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II-1	Article 1	Article 1
II-2	Amendments to Directive 2014/65/EU	Amendments to Directive 2014/65/EU
II-3	Directive 2014/65/EU is amended as follows:	Directive 2014/65/EU is amended as follows:
II-4	(1) in Article 1(4), point (a) is replaced by the following:	(1) in Article 1(4), point (a) is replaced by the following:
II-5	‘(a) Article 9(3), Article 14, and Article 16(2), (3) and (6), Article 16-a (1), first, second and fifth subparagraph, Article 16-a(3), Article 16-a(4), first and second subparagraph, Article 16-a(7), (8), (10) and Article 16-a(11), point (b);’;	‘(a) Article 9(3), Article 14, and Article 16(2), (3) and (6), Article 16-a (1), first, second, tenth and fifth eleventh subparagraph, Article 16-a(3), Article 16-a(4), first and second subparagraph, Article 16-a(7), (8), and (10) and Article 16-a(11), point (b); ’;
II-6	(2) in Article 3(2), points (b) and (c) are replaced by the following:	(2) in Article 3(2), points (a), (b) and (c) are replaced by the following:
II-6a		
II-7	‘(b) conduct of business obligations as established in Article 24(1), (1a), Article 24(3), (4), (5), (7) and (10), Article 25(2), (4), (5) and (6), and, where the national regime allows those persons to appoint tied agents, Article 29, and the respective implementing measures;	(b) conduct of business obligations as established in Article 24(1), (1a), Article 24(3), (4), (5), (7) and (10), Article 25(2), (4), (5) and (6), and, where the national regime allows those persons to appoint tied agents, Article 29, and the respective implementing measures;
II-8	‘(c) organisational requirements as laid down in the Article 16(3), (6), (7), Article 16-a (1), subparagraphs 1, 2 and 5, Article 16-a(3), Article 16-a(4), subparagraphs 1 and 2, Article 16-a(7) point (c), (8), (10) and Article 16(11), point	(c) organisational requirements as laid down in the Article 16(3), (6), (7), Article 16-a (1), subparagraphs 1, 2 and 5, Article 16-a(3), Article 16-a(4), subparagraphs 1 and 2, Article 16-a(7) point (c), (8), (10) and

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	(b), and the corresponding delegated acts adopted by the Commission in accordance with Article 89.’;	Article 16- a (11), point (b), and the corresponding delegated acts adopted by the Commission in accordance with Article 89.’;
II-9	(3) in Article 4(1), the following points (66), (67) and (68) are added:	(3) in Article 4(1), the following points (66), (67), and (68), (69) and (70) are added:
II-10	‘(66) ‘marketing communication’ means any disclosure of information other than a disclosure required by Union or national law, or other than the financial education material referred to in Article 88b, or other than investment research that meet the conditions to be treated as such, that directly or indirectly promotes or entices investments in one or several financial instruments or categories of financial instruments or the use of investment or ancillary services provided by an investment firm that is made:	(66) ‘marketing communication’ means any disclosure of information other than a disclosure required by Union or national law, or other than the financial education material referred to in Article 88b, or other than investment research that meet the conditions to be treated as such, that directly or indirectly promotes or entices investments in one or several financial instruments or categories of financial instruments or the use of investment or ancillary services provided by an investment firm that is made:
II-11	(a) by an investment firm or a third party that is remunerated or incentivised through non-monetary compensation by such investment firm;	(a) by an investment firm or a third party that is remunerated or incentivised through non-monetary compensation by such investment firm;
II-12	(b) to natural or legal persons;	(b) to natural or legal persons;
II-13	(c) in any form and by any means;	(c) in any form and by any means;
II-14	‘(67) ‘marketing practice’ means any strategy, use of a tool or technique applied by an investment firm, or by any third party that is remunerated or incentivised through non-monetary compensation by such investment firm to:	(67) ‘marketing practice’ means any strategy, use of a tool or technique, <u>including online targeting of customers</u> , applied by an investment firm, or by any third party that is remunerated or

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		incentivised through non-monetary compensation by such investment firm to:
II-15	(a) directly or indirectly disseminate marketing communications;	(a) directly or indirectly disseminate marketing communications; <u>or</u>
II-16	(b) accelerate or improve the reach and effectiveness of the marketing communications;	(b) accelerate or improve the reach and <u>or</u> effectiveness of the marketing communications; <u>or</u>
II-17	(c) promote in any way investment firms, financial instruments or investment services;	(c) promote in any way investment firms, financial instruments or investment services, <u>including the online choice architecture</u> ;
II-18	(68) ‘online interface’ means any software, including a website, part of a website or an application;’;	(68) ‘online interface’ means any software, including a website, <u>or a part thereof of a website, or an and</u> applications, <u>including mobile applications</u> ;
II-18a		<u>(69) ‘inducement’ means any fee, commission, monetary or non-monetary benefit paid, provided or received by an investment firm, to or from any party other than the client or a person acting on behalf of the client, in relation to the provision of an investment service or an ancillary service to the client;</u>
II-18b		<u>(70) ‘inducement scheme’ means a set of contractual arrangements governing the payment, provision and receipt of inducements, including the conditions under which the inducements are paid or received.’;</u>
II-19	(4) the following Article 5a is inserted:	(4) the following Article 5a is inserted:
II-20	‘Article 5a	‘Article 5a

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II-21	Procedure to address unauthorised activities offered through digital means	Procedure to address unauthorised activities offered through digital means
II-22	<p>1. Member States shall ensure that where a natural or legal person provides investment services or activities online targeting clients within its territory without being authorised under Article 5(1) or national law or where a competent authority has reasonable grounds to suspect that that entity provides such services without being authorised under Article 5(1) or national law, the competent authority takes all appropriate and proportionate measures to prevent the offering of the unauthorised investment services or activities, including related to marketing communication, by resorting to the supervisory powers referred to in Article 69(2). Any such steps shall respect the principles of cooperation between Member States set out in Chapter II.</p>	<p>1. Member States shall ensure that where a natural or legal person provides investment services or activities online targeting clients within its territory without being authorised under Article 5(1) or national law or where a competent authority has reasonable grounds to suspect that <u>such that entity natural or legal person</u> provides such services without being authorised under Article 5(1) or national law, the competent authority takes all appropriate and proportionate measures to prevent the offering of the unauthorised investment services or activities, including related to marketing communication, by resorting to the supervisory powers referred to in Article 69(2) <u>or any equivalent power</u>. Any such steps shall respect the principles of cooperation between Member States set out in Chapter II.</p>
II-23	<p>2. Member States shall provide that competent authorities publish any decision imposing a measure taken pursuant to paragraph 1, in accordance with Article 71.</p>	<p>2. Member States shall provide that competent authorities publish any decision imposing a measure taken pursuant to paragraph 1, in accordance with Article 71.</p>
II-24	<p>Competent authorities shall inform ESMA of any such decision without undue delay. ESMA shall establish an electronic database containing the decisions submitted by competent authorities, which shall be accessible to all</p>	<p>Competent authorities shall inform ESMA of any such decision without undue delay. ESMA shall establish an electronic database containing the decisions submitted by competent authorities, which shall be accessible to all competent authorities. ESMA shall publish a</p>

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	competent authorities. ESMA shall publish a list of all existing decisions, describing the natural or legal persons concerned and the types of services or products provided. The list shall be accessible to the public through a link on ESMA's website. As regards natural persons, this list shall not lead to the publication of more personal data of those natural persons than that published by the competent authority pursuant to the first subparagraph, and in accordance with Article 71(1).';	list of all existing decisions, describing the natural or legal persons concerned and the types of services or products provided. The list shall be accessible to the public through a link on ESMA's website. As regards natural persons, this list shall not lead to the publication of more personal data of those natural persons than that published by the competent authority pursuant to the first subparagraph, and in accordance with Article 71(1).';
II-25	(5) Article 7 is amended as follows:	(5) Article 7 is amended as follows:
II-26	(a) in paragraph 3, the following subparagraph is added:	(a) in paragraph 3, the following subparagraph is added:
II-27	'Where the authorisation has not been granted, the competent authority shall inform ESMA about the reasons for not granting the authorisation.';	'Where the authorisation has not been granted, the competent authority shall inform ESMA about the reasons for not granting the authorisation.';
II-28	(b) the following paragraph 3a is inserted:	(b) the following paragraph 3a is inserted:
II-29	'3a. ESMA shall establish and make available to competent authorities a list of all entities that have been refused authorisation.	'3a. ESMA shall establish and make available to competent authorities a list of all entities that have been refused authorisation.
II-30	The list shall contain information on the services or activities for which each investment firm has sought	The list shall contain information on the services or activities for which each investment firm has sought authorisation, as well as

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	authorisation, as well as the reasons for the refusal to grant the authorisation and shall be updated on a regular basis.’;	the reasons for the refusal to grant the authorisation and shall be updated on a regular basis.’;
II-31	(6) Article 8 is amended as follows:	(6) Article 8 is amended as follows:
II-32	(a) the second paragraph is replaced by the following:	(a) the second paragraph is replaced by the following:
II-33	‘Every withdrawal of authorisation shall be notified to ESMA. The competent authority shall inform ESMA about the reasons for withdrawing the authorisation.’;	‘Every withdrawal of authorisation shall be notified to ESMA. The competent authority shall inform ESMA about the reasons for withdrawing the authorisation.’;
II-34	(b) the following paragraph is added:	(b) the following paragraph is added:
II-35	‘The list referred to in Article 7(3a) shall also contain all entities from which authorisation has been withdrawn, as well as information on the services or activities for which each investment firm has been withdrawn authorisation, and the reasons to withdraw the authorisation.’;	‘The list referred to in Article 7(3a) shall also contain all entities from which authorisation has been withdrawn, as well as information on the services or activities for which each investment firm has been withdrawn authorisation, and the reasons to withdraw the authorisation.’;
II-36	(7) Article 9(3) is amended as follows:	(7) Article 9(3) is amended as follows:
II-37	(a) the first subparagraph is replaced by the following:	(a) the first subparagraph is replaced by the following:
II-38	‘Member States shall ensure that the management body of an investment firm defines, oversees and is accountable for the implementation of the governance arrangements that ensure effective and prudent management of the investment firm including the segregation of duties in the investment firm, the prevention of conflicts of interest and the protection of	‘Member States shall ensure that the management body of an investment firm defines, oversees and is accountable for the implementation of the governance arrangements that ensure effective and prudent management of the investment firm including the segregation of duties in the investment firm, the prevention of conflicts of interest and the protection of investors, and in a manner that promotes the integrity of the market and the best interest of clients.’;

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	investors, and in a manner that promotes the integrity of the market and the best interest of clients.’;	
II-39	(b) in the second subparagraph, the following point (d) is added:	(b) in the second subparagraph, the following point (d) is added:
II-40	‘(d) a policy on marketing communications and practices, aiming to ensure compliance with obligations set out in Article 24c.’;	‘(d) a policy on marketing communications and practices, aiming to ensure compliance with obligations set out in Article 24c.’;
II-41	(8) Article 16 is amended as follows:	(8) Article 16 is amended as follows:
II-42	(a) paragraph 1 is replaced by the following:	(a) paragraph 1 is replaced by the following:
II-43	‘1. The home Member State shall require that investment firms comply with the organisational requirements laid down in paragraphs 2 to 10 of this Article, Article 16a and in Article 17.’;	‘1. The home Member State shall require that investment firms comply with the organisational requirements laid down in paragraphs 2 to 10 of this Article, Article 16a and in Article 17.’;
II-44	(b) in paragraph 3, subparagraphs 2 to 7 are deleted;	(b) in paragraph 3, subparagraphs 2 to 7 are deleted;
II-45	(c) the following paragraph 3a is inserted:	(c) the following paragraph 3a is inserted:
II-46	‘3a. An investment firm shall maintain and operate effective organisational and administrative arrangements with a view to taking all reasonable steps designed to ensure that marketing communications and practices comply with the obligations set out in Article 24c.’;	‘3a. An investment firm shall maintain and operate effective organisational and administrative arrangements with a view to taking all reasonable steps designed to ensure that marketing communications and practices comply with the obligations set out in Article 24c.’;
II-47	(d) the following paragraph 7a is inserted:	(d) the following paragraph 7a is inserted:

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II-48	<p>‘7a. Member States shall ensure that investment firms establish appropriate procedures and arrangements, including electronic communication channels, to ensure that client’s rights under this Directive can be exercised without restriction and that client’s complaints, as referred to in Article 75, are dealt with properly. Those procedures shall allow investors to register complaints in any language in which communication material or services were provided or in the language as agreed between the firm and its clients prior to entering into any transaction.</p>	<p>‘7a. Member States shall ensure that investment firms establish appropriate procedures and arrangements, including electronic communication channels, to ensure that client’s rights under this Directive can be exercised without restriction and that client’s complaints, as referred to in Article 75, are dealt with properly. Those procedures shall allow investors to register complaints in any language in which communication material or services were provided or in the language as agreed between the firm and its clients prior to entering into any transaction.</p>
II-49	<p>In all cases, complaints shall be registered and complainants shall receive replies within 40 working days.’;</p>	<p>In all cases, complaints shall be registered and complainants shall receive replies within 40 working days. <u>In all cases, investment firms shall register the complaints and shall communicate their decision on a complaint to the complainant in a timely manner, taking into account the subject matter of the complaint and, in any event, no later than 40 working days from the date on which the complaint was received by the investment firm.</u></p>
II-49a		<p><u>Where, in exceptional situations, the decision on a complaint cannot be provided within the period referred to in the previous subparagraph, investment firms shall inform the complainant of</u></p>

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		<u>the reasons for the delay and indicate a reasonable timeframe in which the decision will be provided.</u>
II-49b		<u>Any communication made by the investment firms under this paragraph, that is addressed to a complainant, shall be made in the language in which the complainant filed its complaint, provided that the language used by the complainant is one of the languages referred to in the first subparagraph.’;</u>
II-50	(9) the following Article 16-a is inserted after Article 16:	(9) the following Article 16-a is inserted after Article 16:
II-51	‘Article 16-a	‘Article 16-a
II-52	Product governance requirements	Product governance requirements
II-53	1. Member States shall ensure that investment firms which manufacture financial instruments for sale to clients establish, maintain, operate and review a process for the approval of each financial instrument and significant adaptations of existing financial instruments before it is marketed or distributed to clients (the product approval process).	1. Member States shall ensure that investment firms which manufacture financial instruments for sale to clients establish, maintain, operate and review a process for the approval of each financial instrument and significant adaptations of existing financial instruments before it is marketed or distributed to clients (the product approval process).
II-54	The product approval process shall contain all of the following:	The product approval process shall contain all of the following:

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II-55	(a) a specification of an identified target market of end-clients within the relevant category of clients for each financial instrument;	(a) a specification of an identified target market of end-clients within the relevant category of clients for each financial instrument <u>and of the intended distribution strategy;</u>
II-56	(b) a clear identification of the target market's objectives and needs;	(b) a clear identification of the target market's objectives and needs;
II-57	(c) an assessment of whether the financial instrument is designed appropriately to meet the target market's objectives and needs;	(c) an assessment of whether the financial instrument is designed appropriately to meet the target market's objectives and needs;
II-58	(d) an assessment of all relevant risks to the identified target market and that the intended distribution strategy is consistent with the identified target market;	(d) an assessment of all relevant risks <u>relevant</u> to the identified target market <u>and arising from the distribution strategy</u> and <u>an assessment of that whether</u> the intended distribution strategy is consistent with the identified target market;
II-59	(e) in relation to financial instruments falling under the definition of packaged retail investment products in accordance with Article 4(1) of Regulation (EU) No 1286/2014 of the European Parliament and of the Council*, a clear identification and quantification of all costs and charges related to the financial instrument and an assessment of whether those costs and charges are justified and proportionate, having regard to the characteristics, objectives and, if relevant, strategy of the financial instrument, and its performance ('pricing process').	(e) in relation to financial instruments falling under the definition of packaged retail investment products in accordance with Article 4(1) of Regulation (EU) No 1286/2014 of the European Parliament and of the Council*, a clear identification and quantification of all costs and charges <u>and the performance</u> related to the financial instrument, <u>a clear identification of their other benefits</u> and an assessment of whether <u>the financial instrument offers value for money, by evaluating whether</u> those costs and charges are justified and proportionate, having regard to <u>the performance, the other benefits</u> <u>and</u> the characteristics, objectives and, if relevant, strategy of the

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	<p>_____</p> <p>* Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (OJ L 352, 9.12.2014, p. 1).’;</p>	<p>financial instrument, and its performance (<u>‘value- for-money assessmentpricing process’</u>).</p> <p>_____</p> <p>* Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (OJ L 352, 9.12.2014, p. 1).</p>
II-60	<p>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.</p>	<p>The <u>assessment that the financial instrument can be expected to offer pricing value-for-money process</u> referred to in point (e) shall <u>be established through appropriate product testing and assessments, taking into account the specificities of the financial instrument including, a market comparison with similar financial instruments in the Union, subject to data availability, a comparison by comparing with the relevant benchmark, where available, on costs and performance published by ESMA in accordance with paragraph 9. the costs and charges as well as the performance of the financial instrument to the costs and charges and the performance of a peer group consisting of other financial instruments with similar characteristics including, where relevant, the product type, similar levels of risk, strategy, objectives, range of recommended holding periods and sustainability features. The</u></p>

