

	Commission proposal	Drafting Suggestions
IV-1	Article 3	Article 3
IV-2	Amendments to Directive 2009/138/EC	Amendments to Directive 2009/138/EC
IV-3	Section 5 of Title II, Chapter 1, of Directive (EU) 2009/138 is amended as follows:	Section 5 of Title II, Chapter 1, of Directive (EU) 2009/138 is amended as follows:
IV-4	(1) the heading is replaced by the following:	(1) the heading is replaced by the following:
IV-5	‘Section 5	‘Section 5
IV-6	Cancelation right’;	Cancelation right’;
IV-7	(52) the following text is deleted:	(52) the following text is deleted:
IV-8	‘Subsection 1	‘Subsection 1 <u>2</u>
IV-9	Non-life insurance’;	Non-life insurance’;
IV-10	(53) Articles 183 and 184 are deleted;	(53) Articles 183 and 184 are deleted;
IV-11	(54) the following text is deleted:	(54) the following text is deleted:
IV-12	‘Subsection 1	‘Subsection 1
IV-13	Life insurance’;	Life insurance’;
IV-14	(55) Article 185 is deleted.	(55) Article 185 is deleted.
IV-15	Article 4	Article 4
IV-16	Amendments to Directive 2009/65/EC	Amendments to Directive 2009/65/EC
IV-17	Directive 2009/65/EC is amended as follows:	Directive 2009/65/EC is amended as follows:
IV-18	(1) Article 14 is amended as follows:	(1) Article 14 is amended as follows:
IV-19	(a) the following paragraphs 1a to 1f are inserted:	(a) the following paragraphs 1a to 1f <u>1fg</u> are inserted:

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IV-20	‘1a. For the purpose of paragraph 1, Member States shall require management companies to act in such a way as to prevent undue costs from being charged to the UCITS and its unit-holders.	‘1a. For the purpose of paragraph 1, Member States shall require management companies to act in such a way as to prevent undue costs from being charged to the UCITS and its unit-holders.
IV-21	The costs which comply with the following conditions shall be regarded as due:	The costs which comply with the following conditions shall be regarded as due:
IV-22	(a) The costs are in line with disclosures in the prospectus referred to in Article 69 and the key investor information referred to in Article 78;	(a) The costs are in line with disclosures in the prospectus referred to in Article 69 and the key investor information referred to in Article 78;
IV-23	(b) The costs are necessary for the UCITS to operate in line with its investment strategy and objective or to fulfil regulatory requirements;	(b) The costs are necessary for the UCITS to operate in line with its investment strategy and objective or to fulfil regulatory requirements;
IV-24	(c) The costs are borne by investors in a way that ensures fair treatment of investors.	(c) The costs are borne by investors in a way that ensures fair treatment of investors.
IV-25	1b. Member States shall require management companies to maintain, operate and review an effective pricing process that allows for the identification and quantification of all costs borne by the UCITS or its unit-holders. Before the authorisation of the UCITS and throughout its life, that pricing process shall ensure that the following conditions are fulfilled:	1b. Member States shall require management companies to <u>identify and quantify all costs borne by the UCITS or its unit-holders, and to</u> maintain, operate and review <u>an effective value-for-money assessment pricing and undue costs and value-for-money</u> processes <u>that allows for the identification and quantification of all costs borne by the UCITS or its unit-holders and their performance and that identify the other benefits of the UCITS.</u> Before the

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		<p>authorisation of the UCITS and throughout its life, those that value for money assessment pricing and undue costs processesmanagement companies shall ensure that the following conditions are fulfilled:</p>
IV-26	(a) the costs are not undue;	(a) the costs are not undue;
IV-27	(b) the costs borne by retail investors are justified and proportionate, having regard to the characteristics of the UCITS, including its investment objective, strategy, expected returns, level of risks and other relevant characteristics.	(b) the UCITS offers value for money, by ensuring that the costs borne by retail investors are justified and proportionate, having regard to the characteristics of the UCITS, including its investment objective, strategy, performance expected returns , level of risks; and other benefits and relevant characteristics .
IV-28	1c. Member States shall ensure that management companies are responsible for the effectiveness and quality of their pricing process. The pricing process shall be clearly documented, shall clearly set out the responsibilities of the management bodies of the management company in determining and reviewing the costs borne by investors, and shall be subject to periodic review. The assessment of costs shall be based on objective criteria and methodology, including a comparison to market standards.	1c. Member States shall ensure that management companies are responsible for the effectiveness and quality of their value-for-money assessment pricing and undue costs processes es . The value-for-money assessment pricing and undue costs processes shall be clearly documented, shall clearly set out the responsibilities of the management bodies of the management company in determining and reviewing the costs borne by investors, and shall be subject to periodic review. The assessment of costs and value for money shall

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		be based on objective criteria and methodology, including a comparison to market standards.
IV-29	1d. Member States shall require management companies to assess at least annually whether undue costs have been charged to the UCITS or its unit-holders.	1d. Member States shall require management companies to assess at least annually whether undue costs have been charged to the UCITS or its unit-holders.
IV-30	Member States shall require management companies to reimburse investors where undue costs have been charged to the UCITS or its unit-holders.	Member States shall require management companies to reimburse investors <u>without undue delay</u> where undue costs have been charged to the UCITS or its unit-holders.
IV-31	Member States shall require management companies to report to the competent authorities of their home Member State and to the competent authorities of the home Member State of the UCITS, to the depositary and to the financial auditors of the UCITS, situations where undue costs have been charged to the UCITS or its unit-holders.	Member States shall require management companies to report to the competent authorities of their home Member State and to the competent authorities of the home Member State of the UCITS, to the depositary and to the financial auditors of the UCITS, situations where undue costs have been charged to the UCITS or its unit-holders.
IV-32	1e. Member States shall require management companies to assess at least annually the conditions mentioned in paragraph 1b, point (b). The assessment shall take into account the criteria set out in the pricing process and include a comparison with the relevant benchmark on costs and performance published by ESMA in accordance with paragraph 1f.	1e. Member States shall require management companies to assess at least annually the conditions mentioned in paragraph 1b, point (b). The assessment shall take into account the criteria set out in the <u>value-for-money assessment-pricing</u> process and <u>shall be established through appropriate product testing and assessments, taking into account the</u>

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		<p><u>specificities of the UCITS, including, a market comparison with similar UCITS in the Union, subject to data availability, a comparison to market standards in the Union by comparing the costs and charges as well as the performance of the UCITS with the costs and charges and the performance of a peer group that consists of other UCITS with similar characteristics including, where relevant, the product type, similar levels of risk, strategy, objectives, range of recommended holding periods and sustainability features. the relevant benchmark on costs and performance published by ESMA in accordance with paragraph 1f. The peer-group comparison, including the selection of UCITS with similar characteristics, shall be based on relevant and objective criteria and shall be documented. The compliance report to the management body shall systematically include information on product testing and assessments.</u></p>
IV-32a		<p><u>The peer-group comparison shall be performed using data made available according to paragraph 1g and included in information to be published according to Union law.</u></p>

