obtain the information regarding the customer's knowledge and experience in the investment field relevant to the specific type of insurance-based investment product or, where applicable, underlying investment *assets*, offered or demanded, that customer's financial situation, including the composition of any existing portfolios, its ability to bear full or partial losses, investment needs and objectives, including any sustainability preferences, and risk tolerance, so as to enable the insurance intermediary or the insurance undertaking to recommend to the customer the insurance-based investment products that are suitable for that person and that, in particular, are in accordance with its risk tolerance, ability to bear losses and need for portfolio diversification.

*Amendment*

Without prejudice to Article 20(1), when providing advice on insurance-based investment products, the insurance intermediary or insurance undertaking shall obtain the information regarding the customer's knowledge and experience in the investment field relevant to the specific type of insurance-based investment product or, where applicable, underlying investment *options*, offered or demanded, that customer's financial situation, including the composition of any existing portfolios, its ability to bear full or partial losses, investment needs and objectives, including any sustainability preferences, and risk tolerance, so as to enable the insurance intermediary or the insurance undertaking to recommend to the customer the insurance-based investment products that are suitable for that person and that, in particular, are in accordance with its risk tolerance, ability to bear losses and need for portfolio diversification.

Or. en

**Amendment 94**

**Proposal for a directive**

**Article 2 – paragraph 1 – point 22 – point b**

Directive (EU) 2016/97

Article 30 – paragraph 1 – subparagraph 3

*Text proposed by the Commission*

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

*Amendment*

When providing advice that involves switching between underlying investment *options*, insurance intermediaries and insurance undertakings shall obtain the necessary information on the customer's existing underlying investment *options* 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.

reasonably able to demonstrate that the benefits of switching are expected to be greater than the costs.

Or. en

## **Amendment 95**

### **Proposal for a directive**

#### **Article 2 – paragraph 1 – point 24**

Directive (EU) 2016/97

Article 35a – paragraph 1 – subparagraph 1 a (new)

*Text proposed by the Commission*

*Amendment*

*The first subparagraph shall also apply to any third party (“finfluencer”) that is remunerated or incentivised through non-monetary compensation by an insurance undertaking or insurance intermediary without being registered in accordance with Article 3 of this Directive or authorised in accordance with Article 14 of Directive 2009/138/EC, where such third party promotes through public social media platforms services or insurance-based investment products or underlying investment options on behalf of such an insurance undertaking or insurance intermediary.*

Or. en

## **Amendment 96**

### **Proposal for a directive**

#### **Article 4 – paragraph 1 – point 1 – point a**

Directive 2009/65/EC

Article 14 – paragraph 1 e – subparagraph 1

*Text proposed by the Commission*

*Amendment*

Member States shall require management companies to assess at least annually the conditions mentioned in paragraph 1b,

Member States shall require management companies to assess at least annually the conditions mentioned in paragraph 1b,

point (b). The assessment shall take into account the criteria set out in the pricing process **and include a comparison with the relevant benchmark on costs and performance published by ESMA in accordance with paragraph 1f.**

point (b). The assessment shall take into account the criteria set out in the pricing process.

Or. en

## **Amendment 97**

### **Proposal for a directive**

**Article 4 – paragraph 1 – point 1 – point a**

Directive 2009/65/EC

Article 14 – paragraph 1 e – subparagraph 2

*Text proposed by the Commission*

*Amendment*

***When a UCITS or its share classes, when they have different cost structures, deviate from the relevant benchmark referred to in paragraph 1f, the management company shall perform additional testing and further assessments and establish whether costs and charges are nevertheless justified and proportionate. If justification and proportionality of costs and charges cannot be demonstrated or if the UCITS or its share classes do not comply with other criteria set out by the management company in the pricing process that UCITS or its share classes shall not be marketed to retail investors by the management company.***

***deleted***

Or. en

## **Amendment 98**

### **Proposal for a directive**

**Article 4 – paragraph 1 – point 1 – point a**

Directive 2009/65/EC

Article 14 – paragraph 1 f



*Text proposed by the Commission*

*Amendment*

***If. After consulting EIOPA and competent authorities, ESMA shall, where appropriate, develop and make publicly available benchmarks to enable the comparative assessment of costs and performance of UCITS, or their share classes where they have different cost structures, to be used for the assessment set out in paragraph 1e.***

***deleted***

***Common benchmarks shall be developed, where it is feasible to do so, for UCITS, or their share classes where they have different cost structures, marketed to retail investors that present similar levels of performance, risk, strategy, objectives, or other characteristics.***