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		<u>compliance report to the management body shall systematically include information on product testing and assessments.</u>
II-60a		<u>The peer-group comparison shall be performed using data made available according to paragraph 9a and included in information to be published according to Union law.</u>
II-60b		<u>The peer-group comparison shall only be made in relation to costs and charges for each of the following types of financial instruments:</u>
II-60c		<u>(a) financial instruments that fall within one of the categories referred to in points 4 to 10 of Section C of Annex I; and</u>
II-60d		<u>(b) specific types of transferable securities designated by the Commission by delegated act in accordance with Article 89.</u>
II-61	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.	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. <u>When the financial instrument is at a significant distance from the average of the peer group to</u>

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		<p><u>the detriment of the client, the value for money shall be substantiated through additional testing and further assessments. Where necessary, the manufacturer shall take appropriate actions to ensure value for money. The content of appropriate actions shall be determined by the manufacturer while taking into account the relevant features of the financial instrument and the interest of the client. The compliance report to the management body shall systematically include information on these additional testings and further assessments and their conclusions when financial instruments are at a significant distance from the average of the peer group, including on any actions to ensure value for money.</u></p>
II-61a		<p><u>The peer-group comparison, including the selection of financial instruments with similar characteristics, shall be based on relevant and objective criteria.</u></p>
II-61b		<p><u>Member States may provide for a possibility for an investment firm manufacturing financial instruments to opt, for the purpose of the market comparison in its value-for-money assessment processes, to compare a financial instrument with the relevant Union supervisory benchmark as referred to in paragraph 9, instead of a peer group.</u></p>

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II-61c		<p><u>If the investment firm opted to compare a financial instrument with the relevant Union supervisory benchmark, the investment firm shall, when the financial instrument falls outside the Union supervisory benchmark, substantiate the value for money through additional testing and further assessments. Where necessary, the manufacturer shall take appropriate actions to ensure value for money. The content of appropriate actions shall be determined by the manufacturer while taking into account the relevant features of the financial instrument and the interest of the client. The compliance report to the management body shall systematically include information on these additional testings and further assessments and their conclusions, including on any actions to ensure value for money.</u></p>
II-62	<p>An investment firm which manufactures financial instruments shall make available to distributors all information on the financial instrument and the product approval process that is needed to fully understand that instrument and the elements taken into consideration during the product approval process, including complete and accurate details on any costs and charges of the financial instrument.</p>	<p>An investment firm which manufactures financial instruments shall make available to distributors all information on the financial instrument and the product approval process that is needed to fully understand that instrument and the elements taken into consideration during the product approval process, including complete and accurate details on any costs and charges <u>the value-for-money assessment</u> of the financial instrument.</p>

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II-62a		<u>An investment firm shall regularly review financial instruments it manufactures, taking into account any event or risk that could materially affect the identified target market, to assess whether the financial instrument remains consistent with the objectives and needs of the identified target market and whether the intended distribution strategy remains appropriate.</u>
II-63	2. An investment firm which manufactures financial instruments falling under the definition of packaged retail products in accordance with Article 4(1) of Regulation (EU) No 1286/2014 shall report to its home competent authorities the following:	2. An investment firm which manufactures financial instruments falling under the definition of packaged retail products in accordance with Article 4(1) of Regulation (EU) No 1286/2014 shall report to its home competent authorities the following:
II-64	(a) details of costs and charges of the financial instrument, including any distribution costs that are incorporated into costs of financial instrument, including third-party payments;	(a) details of costs and charges of the financial instrument, including any distribution costs that are incorporated into costs of financial instrument, including third-party payments <u>inducements</u> ;
II-65	(b) data on the characteristics of the financial instrument, in particular its performance and the level of risk.	(b) data on the characteristics of the financial instrument, in particular its performance, and the level of risk and any additional <u>benefits</u> .
II-65a		<u>(c) the Member State(s) where it will directly or indirectly distribute the financial instrument.</u>
II-65b		<u>The data referred to in points (a), (b) and (c) shall only be reported when it is not yet included in a sufficiently detailed and</u>

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		<p><u>standardized form in the key information document in accordance with Regulation (EU) No 1286/2014 or in reporting obligations towards competent authorities on the basis of Union law, and when it is demonstrated that the specific data is necessary for the development of meaningful Union supervisory benchmarks or peer-group comparisons, and that the additional burden on manufacturers and distributors is not disproportionate to the added value for clients. The reporting of these data shall be further specified according to paragraph 12.</u></p>
II-66	<p>The competent authorities shall transmit data referred to in point (a) and (b) to ESMA without undue delay.</p>	<p>The competent authorities shall transmit data referred to in point (a), and (b) <u>and (c)</u> to ESMA without undue delay.</p>
II-67	<p>3. An investment firm that offers or recommends financial instruments which it does not manufacture, shall have in place adequate arrangements to obtain the information referred to in paragraph 1 and to understand the characteristics and identified target market of each financial instrument.</p>	<p>3. An investment firm that offers or recommends financial instruments which it does not manufacture, shall have in place adequate arrangements to obtain the information referred to in paragraph 1 and to understand the characteristics and identified target market of each financial instrument.</p>
II-68	<p>4. An investment firm shall regularly review financial instruments it offers or recommends, taking into account any event or risk that could materially affect the identified target market, to assess whether the financial instrument remains</p>	<p>4. An investment firm shall regularly review financial instruments it offers or recommends, taking into account any event or risk that could materially affect the identified target market, to assess whether the financial instrument remains consistent with the objectives and</p>

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	consistent with the objectives and needs of the identified target market and whether the intended distribution strategy remains appropriate.	needs of the identified target market and whether the intended distribution strategy remains appropriate.
II-69	An investment firm which offers or recommends financial instruments falling under the definition of packaged retail investment products in accordance with Article 4(1) of Regulation (EU) No 1286/2014, shall ensure the following:	An investment firm which offers or recommends financial instruments falling under the definition of packaged retail investment products in accordance with Article 4(1) of Regulation (EU) No 1286/2014, shall ensure the following:
II-70	(a) identify and quantify the costs of distribution and any further costs and charges not already taken into account by the manufacturer;	(a) identify and quantify the costs of distribution and any further costs and charges not already taken into account by the manufacturer;
II-71	(b) assess whether the total costs and charges are justified and proportionate, having regard to the target market's objectives and needs (pricing process).	(b) assess whether <u>the financial instrument offers value for money, by evaluating whether</u> the total costs and charges are justified and proportionate, having regard to <u>the performance, the other benefits and the characteristics, objectives and, if relevant, strategy of the financial instrument and</u> the target market's objectives and needs (<u>value-for-money assessment</u> pricing process).
II-72	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.	The <u>assessment that the financial instrument can be expected to offer value-for-money pricing process</u> , as referred to in points (a) and (b), shall <u>be established through appropriate product testing and assessments, taking into account the specificities of the financial instrument, including, a market comparison with similar financial instruments in the Union, subject to data availability, a</u>

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		<p>comparison <u>by comparing with the relevant benchmark, when available, on costs and performance published by ESMA in accordance with paragraph 9. the costs and charges as well as the performance of the financial instrument to the costs and charges and the performance of a peer group consisting of other financial instruments with similar characteristics including, where relevant, the product type, similar levels of risk, strategy, objectives, range of recommended holding periods and sustainability features. The compliance report to the management body shall systematically include information on product testing and assessments.</u></p>
II-72a		<p><u>The peer-group comparison shall be performed using data made available according to paragraph 9a and included in information to be published according to Union law.</u></p>
II-72b		<p><u>The fifth subparagraph of paragraph 1 applies.</u></p>
II-73	<p>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</p>	<p>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</p>

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	<p>justification and proportionality of costs and charges cannot be demonstrated, the financial instrument shall not be offered or recommended by the investment firm.</p>	<p>proportionality of costs and charges cannot be demonstrated, the financial instrument shall not be offered or recommended by the investment firm.</p> <p><u>When the financial instrument is at a significant distance from the average of the peer group to the detriment of the client, the value for money shall be substantiated through additional testing and further assessments. Where necessary, the distributor shall take appropriate actions to ensure value for money. The content of appropriate actions shall be determined by the distributor while taking into account the relevant features of the financial instrument and the interest of the client. The compliance report to the management body shall systematically include information on these additional testings and further assessments and their conclusions, including on any actions to ensure value for money.</u></p>
II-73a		<p><u>The peer-group comparison, including the selection of financial instruments with similar characteristics, shall be based on relevant and objective criteria.</u></p>
II-73b		<p><u>Except when offering or recommending financial instruments manufactured by entities that are not subject to Directive 2009/65/EC, Directive 2011/61/EU or Directive 2014/65/EU, an investment firm which offers or recommends financial</u></p>

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		<u>instruments which it does not manufacture, may rely on the manufacturer's value-for-money assessment if it takes into account all costs and charges related to the distribution.</u>
II-73c		<u>In such a case, the investment firm shall assess whether the financial instrument meets the target market's objectives and needs.</u>
II-73d		<u>Member States may provide for a possibility for an investment firm offering or recommending financial instruments which it does not manufacture to opt, for the purpose of the market comparison in its value-for-money assessment process, to compare a financial instrument with the relevant Union supervisory benchmark as referred to in paragraph 9, instead of a peer group.</u>
II-73e		<u>In this case, the investment firm shall, when the financial instrument falls outside the Union supervisory benchmark, substantiate the value for money through additional testing and further assessments. Where necessary, the investment firm shall take appropriate actions to ensure value for money. The content of appropriate actions shall be determined by the distributor while taking into account the relevant features of the financial instrument and the interest of the client. The compliance report to the management body shall systematically include information on</u>

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		<u>these additional testings and further assessments and their conclusions, including on any actions to ensure value for money.</u>
II-74	5. An investment firm which offers or recommends financial instruments falling under the definition of packaged retail products in accordance with Article 4(1) of Regulation (EU) No 1286/2014 shall report to its home competent authorities details of the costs of distribution, including any costs related to the provision of advice or any connected third-party payments.	5. An investment firm which offers or recommends financial instruments falling under the definition of packaged retail products in accordance with Article 4(1) of Regulation (EU) No 1286/2014 shall report to its home competent authorities details of the costs of distribution, including any costs related to the provision of advice or any connected <u>third-party payments inducements and the Member State(s) where it will distribute the financial instrument.</u>
II-74a		<u>These costs shall only be reported when they are not yet included in a sufficiently detailed and standardized form in the key information document in accordance with Regulation (EU) No 1286/2014 or in reporting obligations towards competent authorities on the basis of Union law, and when it is demonstrated that the specific data is necessary for the development of meaningful Union supervisory benchmarks or peer-group comparisons, and that the additional burden on manufacturers and distributors is not disproportionate to the added value for clients. The reporting of these costs shall be further specified according to paragraph 12.</u>

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II-75	The competent authorities shall transmit such details of costs of distribution to ESMA without undue delay.	The competent authorities shall transmit such details of costs of distribution data to ESMA without undue delay .
II-76	6. An investment firm which offers or recommends financial instruments falling under the definition of packaged retail products in accordance with Article 4(1) of Regulation (EU) No 1286/2014, manufactured by a manufacturer that is not subject to the reporting obligation laid down in paragraph 2 or any other equivalent reporting obligation, shall report to their home competent authorities the following:	6. An investment firm which offers or recommends financial instruments falling under the definition of packaged retail products in accordance with Article 4(1) of Regulation (EU) No 1286/2014, manufactured by a manufacturer that is not subject to the reporting obligation laid down in paragraph 2 or any other equivalent reporting obligation, shall report to their home competent authorities the following:
II-77	(a) details of costs and charges of any financial instrument destined for retail investors, including any distribution costs that are incorporated into costs of financial instrument, including third-party payments;	(a) details of costs and charges of any financial instrument destined for retail investors, including any distribution costs that are incorporated into costs of financial instrument, including third-party payments inducements ;
II-78	(b) data on the characteristics of the financial instruments, in particular its performance and the level of risk.	(b) data on the characteristics of the financial instruments, in particular its performance, and the level of risk and any additional benefits .
II-78a		<u>(c) the Member State(s) where it will distribute the financial instrument.</u>
II-78b		<u>The data referred to in points (a), (b) and (c) shall only be reported when it is not yet included in a sufficiently detailed and standardized form in the key information document in accordance</u>

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		<p><u>with Regulation (EU) No 1286/2014 or in reporting obligations towards competent authorities on the basis of Union law, and when it is demonstrated that the specific data is necessary for the development of meaningful Union supervisory benchmarks or peer-group comparisons, and that the additional burden on manufacturers and distributors is not disproportionate to the added value for clients. The reporting of these data shall be further specified according to paragraph 12.</u></p>
II-79	The competent authorities shall transmit such data without undue delay to ESMA.	The competent authorities shall transmit such data without undue delay to ESMA.
II-80	7. An investment firm shall document all assessments made and shall, upon request, provide such assessments to a relevant competent authority, including the following:	7. An investment firm shall document <u>the product testing and</u> all assessments made and shall, upon request, provide such assessments to a relevant competent authority, including the following:
II-81	(a) where relevant, the results of the comparison of the financial instrument to the relevant benchmark;	(a) <u>where applicable, where relevant, the dataset and the criteria used to select the peer group and</u> the results of the comparison of the financial instrument to the relevant benchmark peer group or, where the investment firm has opted to compare the financial instrument with the Union supervisory benchmark, the results of that comparison;
II-82	(b) where applicable, the reasons justifying a deviation from the benchmark;	(b) where applicable, the reasons justifying a deviation from the benchmark <u>that the financial instrument offers value for money when it is at a significant distance from the average of the peer</u>

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		<p><u>group to the detriment of the client or, where the investment firm has opted to compare the financial instrument with the Union supervisory benchmark, when it falls outside the Union supervisory benchmark.</u></p>
II-83	<p>(c) the justification and demonstration of the proportionality of costs and charges of the financial instrument.</p>	<p>(c) the justification and demonstration of the proportionality of costs and charges of the financial instrument.</p> <p><u>(c) where applicable, the reasons why the data for the peer-group comparison is not available for the financial instrument and how the value for money has been assessed.</u></p>
II-84	<p>8. An investment firm which manufactures and offers or recommends the financial instrument may establish one pricing process relating to both manufacturing and distribution stages.</p>	<p>8. An investment firm which manufactures and offers or recommends the financial instrument may establish one <u>value-for-money assessment pricing</u> process relating to both manufacturing and distribution stages.</p>
II-85	<p>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 instruments, falling under the definition of packaged retail</p>	<p>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 instruments, falling under the definition of packaged retail</p>

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

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II-85a		<u>Competent authorities shall verify that the value-for-money assessment process of investment firms complies with the product governance requirements under paragraphs 1 to 8 and 11.</u>
II-86	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 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.
II-87	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.	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. <u>The costs used for the development of Union supervisory benchmarks for investment firms manufacturing financial instruments shall, in addition to the total product cost, allow comparison to individual cost components. The costs used for the development of those benchmarks for distributors shall, in addition to the total cost of the product, refer to the distribution cost.</u>
II-87a		<u>Union supervisory benchmarks shall allow to identify financial instruments that are at a significant distance from the average of the relevant product cluster to the detriment of the client (outliers)</u>

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		<u>with respect to costs and performance and thereby have an increased risk of poor value for money.</u>
II-87b		<u>With regard to financial instruments as referred to in subparagraph five of paragraph 1, Union supervisory benchmarks shall, where appropriate and feasible, only be made with respect to costs.</u>
II-88	ESMA shall regularly update the benchmarks.	ESMA shall regularly update the <u>Union supervisory</u> benchmarks.
II-88a		<u>9a. Taking into account the methodology to perform the value-for-money assessment process <u>peer-group comparison</u> as referred to in paragraph 11, ESMA shall make available data for the purpose of the peer-group comparison. Where appropriate, data that is not publicly available shall be anonymized or aggregated. ESMA shall regularly review the data.</u>
II-88b		<u>The data shall be sourced from disclosure and reporting under Union law, including the reporting referred to in paragraph 12.</u>
II-88c		<u>ESMA shall provide access to the data on a non-discriminatory basis to manufacturers and distributors. ESMA may charge fees to manufacturers and distributors for this service that shall not exceed direct costs incurred by ESMA for the provision of this service. The fee structure shall, to the greatest extent possible, be proportionate to the volumes <u>of data provided by each user</u>. ESMA</u>