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IV-33	<p>When a UCITS or its share classes, when they have different cost structures, deviate from the relevant benchmark referred to in paragraph 1f, the management company shall perform additional testing and further assessments and establish whether costs and charges are nevertheless justified and proportionate. If justification and proportionality of costs and charges cannot be demonstrated or if the UCITS or its share classes do not comply with other criteria set out by the management company in the pricing process that UCITS or its share classes shall not be marketed to retail investors by the management company.</p>	<p>When a UCITS or its share classes, when they have different cost structures, deviate from the relevant benchmark referred to in paragraph 1f, the management company shall perform additional testing and further assessments and establish whether costs and charges are nevertheless justified and proportionate. If justification and proportionality of costs and charges cannot be demonstrated or if the UCITS or its share classes do not comply with other criteria set out by the management company in the pricing process that UCITS or its share classes shall not be marketed to retail investors by the management company. <u>When a UCITS or its share classes, when they have different cost structures, is at a significant distance from the average of the peer group to the detriment of the client, the value for money shall be substantiated through additional testing and further assessments. Where necessary, the management company shall take appropriate actions to ensure value for money. The content of appropriate actions shall be determined by the management company while taking into account the relevant features of the UCITS or its share classes, when they have different cost structures, and the interest of the</u></p>

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		<p><u>investor. The compliance report to the management body shall systematically include information on these additional testings and further assessments and their conclusions, including any actions to ensure value for money.</u></p>
IV-33a		<p><u>Member States may provide for a possibility for a management company to optmay, for the purpose of the market comparison in its value-for-money assessment process, to compare a UCITS or its share classes, when they have different cost structures, with the relevant Union supervisory benchmark as referred to in paragraph 1f instead of a peer group.</u></p>
IV33b		<p><u>If the management company opted to compare a UCITS or its share classes, when they have different cost structures, with the relevant Union supervisory benchmark, the management company shall, when a UCITS or its share classes, when they have different cost structures, falls outside the Union supervisory benchmark, substantiate the value for money through additional testing and further assessments. Where necessary, the management company shall take</u></p>

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		<p><u>appropriate actions to ensure value for money. The content of appropriate actions shall be determined by the management company while taking into account the relevant features of the UCITS or its share classes, when they have different cost structures, and the interest of the investor. The compliance report to the management body shall systematically include information on these additional testings and further assessments and their conclusions, including on any actions to ensure value for money.</u></p>
IV-34	<p>1f. After consulting EIOPA and competent authorities, ESMA shall, where appropriate, develop and make publicly available benchmarks to enable the comparative assessment of costs and performance of UCITS, or their share classes where they have different cost structures, to be used for the assessment set out in paragraph 1e.</p>	<p>1f. After consulting EIOPA and competent authorities, ESMA shall, where appropriate, develop and make publicly available benchmarks to enable the comparative assessment of costs and performance of UCITS, or their share classes where they have different cost structures, to be used for the assessment set out in paragraph 1e. <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 Union supervisory benchmarks. Those</u></p>

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		<p><u>benchmarks shall be developed per product cluster that contains a significant number of UCITS, or their share classes where they have different cost structures, 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 UCITS, or their share classes where they have different costs structures, by identifying outliers in the market.</u></p>
IV-34a		<p><u>Competent authorities shall verify that the value-for-money assessment process of management companies complies with the product governance requirements under paragraphs 1b, 1c, 1e and 2(e).</u></p>

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IV-34b		<p><u>Union supervisory benchmarks shall allow to identify UCITS, or their share classes where they have different cost structures, that are at a significant distance from the average of the relevant product cluster to the detriment of the client (outliers) with respect to-costs and performance and thereby have an increased risk of poor value for money.:</u></p>
IV-34c		<p><u>ESMA shall regularly update the Union supervisory benchmarks.</u></p>
IV-34d		<p><u>1g. Taking into account the methodology to perform the peer-group comparisonvalue-for-money assessment as referred to in paragraph 2, point (e), ESMA shall make available data needed for the purpose of the peer-group comparison. Where appropriate, data that is not publicly available shall be anonymised or aggregated. ESMA shall regularly review the data.</u></p>
IV-34e		<p><u>The data shall be sourced from disclosure and reporting under Union law, including the reporting referred to in Article 20a.</u></p>

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IV-34f		<p><u>ESMA shall provide access to the data on a non-discriminatory basis to manufacturers and distributors. ESMA may charge fees to manufacturers and distributors for this service that shall not exceed direct costs incurred by ESMA for the provision of this service. The fee structure shall, to the greatest extent possible, be proportionate to the volumes of data provided each user. ESMA shall provide access to this data to the following entities, to the extent necessary to fulfill their respective responsibilities, mandates and obligations:</u></p>
IV-34g		<p><u>(a) any Union institution, body, office or agency;</u></p>
IV-34h		<p><u>(b) any competent authority designated by a Member State pursuant to a Union legislative act;</u></p>
IV-34i		<p><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></p>
IV-34j		<p><u>(d) any governmental institution, body or agency of a Member State;</u></p>
IV-34k		<p><u>(e) any educational and training establishment for the sole purpose of research, academia, news organisations</u></p>

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		<u>and non-governmental organisations insofar as access to the information is necessary in the performance of their tasks.</u>
IV-34l		<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>
IV-34m		<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>
IV-34n		<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>
IV-34o		<u>Power is conferred on the Commission to adopt those regulatory technical standards in accordance with Article 150 of Regulation (EU) No 1095/2010.</u>

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IV-34p		<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>
IV-35	Common benchmarks shall be developed, where it is feasible to do so, for UCITS, or their share classes where they have different cost structures, marketed to retail investors that present similar levels of performance, risk, strategy, objectives, or other characteristics.	Common benchmarks shall be developed, where it is feasible to do so, for UCITS, or their share classes where they have different cost structures, marketed to retail investors that present similar levels of performance, risk, strategy, objectives, or other characteristics.
IV-36	These benchmarks shall display a range of costs and performance, especially cases where costs and performance depart significantly from the average. These benchmarks shall be updated on a regular basis.’;	These benchmarks shall display a range of costs and performance, especially cases where costs and performance depart significantly from the average. These benchmarks shall be updated on a regular basis.’;
IV-36a		<u>1h. Competent authorities may develop and make publicly available benchmarks on costs and performance for UCITS, or their share classes where they have different cost structures, with similar characteristics that are only distributed in their Member State, until appropriate Union supervisory benchmarks as referred to in paragraph 1f have been developed and made public.</u>