***These benchmarks shall display a range of costs and performance, especially cases where costs and performance depart significantly from the average. These benchmarks shall be updated on a regular basis.;***

Or. en

## **Amendment 99**

### **Proposal for a directive**

#### **Article 4 – paragraph 1 – point 1 – point b – point iii**

Directive 2009/65/EC

Article 14 – paragraph 2 – subparagraph 1 – point e

*Text proposed by the Commission*

*Amendment*

(e) provide for criteria to determine whether costs are justified and proportionate in accordance with paragraph 1b, point (b), ***and for taking corrective measures mentioned in paragraph 1e and specify the methodology used by ESMA to develop its benchmarks.;***

(e) provide for criteria to determine whether costs are justified and proportionate in accordance with paragraph 1b, point (b);

Or. en

## Amendment 100

### Proposal for a directive

#### Article 5 – paragraph 1 – point 1 – point a

Directive 2011/61/EU

Article 12 – paragraph 1 e – subparagraph 1

#### *Text proposed by the Commission*

Member States shall require AIFMs to assess at least annually the conditions mentioned in paragraph 1b, point (b). The assessment shall take into account the criteria set out in the pricing process ***and, for AIFs marketed to retail investors, include a comparison with the relevant benchmark on costs and performance published by ESMA in accordance with paragraph 1f.***

#### *Amendment*

Member States shall require AIFMs to assess at least annually the conditions mentioned in paragraph 1b, point (b). The assessment shall take into account the criteria set out in the pricing process.

Or. en

## Amendment 101

### Proposal for a directive

#### Article 5 – paragraph 1 – point 1 – point a

Directive 2011/61/EU

Article 12 – paragraph 1 e – subparagraph 2

#### *Text proposed by the Commission*

***When an AIF or its share classes, when they have different cost structures, deviate from the relevant benchmark referred to in paragraph 1f, the AIFM shall perform additional testing and further assessments and establish whether costs and charges are nevertheless justified and proportionate. If justification and proportionality of costs and charges cannot be demonstrated, or if the AIF or its share classes do not comply with other criteria set out by the AIFM in the pricing process, that AIF or its share class shall not be marketed to retail investors by the***

#### *Amendment*

***deleted***

**AIFM.**

Or. en

## **Amendment 102**

### **Proposal for a directive**

**Article 5 – paragraph 1 – point 1 – point a**

Directive 2011/61/EU

Article 12 – paragraph 1 f

*Text proposed by the Commission*

*Amendment*

*If. After having consulted EIOPA and competent authorities, ESMA shall, where appropriate, develop and make publicly available benchmarks to enable the comparative assessment of costs and performance of AIFs, or their share classes where they have different cost structures, to be used for the assessment set out in paragraph 1e.*

*deleted*

*Common benchmarks shall be developed, where it is feasible to do so, for AIFs, or their share classes where they have different cost structures, marketed to retail investors that present similar levels of performance, risk, strategy, objectives, or other characteristics.*

*These benchmarks shall display a range of costs and performance, especially cases where costs and performance depart significantly from the average. The benchmarks shall be updated on a regular basis.;*

Or. en

## **Amendment 103**

### **Proposal for a directive**

**Article 5 – paragraph 1 – point 1 – point b**

Directive 2011/61/EU

Article 12 – paragraph 3 – point b

*Text proposed by the Commission*

(b) provide for criteria to determine whether costs are justified and proportionate in accordance with paragraph 1b, point (b) ***and for taking corrective measures mentioned in paragraph 1e and specify the methodology used by ESMA to develop its benchmarks.***;

*Amendment*

(b) provide for criteria to determine whether costs are justified and proportionate in accordance with paragraph 1b, point (b);

Or. en

## EXPLANATORY STATEMENT

The Rapporteur welcomes the timely Commission's proposal for the Retail Investment Strategy, in line with one of the key Commission's objectives of the 2020 capital markets union action plan to make the EU an even safer place for individuals to save and invest long-term.

The Commission's proposal consists of:

- 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;
- Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 1286/2014 as regards the modernisation of the key information document.

The Rapporteur considers this proposal to be one of the key proposals of this mandate. Given the time constraints, she has identified main political priorities, which she addresses in her draft report, with the aim to continue the discussions. She will further amend the proposal throughout the amendment procedure.

The Rapporteur fully shares the objectives of this proposal. More than 70 % of EU citizens have never invested in financial products due to various reasons, whether they find it too complex or they have concerns about the risks. Therefore, we must do everything to encourage citizens to change this. The new rules to protect and empower retail investors must provide for clear and transparent information and ensure that the financial advice is in the best interest of the retail investor.