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		<u>shall provide access to this data to the extent necessary to fulfill their respective responsibilities, mandates and obligations:</u>
II-88d		<u>(a) any Union institution, body, office or agency;</u>
II-88e		<u>(b) any competent authority designated by a Member State pursuant to a Union legislative act;</u>
II-88f		<u>(c) any member of the European Statistical System as defined in Article 4 of Regulation (EC) No 223/2009 of the European Parliament and of the Council;</u>
II-88g		<u>(d) any governmental institution, body or agency of a Member State;</u>
II-88h		<u>(e) any educational and training establishment for the sole purpose of research, academia, news organisations and non-governmental organisations insofar as access to the information is necessary in the performance of their tasks.</u>
II-88i		<u>The entities referred to in point (b) shall have unrestricted access to the data on a non-anonymous and non-aggregated basis, to the extent necessary to fulfill their mandates. ESMA shall provide access to the data to the entities referred to in points (a) to (d) free of charge.</u>

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II-88j		<u>After having consulted EIOPA, the competent authorities and relevant stakeholders, ESMA shall develop draft regulatory technical standards to specify the data that is to be made available, how it is to be made available, the modalities of access and the fee structure.</u>
II-88k		<u>ESMA shall submit those draft regulatory technical standards to the Commission by [OJ: insert date of entry into force of the amending Directive + 24 months].</u>
II-88l		<u>Power is conferred on the Commission to adopt those regulatory technical standards in accordance with Article 10 of Regulation (EU) No 1095/2010.</u>
II-88m		<u>ESMA shall publish and make easily accessible on its website the fee structure and the rates. ESMA shall review the fee structure and the rates on an annual basis.</u>
II-88n		<u>9b. By [OJ: insert date of application of this amending Directive referred to in Article 6(2) + 5 years], the competent authorities shall report to ESMA on:</u>
II-88o		<u>(a) the impact and added value of the peer-group comparison on the value for money of financial instruments;</u>

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II-88p		<u>(b) the impact and added value of Union supervisory benchmarks on the supervision of the value-for-money assessment process;</u>
II-88q		<u>(c) the application of Union supervisory benchmarks in the value-for-money assessment process of investment firms; and</u>
II-88r		<u>(d) whether and how any national specific issues should be taken into account in order for all clients within the Union to be fairly and sufficiently protected, including concrete proposals how this should be done.</u>
II-88s		<u>By [OJ: insert date of application of this amending Directive referred to in Article 6(2) + 6 years], ESMA shall submit to the Commission a report analysing:</u>
II-88t		<u>(a) the impact and the added value of the peer-group comparison and of the Union supervisory benchmarks on the value for money of financial instruments and the supervision of the value-for-money assessment process, including the need to revise the framework;</u>
II-88u		<u>(b) the application of Union supervisory benchmarks in the value-for-money assessment process of investment firms;</u>

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II-88v		<u>(c) whether and how any national specific issues should be taken into account in order for all clients within the Union to be fairly and sufficiently protected; and</u>
II-88w		<u>(d) whether and how to modify the approach to the data that is made available in accordance with paragraph 9a.</u>
II-88x		<u>When drafting the report, ESMA shall coordinate with EIOPA.</u>
II-88xa		<u>By [OJ: insert date of application of this amending Directive referred to in Article 6(2) +7 years], the Commission shall submit a report to the Council and the European Parliament presenting the conclusions of the review. If appropriate, the report shall be accompanied by legislative proposals.</u>
II-89	10. The policies, processes and arrangements referred to in paragraph 1 to 9 shall be without prejudice to all other requirements under this Directive and Regulation (EU) No 600/2014, including those relating to disclosure, suitability or appropriateness, identification and management of conflicts of interests, and third-party payments.	10. The policies, processes and arrangements referred to in paragraph 1 to 9 shall be without prejudice to all other requirements under this Directive and Regulation (EU) No 600/2014, including those relating to disclosure, suitability or appropriateness, identification and management of conflicts of interests, and third-party payments <u>inducements</u> .
II-90	11. The Commission is empowered to supplement this Directive by adopting delegated acts in accordance with Article 89 to specify the following:	11. The Commission is empowered to supplement this Directive by adopting delegated acts in accordance with Article 89 to <u>further specify the principles set out in this Article, including the methodology for the peer-group comparison. the following:</u>

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II-91	(a) the methodology used by ESMA to develop benchmarks referred to in paragraph 9;	(a) the methodology used by <u>investment firms</u> ESMA to perform the value for money assessment process, including the peer group comparison develop benchmarks referred to in paragraph 9;
II-92	(b) the criteria to determine whether costs and charges are justified and proportionate.	(b) the criteria to determine whether costs and charges are justified and proportionate.
II-93	12. ESMA, after having consulted EIOPA and the competent authorities and taking into consideration the methodology referred to in paragraph 11, point (a), shall develop draft regulatory technical standards specifying the following:	12. ESMA, after having consulted EIOPA and the competent authorities, after industry testing and taking into consideration the methodology referred to in paragraph 11, point (a) and taking into consideration the methodologies referred to in paragraph 9 and 11, shall develop draft regulatory technical standards specifying the following:
II-94	(a) the content and type of data and details of costs and charges to be reported to the competent authorities in accordance with paragraph 2, 5 and 6, based on disclosure and reporting obligations, unless additional data is exceptionally necessary;	(a) the content and type of data and details of costs and charges to be reported to the competent authorities in accordance with paragraph 2, 5 and 6, based on disclosure and reporting obligations, unless additional data is exceptionally necessary;
II-95	(b) the data standards and formats, methods and arrangements, frequency and starting date for the information to be reported in accordance paragraph 2, 5 and 6.	(b) the data standards and formats, methods and arrangements, frequency and starting date for the information to be reported in accordance <u>with</u> paragraph 2, 5 and 6.

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II-96	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.	ESMA shall submit those draft regulatory technical standards to the Commission by [<u>OJ: insert date of entry into force of the amending Directive + 24 months</u>] [18 months] after adoption of the delegated act referred to in paragraph 11.
II-96a		<u>When developing the draft regulatory technical standards, ESMA shall only include specific data when it is not yet included in a sufficiently detailed and standardized form in the key information document in accordance with Regulation (EU) No 1286/2014 or in reporting obligations towards competent authorities on the basis of Union law, and when it is demonstrated that the specific data is necessary for the development of meaningful benchmarks or peer-group comparisons, and that the additional burden on manufacturers and distributors is not disproportionate to the added value for clients.</u>
II-96b		<u>ESMA shall ensure that the reporting standards and formats, methods and arrangements and frequency remain proportionate and are aggregated to the extent feasible.</u>
II-97	Power is delegated to the Commission to adopt the regulatory technical standards in accordance with Article 10 of Regulation (EU) No 1095/2010.’	Power is delegated to the Commission to adopt the regulatory technical standards in accordance with Article 10 of Regulation (EU) No 1095/2010.’
II-98	(10) Article 16a is replaced by the following:	(10) Article 16a is replaced by the following:
II-99	‘Article 16a	‘Article 16a

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II-100	Exemptions from product governance requirements	Exemptions from product governance requirements
II-101	An investment firm shall be exempted from the requirements set out in the Article 16-a(1) and in Article 24(2), where the investment service it provides relates to bonds with no other embedded derivative than a make-whole clause or where the financial instruments are marketed or distributed exclusively to eligible counterparties.’;	An investment firm shall be exempted from the requirements set out in the Article 16-a(1) and in Article 24(2), where the investment service it provides relates to bonds with no other embedded derivative than a make-whole clause or where the financial instruments are marketed or distributed exclusively to eligible counterparties.’;
II-102	(11) in Article 21, the following paragraphs 3 and 4 are added:	(11) in Article 21, the following paragraphs 3 and 4 are added:
II-103	‘3. ESMA or the competent authority of any host Member State on the territory of which a firm is active may request that the competent authority of the home Member State examines whether that firm still meets the conditions for authorisation as established in Chapter I.	‘3. ESMA, or <u>The</u> competent authority of any host Member State on the territory of which <u>an investment</u> firm is active may request, <u>only in the case of material investor protection concerns</u> , that the competent authority of the home Member State examines whether that <u>investment</u> firm still meets <u>particular requirements</u> the conditions for authorisation as established in Chapter I, <u>and shall provide an explanation of the reasons for the request, specifying those requirements for authorisation that should be examined.</u>
II-104	ESMA shall be made aware of such request. The competent authority of the home Member State shall communicate its findings to the competent authority of the host Member State and ESMA within two months following the request.	ESMA shall be made aware of such request. The competent authority of the home Member State shall communicate its findings to the competent authority of the host Member State and ESMA within two months following the request. <u>The home and the host Member</u>

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		<u>States may agree to extend or reduce that deadline.</u>
II-105	4. In the case of justified concerns about potential threats to investor protection, ESMA may, on its own initiative or at the request of one or more of the competent authorities, set up and coordinate a collaboration platform under the conditions set out in Article 87a.’;	4. In the case of justified concerns about potential threats to investor protection, ESMA may, on its own initiative or at the request of one <u>two</u> or more of the competent authorities, set up and coordinate a collaboration platform under the conditions set out in Article 87 <u>ab</u> .’;
II-106	(12) Article 24 is amended as follows:	(12) Article 24 is amended as follows:
II-107	(a) paragraph 1 is replaced by the following :	(a) paragraph 1 is replaced by the following :
II-108	‘1. Member States shall require that, when providing investment services or, where appropriate, ancillary services to clients, an investment firm act honestly, fairly and professionally in accordance with the best interests of its clients and comply, in particular, with the principles set out in this Article and Articles 24a to Article 25.’;	‘1. Member States shall require that, when providing investment services or, where appropriate, ancillary services to clients, an investment firm act honestly, fairly and professionally in accordance with the best interests of its clients and comply, in particular, with the principles set out in this Article and Articles 24a to Article 25.’;
II-109	(b) the following paragraph 1a is inserted:	(b) the following paragraph 1a is inserted:
II-110	‘1a. Member States shall ensure that, in order to act in the best interest of the client, when providing investment advice to retail clients, investment firms are under the obligation of the following:	‘1a. Member States shall ensure that, in order to act in the best interest of the client, when providing investment advice to retail clients, investment firms comply with the following requirements are under <u>the obligation of the following:</u>
II-111	(a) to provide advice on the basis of an assessment of an appropriate range of financial instruments;	(a) to provide advice on the basis of an assessment of an appropriate range of financial instruments <u>identified as suitable for</u>

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		<p><u>the client pursuant to Article 25(2), from one or more manufacturers which must be sufficiently diversified with regard to their type, characteristics and underlying investment assets to ensure that the client’s investment objectives can be met;</u></p>
II-112	<p>(b) to recommend the most cost-efficient financial instruments among financial instruments identified as suitable to the client pursuant to Article 25(2) and offering similar features;</p>	<p>(b) to recommend the most cost-efficient financial instruments among financial instruments identified as suitable to the client pursuant to Article 25(2) and offering <u>similar</u> features. <u>The assessment of cost-efficiency shall take into accounts the costs and associated charges of these products as well as other factors of the financial instrument relevant to the client, such as the performance and the expected return;</u></p>
II-113	<p>(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.’;</p>	<p>(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.’;</p>
II-114	<p>(c) in paragraph 2, the first subparagraph is replaced by the following:</p>	<p>(c) in paragraph 2, the first subparagraph is replaced by the following:</p>
II-115	<p>‘Member States shall ensure that investment firms which manufacture financial instruments for sale to clients:</p>	<p>‘Member States shall ensure that investment firms which manufacture financial instruments for sale to clients:</p>

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II-116	(a) design those financial instruments to meet the needs of an identified target market of end clients within the relevant category of clients;	(a) design those financial instruments to meet the needs of an identified target market of end clients within the relevant category of clients;
II-117	(b) design their strategy for the distribution of the financial instruments, including in terms of marketing communication and marketing practices, in a way that is compatible with the identified target market;	(b) design their strategy for the distribution of the financial instruments, including in terms of marketing communication and marketing practices, in a way that is compatible with the identified target market;
II-118	(c) take reasonable steps to ensure that the financial instruments are distributed to the identified target market.’;	(c) take reasonable steps to ensure that the financial instruments are distributed to the identified target market.’;
II-119	(d) paragraph 3 is replaced by the following:	(d) paragraph 3 is replaced by the following:
II-120	‘All information, addressed by the investment firm to clients or potential clients shall be fair, clear and not misleading.’;	‘All information, addressed by the investment firm to clients or potential clients shall be fair, clear and not misleading.’;
II-121	(e) paragraph 4 is amended as follows:	(e) paragraph 4 is amended as follows:
II-122	(i) the first subparagraph is amended as follows:	(i) the first subparagraph is amended as follows:
II-123	- the introductory wording is replaced by the following:	- the introductory wording is replaced by the following:
II-124	‘Appropriate information shall be provided in good time prior to the provision of any service or the conclusion of any transaction to clients or potential clients with regard to the investment firm and its services, the financial instruments and proposed investment strategies, execution	Appropriate information shall be provided in good time prior to the provision of any service to or the conclusion of any transaction to with retail clients or potential clients with regard to the investment firm and its services, the financial instruments and proposed investment strategies, execution venues and all costs and related charges. That information shall include the following:’

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	venues and all costs and related charges. That information shall include the following:’;	
II-125	- in point (a), the following points (iv) and (v) are added:	- in point (a), the following points (iv) and (v) are added:
II-126	‘(iv) where the investment firm provides independent advice to a retail client, whether the range of financial instruments that is recommended is restricted or not to well-diversified, non-complex as referred to in article 25(4)(a) and cost-efficient financial instruments only;	‘(iv) where the investment firm provides independent advice to a retail client, whether the range of financial instruments that is recommended is restricted or not to well-diversified, non-complex as referred to in article 25(4)(a) and cost-efficient financial instruments only;
II-127	(v) how the recommended financial instruments take into account the diversification of the client’s portfolio;’	(v) how the recommended financial instruments take into account the diversification of the client’s portfolio;’
II-128	- points (b) and (c) are replaced by the following:	- points (b) and (c) are replaced by the following:
II-129	‘(b) the information on financial instruments and proposed investment strategies (including for diversification purpose) must include appropriate guidance on and warnings of the risks associated with investments in those instruments or in respect of particular investment strategies and whether the financial instrument is intended for retail or professional clients, taking account of the identified target market in accordance with paragraph 2;’	‘(b) the information on financial instruments and proposed investment strategies (including for diversification purpose) must include appropriate guidance on and warnings of the risks associated with investments in those instruments or in respect of particular investment strategies and whether the financial instrument is intended for retail or professional clients, taking account of the identified target market in accordance with paragraph 2;’
II-130	‘(c) the information on costs and charges as referred to in Article 24b;’;	‘(c) the information on costs and charges as referred to in Article 24b;’;
II-131	- the following point (d) is added:	- the following point (d) is added:

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II-132	‘(d) where the services are provided under the right of establishment or the freedom to provide services:	‘(d) where the services are provided under the right of establishment or the freedom to provide services:
II-133	(i) the Member State in which the head office of the investment firm and, where appropriate, the branch offering the service is/are located;	(i) the Member State in which the head office of the investment firm and, where appropriate, the branch offering the service is/are located;
II-134	(ii) the relevant national competent authority of such investment firm or where relevant, of such branch.’;	(ii) the relevant national competent authority of such investment firm or where relevant, of such branch.’;
II-135	(ii) the second, third and fourth subparagraphs are deleted;	(ii) the second, third and fourth subparagraphs are deleted;
II-136	(f) paragraph 5 is replaced by the following:	(f) paragraph 5 is replaced by the following:
II-137	‘5. The information referred to in paragraph 4 shall be provided in a comprehensible form in such a manner that clients or potential clients are reasonably able to understand the nature and risks of the investment service and of the specific type of financial instrument that is being offered and, consequently, to take investment decisions on an informed basis. Where this Directive does not require the use of a standardised format for the provision of that information, Member States may require that information to be provided in a standardised format.’;	‘5. The information referred to in paragraph 4 shall be provided in a comprehensible form in such a manner that clients or potential clients are reasonably able to understand the nature and risks of the investment service and of the specific type of financial instrument that is being offered and, consequently, to take investment decisions on an informed basis. Where this Directive does not require the use of a standardised format for the provision of that information, Member States may require that information to be provided in a standardised format.’;
II-138	(g) the following paragraphs 5b and 5c are inserted:	(g) the following paragraphs 5b and 5c are inserted:
II-139	‘5b. ESMA shall, by [2 years after the entry into force of the amending Directive], where necessary on the basis of	‘5b. ESMA shall, by [2 years after the entry into force of thi<u>s</u>e amending Directive], where necessary on the basis of prior consumer

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	prior consumer and industry testing, and after consulting EIOPA, develop, and update periodically, guidelines to assist investment firms that provide any information to retail clients in an electronic format to design such disclosures in a suitable way for the average member of the group to whom they are directed.	and industry testing, and after consulting EIOPA, develop, and update periodically, guidelines to assist investment firms that provide any information to retail clients in an electronic format to design such disclosures in a suitable way for the average member of the group to whom they are directed.
II-140	The guidelines referred to in the first subparagraph shall specify the following:	The guidelines referred to in the first subparagraph shall specify the following:
II-141	(a) the presentation and format of the disclosures in electronic format, considering the various designs and channels that investment firms may use to inform their clients or potential clients;	(a) the presentation and format of the disclosures in electronic format, considering the various designs and channels that investment firms may use to inform their clients or potential clients;
II-142	(b) necessary safeguards to ensure ease of navigability and accessibility of the information, regardless of the device used by the client;	(b) necessary safeguards to ensure ease of navigability and accessibility of the information, regardless of the device used by the client;
II-143	(c) necessary safeguards to ensure easy retrievability of the information and facilitate the storing of information by clients in a durable medium.’	(c) necessary safeguards to ensure easy retrievability of the information and facilitate the storing of information by clients in a durable medium.’
II-144	‘5c. Member States shall ensure that investment firms display appropriate warnings in information materials, including marketing communications, provided to retail clients or potential retail clients, to alert on the specific	5c. Member States shall ensure that investment firms display appropriate warnings in information materials, including marketing communications, <u>concerning particularly risky financial instruments</u> , provided to retail clients or potential retail clients, to

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	risks of potential losses carried by particularly risky financial instruments.	alert on <u>highlight</u> the specific risks of potential losses carried by associated with such particularly risky financial instruments.
II-145	ESMA shall, by [18 months after the entry into force of the amending Directive], develop, and update periodically, guidelines on the concept of particularly risky financial instruments taking due account of the specificities of the different types of instruments.	ESMA, shall, by [18 months after the entry into force of the amending Directive], <u>develop draft regulatory technical standards to further specify,</u> and update periodically, guidelines on the concept of particularly risky financial instruments <u>and, after conducting consumer testing, the format and content of the risk warnings mentioned in the previous subparagraph,</u> taking due account of the specificities of the different types of <u>financial</u> instruments <u>The specificities of the financial instruments may, in particular, relate to specific market risks, credit risks and liquidity risks.</u> <u>The format and content of the risk warnings shall take into account the different types of communication media.</u>
II-146	ESMA shall develop draft regulatory technical standards to further specify the format and content of such risk warnings, taking due account of the specificities of the different types of financial instruments and types of communications.	ESMA shall develop draft regulatory technical standards to shall should also further specify the format and content of such risk warnings, taking due account of the specificities of the different types of financial instruments and types of communications.