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IV-36b		By [date of application], ESMA, after having consulted EIOPA, the competent authorities and other stakeholders, shall issue guidelines on the methodology to be used for such benchmarks.
IV-37	(b) paragraph 2 is amended as follows:	(b) paragraph 2 is amended as follows:
IV-38	(i) The introductory wording is replaced by the following:	(i) The introductory wording is replaced by the following:
IV-39	‘Without prejudice to Article 116, the Commission shall adopt, by means of delegated acts in accordance with Article 112a, measures to ensure that the management company complies with the duties set out in paragraphs 1 to 1e in particular to:’;	‘Without prejudice to Article 116, the Commission shall adopt, by means of delegated acts in accordance with Article 112a, measures to ensure that the management company complies with the duties set out in paragraphs 1 to 1e in particular to:’;
IV-40	(ii) point (b) is replaced by the following:	(ii) point (b) is replaced by the following:
IV-41	‘(b) specify the principles required to ensure that management companies employ effectively the resources and procedures that are necessary for the proper performance of their business activities;’	‘(b) specify the principles required to ensure that management companies employ effectively the resources and procedures that are necessary for the proper performance of their business activities;’
IV-42	(iii) the following points (d) and (e) are added:	(iii) the following points (d) and (e) are added:
IV-43	‘(d) specify the minimum requirements for the pricing process to prevent undue costs from being charged to the UCITS and its unit-holders, in particular, by:	‘(d) specify the minimum requirements for the value-for-money assessment pricing undue costs process to prevent undue costs from being charged to the UCITS and its unit-holders, in particular, by:

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IV-44	(i) ensuring that costs are correctly identified and quantified, and comply with the requirements set out in paragraph 1a, point (a);	(i) ensuring that costs are correctly identified and quantified, and comply with the requirements set out in paragraph 1a, point (a);
IV-45	(ii) identifying which costs can be charged to the UCITS and its unit-holders taking into account the level of the costs and the nature of the costs by reference to a list of eligible costs that meet the conditions set out in paragraph 1a, points (b) and (c) , and the conditions under which competent authorities may authorise on a case-by-case basis costs which are not included in the list of eligible costs but that meet the conditions set out in paragraph 1a, points (b) and (c);	(ii) identifying which costs can be charged to the UCITS and its unit-holders taking into account the level of the costs and the nature of the costs by reference to a list of eligible costs that meet the conditions set out in paragraph 1a, points (b) and (c) , and the conditions under which competent authorities may authorise on a case-by-case basis costs which are not included in the list of eligible costs but that meet the conditions set out in paragraph 1a, points (b) and (c);
IV-46	(iii) identifying potential conflict of interests and measures to mitigate the occurrence of conflicts of interest;	(iii) identifying potential conflict of interests and measures to mitigate the occurrence of conflicts of interest;
IV-47	(iv) establishing a procedure to determine the level of compensation where undue costs have been charged to investors.;	(iv) establishing a procedure to determine the level of compensation where undue costs have been charged to investors.;
IV-48	(e) provide for criteria to determine whether costs are justified and proportionate in accordance with paragraph 1b, point (b), and for taking corrective measures mentioned in paragraph 1e and specify the methodology used by ESMA to develop its benchmarks.?’;	(e) <u>specify the methodology to be used by management companies to perform the peer-group comparison.</u> provide for criteria to determine whether costs are justified and proportionate in accordance with paragraph 1b, point (b), and for taking corrective measures

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		mentioned in paragraph 1e and specify the methodology used by ESMA to develop its benchmarks. ’;
IV-49	(c) the following paragraph 4 is added:	(c) the following paragraph 4 is added:
IV-49a		<u>By [OJ: insert date of application of this amending Directive referred to in Article 6(2) + 5 years], competent authorities shall report to ESMA on:</u>
IV-49b		<u>(a) the impact and the added value of the peer-group comparison on the value for money of UCITS;</u>
IV-49c		<u>(b) the impact and the added value of Union supervisory benchmarks on the supervision of the value-for-money assessment process;</u>
IV-49d		<u>(c) the application of Union supervisory benchmarks in the value-for -money assessment process of management companies; and</u>
IV-49e		<u>(d) whether and how any national specific issues should be taken into account in order for all investors within the Union to be fairly and sufficiently protected, including concrete proposals how this should be done.</u>

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IV-49f		<u>By ... [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>
IV-49g		<u>(a) the impact and the added value of the peer-group comparison and the Union supervisory benchmarks on the value for money of UCITS and on the supervision of the value-for-money assessment process in the Union, including the need to revise the framework;</u>
IV-49h		<u>(b) the application of Union supervisory benchmarks in the value-for-money assessment process of management companies;</u>
IV-49i		<u>(c) whether and how any national specific issues should be taken into account in order for all investors within the Union to be fairly and sufficiently protected; and</u>
IV-49j		<u>(d) whether and how to modify the approach to the data that is made available in accordance with paragraph 1g.</u>
IV-49k		<u>When drafting the report, ESMA shall coordinate with EIOPA.</u>

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IV-50	<p>‘4. By ...[OP: please insert the date = five years from the date referred to in Article 7(2) of this Directive], after consulting ESMA, the Commission shall submit a report to Council and Parliament on the implementation of this Article. The report shall evaluate at least the following:</p>	<p>‘4. By [OJ: insert <u>date of application of this amending Directive referred to in Article 6(2) + 7 years</u> OP: please insert the date = five years from the date referred to in Article 7(2) of this Directive], after consulting ESMA, the Commission shall submit a report to <u>the</u> Council and <u>the European</u> Parliament <u>presenting the conclusions of the review on the implementation of this Article. If appropriate, the report shall be accompanied by legislative proposals.</u> The report shall evaluate at least the following:</p>
IV-51	<p>(a) whether this Article has had a positive impact on the costs and performance of UCITS offered to retail investors and to which extent;</p>	<p>(a) — whether this Article has had a positive impact on the costs and performance of UCITS offered to retail investors and to which extent;</p>
IV-52	<p>(b) whether the assessment set out in paragraph 1e is proportionate in terms of complexity and costs incurred by management companies.’;</p>	<p>(b) — whether the assessment set out in paragraph 1e is proportionate in terms of complexity and costs incurred by management companies.’;</p>
IV-53	<p>(56) the following Article 20a is inserted:</p>	<p>(56 2) the following <u>point (f) is added to the second paragraph of</u> Article 20a <u>is inserted:</u></p>