- **Inducements**

The Rapporteur expressed strong views against a full ban on inducements. She remains concerned about the introduction of a partial ban on executive-only services which is not justified and does not seem to address issues of conflict of interest. This looks more like it is a first step towards a full ban. Many consumers in the EU rely on the advice of financial advisors and therefore it is necessary to enhance the current framework with appropriate tools and improvements. She believes that the conflicts of interest can be addressed via increased transparency. Moreover, the Rapporteur is of the opinion that the timing and the content of the review clause is unsatisfactory. This review clause shall not be biased as to lead to the automatic introduction of a full inducement ban. Therefore, she proposes to prolong it to 5 years starting from the end of the transposition period of the directive, to allow seeing the real effects of the measures on the market. Furthermore, she suggests broadening the review clause's scope to provide for an assessment based on potential conflicts of interest, evolution of costs, level of retail investment in capital markets, consumer protection and the relevance of distribution rules.

- **Best interest test**

In her draft report, the Rapporteur clarifies and strengthens the Commission's proposal on the 'best interest' test under Markets in Financial Instruments Directive (MiFID) and Insurance Distribution Directive (IDD). In MiFID, she proposes to clarify the notion of 'cost-efficiency'. In IDD, rather than focusing on the cost-efficiency of a product, she suggests that financial advice shall be given based on the performance, level of risk, costs, charges of an insurance based investment product or, where applicable underlying investment options. The products that are offered to the consumers must be tailored to their specific needs and objectives, thus it is not only the price that matters, but equally so the quality of the product.

- **Value for Money benchmarks**

In the Rapporteur's view, the Commission's proposal on value for money could be disruptive on the market, as it would lead to reduced diversity of products and suppressed innovation. She believes that the lack of clarification regarding the methodology applied to design those benchmarks prevents us to assess how these would truly unfold in practice. The Rapporteur fully agrees with the principle that the product must deliver value for money and that the products with unjustified and disproportionate high costs and charges have no place on the market. However, further discussions are needed on this point in order to find the right and balanced approach. Hence, the Rapporteur in her draft report deletes the benchmarks, with a view to continue discussions on this topic.

- **Supervision and cross-border practices**

The Commission's proposal does not go far enough in this respect and therefore the Rapporteur proposes amendments in pursuance of boosting the cross-border supervision and ensuring the equal protection for all consumers in all EU Member States. In this spirit, the Rapporteur introduces an obligation for companies to register in the same Member State where their head office is located, in order to avoid forum-shopping.

- **Finfluencers**

Digitalization has created a new generation of investors. We see the emergence of so-called "finfluencers" operating on social media and mobilizing mainly younger generations. The Rapporteur welcomes the measures proposed by the Commission to ensure clear, fair and no misleading marketing communications and to address concerns when it comes to financial influencers. They often lack specific knowledge in the area. Therefore the Rapporteur proposes additional elements to strengthen this part of the proposal even further, for example, by imposing the firms to sign a contract with the finfluencers in order to ensure transparency and determine responsibility. She also suggests to extend the provision regarding the 'procedure to address unauthorised activities offered through digital means', to finfluencers using miss-selling practices.

- **Financial literacy**

The Rapporteur perceives financial literacy as a vital element of improving investment behaviour in the EU, not only for consumers but also for financial advisors in order to provide high-quality professional advice. According to the recent Eurobarometer survey, only 18 % of EU citizens have a high level of financial literacy, 64 % have a medium level and 18 % a low level, while there are also huge divergences among Member States. These numbers clearly show that much more needs to be done in this field and that the EU must fully use its role to urge Member States to be ambitious in this regard.

- **Data providers**

Financial and non-financial market data are essential to the correct functioning of financial markets and to the provision of quality investment services to clients. These data must be of high quality, reliable, subject to very strict control procedures and accessible at fair conditions. The access, use and cost of financial and non-financial market data necessary to provide investment services and to manufacture and distribute financial products are an important portion of the costs borne by investment firms, representing therefore a significant proportion of the total charges paid by retail clients. That is why the Rapporteur is of the view that the EU should implement horizontal and holistic European regulation for both financial and non-financial data providers and their activities, which should be accompanied by increased supervision of all data providers (including the third-country providers who currently benefit from an oligopolistic situation) at the European level.

- **Packaged retail and insurance-based investment products (PRIIPS)**

The Rapporteur welcomes the Commission's proposal on PRIIPS but sees the need to introduce further adjustments to market practices and certain adaptations to the insurance sector. She suggests erasing a new section in the Key Information Document titled 'Product at a glance' and will continue to further assess the alignment of the new sustainability section with the relevant existing legislation.