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II-147	ESMA shall submit those draft regulatory technical standards to the Commission by [OJ: insert date 18 months after the date of entry into force].	ESMA shall submit those draft regulatory technical standards to the Commission by [OJ: insert date 18 months after the date of entry into force].
II-148	Power is delegated to the Commission to adopt the regulatory technical standards referred to in the third subparagraph in accordance with Article 10 of Regulation (EU) No 1095/2010.	Power is delegated to the Commission to adopt those regulatory technical standards in accordance with Article 10 of Regulation (EU) No 1095/2010.
II-149	ESMA shall monitor the consistent application of risk warnings throughout the Union. In case of concerns regarding the use, or absence of use or supervision of the use of such risk warnings in Member States, that may have a material impact on the investor protection, ESMA, after having consulted the competent authorities concerned, may impose the use of risk warnings by investment firms.’;	ESMA shall monitor the consistent application of risk warnings throughout the Union. In case of concerns regarding the use, or <u>the</u> absence of use or <u>the</u> supervision of the use of such risk warnings in one or more Member States, that may have a material impact on the investor protection, ESMA, after having consulted the competent authorities concerned, may impose the use of risk warnings by investment firms <u>issue a recommendation addressed to the relevant competent authorities, to impose on investment firms the use of risk warnings for specific financial instruments.</u> ’;
II-149a		<u>(ga) The following subparagraph is added in paragraph 7:</u>
II-149b		<u>“The first subparagraph shall not apply to minor non-monetary benefits of a total value below EUR 100 per annum per third party or of a scale and nature such that they could not be judged to impair compliance with the investment firm’s duty to act in the</u>

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		<u>best interest of the client, provided that they have been clearly disclosed to the client.”;</u>
II-150	(h) the following paragraph 7a is inserted:	(h) the following paragraph 7a is inserted:
II-151	‘7a. When providing investment advice to retail clients on an independent basis, the investment firm may limit the assessment in relation to the type of financial instruments mentioned in paragraph 7, point (a), to well-diversified, cost-efficient and non-complex financial instruments as referred to in Article 25(4)(a). Before accepting such service, the retail client shall be duly informed about the possibility and conditions to get access to standard independent investment advice and the associated benefits and constraints.’;	‘7a. When providing investment advice to retail clients on an independent basis, the investment firm may limit the assessment in relation to the type of financial instruments mentioned in paragraph 7, point (a), to well-diversified, cost-efficient and non-complex financial instruments as referred to in Article 25(4)(a). Before accepting such service, the retail client shall be duly informed about the possibility and conditions to get access to standard independent investment advice and the associated benefits and constraints.’;
II-152	(i) paragraphs 8, 9 and 9a are deleted;	(i) paragraphs 8, and 9 and 9a are deleted;
II-152a		<u>(i)(a) paragraph 12 is replaced by the following:</u>
II-152b		‘12. Member States may, in exceptional cases, impose additional requirements on investment firms in respect of the matters covered by this Article and Articles 24b, and 24c and 24d . Such requirements must be objectively justified and proportionate so as to address specific risks to investor protection or to market integrity which are of particular importance in the circumstances of the market structure of that Member State.

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		<p>Member States shall notify the Commission of any requirement which they intend to impose in accordance with this paragraph without undue delay and at least two months before the date appointed for that on <u>which such</u> requirement to come will enter into force. The notification shall include a justification for that the requirement. Any such additional requirements shall not restrict or otherwise affect the rights of investment firms under Articles 34 and 35 of this Directive.’;</p>
II-153	(j) in paragraph 13, the first subparagraph is amended as follows:	(j) in paragraph 13, the first subparagraph is amended as follows:
II-154	(i) the introductory wording is replaced by the following:	(i) the introductory wording is replaced by the following:
II-155	‘The Commission shall be empowered to adopt delegated acts in accordance with Article 89 to ensure that investment firms comply with the principles set out in this Article, Article 24a and Article 24b when providing investment or ancillary services to their clients, including:’;	‘The Commission shall be empowered to adopt delegated acts in accordance with Article 89 to ensure that investment firms comply with the principles set out in this Article, Article 24a and Article 24b when providing investment or ancillary services to their clients, including:’;
II-156	(ii) point (d) is replaced by the following:	(ii) point (d) is replaced by the following:
II-157	‘(d) the criteria to assess compliance of firms providing investment advice to retail clients, notably those receiving inducement, with the obligation to act in the best interest of their clients as set out in paragraphs 1 and 1a.’;	‘(d) the criteria to assess compliance of firms providing investment advice to retail clients, notably those receiving inducement, with the obligation to act in the best interest of their clients as set out in paragraphs 1 and 1a.’;

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II-158	(13) the following Articles 24a, 24b, 24c and 24d are inserted:	(13) the following Articles 24a, 24b, 24c and 24d are inserted:
II-159	<i>'Article 24a</i>	<i>'Article 24a</i>
II-160	Inducements	Inducements
II-161	1. Member States shall ensure that investment firms, when providing portfolio management, do not pay or receive any fee or commission, or provide or are provided with any non-monetary benefit, in connection with the provision of such service, to or by any party except the client or a person on behalf of the client.	1. Member States shall ensure that investment firms, when providing portfolio management, do not pay or receive accept and retain any inducement fee or commission, or provide or are provided with any non-monetary benefit , in connection with relation to the provision of such service, to or by any party except the client or a person on behalf of the client.
II-162	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.	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. <u>Member States shall ensure that investment firms paying or receiving inducements comply with the following overarching principles:</u>

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		<p><u>(a) Inducements do not provide an incentive to the investment firm to offer or recommend a particular financial instrument or service to the client;</u></p> <p><u>(b) The level of inducements paid or accepted and retained is proportional to the value of the financial instrument and the level of service provided to the relevant client;</u></p> <p><u>(c) Inducements paid to or accepted and retained by entities belonging to the same group are treated in the same way as inducements paid to or accepted and retained from other entities;</u></p> <p><u>(d) Inducements accepted and retained do not directly benefit the recipient firm, its shareholders or employees without tangible benefit to the client.</u></p> <p><u>Investment firms shall explain in their inducements policy or procedures how they comply with the overarching principles.</u></p>
II-163	<p>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.</p>	<p>3. <u>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.</u></p> <p>Where the investment firm is not prohibited from <u>paying or accepting and retaining inducements</u> getting or paying fees or benefits, from or to a third party, in <u>relation to connection with</u> services provided to its clients, it shall ensure that the reception or payment of such <u>inducements</u> fees or benefits does not impair compliance with the</p>

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		<p>investment firm’s duty to act honestly, fairly and professionally in accordance with the best interest of its clients.</p> <p><u>Investment firms shall be considered not to comply with their duty to act honestly, fairly and professionally in accordance with the best interest of their clients if their inducements or inducements schemes do not meet at least the following criteria, where applicable:</u></p>
II-163a		<p><u>(a) the inducement takes into account qualitative criteria, such as compliance with applicable regulations;</u></p>
II-163b		<p><u>(b) the inducement is designed to enhance the quality of the relevant service to the client;</u></p>
II-163c		<p><u>(c) the investment firm can demonstrate that, where linked to a financial instrument, the inducement was taken into account in the context of the product governance requirements when assessing the cost structure of the financial instrument;</u></p>
II-163d		<p><u>(d) an appropriate mechanism exists for reclaiming the inducement in nominal value in case the interests of the clients have been harmed as a result of non-compliance of the investment firm with investor protection requirements set forth in this Directive;</u></p>

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II-163e		<u>(e) the inducement does not contain any form of variable or contingent threshold or any other kind of value accelerator which is unlocked by attaining a target based on volume or value of sales;</u>
II-163f		<u>(f) the inducement is based on a clear, comprehensible and transparent calculation method;</u>
II-163g		<u>(g) the inducement can be identified separately from other fees, commissions or non-monetary benefits (such as fees relating to services for other clients) and payments or benefits which are necessary for the provision of services;</u>
II-163ga		<u>For the purposes of point (b), an inducement or inducement scheme shall be considered to be designed to enhance the quality of the relevant service to the client if it is justified by the provision of an on-going benefit to the relevant client in relation to an on-going inducement and it is justified by the provision of an additional or higher-level service to the relevant client, proportional to the level of inducements received, such as:</u>
II-163gb		<u>(i) the provision of non-independent investment advice on and access to a wide range of suitable financial instruments including an appropriate number of instruments from third-party product providers having no close links with the investment firm;</u>
II-163gc		<u>(ii) the provision of non-independent investment advice combined with either: an offer to the client, at least on an annual basis, to</u>

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		<p><u>assess the continuing suitability of the financial instruments in which the client has invested; or with another on-going service that is likely to be of value to the client such as advice about the suggested optimal asset allocation of the client; or</u></p>
II-163gd		<p><u>(iii) the provision of access, at a competitive price, to a wide range of financial instruments that are likely to meet the needs of the client, including an appropriate number of instruments from third-party product providers having no close links with the investment firm, together with either the provision of added-value tools, such as objective information tools helping the relevant client to take investment decisions or enabling the relevant client to monitor, model and adjust the range of financial instruments in which they have invested, or providing periodic reports of the performance and costs and charges associated with the financial instruments.</u></p>
II-163h		<p><u>Investment firms shall must fulfil the requirements set out above on an ongoing basis as long as they continue to pay or accept and retain the inducement.</u></p>
II-164	<p>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,</p>	<p>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</p>

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	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.	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. <u>Investment firms shall keep an internal list of all inducements paid or accepted and retained in relation to the provision of investment services or ancillary services and keep records of the inducements test performed in accordance with paragraph 3.</u>
II-165	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.	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.
II-166	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.	5. Paragraphs 1, 2 <u>and 3</u> shall not apply to the minor non-monetary benefits of a total value below EUR 100 per annum <u>per third party</u> or of a scale and nature such that they could not be judged to impair compliance with the investment firm's duty to act in the best interest of the client, provided that they have been clearly disclosed to the client.
II-167	6. Member States shall ensure that the provision of research by third parties to investment firms providing portfolio management or other investment or ancillary services to clients is to be regarded as fulfilling the obligations under Article 24(1) if:	6. Member States shall ensure that the provision of research by third parties to investment firms providing portfolio management or other investment or ancillary services to clients is to be regarded as fulfilling the obligations under Article 24(1) if:

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II-168	(a) before the execution or research services have been provided, an agreement has been entered into between the investment firm and the research provider, identifying the part of any combined charges or joint payments for execution services and research that is attributable to research;	(a) — before the execution or research services have been provided, an agreement has been entered into between the investment firm and the research provider, identifying the part of any combined charges or joint payments for execution services and research that is attributable to research;
II-169	(b) the investment firm informs its clients about the joint payments for execution services and research made to the third-party providers of research; and	(b) — the investment firm informs its clients about the joint payments for execution services and research made to the third-party providers of research; and
II-170	(c) the research for which the combined charges or the joint payment is made concerns issuers whose market capitalisation for the period of 36 months preceding the provision of the research did not exceed EUR 10 billion, as expressed by end-year quotes for the years when they are or were listed or by the own-capital for the financial years when they are or were not listed.	(c) — the research for which the combined charges or the joint payment is made concerns issuers whose market capitalisation for the period of 36 months preceding the provision of the research did not exceed EUR 10 billion, as expressed by end-year quotes for the years when they are or were listed or by the own-capital for the financial years when they are or were not listed.
II-171	For the purpose of this Article, research shall be understood as covering research material or services concerning one or several financial instruments or other assets, or the issuers or potential issuers of financial instruments, or as covering research material or services closely related to a specific industry or market such that it informs views on financial	For the purpose of this Article, research shall be understood as covering research material or services concerning one or several financial instruments or other assets, or the issuers or potential issuers of financial instruments, or as covering research material or services closely related to a specific industry or market such that

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	instruments, assets or issuers within that industry or market.	it informs views on financial instruments, assets or issuers within that industry or market.
II-172	Research shall also comprise material or services that explicitly or implicitly recommend or suggest an investment strategy and provide a substantiated opinion as to the present or future value or price of financial instruments or assets, or otherwise contain analysis and original insights and reach conclusions based on new or existing information that could be used to inform an investment strategy and be relevant and capable of adding value to the investment firm’s decisions on behalf of clients being charged for that research.	Research shall also comprise material or services that explicitly or implicitly recommend or suggest an investment strategy and provide a substantiated opinion as to the present or future value or price of financial instruments or assets, or otherwise contain analysis and original insights and reach conclusions based on new or existing information that could be used to inform an investment strategy and be relevant and capable of adding value to the investment firm’s decisions on behalf of clients being charged for that research.
II-173	7. Where the investment firm is not prohibited from getting or paying fees or benefits, from or to a third-party, in connection with services provided to its clients, it shall ensure that the reception or payment of such fees or benefits does not impair compliance with the investment firm’s duty to act honestly, fairly and professionally in accordance with the best interest of its clients. The existence, nature and amount of such third-party payment(s) shall be disclosed in accordance with Article 24b(1).	7. Where the investment firm is not prohibited from receiving getting or paying fees or benefits, from or to a third-party, in relation to connection with services provided to its clients, it shall ensure that the reception or payment of such fees or benefits does not impair compliance with the investment firm’s duty to act honestly, fairly and professionally in accordance with the best interest of its clients. The existence, nature and amount of such third-party payments inducements shall be disclosed separately from other costs and charges in accordance with Article 24b(1).