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IV-54	‘Article 20a	<u>‘Article 20a</u>
IV-55	In respect of each UCITS it manages, a management company shall provide to the competent authority of its home Member State information on the costs borne by investors and performance of the UCITS, at the level of each fund, or at the level of the UCITS share classes where those share classes have different cost structures.’;	(f) In respect of each UCITS it manages, a management company shall provide to the competent authority of its home Member State information on the costs borne by investors and <u>data on other characteristics, in particular the</u> performance of the UCITS, at the level of each fund, or at the level of the UCITS share classes where those share classes have different cost structures.’;
IV-55a		<u>(3) In Article 20a, the fifth paragraph, point (a) is replaced by the following:</u>
IV-55b		<u>‘(a) the details of the information to be reported in accordance with paragraph 1, paragraph 2, points (a), (b), (c), (e) and (f), and paragraph 4;’</u>
IV-56	(57) in Article 30, the second paragraph is replaced by the following:	(57 4) in Article 30, the second paragraph is replaced by the following:
IV-57	‘For the purpose of the Articles referred to in the first paragraph, ‘management company’ means ‘investment company’, with the exception of the second paragraph of Article 14(1d).’	‘For the purpose of the Articles referred to in the first paragraph, ‘management company’ means ‘investment company’, with the exception of the second paragraph of Article 14(1d).’
IV-58	(58) in Article 90, the following paragraph is added:	(58 5) in Article 90, the following paragraph is added:

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IV-59	‘This Article applies without prejudice to the application of Article 14.’;	‘This Article applies without prejudice to the application of Article 14.’;
IV-60	(59) in Article 98(2), the following point (n) is added:	(59 6) in Article 98(2), the following point (n) is added:
IV-61	‘(n) require compensation to investors where undue costs have been charged to UCITS or its unit-holders.’;	‘(n) require compensation to investors where undue costs have been charged to UCITS or its unit-holders.’;
IV-62	(60) in Article 99(6), the following point is added:	(60 7) in Article 99(6), the following point (n) is added:
IV-63	‘(n) require compensation to investors where undue costs have been charged to UCITS or its unit-holders.’;	‘(n) require compensation to investors where undue costs have been charged to UCITS or its unit-holders.’;
IV-64	(61) in Article 112a(2), the following subparagraph is inserted after the fourth subparagraph:	(61 8) in Article 112a(2), the following subparagraph is inserted after the fourth subparagraph:
IV-65	‘The power to adopt the delegated acts referred to in Article 14 shall be conferred on the Commission for a period of four years from [OJ: insert date of entry into force of this amending Directive].’;	‘The power to adopt the delegated acts referred to in Article 14 shall be conferred on the Commission for a period of four years from [OJ: insert date of entry into force of this amending Directive].’;
IV-66	Article 5	Article 5
IV-67	Amendments to Directive 2011/61/EU	Amendments to Directive 2011/61/EU
IV-68	Directive 2011/61/EU is amended as follows:	Directive 2011/61/EU is amended as follows:
IV-69	(1) Article 12 is amended as follows:	(1) Article 12 is amended as follows:
IV-70	(a) the following paragraphs 1a to 1f are inserted:	(a) the following paragraphs 1a to 1fg are inserted:
IV-71	“1a. For the purposes of paragraph 1, Member States shall require AIFMs to act in such a way as to prevent undue costs from being charged to the AIFs and their unitholders.	“1a. For the purposes of paragraph 1, Member States shall require AIFMs to act in such a way as to prevent undue costs from being charged to the AIFs and their unitholders.

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IV-72	The costs which comply with the following conditions shall be regarded as due:	The costs which comply with the following conditions shall be regarded as due:
IV-73	(a) The costs are in line with disclosures in the prospectus referred to in Article 23(3), the fund rules or instruments of incorporation as referred to in Article 23(1) and the key information document referred to in Article 5(1) of Regulation (EU) No 1286/2014;	(a) The costs are in line with disclosures in the prospectus referred to in Article 23(3), the fund rules or instruments of incorporation as referred to in Article 23(1) and the key information document referred to in Article 5(1) of Regulation (EU) No 1286/2014;
IV-74	(b) The costs are necessary for the AIF to operate in line with its investment strategy and objective or to fulfil regulatory requirements;	(b) The costs are necessary for the AIF to operate in line with its investment strategy and objective or to fulfil regulatory requirements;
IV-75	(c) The costs are borne by investors in a way that ensures fair treatment of investors, except for cases mentioned in Article 12 (1) where AIF rules or instruments of incorporation provide for a preferential treatment.	(c) The costs are borne by investors in a way that ensures fair treatment of investors, except for cases mentioned in Article 12 (1) where AIF rules or instruments of incorporation provide for a preferential treatment.
IV-76	1b. Member States shall require AIFMs to maintain, operate and review an effective pricing process that allows for the identification and quantification of all costs borne by the AIFs or their unitholders. That pricing process shall ensure that the following conditions are fulfilled:	1b. Member States shall require AIFMs to <u>identify and quantify all costs borne by the AIF or its unit-holders, and to maintain, operate and review an effective pricing and undue costs and value-for-money processes that allows for the identification and quantification of all costs borne by the AIFs or their unitholders and their performance, and that identify the other benefits of the AIF. That pricing</u>

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		processes AIFMs shall ensure that the following conditions are fulfilled:
IV-77	(a) the costs are not undue;	(a) the costs are not undue;
IV-78	(b) the costs borne by retail investors are justified and proportionate, having regard to the characteristics of the AIF, including its investment objective, strategy, expected returns, level of risks and other relevant characteristics.	(b) <u>the AIF offers value for money, by ensuring that</u> the costs borne by retail investors are justified and proportionate, having regard to the characteristics of the AIF, including its investment objective, strategy, <u>performance expected returns</u> , level of risks, <u>and</u> other <u>benefits and relevant characteristics</u> .
IV-79	1c. Member States shall ensure that AIFMs are responsible for the effectiveness and quality of their pricing process. The pricing process shall be clearly documented, shall clearly set out the responsibilities of the management bodies of the AIFM in determining and reviewing the costs borne by investors, and shall be subject to periodic review. The assessment of costs shall be based on objective criteria and methodology, including a comparison to market standards.	1c. Member States shall ensure that AIFMs are responsible for the effectiveness and quality of their <u>value-for-money assessment pricing and undue costs</u> processes. The <u>value-for-money assessment pricing and undue costs</u> processes shall be clearly documented, shall clearly set out the responsibilities of the management bodies of the AIFM in determining and reviewing the costs borne by investors, and shall be subject to periodic review. The assessment of costs <u>and value for money</u> shall be based on objective criteria and methodology, including a comparison to market standards .