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II-174	Where applicable, the investment firm shall also inform the client on mechanisms for transferring to the client the fee, commission, monetary or non-monetary benefit received in relation to the provision of the investment or ancillary service.	Where applicable, the investment firm shall also inform the client on mechanisms for transferring to the client the <u>inducement fee, commission, monetary or non-monetary benefit</u> received in relation to the provision of the investment or ancillary service.
II-175	The payment or benefit which enables or is necessary for the provision of investment services, such as custody costs, settlement and exchange fees, regulatory levies or legal fees, and which by its nature cannot give rise to conflicts with the investment firm’s duties to act honestly, fairly and professionally in accordance with the best interests of its clients, is not subject to the requirements set out in the first subparagraph.	The payment or benefit which enables or is necessary for the provision of investment services, such as custody costs, settlement and exchange fees, regulatory levies or legal fees, and which by its nature cannot give rise to conflicts with the investment firm’s duties to act honestly, fairly and professionally in accordance with the best interests of its clients, is not subject to the requirements <u>set out in the paragraphs 2 and 3 first subparagraph.</u>
II-175a		<u>7a. Member States shall ensure that an investment firm that provides reception and transmission of orders or execution of orders to or on behalf of retail clients in relation to financial instruments through digital means without advice, using a filtering tool to make it possible for retail clients to select financial instruments on the basis of various criteria, includes an option that allows its clients to easily identify financial instruments for which the investment firm does not pay or receive inducements. If the</u>

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		<u>investment firm does not offer such products to retail clients, it shall prominently state this in the filtering tool.</u>
II-176	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.	8. Three Five years after the date of entry into force of Directive (EU) [OP Please introduce the number of the amending Directive] and after having consulted ESMA and EIOPA, the Commission shall assess the effects of third-party payments inducements on retail clients 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 this Directive (EU) [Number of the amending Directive] on retail clients it. If necessary to prevent consumer detriment, the Commission shall propose legislative amendments to the European Parliament and the Council.
II-176a		<u>9. Without prejudice to paragraph 1 of this Article and Article 24(7), Member States may prohibit entirely or restrict to certain financial instruments or types of financial instruments or investment services the payment or acceptance by investment firms of inducements. Member States may additionally impose stricter requirements in respect of the matters covered by paragraph 3 of this Article. Such stricter requirements have to be complied with by all investment firms active on the territory of the</u>

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		<u>Member State imposing stricter requirements, including those operating under the freedom to provide services or the freedom of establishment. Member States shall notify the Commission and ESMA without undue delay after their adoption of any prohibition or restriction.</u>
II-177	Article 24b	Article 24b
II-178	Information on costs, associated charges and third-party payments	Information on costs, associated charges and third-party payments <u>inducements</u>
II-179	1. Member States shall ensure that investment firms provide clients or potential clients in good time prior to the provision of any investment services and ancillary services, and in good time prior to the conclusion of any transaction on financial instruments with information, in the required format, on all costs, associated charges and third-party payments related to those services, financial instruments or transactions.	Member States shall ensure that investment firms provide clients or potential clients in good time prior to the provision of any investment services and or ancillary services, and in good time prior to the conclusion of any transaction on financial instruments with information, in the required format, on all costs, associated charges and third-party payments <u>inducements</u> related to those services, financial instruments or transactions.
II-180	The information on those costs, associated charges and third-party payments shall include all of the following:	The information on those costs, associated charges and third-party payments <u>inducements</u> shall include all of the following:
II-181	(a) all explicit and implicit, and associated charges, charged by the investment firms or other parties where the client has been directed to such other parties, for the	(a) all explicit and implicit, and associated charges, charged by the investment firms or other parties where the client has been directed to such other parties, for the investment services and/or ancillary services provided to the client or potential client;

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	investment services and/or ancillary services provided to the client or potential client;	
II-182	(b) all costs and associated charges associated with the manufacturing and managing of any financial instrument recommended or marketed to the client or potential client;	(b) all costs and associated charges associated with the manufacturing and managing of any financial instrument recommended or marketed to the client or potential client;
II-183	(c) any third-party payments paid or received by the firm in connection with the investment services provided to the client or potential client;	(c) any third-party payments inducements paid or received accepted and retained by the firm in connection with relation to the investment or ancillary services provided to the client or potential client;
II-184	(d) how the client may pay for them.	(d) how the client may pay for them.
II-185	Member States shall ensure that investment firms aggregate the information on all costs and associated charges to enable the client to understand the overall cost, of the financial instruments and the cumulative effect on return of the investment. Member States shall ensure that investment firms express the overall cost in monetary terms and percentages calculated up to the maturity date of the financial instrument or for financial instruments without a maturity date, the holding period recommended by the investment firm, or in the absence thereof, holding periods of 1, 3 and 5 years. Where the client so requests, investment firms shall provide an itemised breakdown.	Member States shall ensure that investment firms aggregate the information on all costs, and associated charges and third-party payments inducements as mentioned under sub-paragraphs a, b and c to enable the retail client to understand the overall cost linked to, of the financial instruments, investment services and inducements and their cumulative effect on return of on the investment. Member States shall ensure that investment firms express the overall cost in monetary terms and percentages calculated up to the maturity date of the financial instrument or for financial instruments without a maturity date, the holding period recommended by the investment firm, or in the absence thereof, holding periods of 1, 3 and 5 years. Where the client so requests, investment firms shall provide an itemised breakdown.

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II-185a		<u>Investment firms shall inform their retail clients or potential retail clients—that they have the option of receiving an itemised breakdown of the cost data.</u>
II-186	<p>The third-party payments paid or received by the investment firm in connection with the investment service provided to the client shall be itemised separately. The investment firm shall disclose the cumulative impact of such third-party payments, including any recurring third-party payments, on the net return over the holding period as mentioned in the preceding subparagraph. The purpose of the third-party payments and their impact on the net return shall be explained in a standardised way and in a comprehensible language for an average retail client.</p>	<p>The third-party payments inducements paid or received <u>accepted and retained</u> by the investment firm in relation to connection with the investment service provided to the client shall be itemised separately. The investment firm shall disclose the cumulative impact of such third-party payments inducements, including any recurring third-party payments inducements, on the net return over the holding period as mentioned in the preceding subparagraph. The purpose of the third-party payments inducements and their impact on the net return shall be explained in a standardised way and in a comprehensible language for an average retail client <u>using language that is plain and intelligible for an average retail client.</u></p> <p><u>When paying or accepting and retaining inducements in relation to the investment service provided to the client, the investment firm shall explicitly inform the client on the existence of such inducements.</u></p>
II-187	<p>Where the amount of any costs, associated charges or third-party payments cannot be ascertained prior to the provision of the relevant investment or ancillary service, the method of</p>	<p>Where the amount of any costs, associated charges or third-party payments inducements cannot be ascertained prior to the provision of the relevant investment or ancillary service, the method of calculating</p>

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	calculating the amount shall be clearly disclosed to the client in a manner that is comprehensible, accurate and understandable for an average retail client.	the amount shall be clearly disclosed to the client in a manner that is comprehensible, accurate and understandable for an average retail client.
II-188	Investment firms providing investment services to professional clients shall have the right to agree to a limited application of the detailed requirements set out in this paragraph, with such clients. Investment firms shall not be allowed to agree such limitations when the services of investment advice or portfolio management are provided or when, irrespective of the investment service provided, the financial instruments concerned embed a derivative.	Investment firms providing investment services to professional clients shall have the right to agree to a limited application of the detailed requirements set out in this paragraph, with such clients. Investment firms shall not be allowed to agree such limitations when the services of investment advice or portfolio management are provided or when, irrespective of the investment service provided, the financial instruments concerned embed a derivative.
II-189	Investment firms providing investment services to eligible counterparties shall have the right to agree to a limited application of the detailed requirements set out in this paragraph, except when, irrespective of the investment service provided, the financial instruments concerned embed a derivative and the eligible counterparty intends to offer them to its clients.	Investment firms providing investment services to eligible counterparties shall have the right to agree to a limited application of the detailed requirements set out in this paragraph, except 6 when, irrespective of the investment service provided, the financial instruments concerned embed a derivative and the eligible counterparty intends to offer them to its clients.
II-190	2. After having conducted consumer and industry testing and after having consulted EIOPA, ESMA shall develop draft regulatory technical standards to specify all of the following:	2. After having conducted consumer and industry testing and after having consulted EIOPA, ESMA shall develop draft regulatory technical standards to specify all of the following:

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II-191	(a) the relevant format for the provision of any costs, associated charges and third-party payments, by the investment firm to its retail client or potential retail client, prior to the conclusion of any transaction on financial instruments;	(a) the relevant format for the provision of any costs, associated charges and third-party payments <u>inducements</u> , by the investment firm to its retail client or potential retail client, prior to <u>the provision of any investment services, ancillary services and</u> the conclusion of any transaction on-in financial instruments.
II-192	(b) the standard terminology and related explanations to be used by investment firms for the disclosure and calculation of any costs, associated charges and third-party payments charged directly or indirectly by firms to the client or potential client in connection with the provision of any investment service(s) or ancillary service(s) and the manufacturing and managing of financial instruments to be recommended or marketed to the client or potential client. Explanations related to those costs, associated charges and third-party payments and their impact on the expected returns, shall ensure that they are likely to be understood by any average retail client without specific knowledge on investments in financial instruments.	(b) the standard terminology, <u>calculation method</u> and related explanations to be used by investment firms for the disclosure and calculation of any costs, <u>including implicit costs</u> , associated charges and third-party payments <u>inducements</u> charged directly or indirectly by firms to the client or potential client in connection with <u>relation to</u> the provision of any investment service(s) or ancillary service(s) and the manufacturing and managing of financial instruments to be recommended or marketed to the client or potential client. Explanations related to those costs, associated charges and third-party payments <u>inducements</u> and their impact on the expected returns, shall ensure that they are likely to be understood by any average retail client without specific knowledge on investments in financial instruments.
II-193	ESMA shall submit those draft regulatory technical standards to the Commission by [OJ: 18 months after the date of entry into force].	ESMA shall submit those draft regulatory technical standards to the Commission by [OJ: 18 months after the date of entry into force].

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II-194	Power is delegated to the Commission to adopt those regulatory technical standards in accordance with Article 10 of Regulation. (EU) No 1095/2010.	Power is delegated to the Commission to adopt those regulatory technical standards in accordance with Article 10 of Regulation. (EU) No 1095/2010.
II-195	3. Where the agreement to buy or sell a financial instrument is concluded using a means of distance communication which prevents the prior delivery of the information on costs and charges, the investment firm may provide the information on costs and charges either in electronic format or on paper, where requested by a retail client, without undue delay after the conclusion of the transaction, provided that the following conditions are met:	3. Where the agreement to buy or sell a financial instrument is concluded using a means of distance communication which prevents the prior delivery of the information on costs and charges, the investment firm may provide the information on costs and charges either in electronic format or on paper, where requested by a retail client, without undue delay after the conclusion of the transaction, provided that the following conditions are met:
II-196	(a) the client has consented to receiving the information without undue delay after the conclusion of the transaction;	(a) the client has consented to receiving the information without undue delay after the conclusion of the transaction;
II-197	(b) the investment firm has given the client the option of delaying the conclusion of the transaction until the client has received the information.	(b) the investment firm has given the client the option of delaying the conclusion of the transaction until the client has received the information.
II-198	The investment firm shall be required to give the client the option of receiving the information on costs and charges over the phone prior to the conclusion of the transaction.	The investment firm shall be required to give the client the option of receiving the information on costs and charges over the phone prior to the conclusion of the transaction.
II-199	4. Without prejudice to other requirements associated to portfolio management services, when providing any	4. Without prejudice to other requirements associated to portfolio management services, when providing any investment service to a

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	investment service to a retail client together with a service of safekeeping and administration of financial instruments for the account of the retail client, the investment firm shall, in connection with those instruments, provide its retail client with an annual statement with the following information expressed in monetary terms and percentages:	retail client together with a service of safekeeping and administration of financial instruments for the account of the retail client, the investment firm shall, in connection with <u>relation to</u> those instruments, provide its retail client with an annual statement with the following information expressed in monetary terms and percentages:
II-200	(a) all implicit and explicit costs and associated charges paid or borne annually by the retail client for the total portfolio, with a split between:	(a) all implicit and explicit costs and associated charges paid or borne annually by the retail client for the total portfolio, with a split between:
II-201	(i) the costs associated with the provision of any investment or ancillary service, as applicable, by the investment firm to the retail client;	(i) the costs associated with the provision of any investment or ancillary service, as applicable, by the investment firm to the retail client;
II-202	(ii) the costs associated to the manufacturing and managing of the financial instruments held by the retail client;	(ii) the costs associated to the manufacturing and managing of the financial instruments held by the retail client;
II-203	(iii) if any, the payments received by the firm from, or paid to, third parties in connection with the investment services provided to the retail client;	(iii) if any, the payments received by the firm from, or paid to, third parties in connection with <u>relation to</u> the investment <u>or ancillary</u> services provided to the retail client;
II-204	(b) the total amount of dividends, interest and other payments received annually by the retail client for the total portfolio;	(b) the total amount of dividends, interest and other payments received annually by the retail client for the total portfolio;

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II-205	(c) the total taxes, including any stamp duty, transactions tax, withholding tax and any other taxes where levied by the investment firm, borne by the retail client for the total portfolio;	(c) the total taxes, including any stamp duty, transactions tax, withholding tax and any other taxes where levied by the investment firm, borne by the retail client for the total portfolio;
II-206	(d) the annual market value, or estimated value, when the market value is not available, of each financial instrument included in the retail client's portfolio;	(d) the annual market value, or estimated value, when the market value is not available, of each financial instrument included in the retail client's portfolio;
II-207	(e) the net annual performance of the portfolio of the retail client and the annual performance of each of the financial instruments included in this portfolio.	(e) the net annual performance, <u>at the end of the reporting period,</u> of the <u>whole</u> portfolio of the retail client <u>holds with the investment firm during the reporting period</u> and the <u>net</u> annual performance of each of the financial instruments included in this portfolio <u>at the end of the reporting period.</u>
II-208	Where providing an investment service without a service of safekeeping and administration of financial instruments for the account of the retail client, the investment firm shall provide an annual statement including applicable information on point (a).	Where providing an investment service without a service of safekeeping and administration of financial instruments for the account of the retail client, the investment firm shall provide an annual statement including applicable information on point (a). <u>However, where the investment firm provides only reception and transmission of orders or execution of orders on behalf of clients, the information required under paragraph 4(a)(ii) may be limited to the information to which the firm has access, after having attempted to obtain this information on a best-effort.</u>

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II-209	Where providing exclusively a service of safekeeping and administration of financial instruments for the account of the retail client, the investment firm shall provide an annual statement including applicable information on point (a), (b), (c) and (d).	Where providing exclusively a service of safekeeping and administration of financial instruments for the account of the retail client, the investment firm shall provide an annual statement including applicable information on points (a) <u>(i) and (iii)</u> , (b), (c) and (d).
II-209a		<u>The inducements paid or accepted and retained by the investment firm in relation to the investment service provided to the client shall be itemised separately. The investment firm shall disclose the cumulative impact of such inducements, including any recurring inducements, on the net return over the period covered by the annual statement and on a cumulative basis since the acquisition of the financial instruments in the portfolio by the retail client.</u>
II-210	Upon its request, the retail client shall be entitled to receive each year a detailed breakdown of the information referred to under point (a) to (c) above per financial instrument owned during the relevant period as well as for each tax borne by the retail client.	Upon its request, the retail client shall be entitled to receive each year a detailed breakdown of the information referred to under point (a) to (c) above, <u>including in relation to inducements</u> , per financial instrument owned during the relevant period as well as for each tax borne by the retail client. <u>Investment firms shall inform their clients of their right to request the provision of such detailed breakdowns.</u>
II-211	The annual statement on costs and performance for retail clients shall be presented in an easy-to-understand way for an average retail client. Information on costs, associated	The annual statement on costs and performance for retail clients shall be presented in an easy-to-understand way for an average retail client. <u>It shall be provided to the client as soon as possible and no later</u>

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	charges and any third-party payments shall be presented using the terminology and explanations as described under paragraph 2 of this Article.	<p><u>than [4] months after the end of the reporting period, based on the calendar year or the fiscal year.</u></p> <p>Information on costs, associated charges and any third-party payments <u>inducements</u> shall be presented using the terminology, and explanations, <u>format and calculation method specified in the regulatory technical standards referred to as described under in paragraph 2 of this Article for the costs, associated charges and third-party payments prior to the provision of any investment services, ancillary services and the conclusion of any transaction in financial instruments.</u></p>
II-212	5. The annual statement referred to in paragraph 4 shall not be provided where the investment firm provides its retail clients with access to an online system, which qualifies as a durable medium, where up-to-date statements with the relevant disclosure per instrument as required under paragraph 4 can be easily accessed by the retail client and the firm has evidence that the client has accessed those statements at least once per year.	5. The annual statement referred to in paragraph 4 shall not be provided where the investment firm provides its retail clients with access to an online system, which qualifies as a durable medium, where up-to-date statements with the relevant disclosure per instrument as required under paragraph 4 can be easily accessed by the retail client and the firm has evidence that the client has accessed those statements at least once per year.
II-213	Article 24c	Article 24c
II-214	Marketing Communications and Practices	Marketing communications and practices

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II-215	1. Member States shall ensure that marketing communications are clearly identifiable as such and clearly identify the investment firms responsible for their content and distribution, regardless of whether the communication is made directly or indirectly by the investment firm.	1. Member States shall ensure that marketing communications are clearly identifiable as such and clearly identify the investment firms responsible for their content and distribution, regardless of whether the communication is made directly or indirectly by the investment firm.
II-216	2. Member States shall ensure that marketing communications are developed, designed and provided in a manner that is fair, clear, not misleading, balanced in terms of presentation of benefits and risks, and appropriate in terms of content and distribution channels for the target audience and where related to a specific financial instrument to the target market identified pursuant to Article 24(2).	2. Member States shall ensure that marketing communications are developed, designed and provided in a manner that is fair, clear, not misleading, balanced in terms of presentation of benefits and risks, and appropriate in terms of content and distribution channels for the target audience and where related to a specific financial instrument to the target market identified pursuant to Article 24(2).
II-217	All marketing communications shall present in a prominent and concise way, the essential characteristics of the financial instruments or the investment services and related ancillary services to which they refer.	All marketing communications shall present in a prominent and concise way, the essential characteristics of the financial instruments or the investment services and related ancillary services to which they refer.
II-218	The presentation of the essential characteristics of the financial instruments and services included in the marketing communications provided or made accessible to retail or potential retail clients, shall ensure that they can easily	The presentation of the essential characteristics of the financial instruments and services included in the marketing communications provided or made accessible to retail or potential retail clients, shall ensure that they can easily understand the key features of the financial instruments or services as well as the main risks associated with them.

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	understand the key features of the financial instruments or services as well as the main risks associated with them.	
II-219	3. Member States shall ensure that marketing practices are developed and used in a manner that is fair and not misleading, and shall be appropriate for the target audience.	3. Member States shall ensure that marketing practices are developed and used in a manner that is fair, clear and not misleading, and shall be appropriate for the target audience <u>based on the target market assessment and the distribution strategy of the product in the context of the product oversight and governance requirements.</u>
II-220	4. Where a manufacturer of a financial instrument prepares and provides a marketing communication to be used by the distributor, the manufacturer shall be responsible for the content of such marketing communication and its update. The distributor shall be responsible for the use of this marketing communication and shall ensure that it is used for the identified target market only and in line with the distribution strategy identified for the target market.	4. Where a manufacturer of a financial instrument prepares and provides a marketing communication to be used by the 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.
II-221	Where an investment firm offers or recommends financial instruments which it does not manufacture, organises its own marketing communication, it shall be fully responsible for its appropriate content, update and use, in line with the identified target market and in particular in line with the identified client categorisation.	Where an investment firm 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.

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II-222	5. Member States shall ensure, investment firms make annual reports to the firm's management body on the use of marketing communications and strategies aimed at marketing practices, the compliance with relevant obligations on marketing communications and practices under this Directive and on any signalled irregularities and proposed solutions.	5. Member States shall ensure, investment firms make annual reports to the firm's management body on the use of marketing communications and strategies aimed at marketing practices, the compliance with relevant obligations on marketing communications and practices under this Directive and on any signalled irregularities and proposed solutions.
II-223	6. Member States shall ensure that national competent authorities can take timely and effective action in relation to any marketing communication or marketing practice that do not comply with requirements under paragraphs 1 to 3.	6. Member States shall ensure that national competent authorities can take timely and effective action in relation to any marketing communication or marketing practice that do not comply with requirements under paragraphs 1 to 3.
II-224	7. Records to be kept by the investment firm according to Article 16(6) shall include all marketing communications provided or made accessible to retail clients or potential retail clients, by the investment firm or any third party remunerated or incentivised through non-monetary compensation by the investment firm.	7. Records to be kept by the investment firm according to Article 16(6) shall include all marketing communications provided or made accessible to retail clients or potential retail clients, by the investment firm or any third party remunerated or incentivised through nonmonetary compensation by the investment firm.
II-225	Such records shall be kept for a period of five years and, where requested by the competent authority, for a period of up to seven years. Those records shall be retrievable by the investment firm upon request of the competent authority.	Such records shall be kept for a period of five years and, where requested by the competent authority, for a period of up to seven years. Those records shall be retrievable by the investment firm upon request of the competent authority.

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II-226	The records referred to in the first subparagraph shall contain all of the following:	The records referred to in the first subparagraph shall contain all of the following:
II-227	(a) the content of the marketing communication;	(a) the content of the marketing communication;
II-228	(b) details about the medium used for the marketing communication;	(b) details about the medium used for the marketing communication;
II-229	(c) the date and duration of the marketing communication including relevant starting and end times;	(c) the date and duration of the marketing communication including relevant starting and end times;
II-230	(d) the targeted retail client segments or profiling determinants;	(d) the targeted retail client segments or profiling determinants;
II-231	(e) the Member States where the marketing communication is made available;	(e) the Member States where the marketing communication is made available;
II-232	(f) the identity of any third party involved in the dissemination of the marketing communication.	(f) the identity of any third party involved in the dissemination of the marketing communication.
II-233	Records of such identity referred to in point (f) shall contain the legal names, registered addresses, contact details and where relevant social media handle of the natural or legal persons concerned.	Records of such identity referred to in point (f) shall contain the legal names, registered addresses, contact details and where relevant social media handle of the natural or legal persons concerned.
II-234	8. The Commission is empowered to adopt a delegated act in accordance with Article 89 to supplement this Directive by specifying the following:	8. The Commission is empowered to adopt a delegated act in accordance with Article 89 to supplement this Directive by specifying the following:
II-235	(a) the essential characteristics of financial instrument(s) or investment and ancillary service(s) to be disclosed in all	(a) the essential characteristics of financial instrument(s) or investment and ancillary service(s) to be disclosed in all marketing

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	marketing communications targeting retail clients or potential retail clients and any other relevant criteria to ensure that those essential characteristics appear in a prominent way and are easily accessible by an average retail client, regardless of the means of communication;	communications targeting retail clients or potential retail clients and any other relevant criteria to ensure that those essential characteristics appear in a prominent way and are easily accessible by an average retail client, regardless of the means of communication;
II-236	(b) the conditions with which marketing communications and marketing practices should comply in order to be fair, clear, not misleading, balanced in terms of presentation of advantages and risks, and appropriate in terms of content and distribution channels for the target audience or, where applicable, the target market.	(b) the conditions with which marketing communications and marketing practices should comply in order to be fair, clear, not misleading, balanced in terms of presentation of advantages and risks, and appropriate in terms of content and distribution channels <u>media, including character-limited media and short-form content</u> , for the target audience or, where applicable, the target market <u>based on the target market assessment and the distribution strategy of the product in the context of the product oversight and governance requirements.</u>
II-237	Article 24d	Article 24d
II-238	Professional requirements	Professional requirements
II-239	1. Member States shall require investment firms to ensure and demonstrate to competent authorities on request that natural persons giving investment advice or information about financial instruments, investment services or ancillary services to clients on behalf of the investment firm possess the necessary knowledge and competence to fulfil their	1. Member States shall require investment firms to ensure and demonstrate to competent authorities on request that natural persons giving investment advice or information about financial instruments, investment services or ancillary services to clients on behalf of the investment firm possess the necessary knowledge and competence to fulfil their obligations under Articles 24, 24a, 24b, 24c and Article 25

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	obligations under Articles 24, 24a, 24b, 24c and Article 25 and maintain and update that knowledge and competence by undertaking regular professional development and training including specific training where new financial instruments and investment services are being offered by the firm. Member States shall have in place and publish the criteria to be used for assessing effectively such knowledge and competence.	and maintain and update that knowledge and competence by undertaking regular professional development and training including specific training where new financial instruments and investment services are being offered by the firm. Member States shall have in place and publish <u>all relevant information about</u> the criteria to be used for assessing effectively such knowledge and competence.
II-240	2. For the purpose of paragraph 1, Member States shall require investment firms to ensure and demonstrate to competent authorities on request that natural persons giving investment advice to clients on behalf of the investment firm possess and maintain at least the knowledge and competence set out in Annex V and undertake at least 15 hours of professional training and development per year. Compliance with the criteria set out in Annex V as well as the yearly successful completion of the continuous professional training and development shall be proven by a certificate.	2. For the purpose of paragraph 1, Member States shall require investment firms to ensure and demonstrate to competent authorities on request that natural persons giving investment advice to clients on behalf of the investment firm, possess and maintain at least the knowledge and competence set out in Annex V and undertake at least 15 hours of professional training and development per year.
II-240a		<u>For the purpose of the first subparagraph, Member States shall have in place mechanisms, as determined and published by their national competent authority, to assess compliance by the persons</u>

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		<p><u>referred to in the first subparagraph for which they are the home Member State</u>, with the criteria set out in Annex V <u>in the form of a certificate or comparable form of evidence</u>, as well as <u>with</u> the yearly successful completion of the continuing professional training and development, <u>which</u> shall be proven by a certificate <u>or equivalent proof of completion of such training and development</u>.</p>
II-241	The Commission is empowered to amend this Directive by adopting a delegated act in accordance with Article 89, to review, where necessary, the requirements set out in Annex V.’;	The Commission is empowered to amend this Directive by adopting a delegated act in accordance with Article 89, to review, where necessary, the requirements set out in Annex V.’;
II-242	(14) Article 25 is amended as follows:	(14) Article 25 is amended as follows:
II-243	(a) paragraphs 1, 2 and 3 are replaced by the following:	(a) paragraphs 1, 2 and 3 are replaced by the following:
II-244	‘1. The investment firm shall assess the suitability or appropriateness of the relevant financial instruments(s) or investment services or transaction(s) to be recommended to, or demanded by, his or her client or potential client in good time before respectively i) the provision of the investment advice or portfolio management or ii) the execution or reception and transmission of the order. Each of these assessments shall be determined on the basis of information about the client or potential client as obtained by the	<p>‘1. The investment firm shall assess the suitability or appropriateness of the relevant financial instruments(s) or investment services or transaction(s) to be recommended to or requested demanded by, his or her <u>its retail</u> client or potential client in good time before respectively i) the provision of the investment advice or portfolio management or ii) the execution or reception and transmission of the order.</p> <p><u>The investment firm shall assess the suitability of the relevant financial instrument(s) or investment service to be recommended</u></p>

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	investment firm, in accordance with the below requirements.	<p><u>to, or requested by, its retail client or potential client in good time before the provision of the investment advice or portfolio management.</u></p> <p>Each of these assessments shall be determined<u>carried out</u> on the basis of <u>proportionate and necessary</u> information about the client or potential client as obtained by the investment firm, in accordance with the below<u>requirements set out in this Article.</u></p>
II-245	The investment firm shall ensure that the purpose of the suitability or appropriateness assessment is explained to the client or potential client before any information is requested from him or her. The clients and potential clients shall be warned of the following consequences:	The investment firm shall ensure that the purpose of the suitability or appropriateness assessment is explained to the client or potential client before <u>the information necessary for this assessment</u> any information is requested from him or her. The clients and potential clients shall be warned of the following consequences:
II-246	(a) the provision of inaccurate or incomplete information shall impact negatively the quality of the assessment to be made by the investment firm;	(a) the provision of inaccurate or incomplete information shall <u>may</u> impact negatively the quality of the assessment to be made by the investment firm;
II-247	(b) the absence of information shall prevent the firm to determine whether the service or financial instrument envisaged is suitable or appropriate for them and to proceed with the recommendation or the execution of the client's order. Such explanation and warning shall be provided in a standardised format.	(b) the absence of <u>the necessary</u> information, <u>including the provision of incomplete information,</u> shall prevents the firm to <u>from</u> determining whether the <u>investment</u> service or financial instrument envisaged is suitable or appropriate for them and, <u>in case of</u>

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		<p><u>investment advice, from to proceeding</u> with the recommendation or the execution of the client's order.</p> <p>Such explanation and warning shall be provided in a standardised format. <u>The investment firm shall keep a record of the warnings provided to its client for at least the duration of its relationship with the client.</u></p>
II-248	<p>The investment firm shall, upon request of the retail client, provide them with a report on the information collected for the purpose of the suitability or appropriateness assessment. Such report shall be presented in a standardised format.</p>	<p><u>The investment firm shall keep a record of the information collected from the retail client for the purpose of the suitability or appropriateness assessment.</u> The investment firm shall, upon request of the retail client, provide them with a report on the information collected for the purpose of the suitability or appropriateness assessment. <u>Such report shall be presented in a standardised format.</u></p>
II-249	<p>ESMA shall develop draft regulatory technical standards to determine the explanation and warning referred to in paragraph 1, second subparagraph, and the format and content of the report referred to in paragraph 1, third subparagraph.</p>	<p>ESMA shall develop draft regulatory technical standards to determine the explanation and warning referred to in paragraph 1, second subparagraph, <u>and the format and content of the report referred to in paragraph 1, third subparagraph.</u></p>
II-250	<p>ESMA shall submit the draft regulatory technical standards to the Commission by [OJ: insert date 18 months after the date of entry into force].</p>	<p>ESMA shall submit the draft regulatory technical standards to the Commission by [OJ: insert date 18 months after the date of entry into force].</p>

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II-251	<p>Power is conferred to the Commission to adopt those regulatory technical standards referred to above in the fourth subparagraph of this paragraph in accordance with Articles 10 to 14 of Regulation. (EU) No 1095/2010.</p>	<p>Power is <u>delegated conferred</u> to the Commission to adopt those regulatory technical standards <u>referred to above in the fourth subparagraph of this paragraph</u> in accordance with Articles 10 <u>to 14</u> of Regulation; (EU) No 1095/2010.</p>
II-252	<p>2. Subject to the second subparagraph, when providing investment advice or portfolio management services, the investment firm shall obtain the necessary information regarding the client or potential client’s knowledge and experience in the investment field relevant to the specific type of product or service, that client’s financial situation, including the composition of any existing portfolios, its ability to bear full or partial losses, investment needs and objectives including sustainability preferences, if any, and risk tolerance, so as to enable the investment firm to recommend to the client or potential client the investment services or financial instruments that are suitable for that person, and, in particular, are in accordance with its risk tolerance, ability to bear losses and need for portfolio diversification.</p>	<p>2. Subject to the second subparagraph, when providing investment advice or portfolio management services, the investment firm shall obtain the necessary information regarding the <u>retail client’s</u> or potential client’s knowledge and experience in the investment field relevant to the specific type of <u>financial instrument product</u> or <u>investment</u> service, thethat client’s financial situation, including, <u>to the extent possible</u>, the composition of any existing portfolios, its the <u>client’s</u> ability to bear full or partial losses, investment needs and objectives including sustainability preferences, if any, and risk tolerance, so as to enable the investment firm to recommend to the client or potential client, <u>or to undertake on the client’s behalf</u>, the investment services transactions in <u>investment services transactions in</u> financial instruments that are suitable for that clientperson, and, in particular, are in accordance with its risk tolerance, ability to bear losses and, <u>to the extent applicable</u>, need for portfolio diversification. <u>Where the client is not willing to provide information on existing portfolios held with third parties, the investment firm shall base the assessment of portfolio diversification on the information available to it.</u></p>

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II-252a		<u>Member States shall ensure that investment firms cannot consider a product to be suitable where it contains features which are not be necessary to the achievement to of the client's investment objectives and that give rise to extra costs.</u>
II-253	When providing independent investment advice to retail clients restricted to well-diversified, non-complex, and cost-efficient financial instruments, the independent firm shall be under no obligation to obtain information on the retail client or potential retail client's knowledge and experience about the considered financial instruments or investment services or on the retail client's existing portfolio composition.	When providing independent investment advice to retail clients restricted to well-diversified, non-complex, and cost-efficient financial instruments, the <u>independent investment</u> firm shall be under no obligation to obtain information on the retail client or potential retail client's knowledge and experience about the considered financial instruments or investment services or on the retail client's existing portfolio composition.
II-254	Member States shall ensure that where an investment firm provides investment advice recommending a package of services or products bundled pursuant to Article 24(11), the overall bundled package is suitable.	Member States shall ensure that where an investment firm provides investment advice recommending a package of services or products bundled pursuant to Article 24(11), the overall bundled package is suitable.
II-255	When providing either investment advice or portfolio management that involves the switching of financial instruments, investment firms shall obtain the necessary information on the client's investment and shall analyse the costs and benefits of the switching of financial instruments. When providing investment advice, investment firms shall	When providing either investment advice or portfolio management that involves the switching of financial instruments, investment firms shall obtain the necessary information on the client's investment and shall analyse the costs and benefits of the switching of financial instruments. When providing investment advice, investment firms shall inform the

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	inform the client whether or not the benefits of the switching of financial instruments are greater than the costs involved in such switching.	client whether or not the benefits of the switching of financial instruments are greater than the costs involved in such switching.
II-256	3. Member States shall ensure that investment firms, when providing investment services other than those referred to in paragraph 2, ask the client or potential client to provide information regarding their knowledge and experience in the investment field relevant to the specific type of product or service offered or demanded, and for the retail client or potential retail client, the capacity to bear full or partial losses and risks tolerance so as to enable the investment firm to assess whether the investment service(s) or financial instrument(s) envisaged is appropriate for the client.	3. Member States shall ensure that investment firms, when providing investment services other than those referred to in paragraph 2, ask the retail client or potential retail client to provide information regarding their knowledge and experience in the investment field relevant to the specific type of product or service offered or requested demanded, and for the retail client or potential retail client, the capacity to bear full or partial losses and risks tolerance and for the retail client or potential retail client, the capacity to bear full or partial losses and risks tolerance so as to enable the investment firm to assess whether the investment service(s) or financial instrument(s) envisaged are appropriate for the client.
II-257	Where a bundle of services or products is envisaged pursuant to Article 24(11), the assessment shall consider whether the overall bundled package is appropriate.	Where a bundle of services or products is envisaged pursuant to Article 24(11), the assessment shall consider whether the overall bundled package is appropriate.
II-258	Where the investment firm assesses on the basis of the information received under the first subparagraph, that the product or service is not appropriate to the client or potential client, the investment firm shall warn the client or	Where the investment firm assesses, on the basis of the information received under the first subparagraph, that the financial instrument product or investment service is not appropriate to the retail client or potential retail client, the investment firm shall warn the retail client or potential retail client. That warning shall be provided in a