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IV-80	1d. Member States shall require AIFMs to assess at least annually whether undue costs have been charged to AIF or its unit holders.	1d. Member States shall require AIFMs to assess at least annually whether undue costs have been charged to AIF or its unit holders.
IV-81	Member States shall require AIFMs to reimburse investors where undue costs have been charged to the or its AIF unit-holders.	Member States shall require AIFMs to reimburse investors <u>without undue delay</u> where undue costs have been charged to the or its AIF unit-holders.
IV-82	Member States shall require AIFMs to report to the competent authorities, of their home Member State, to the competent authority of the home Member State of the AIF, where applicable, to the depositary and to the financial auditors of the AIFMs and the AIF, where applicable, situations where undue costs have been charged to the AIF or its unit-holders.	Member States shall require AIFMs to report to the competent authorities, of their home Member State, to the competent authority of the home Member State of the AIF, where applicable, to the depositary and to the financial auditors of the AIFMs and the AIF, where applicable, situations where undue costs have been charged to the AIF or its unit-holders.
IV-83	1e. Member States shall require AIFMs to assess at least annually the conditions mentioned in paragraph 1b, point (b). The assessment shall take into account the criteria set out in the pricing process and, for AIFs marketed to retail investors, include a comparison with the relevant benchmark on costs and performance published by ESMA in accordance with paragraph 1f.	1e. Member States shall require AIFMs to assess at least annually the conditions mentioned in paragraph 1b, point (b). The assessment shall take into account the criteria set out in the <u>value-for-money assessment pricing</u> process and, for AIFs marketed to retail investors, <u>shall be established through appropriate testing, taking into account the specificities of the AIF, including, a market comparison with similar AIFs in the Union, subject to data</u>

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		<p><u>availability, by comparing the costs and charges as well as the performance of the AIF with the costs and charges and the performance of a peer group that consists of other AIFs with similar characteristics including, where relevant, product type, similar levels of risk, strategy, objectives, range of recommended holding periods and sustainability features. the relevant benchmark on costs and performance published by ESMA in accordance with paragraph 1f. The peer-group comparison, including the selection of AIFs with similar characteristics, shall be based on relevant and objective criteria and shall be documented. The compliance report to the management body shall systematically include information on product testing and assessments.</u></p>
IV-83a		<p><u>The peer-group comparison shall be performed using data made available according to paragraph 1g and included in information to be published according to Union law.</u></p>
IV-84	<p>When an AIF or its share classes, when they have different cost structures, deviate from the relevant benchmark referred to in paragraph 1f, the AIFM shall perform additional testing and further assessments and establish whether costs and</p>	<p>When an AIF or its share classes, when they have different cost structures, deviate from the relevant benchmark referred to in paragraph 1f, the AIFM shall perform additional testing and further assessments and establish</p>

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	<p>charges are nevertheless justified and proportionate. If justification and proportionality of costs and charges cannot be demonstrated, or if the AIF or its share classes do not comply with other criteria set out by the AIFM in the pricing process, that AIF or its share class shall not be marketed to retail investors by the AIFM.</p>	<p>whether costs and charges are nevertheless justified and proportionate. If justification and proportionality of costs and charges cannot be demonstrated, or if the AIF or its share classes do not comply with other criteria set out by the AIFM in the pricing process, that AIF or its share class shall not be marketed to retail investors by the AIFM.</p> <p><u>When an AIF or its share classes, when they have different cost structures, is at a significant distance from the average of the peer group to the detriment of the client, the value for money shall be substantiated through additional testing and further assessments. Where necessary, the management company shall take appropriate actions to ensure value for money. The content of appropriate actions shall be determined by the AIFM while taking into account the relevant features of the AIF or its share classes, when they have different cost structures, and the interest of the investor. The 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>

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IV-84a		<p><u>Member States may provide for a possibility for an AIFM to opt, for the purpose of the market comparison in its value-for-money assessment process, to compare an AIF or its share classes, when they have different cost structures, with the relevant Union supervisory benchmark as referred to in paragraph 1f instead of a peer-group.</u></p>
IV-84b		<p><u>If the AIFM opted to compare an AIF or its share classes, when they have different cost structures, with the relevant Union supervisory benchmark, the AIFM shall, when an AIF or its share classes, when they have different cost structures, falls outside the Union supervisory benchmark, substantiate the value for money through additional testing and further assessments.—Where necessary, the AIFM shall take appropriate actions to ensure value for money. The content of appropriate actions shall be determined by the AIFM while taking into account the relevant features of the AIF or its share classes, when they have different cost structures, and the interest of the investor. The compliance report to the management body shall systematically include information on these additional testings and further</u></p>

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		<u>assessments and their conclusions, including on any actions to ensure value for money.</u>
IV-85	1f. After having consulted EIOPA and competent authorities, ESMA shall, where appropriate, develop and make publicly available benchmarks to enable the comparative assessment of costs and performance of AIFs, or their share classes where they have different cost structures, to be used for the assessment set out in paragraph 1e.	1f. After having consulted EIOPA and competent authorities, ESMA shall, where appropriate, develop and make publicly available benchmarks to enable the comparative assessment of costs and performance of AIFs, or their share classes where they have different cost structures, to be used for the assessment set out in paragraph 1e. <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 Union supervisory benchmarks for AIFs marketed to retail investors, or their share classes where they have different cost structures. Those benchmarks shall be developed per product cluster that contains a significant number of AIFs, or their share classes where they have different cost structures, 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</u>

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		<p><u>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 help competent authorities with a reference point for the supervision of the value-for-money of AIFs, or their share classes where they have different cost structures, by identifying outliers in the market.</u></p>
IV85a		<p><u>Competent authorities shall verify that the value-for-money assessment process of AIFMs complies with the product governance requirements under paragraphs 1b, 1c, 1e and 3, (b).</u></p>
IV-85b		<p><u>Union supervisory benchmarks shall allow to identify AIFs, or their share classes where they have different cost structures, that are at a significant distance from the average of the relevant product cluster to the detriment of the client (outliers) with respect to costs and performance and thereby have an increased risk of poor value for money.</u></p>

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IV-85c		<u>ESMA shall regularly update the Union supervisory benchmarks.</u>
IV-85d		<u>1g. Taking into account the methodology to perform the peer-group comparison value for money assessment process as referred to in paragraph 3, point (b), ESMA shall make available data for the purpose of the peer-group comparison. Where appropriate, data that is not publicly available shall be anonymised or aggregated. ESMA shall regularly review the data.</u>
IV-85e		<u>The data shall be sourced from disclosure and reporting under Union law , including the reporting referred to in Article 24.</u>
IV-85f		<u>ESMA shall provide access to the data on a non-discriminatory basis to manufacturers and distributors. ESMA may charge fees to manufacturers and distributors for this service that shall not exceed direct costs incurred by ESMA for the provision of this service. The fee structure shall, to the greatest extent possible, be proportionate to the volumes of data provided each user. ESMA shall provide access to this data to the following</u>

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		<u>entities, to the extent necessary to fulfill their respective responsibilities, mandates and obligations:</u>
IV-85g		<u>(a) any Union institution, body, office or agency;</u>
IV-85h		<u>(b) any competent authority designated by a Member State pursuant to a Union legislative act;</u>
IV-85i		<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>
IV-85j		<u>(d) any governmental institution, body or agency of a Member State;</u>
IV-85k		<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>
IV-85l		<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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IV-85m		<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>
IV-85n		<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>
IV-85o		<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>
IV-85p		<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>
IV-86	Common benchmarks shall be developed, where it is feasible to do so, for AIFs, or their share classes where they have different cost structures, marketed to retail investors that present similar levels of performance, risk, strategy, objectives, or other characteristics.	Common benchmarks shall be developed, where it is feasible to do so, for AIFs, or their share classes where they have different cost structures, marketed to retail investors that present similar levels of performance, risk, strategy, objectives, or other characteristics.