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	potential client. That warning shall be provided in a standardised format and shall be recorded.	standardised format and shall be recorded. <u>The investment firm shall keep a record of such warnings.</u>
II-259	The investment firm shall not proceed with a transaction subject to a warning indicating that the product of service is not appropriate, unless the client asks to proceed with it despite such warning. Both demand of the client and acceptance of the firm shall be recorded	The investment firm shall not proceed with a transaction subject to a warning indicating that the <u>financial instrument product or investment</u> service is not appropriate <u>or a warning indicating that the investment firm cannot assess the appropriateness of the financial instrument product or investment service,</u> unless the <u>retail</u> client asks to proceed with it despite such warning. <u>The investment firm shall keep a record of Bboth the requestdemand</u> of the <u>retail</u> client and <u>the</u> acceptance of the firm shall be recorded.
II-260	ESMA shall develop draft regulatory technical standards to determine the format and content of the warning referred to in subparagraph 3.	ESMA shall develop draft regulatory technical standards to determine the format and content of the warning referred to in subparagraph 3.
II-261	ESMA shall submit the draft regulatory technical standards to the Commission by [OJ: insert date 18 months after the date of entry into force].	ESMA shall submit the draft regulatory technical standards to the Commission by [OJ: insert date 18 months after the date of entry into force].
II-262	Power is conferred to the Commission to adopt those regulatory technical standards in accordance with Articles 10 of Regulation. (EU) No 1095/2010.’;	Power is conferred <u>delegated on to</u> the Commission to adopt those regulatory technical standards in accordance with Articles <u>10</u> of Regulation (EU) No 1095/2010.’;
II-263	(b) in paragraph 4, the following subparagraphs are added:	(b) in paragraph 4, the following subparagraphs are added:

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II-264	‘ESMA shall develop draft regulatory technical standards to determine the format and content of warning referred to in the first subparagraph, point (c).	‘ESMA shall develop draft regulatory technical standards to determine the format and content of warning referred to in the first subparagraph, point (c).
II-265	ESMA shall submit the draft regulatory technical standards to the Commission by [OJ: insert date 18 months after the date of entry into force].	ESMA shall submit the draft regulatory technical standards to the Commission by [OJ: insert date 18 months after the date of entry into force].
II-266	Power is conferred to the Commission to adopt those regulatory technical standards as referred to above in accordance with Articles 10 of Regulation. (EU) No 1095/2010.’;	Power is conferred delegated to the Commission to adopt those regulatory technical standards as referred to above in accordance with Articles 10 of Regulation. (EU) No 1095/2010.’;
II-267	(c) in paragraph 6, second subparagraph, the following sentence is added:	(c) in paragraph 6, second subparagraph, the following sentence is added:
II-268	‘The provision of such statement shall be made sufficiently in advance before the conclusion of the transaction to ensure, except if otherwise instructed, that the client gets enough time to review it, and where necessary, obtain additional information or clarifications from the investment firm.’;	‘The provision of such statement shall be made sufficiently in advance before the conclusion of the transaction to ensure, except if otherwise instructed, that the client gets enough time to review it, and where necessary, obtain additional information or clarifications from the investment firm.’;
II-269	(d) paragraph 8 is replaced by the following:	(d) paragraph 8 is replaced by the following:
II-270	‘8. The Commission is empowered to supplement this Directive by adopting delegated acts in accordance with Article 89 to ensure that investment firms comply with the	‘8. The Commission is empowered to supplement this Directive by adopting delegated acts in accordance with Article 89 to ensure that investment firms comply with the principles set out in paragraphs 1 to

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	principles set out in paragraphs 1 to 6 of this Article when providing investment or ancillary services to their clients, including information to obtain when assessing the suitability or appropriateness of the services and financial instruments for their clients, criteria to assess non-complex financial instruments for the purposes of paragraph 4, point (a)(vi), of this Article, the content and the format of records and agreements for the provision of services to clients and of periodic reports to clients on the services provided. Those delegated acts shall take into account:	6 of this Article when providing investment or ancillary services to their clients, including information to obtain when assessing the suitability or appropriateness of the services and financial instruments for their clients, criteria to assess non-complex financial instruments for the purposes of paragraph 4, point (a)(vi), of this Article, <u>the criteria and conditions for the provision of investment advice pursuant to paragraph 2, second subparagraph</u> , the content and the format of records and agreements for the provision of services to clients and of periodic reports to clients on the services provided. Those delegated acts shall take into account:
II-271	(a) the nature of the services offered or provided to the client or potential client, having regard to the type, object, size, costs, risks, complexity, price and frequency of the transactions;	(a) the nature of the services offered or provided to the client or potential client, having regard to the type, object, size, costs, risks, complexity, price and frequency of the transactions;
II-272	(b) the nature of the products being offered or considered, including different types of financial instruments;	(b) the nature of the products being offered or considered, including different types of financial instruments;
II-273	(c) the retail or professional nature of the client or potential clients or, in the case of paragraph 6, their classification as eligible counterparties.’;	(c) the retail or professional nature of the client or potential clients or, in the case of paragraph 6, their classification as eligible counterparties.’;
II-274a		<u>(14a) Article 29a is amended as follows:</u>
II-274b		<u>(a) paragraph 1 is replaced by the following:</u>

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II-274c		<u>‘1. The requirements laid down in point (c) of Article 24(4) and in Article 24b shall not apply to services provided to professional clients, except for investment advice and portfolio management.’;</u>
II-274d	(15) Article 30 is amended as follows:	(15) Article 30 is amended as follows:
II-275	(a) in paragraph 1, the first subparagraph is replaced by the following:	(a) in paragraph 1, the first subparagraph is replaced by the following:
II-276	‘Member States shall ensure that investment firms authorised to execute orders on behalf of clients, and/or to deal on own account, and/or to receive and transmit orders have the possibility of bringing about or entering into transactions with eligible counterparties without being obliged to comply with Article 16(3a), Article 24 with the exception of paragraphs 5, 5a and 5c thereof, Article 24a, Article 24b, with the exception of paragraph 1, Article 24c, Article 25, Article 27 and Article 28(1), in respect of those transactions or in respect of any ancillary service directly relating to those transactions.’;	‘Member States shall ensure that investment firms authorised to execute orders on behalf of clients, and/or to deal on own account, and/or to receive and transmit orders have the possibility of bringing about or entering into transactions with eligible counterparties without being obliged to comply with Article 16(3a), Article 24 with the exception of paragraphs 5, 5a and 5c thereof , Article 24a, Article 24b, with the exception of paragraph 1 , Article 24c, Article 25, Article 27 and Article 28(1), in respect of those transactions or in respect of any ancillary service directly relating to those transactions.’;
II-277	(b) in paragraph 2, the second subparagraph is replaced by the following:	(b) in paragraph 2, the second subparagraph is replaced by the following:
II-278	‘Classification as an eligible counterparty under the first subparagraph shall be without prejudice to the right of such entities to request, either on a general form or on a trade-	‘Classification as an eligible counterparty under the first subparagraph shall be without prejudice to the right of such entities to request, either on a general form or on a trade-by-trade basis, treatment as clients

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	by-trade basis, treatment as clients whose business with the investment firm is subject to Articles 24, 24a, 24b, 24c, 25, 27 and 28.’;	whose business with the investment firm is subject to Articles 24, 24a, 24b, 24c, 25, 27 and 28.’;
II-279	(16) the following Article 35a is inserted:	(16) the following Article 35a is inserted:
II-280	‘Article 35a	‘Article 35a
II-281	Reporting of cross-border activities	Reporting of cross-border activities
II-282	1. Member States shall require that investment firms and credit institutions providing investment services or activities report the following information annually to the competent authority of its home Member State when they provide investment services to more than 50 clients on a cross-border basis:	1. Member States shall require that investment firms and credit institutions providing investment services or activities report the following information annually to the competent authority of its home Member State when they provide investment services to more than 50 clients on a cross-border basis:
II-283	(a) the list of host Member States in which the investment firm is active through the freedom to provide services and activities following a notification pursuant to Article 34(2);	(a) the list of host Member States in which the investment firm is active through the freedom to provide services and activities following a notification pursuant to Article 34(2);
II-284	(b) the type, scope and scale of services provided and activities carried out in each host Member State through the freedom to provide investment services and activities and ancillary services;	(b) the type, scope and scale of services provided and activities carried out in each host Member State through the freedom to provide investment services and activities and ancillary services;
II-285	(c) for each host Member State, the total number and the categories of clients corresponding to the services and	(c) for each host Member State, the total number and the categories of clients corresponding to the services and activities referred to in

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	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;	point (b), and provided during the relevant period ending on the 31 December and a breakdown between professional and non-professional clients;
II-286	(d) the number of complaints referred to under Article 75 received from clients and interested parties in each host Member State;	(d) the number of complaints referred to under Article 75 received from clients and interested parties in each host Member State;
II-287	(e) the type of marketing communications used in host Member States.	(e) the type of marketing communications used in host Member States.
II-288	Competent authorities shall communicate to ESMA all the information collected from investment firms.	Competent authorities shall communicate to ESMA all the information collected from investment firms.
II-289	2. ESMA shall establish an electronic database containing the information collected pursuant to paragraph 1, which shall be made accessible to all competent authorities.	2. ESMA shall establish an electronic database containing the information collected pursuant to paragraph 1, which shall be made accessible to all competent authorities.
II-290	3. ESMA shall develop draft regulatory technical standards on the details of the information referred to in paragraph 1 that is to be reported by investment firms to competent authorities.	3. ESMA shall develop draft regulatory technical standards on the details of the information referred to in paragraph 1 that is to be reported by investment firms to competent authorities.
II-291	ESMA shall submit those draft regulatory technical standards to the Commission by [OJ: insert date 18 months after the date of entry into force].	ESMA shall submit those draft regulatory technical standards to the Commission by [OJ: insert date 18 months after the date of entry into force].

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II-292	Power is delegated to the Commission to adopt the regulatory those technical standards in accordance with Article 10 of Regulation (EU) No 1095/2010.	Power is delegated to the Commission to adopt the <u>those</u> regulatory those technical standards in accordance with Article 10 of Regulation (EU) No 1095/2010.
II-293	4. ESMA shall develop draft implementing technical standards specifying the data standards and formats, methods and transfer arrangements, frequency and starting date for the information to be reported.	4. ESMA shall develop draft implementing technical standards specifying the data standards and formats, methods and transfer arrangements, frequency and starting date for the information to be reported.
II-294	ESMA shall submit those draft implementing technical standards to the Commission by [OJ: insert date 18 months after the date of entry into force].	ESMA shall submit those draft implementing technical standards to the Commission by [OJ: insert date 18 months after the date of entry into force].
II-295	Power is conferred on the Commission to adopt the implementing technical standards in accordance with Article 15 of Regulation (EU) No 1095/2010.	Power is conferred on the Commission to adopt the implementing technical standards in accordance with Article 15 of Regulation (EU) No 1095/2010.
II-296	5. Based on the information communicated pursuant to paragraph 2, ESMA shall publish every year a report containing anonymized and aggregated statistics on the investment services provided and the activities carried out in the Union through the freedom to provide investment services and activities, as well as an analysis of trends.’;	5. Based on the information communicated pursuant to paragraph 2, ESMA shall publish every year a report containing anonymized and aggregated statistics on the investment services provided and the activities carried out in the Union through the freedom to provide investment services and activities, as well as an analysis of trends.’;
II-297	(17) Article 69(2) is amended as follows:	(17) Article 69(2) is amended as follows:
II-297a		<u>((a)-1) the introductory wording is replaced by the following:</u>

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		“The powers referred to in paragraph 1 shall include, at least, the <u>following</u> powers to:”
II-298	(a) the following point (ca) is inserted:	(a) the following point (ca) is inserted:
II-299	‘(ca) carry out mystery shopping activities;’	‘(ca) carry out mystery shopping activities;’
II-299a		<u>(aa) point (d) is replaced by the following:</u>
II-299b		<u>‘(d) a temporary ban or, in case of repeated serious infringements, a ban of at least 10 years, against any member of the investment firm’s management body or any other natural person, who is held responsible, to exercise management functions in investment firms;’;</u>
II-300	(b) the following point (ka) is inserted:	(b) the following point (ka) is inserted:
II-300a	‘(ka) suspend or prohibit, for a maximum duration of 1 year, marketing communications or practices used by an investment firm in their Member State, where there are reasonable grounds to believe that this Directive or Regulation (EU) No 600/2014 have been infringed.;;’	‘(ka) suspend or prohibit , for a maximum duration of 1 year, <u>renewable for further periods not exceeding one year at a time if the grounds for the temporary suspension continue to be applicable</u> , marketing communications or practices used by an investment firm in their Member State, where there are reasonable grounds to believe that this Directive or Regulation (EU) No 600/2014 have been infringed.;;’
II-301	(c) the following points (v) and (w) are inserted:	(c) the following points (v) and (w) are inserted:

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II-302	‘(v) take all necessary measures, including by requesting a third party or other public authority to implement such measures, whether on a temporary or permanent basis, to:	‘(v) <u>to the extent permitted by national law</u> , take all necessary measures, including by requesting a third party or other public authority to implement such measures, whether on a temporary or permanent basis, to:
II-303	(i) remove content or restrict access to an online interface or order the explicit display of a warning to clients when they access an online interface;	(i) remove content or restrict access to an online interface or order the explicit display of a warning to clients when they access an online interface;
II-304	(ii) order a hosting service provider to remove, disable or restrict access to an online interface;	(ii) order a hosting service provider to remove, disable or restrict access to an online interface;
II-305	(iii) order domain registries or registrars to delete a fully qualified domain name and to allow the competent authority concerned to register it.	(iii) order domain registries or registrars to delete a fully qualified domain name and to allow the competent authority concerned to register it.
II-306	(w) to impose the use of risk warnings by investment firms in information materials, including marketing communications, related to particularly risky financial instruments where those instruments could pose a serious threat to investor protection.’;	(w) to impose the use of risk warnings on investment firms in information materials, including marketing communications, <u>provided to retail investors</u> concerning particularly risky financial instruments.’; where those instruments could pose a serious threat to investor protection.’;
II-306a		<u>(wa) require the investment firms to cease from using risk warnings in information materials, including marketing communications, provided to retail investors concerning financial instruments that are not considered as particularly risky.</u>
II-307	(d) the following subparagraphs are added:	(d) the following subparagraphs are added:

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II-308	‘When making use of the powers referred to in point (ka), the competent authority shall notify ESMA. Where such practices or communications are used in more than one Member State, ESMA shall, upon request of at least one competent authority, coordinate actions taken by competent authorities pursuant to point (ka).	‘When making use of the powers referred to in point (ka), the competent authority shall notify ESMA. Where such practices or communications are used in more than one Member State, ESMA shall, upon request of at least one competent authority, coordinate actions taken by competent authorities pursuant to point (ka).
II-309	The implementation and the exercise of powers set out in this paragraph shall be proportionate and shall comply with Union and national law, including with applicable procedural safeguards and with the principles of the Charter of Fundamental Rights of the European Union. The investigation and enforcement measures adopted pursuant to this Directive shall be appropriate to the nature and the overall actual or potential harm of the infringement.’;	The implementation and the exercise of powers set out in this paragraph shall be proportionate and shall comply with Union and national law, including with applicable procedural safeguards and with the applicable principles of the Charter of Fundamental Rights of the European Union. The investigation and enforcement measures adopted pursuant to this Directive shall be appropriate to the nature and the overall actual or potential harm of the infringement.’;
II-309a		(e) point (t) is replaced by the following:
II-309b		<u>‘(t) suspend the marketing or sale of financial instruments or structured deposits where the investment firm has not developed or applied an effective product approval process or otherwise failed to comply with Article 16(3) or Article 16-a of this Directive.’</u>
II-310	(18) in Article 70(3), point (a), the following points (xxxvii) to (xxxii) are added:	(18) in Article 70(3), point (a), the following points (xxxvii) to (xxxii) are added:
II-311	‘(xxxvii) Article 16-a(1) to (8);	‘(xxxvii) Article 16-a(1) to (8);

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II-312	‘(xxxviii) Article 24(5a) to (5c) and (11a);	‘(xxxviii) Article 24(5a) to and (5c) and (11a);
II-313	‘(xxxix) Article 24a(1) to (2) and (6) to (7);	‘(xxxix) Article 24a(1) to (2) and (6) to (7);
II-314	‘(xxxx) Article 24b(1), (3) and (4);	‘(xxxx) Article 24b(1), (3) and (4);
II-315	‘(xxxxi) Article 24c(1) to (5) and (7);	‘(xxxxi) Article 24c(1) to (5) and (7);
II-316	‘(xxxxii) Article 35a(1);’;	‘(xxxxii) Article 35a(1);’;
II-316a		<u>(18a) in Article 70(6), point d is replaced by the following:</u>
II-316b		<u>‘(d) a temporary ban or, in case of repeated serious infringements, a ban of at least 10 years, against any member of the investment firm’s management body or any other natural person, who is held responsible, to exercise management functions in investment firms;’;</u>
II-317	(19) Article 73(1) is amended as follows:	(19) Article 73(1) is amended as follows:
II-318	(a) the first subparagraph is replaced by the following:	(a) the first subparagraph is replaced by the following:
II-319	‘Member States shall ensure that competent authorities establish effective mechanisms to enable reporting of potential or actual infringements of Regulation (EU) No 600/2014 and of the national provisions adopted in the implementation of this Directive to competent authorities, including by firms not duly authorised under this Directive.’;	‘Member States shall ensure that competent authorities establish effective mechanisms to enable reporting of potential or actual infringements of Regulation (EU) No 600/2014 and of the national provisions adopted in the implementation of this Directive to competent authorities, including by firms not duly authorised under this Directive.’;
II-320	(b) in the second subparagraph, point (a) is replaced by the following:	(b) in the second subparagraph, point (a) is replaced by the following:

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II-321	‘(a) specific procedures for the receipt of reports on potential or actual infringements and their follow-up, including the establishment of secure communication channels for such reports. Those procedures shall also include the creation, on the front page of each competent authority’s website, of a link to a simple reporting form allowing any person to report potential or actual infringements to Union Law or national law. Member States shall require competent authorities to analyse, without undue delay, all reports submitted via this reporting form;’;	‘(a) specific procedures for the receipt of reports on potential or actual infringements and their follow-up, including the establishment of secure communication channels for such reports. Those procedures shall also include the creation, on the front page of each competent authority’s website, of a link to a simple reporting form allowing any person to report potential or actual infringements to Union Law or national law. Member States shall require competent authorities to analyse, without undue delay, all reports submitted via this reporting form;’;
II-322	(20) Article 86 is amended as follows:	(20) Article 86 is amended as follows:
II-323	(a) paragraph 1 is replaced by the following:	(a) paragraph 1 is replaced by the following:
II-324	‘1. Where the competent authority of the host Member State (for the purposes of this Article the ‘initiating authority’) has reasonable grounds for believing that an investment firm acting within its territory under the freedom to provide services infringes the obligations arising from the provisions adopted pursuant to this Directive or that an investment firm that has a branch within its territory infringes the obligations arising from the provisions adopted pursuant to this Directive which do not confer powers on the competent authority of the host Member	‘1. Where the competent authority of the host Member State (for the purposes of this Article the ‘initiating authority’) has reasonable grounds for believing that an investment firm acting within its territory under the freedom to provide services infringes the obligations arising from the provisions adopted pursuant to this Directive or that an investment firm that has a branch within its territory infringes the obligations arising from the provisions adopted pursuant to this Directive which do not confer powers on the competent authority of the host Member State, it shall refer those findings to the competent authority of the home Member State.

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	State, it shall refer those findings to the competent authority of the home Member State.	
II-325	Information that such referral is made shall be transmitted to ESMA. ESMA shall transmit such information to the competent authorities of all other host Member States where the investment firm provides investment services or performing activities.	Information that such referral is made shall be transmitted to ESMA. ESMA shall transmit such information to the competent authorities of all other host Member States where the investment firm provides investment services or performing activities.
II-326	The competent authority of the home Member State shall, without undue delay and at the latest 30 working days after the initiating authority has referred its findings, take the necessary measures or begin the necessary administrative process aimed at taking such measures. The competent authority of the home Member State shall communicate all necessary information on any measure taken to the initiating authority, as well as to ESMA and to the competent authorities of all other Member States on the territory of which the investment firm is active.	The competent authority of the home Member State shall, without undue delay and at the latest <u>30 60</u> working days after the initiating authority has referred its findings, take the necessary measures or begin the necessary administrative process aimed at taking such measures. The competent authority of the home Member State shall communicate all necessary information on any measure taken to the initiating authority, as well as to ESMA and to the competent authorities of all other Member States on the territory of which the investment firm is active.
II-327	If, despite the measures taken by the competent authority of the home Member State or because such measures prove inadequate or if no measure has been taken, the investment firm persists in acting in a manner that is clearly prejudicial	If, despite the measures taken by the competent authority of the home Member State or because such measures prove inadequate or if no measure has been taken, the investment firm persists in acting in a manner that is clearly prejudicial to the interests of host Member State

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	to the interests of host Member State investors or the orderly functioning of markets, the following shall apply:	investors or the orderly functioning of markets, the following shall apply:
II-328	(a) after informing the competent authority of the home Member State, the competent authority of the host Member State shall take all the appropriate measures needed in order to protect investors and the proper functioning of the markets, which shall include the possibility of preventing the offending investment firms from initiating any further transactions within their territories. The Commission and ESMA shall be informed of such measures without undue delay, as well as all competent authorities of the host Member States where the offending investment firm is active; and	(a) after informing the competent authority of the home Member State, the competent authority of the host Member State shall take all the appropriate measures needed in order to protect investors and the proper functioning of the markets, which shall include the possibility of preventing the offending investment firms from initiating any further transactions within their territories. The Commission and ESMA shall be informed of such measures without undue delay, as well as all competent authorities of the host Member States where the offending investment firm is active; and
II-329	(b) the competent authority of the host Member State may refer the matter to ESMA, which may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No 1095/2010.’;	(b) the competent authority of the host Member State may refer the matter to ESMA, which may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No 1095/2010.’;
II-330	(b) the following paragraphs 1a and 1b are inserted:	(b) the following paragraphs 1a and 1b are inserted:
II-331	‘1a. Where the initiating authority has taken precautionary measures against an offending investment firm pursuant to paragraph 1, the competent authority of any other host Member State may, where the same investment firm causes	‘1a. Where the initiating authority has taken precautionary measures against an offending investment firm pursuant to paragraph 1, the competent authority of any other host Member State may, where the same investment firm causes concerns or infringements highly similar

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	concerns or infringements highly similar or identical to those referred to in the findings of the initiating authority, adopt highly similar or identical measures with respect to that firm, provided that that competent authority also has reasonable grounds for believing that a similar infringement has occurred in its territory.	or identical to those referred to in the findings of the initiating authority, adopt highly similar or identical measures with respect to that firm, provided that that competent authority also has reasonable grounds for believing that a similar infringement has occurred in its territory.
II-332	The competent authority of that other host Member State may do so without first referring findings to the competent authority of the host Member State, but shall inform the competent authority of the home Member State at least five working days before taking such precautionary measures.	The competent authority of that other host Member State may do so without first referring findings to the competent authority of the host Member State, but shall inform the competent authority of the home Member State at least five ten working days before taking such precautionary measures.
II-333	The Commission, ESMA and all competent authorities of the host Member States where the offending investment firm is active shall be informed of such measures without undue delay.	The Commission, ESMA and all competent authorities of the host Member States where the offending investment firm is active shall be informed of such measures without undue delay.
II-334	1b. Where, within 12 months, one or more competent authorities of host Member States have taken measures pursuant to paragraph 1, fourth subparagraph, point (a), with respect to one or more investment firms having the same home Member State, or if a home Member States disagrees with the findings of a host Member State, ESMA	1b. Where, within 12 months, one or more competent authorities of host Member States have taken measures pursuant to paragraph 1, fourth subparagraph, point (a), with respect to one or more investment firms having the same home Member State, or if a home Member States disagrees with the findings of a host Member State, ESMA may , at the request of an NCA , set up a cooperation platform in accordance with Article 87 ab .’;

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	may set up a cooperation platform in accordance with Article 87a.’;	
II-335	(21) the following Article 87a is inserted:	(21) the following Article 87 a ab is inserted:
II-336	‘Article 87a	‘Article 87 a ab
II-337	Collaboration platforms	Collaboration platforms
II-338	<p>1. ESMA may, in the case of justified concerns about negative effects on investors, on its own initiative or at the request of one or more competent authorities, set up and coordinate a collaboration platform, to strengthen the exchange of information and to enhance collaboration between the relevant supervisory authorities where an investment firm carries out, or intends to carry out, activities which are based on the freedom to provide services or the freedom of establishment and where such activities are of relevance with respect to the host Member State’s market. If a collaboration platform is set up at the request of a competent authority, that competent authority shall notify the competent authority of the home Member State of its justified concerns about negative effects on investors.</p>	<p>1. ESMA may, in the case of justified concerns about negative effects on investors, on its own initiative or at the request of one two or more competent authorities, set up and coordinate a collaboration platform, to strengthen the exchange of information and to enhance collaboration between the relevant supervisory authorities where an investment firm carries out, or intends to carry out, activities which are based on the freedom to provide services or the freedom of establishment and where such activities are of relevance with respect to the host Member State’s market. If a collaboration platform is set up at the request of a competent authoritiessy, thoseat competent authoritiesiesy shall notify the competent authority of the home Member State of its their justified concerns about negative effects on investors.</p>
II-339	<p>2. Paragraph 1 shall be without prejudice to the right of the relevant supervisory authorities to set up a collaboration platform where they all agree to do so.</p>	<p>2. Paragraph 1 shall be without prejudice to the right of the relevant supervisory authorities to set up a collaboration platform where they all agree to do so.</p>

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II-340	3. The setting up of a collaboration platform pursuant to paragraphs 1 and 2 is without prejudice to the supervisory mandate of the supervisory authorities of the home Member State and host Member State provided for in this Directive.	3. The setting up of a collaboration platform pursuant to paragraphs 1 and 2 is without prejudice to the supervisory mandate of the supervisory authorities of the home Member State and host Member State provided for in this Directive.
II-341	4. Without prejudice to Article 35 of Regulation (EU) No 1095/2010, at the request of ESMA, the relevant competent authorities shall provide all necessary information in a timely manner.	4. Without prejudice to Article 35 of Regulation (EU) No 1095/2010, at the request of ESMA, the relevant competent authorities shall provide all necessary information in a timely manner.
II-342	5. Where two or more competent authorities of a collaboration platform disagree about the procedure or content of an action to be taken, or inaction, ESMA may, at the request of any relevant competent authority or on its own initiative, assist the competent authorities in reaching an agreement in accordance with Article 19(1) of Regulation (EU) No 1095/2010.	5. Where two or more competent authorities of a collaboration platform disagree about the procedure or content of an action to be taken, or inaction, ESMA may, at the request of any relevant competent authority or on its own initiative, assist the competent authorities in reaching an agreement in accordance with Article 19(1) of Regulation (EU) No 1095/2010.
II-343	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	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

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	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.’;	concerns of other competent authorities concerned and to launch a joint on-site inspection together with other competent authorities concerned.’;
II-344	(22) the following Title VIa is inserted:	(22) the following Title VIa is inserted:
II-345	‘TITLE VIa	‘TITLE VIa
II-346	FINANCIAL EDUCATION	FINANCIAL EDUCATION
II-347	Article 88a	Article 88a
II-348	Financial education of retail clients and prospective retail clients	Financial education of retail clients and prospective retail clients
II-349	Member States shall promote measures that support the education of retail clients and prospective retail clients in relation to responsible investment when accessing investment services or ancillary services.	1. Member States shall promote measures that support the education of retail clients and prospective retail clients in relation to responsible investment when accessing investment services or ancillary services. <u>Where appropriate, the measures shall target the needs of specific age groups and of other specific target groups and take into account the joint EU/OECD-INFE financial competence frameworks.</u>
II-349a		<u>2. Member States shall designate one or more competent authorities or one or more public bodies to achieve the objective set out in paragraph 1.</u>
II-350	Article 88b	Article 88b

	Commission proposal	Drafting Suggestions
II-351	Financial education and marketing communication	Financial education and marketing communication
II-352	Financial education material that aims to support individuals' financial literacy by enabling them to acquire financial competences, and that does not directly promote or entice investment in one or several financial instruments, or categories thereof, or specific investment services, shall not be deemed to constitute a marketing communication for the purposes of this Directive.';	Financial education material that aims to support individuals' financial literacy by enabling them to acquire financial competences, and that does not directly promote or entice investment in one or several financial instruments, or categories thereof, or specific investment services, shall not be deemed to constitute a marketing communication for the purposes of this Directive.';
II-353	(23) Article 89, is replaced by the following:	(23) Article 89, is replaced by the following:
II-354	'1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.	'1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
II-355	2. The delegation of power referred to in Article 2(3), Article 2(4), Article 4(1)(2), second subparagraph, Article 4(2), Article 13(1), Article 16(12), Article 16-a(11), Article 16-a(12) Article 23(4), Article 24(5c), Article 24(13), Article 24b(2), Article 24c(8), Article 24d(2), Article 25(8), Article 27(9), Article 28(3), Article 30(5), Article 31(4), Article 32(4), Article 33(8), Article 35a(3), Article 35a(4), Article 52(4), Article 54(4), Article 58(6), Article 64(7), Article 65(7) and Article 79(8)	2. The delegation of power referred to in Article 2(3), Article 2(4), Article 4(1)(2), second subparagraph, Article 4(2), Article 13(1), Article 16(12), Article 16-a(1) , Article 16-a(11), Article 16-a(12) Article 23(4), Article 24(5c), Article 24(13), Article 24b(2), Article 24c(8), Article 24d(2), Article 25(8), Article 27(9), Article 28(3), Article 30(5), Article 31(4), Article 32(4), Article 33(8), Article 35a(3), Article 35a(4), Article 52(4), Article 54(4), Article 58(6), Article 64(7), Article 65(7) and Article 79(8) shall be conferred on the Commission for an indeterminate period of time from 2 July 2014.

	Commission proposal	Drafting Suggestions
	shall be conferred on the Commission for an indeterminate period of time from 2 July 2014.	
II-356	<p>3. The delegation of power referred to in Article 2(3), Article 2(4), second subparagraph of Article 4(1)(2), Article 4(2), Article 13(1), Article 16(12), Article 16-a(11), Article 16-a(12), Article 23(4), Article 24(5c), Article 24(13), Article 24b(2), Article 24c(8), Article 24d(2), Article 25(8), Article 27(9), Article 28(3), Article 30(5), Article 31(4), Article 32(4), Article 33(8), Article 35a(3), Article 35a(4), Article 52(4), Article 54(4), Article 58(6), Article 64(7), Article 65(7) and Article 79(8) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the <i>Official Journal of the European Union</i> or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.</p>	<p>3. The delegation of power referred to in Article 2(3), Article 2(4), second subparagraph of Article 4(1)(2), Article 4(2), Article 13(1), Article 16(12), Article 16-a(11), Article 16-a(12), Article 23(4), Article 24(5c), Article 24(13), Article 24b(2), Article 24c(8), Article 24d(2), Article 25(8), Article 27(9), Article 28(3), Article 30(5), Article 31(4), Article 32(4), Article 33(8), Article 35a(3), Article 35a(4), Article 52(4), Article 54(4), Article 58(6), Article 64(7), Article 65(7) and Article 79(8) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the <i>Official Journal of the European Union</i> or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.</p>
II-357	<p>4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the</p>	<p>4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016.</p>

	Commission proposal	Drafting Suggestions
	Interinstitutional Agreement on Better Law-Making of 13 April 2016.	
II-358	5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.	5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
II-359	6. A delegated act adopted pursuant to Article 2(3), Article 2(4), second subparagraph of Article 4(1)(2), Article 4(2), Article 13(1), Article 16(12), Article 16-a(11), Article 16-a(12), Article 23(4), Article 24(5c), Article 24(13), Article 24b(2), Article 24c(8), Article 24d(2), Article 25(8), Article 27(9), Article 28(3), Article 30(5), Article 31(4), Article 32(4), Article 33(8), Article 35a(3), Article 35a(4), Article 52(4), Article 54(4), Article 58(6), Article 64(7), Article 65(7) and Article 79(8)) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of three months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by three months at the initiative of the European Parliament or of the Council.';	6. A delegated act adopted pursuant to Article 2(3), Article 2(4), second subparagraph of Article 4(1)(2), Article 4(2), Article 13(1), Article 16(12), Article 16-a(11), Article 16-a(12), Article 23(4), Article 24(5c), Article 24(13), Article 24b(2), Article 24c(8), Article 24d(2), Article 25(8), Article 27(9), Article 28(3), Article 30(5), Article 31(4), Article 32(4), Article 33(8), Article 35a(3), Article 35a(4), Article 52(4), Article 54(4), Article 58(6), Article 64(7), Article 65(7) and Article 79(8)) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of three months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by three months at the initiative of the European Parliament or of the Council.';

	Commission proposal	Drafting Suggestions
II-360	(24) Annex II is amended as set out in Annex I to this Directive.	(24) Annex II is amended as set out in Annex I to this Directive.
II-361	(25) Annex V is added as set out in Annex II to this Directive.	(25) Annex V is added as set out in Annex II to this Directive.