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IV-87	These benchmarks shall display a range of costs and performance, especially cases where costs and performance depart significantly from the average. The benchmarks shall be updated on a regular basis.’;	These benchmarks shall display a range of costs and performance, especially cases where costs and performance depart significantly from the average. The benchmarks shall be updated on a regular basis.’;
IV-88	(b) paragraph 3 is replaced by the following:	(b) paragraph 3 is replaced by the following:
IV-89	‘3. The Commission shall adopt, by means of delegated acts in accordance with Article 56 and subject to the conditions of Articles 57 and 58, measures specifying the criteria to be used by the relevant competent authorities to assess whether AIFMs comply with their obligations under paragraph 1 of this Article and measures to ensure that the AIFM complies with the duties set out in paragraphs 1 to 1e of this Article, in particular to:	‘3. The Commission shall adopt, by means of delegated acts in accordance with Article 56 and subject to the conditions of Articles 57 and 58, measures specifying the criteria to be used by the relevant competent authorities to assess whether AIFMs comply with their obligations under paragraph 1 of this Article and measures to ensure that the AIFM complies with the duties set out in paragraphs 1 to 1e of this Article, in particular to:
IV-90	(a) specify the minimum requirements for the pricing process to prevent undue costs from being charged to the AIF and its unit-holders, in particular, by:	(a) specify the minimum requirements for the value-for-money assessment <u>pricing</u> undue costs process to prevent undue costs from being charged to the AIF and its unit-holders, in particular, by:
IV-91	(i) ensuring that costs are correctly identified and quantified, and comply with the condition set out in paragraph 1a, point (a);	(i) ensuring that costs are correctly identified and quantified, and comply with the condition set out in paragraph 1a, point (a);
IV-92	(ii) identifying which costs can be charged to the AIF and its unit-holders taking into account the level of the costs and the	(ii) identifying which costs can be charged to the AIF and its unit-holders taking into account the level of the costs and the

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	nature of the costs by reference to a list of eligible costs that meet the conditions set out in paragraph 1a, points (b) and (c), and the conditions under which competent authorities may authorise on a case-by-case basis costs which are not included in the list of eligible costs but that meet the conditions set out in paragraph 1a, points (b) and (c);	nature of the costs by reference to a list of eligible costs that meet the conditions set out in paragraph 1a, points (b) and (c), and the conditions under which competent authorities may authorise on a case-by-case basis costs which are not included in the list of eligible costs but that meet the conditions set out in paragraph 1a, points (b) and (c);
IV-93	(iii) identifying potential conflict of interests and measures to mitigate the occurrence of conflicts of interest;	(iii) identifying potential conflict of interests and measures to mitigate the occurrence of conflicts of interest;
IV-94	(iv) establishing a procedure to determine the level of compensation in case undue costs have been charged to investors.	(iv) establishing a procedure to determine the level of compensation in case undue costs have been charged to investors.
IV-95	(b) provide for criteria to determine whether costs are justified and proportionate in accordance with paragraph 1b, point (b) and for taking corrective measures mentioned in paragraph 1e and specify the methodology used by ESMA to develop its benchmarks.';	(b) <u>specify the methodology to be used by AIFMs to perform the value-for-money assessment process, including the peer-group comparison. If provide for criteria to determine whether costs are justified and proportionate in accordance with paragraph 1b, point (b) and for taking corrective measures mentioned in paragraph 1e and specify the methodology used by ESMA to develop its benchmarks.'</u> ;
IV-96	(c) the following paragraph 4 is added:	(c) the following paragraph 4 is added:

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IV-96a		<u>'4. By [OJ: insert date of application of this amending Directive referred to in Article 6(2) + 5 years], competent authorities shall report to ESMA on:</u>
IV-96b		<u>(a) the impact and the added value of the peer-group comparison on the value for money of AIFs;</u>
IV-96c		<u>(b) the impact and the added value of Union supervisory benchmarks on the supervision of the value-for-money assessment process;</u>
IV-96d		<u>(c) the application of Union supervisory benchmarks in the value-for-money assessment process of AIFMs; and</u>
IV-96e		<u>(d) whether and how any national specific issues should be taken into account in order for all investors within the Union to be fairly and sufficiently protected, including concrete proposals how this should be done.</u>
IV-96f		<u>By ... [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>
IV-96g		<u>(a) the impact and the added value of the peer-group comparison and the Union supervisory benchmarks on the value for money of AIFs and on supervision of the</u>

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		<u>value-for-money assessment process in the Union, including the need to revise the framework;</u>
IV-96h		<u>(b) the application of Union supervisory benchmarks in the value-for-money assessment process of AIFMs;</u>
IV-96i		<u>(c) whether and how any national specific issues should be taken into account in order for all investors within the Union to be fairly and sufficiently protected; and</u>
IV-96j		<u>(d) whether and how to modify the approach to the data that is made available in accordance with paragraph 1g.</u>
IV-96k		<u>When drafting the report, ESMA shall coordinate with EIOPA.</u>
IV-97	‘4. By ...[OP: please insert the date = five years from the date referred to in Article 7(2) of this Directive] after consulting ESMA, the Commission shall submit a report to Council and Parliament on the implementation of this Article. The report shall evaluate at least the following:	‘4. By [OJ: insert <u>date of application of this amending Directive referred to in Article 6(2) + 7 years</u> OP: please insert the date = five years from the date referred to in Article 7(2) of this Directive] after consulting ESMA, the Commission shall submit a report to <u>the</u> Council and <u>the European</u> Parliament <u>presenting the conclusions of the review. If appropriate, the report shall be accompanied by legislative proposals on the implementation of this Article.</u> The report shall evaluate at least the following:

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IV-98	(a) whether this Article has had a positive impact on the costs and performance of AIF offered to retail investors and to which extent;	(a) — whether this Article has had a positive impact on the costs and performance of AIF offered to retail investors and to which extent;
IV-99	(b) whether the assessment set out in paragraph 1e is proportionate in terms of complexity and costs incurred by AIFMs.’;	b) — whether the assessment set out in paragraph 1e is proportionate in terms of complexity and costs incurred by AIFMs.’;
IV-100	(62) in Article 24(2), the following point (f) is added:	(62) in Article 24(2), the following point (f) (g) is added:
IV-101	‘(f) information on the costs borne by investors and performance of the AIF, at the level of each AIF or at the level the AIF’s share classes where those share classes have different cost structures.’;	‘ (f) (g) information on the costs borne by investors and data on other characteristics, in particular the performance of the AIF, at the level of each AIF or at the level the AIF’s share classes where those share classes have different cost structures.’;
IV-101a		<u>(3) In Article 24(5a), point (a) is replaced by the following:</u>

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IV-101b		<u>‘(a) the details of the information to be reported in accordance with paragraph 1 and with paragraph 2, points (a), (b), (c), (e), (f) and (g);</u>
IV-102	(63) in Article 46(2), the following point (n) is added:	(63 4) in Article 46(2), the following point (n) is added:
IV-103	‘(n) require to compensate investors where undue costs have been charged to the AIF or its unit-holders.’	‘(n) require to compensate investors where undue costs have been charged to the AIF or its unit-holders.’
IV-104	(64) in Article 56(1), the following sentence is inserted after the first sentence:	(64 5) in Article 56(1), the following sentence is inserted after the first sentence:
IV-105	‘The powers to adopt delegated acts referred to in Article 12 shall be conferred on the Commission for a period of 4 years from [OJ: insert date of entry into force of the amending Directive].’;	‘The powers to adopt delegated acts referred to in Article 12 shall be conferred on the Commission for a period of 4 years from [OJ: insert date of entry into force of the amending Directive].’.
IV-106	Article 6	Article 6
IV-107	Transposition	Transposition
IV-108	1. Member States shall adopt and publish, by ... [OP please insert the date = 12 months after the date of entry into force of this Directive] at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.	1. Member States shall adopt and publish, by ... [OP please insert the date = 30 months after the date of entry into force of this Directive] at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.

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IV-109	2. They shall apply those provisions from ... [OP please insert the date = 18 months after the date of entry into force of this Directive].	2. They shall apply those provisions from... [OP please insert the date = 36 months after the date of entry into force of this Directive].
IV-109a		<u>Notwithstanding the previous subparagraph, they shall not apply the laws, regulations and administrative provisions transposing (i) Article 24(5c) of Directive 2014/65/EU, as inserted by Article 1(12)(g) of this Directive, and (ii) Article 29(5) of Directive 2016/97 EU, as inserted by Article 2(44) of this Directive, until 12 months after the entry into force of the delegated acts referred to in the said provisions.</u>
IV-110	3. When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.	3. When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.
IV-111	4. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.	4. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.
IV-112	Article 7	Article 7
IV-113	Entry into force	Entry into force

	Commission proposal	Drafting Suggestions
IV-114	This Directive shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.	This Directive shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.
IV-115	Article 8	Article 8
IV-116	Addressees	Addressees
IV-117	This Directive is addressed to the Member States.	This Directive is addressed to the Member States.
IV-118	Done at Brussels,	Done at Brussels,
IV-119	For the European Parliament For the Council	For the European Parliament For the Council
IV-120	The President The President	The President The President
IV-121	ANNEX I	ANNEX I
IV-121a		<u>In Annex II to Directive 2014/65/EU, the third subparagraph of section I is replaced by the following:</u>
IV-121b		“The entities referred to above are considered to be professionals. They must however be allowed to request non-professional treatment and investment firms may agree to provide a higher level of protection. Where the client of an investment firm is an undertaking referred to above, the investment firm must inform it prior to any provision of services that, on the basis of the information available to the investment firm, the client is deemed to be a professional client, and will be treated as such unless the investment firm and the client agree otherwise. <u>In case of an ongoing</u>

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		<u>relationship, the client should be clearly informed of any change in the categorisation during the relationship and the consequences thereof, including, when the client is considered to be a professional client, their right to request non-professional treatment.</u>
IV-122	In Annex II to Directive 2014/65/EU, section II.1 is amended as follows:	In Annex II to Directive 2014/65/EU, <u>section</u> II.1 is amended as follows:
IV-123	(1) the fourth subparagraph is replaced by the following:	(1) the fourth sub paragraph is replaced by the following:
IV-124	‘The fitness test applied to managers and directors of entities authorised under the present Directive or other EU Directives in the financial field could be regarded as an example of the assessment of expertise and knowledge. In the case of small entities, the person subject to that assessment shall be the person authorised to carry out transactions on behalf of the entity.’;	The fitness test applied to managers and directors of entities authorised under the present Directive or other EU Directives in the financial field could be regarded as an example of the assessment of expertise and knowledge. <u>In the case of small entities, the person subject to that assessment shall be the person authorised to carry out transactions on behalf of the entity.</u> ’;
IV-125	(2) subparagraph 5 is amended as follows:	(2) <u>the fifth</u> sub paragraph 5 is amended as follows:
IV-126	(1) the second and third indents are replaced by the following:	(1) the <u>first</u> , second and third indents are replaced by the following:
IV-126a		<u>‘- the client has carried out, in significant size, on the relevant market at least 15 transactions per year over the last three years. Monthly transactions in an investment</u>

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		<u>plan are considered as only one transaction, unless they are of significant size.</u> ;
IV-127	‘- the size of the client’s financial instrument portfolio, defined as including cash deposits and financial instruments exceeds EUR 250 000 on average during the last 3 years,’;	‘- the size of the client’s financial instrument portfolio, defined as including cash deposits and financial instruments, <u>has on average over the last three years, preceding that client's request to be classified as professional client, exceeded</u> EUR 250 000, <u>as demonstrated by annual statements or, where not available, other periodic statements of financial position during the last 3 calendar years;</u> ’
IV-128	- the client works or has worked in the financial sector or undertaken capital market activities requiring to buy and sell financial instruments and/or to manage a portfolio of financial instruments for at least one year in a professional position, which requires knowledge of the transactions or services envisaged.’;	‘- the client works or has worked in the financial sector or undertaken capital market activities requiring <u>them</u> to buy and sell financial instruments and/or to manage a portfolio of financial instruments for at least one year in a professional position which requires knowledge of the transactions or services envisaged, <u>or the client can provide the firm with proof of recognised education or training that evidences an understanding of the relevant transactions or services envisaged and the ability to evaluate the risks adequately.</u> ’;
IV-129	(2) the following indent is added:	(2) — the following indent is added:

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IV-130	‘ - the client can provide the firm with proof of a recognised education or training that evidences his/her understanding of the relevant transactions or services envisaged and his/her ability to evaluate adequately the risks.’;	— the client can provide the firm with proof of a recognised education or training that evidences his/her understanding of the relevant transactions or services envisaged and his/her ability to evaluate adequately the risks.
IV-131	(3) the following subparagraphs are added:	(3) the following sub paragraphs are <u>inserted after the fifth paragraph</u> added:
IV-132	‘Where the client is a legal entity, as a minimum, two of the following criteria shall be met:	‘Where the client is a legal entity, as a minimum, two of the following criteria shall be met:
IV-133	- balance sheet total: EUR 10 000 000	- balance sheet total: EUR 10 000 000
IV-134	- net turnover: EUR 20 000 000	- net turnover: EUR 20 000 000
IV-135	- own funds: EUR 1 000 000	- own funds: EUR 1 000 000
IV-136	The investment firm shall assess that the legal representative of that legal entity or the person responsible for the investment transactions on behalf of that legal entity, understands the relevant transactions or services envisaged, is capable of making investment decisions in line with the legal entity’s objectives, needs and financial capacity and is able to evaluate adequately the risks.’.	The investment firm shall assess <u>whether that the natural persons which represent the</u> legal entity <u>or the person responsible for the investment transactions on behalf of that legal entity</u> understands the relevant transactions <u>or and investment services envisaged, are authorised and is</u> capable of making investment decisions in line with the legal entity’s objectives, <u>corporate purposes,</u> needs and financial capacity and <u>are is</u> able to evaluate <u>adequately</u> the risks <u>adequately. The investment firm shall establish and</u>

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		<u>implement a policy as to how-the initial assessment and, where needed, subsequent assessments in case of changes in the natural persons representing the legal entity, will be done in practice, including, from whom information about knowledge and experience should be collected and, to the extent possible, taking into account, amongst others, the activities and the organisation of the legal entity. The investment firm shall keep a record of this policy.’.</u>
IV-137	ANNEX II	ANNEX II
IV-138	‘Annex V	‘Annex V
IV-139	Minimum professional knowledge and competence requirements	Minimum professional knowledge and competence requirements
IV-140	(as referred to in Article 24d(2))	(as referred to in Article 24d(2))
IV-141	(a) understand the key characteristics, risks and features of the financial instruments being offered or recommended, including any general tax implications to be incurred by the client in the context of transactions;	(a) understand the key characteristics, risks and features of the financial instruments being offered or recommended, including any general tax implications to be incurred by the client in the context of transactions;
IV-142	(b) understand the total costs and charges to be incurred by the client in the context of the type of investment product being offered or recommended and the costs related to the provision of the advice and any other related services being provided;	(b) understand the total costs and charges to be incurred by the client in the context of the type of investment product being offered or recommended and the costs related to the provision of the advice and any other related services being provided;

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IV-143	(c) understand how the type of investment product provided by the firm may not be suitable for the client, having assessed the relevant information provided by the client against changes that have occurred since the relevant information was gathered;	(c) understand how the type of investment product provided by the firm may not be suitable for the client, having assessed the relevant information provided by the client against changes that have occurred since the relevant information was gathered;
IV-144	(d) understand how financial markets function and how they affect the value and pricing of financial instruments offered or recommended to clients;	(d) understand how financial markets function and how they affect the value and pricing of financial instruments offered or recommended to clients;
IV-145	(e) understand the impact of macro-economic developments, national/regional/global events on financial markets and on the value of financial instruments being offered or recommended to clients;	(e) understand the impact of macro-economic developments, national/regional/global events on financial markets and on the value of financial instruments being offered or recommended to clients;
IV-146	(f) understand the difference between past performance and future performance scenarios as well as the limits of forecasting;	(f) understand the difference between past performance and future performance scenarios as well as the limits of forecasting;
IV-147	(g) understand the general implications of the main elements of the financial regulatory framework;	(g) understand the general implications of the main elements of the financial regulatory framework;
IV-148	(h) assess data relevant to financial instruments offered or recommended to clients such as key information documents, prospectuses, financial statements, or financial data;	(h) assess data relevant to financial instruments offered or recommended to clients such as key information documents, prospectuses, financial statements, or financial data;
IV-149	(i) understand specific market structures for the type of financial instruments offered or recommended to clients;	(i) understand specific market structures for the type of financial instruments offered or recommended to clients;

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IV-150	(j) understand the valuation principles for the type of financial instruments offered or recommended to clients;	(j) understand the valuation principles for the type of financial instruments offered or recommended to clients;
IV-151	(k) understand the fundamentals of managing a portfolio, including being able to understand the implications of diversification regarding individual investment alternatives;	(k) understand the fundamentals of managing a portfolio, including being able to understand the implications of diversification regarding individual investment alternatives;
IV-152	(l) understand the concept of sustainable investment and how to consider and integrate sustainability factors and client’s sustainability preferences into the advisory processes.’	(l) understand the concept of sustainable investment and how to consider and integrate sustainability factors and client’s sustainability preferences into the advisory processes.’
IV-153	ANNEX III	ANNEX III
IV-154	(1) Part II of Annex I to Directive (EU) 2016/97 is amended as follows:point (a) is replaced by the following:	(1) Part II of Annex I to Directive (EU) 2016/97 is amended as follows:point (a) is replaced by the following:
IV-155	‘(a) minimum necessary knowledge of the key characteristics, risks and features of insurance-based investment products, including terms and conditions and net premiums and, where applicable, guaranteed and non-guaranteed benefits as well as the financial risks borne by policyholders and any general tax implications to be incurred by the client;’;	‘(a) minimum necessary knowledge of the key characteristics, risks and features of insurance-based investment products, including terms and conditions and net premiums and, where applicable, guaranteed and non-guaranteed benefits as well as the financial risks borne by policyholders and any general tax implications to be incurred by the client;’;
IV-156	(2) the following point (aa) is inserted:	(2) the following point (aa) is inserted:
IV-157	‘(aa) minimum necessary knowledge of the total costs and charges to be incurred by the client in the context of the type	‘(aa) minimum necessary knowledge of the total costs and charges to be incurred by the client in the context of the type

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	of insurance-based investment product being offered or recommended and the costs related to the provision of the advice and any other related services being provided;’;	of insurance-based investment product being offered or recommended and the costs related to the provision of the advice and any other related services being provided;’;
IV-158	(3) point (c) is replaced by the following:	(3) point (c) is replaced by the following:
IV-159	‘(c) minimum necessary financial competency, including:	‘(c) minimum necessary financial competency, including:
IV-160	(i) understanding how financial markets function and how they affect the value and pricing of financial instruments offered or recommended to clients;	(i) understanding how financial markets function and how they affect the value and pricing of financial instruments offered or recommended to clients;
IV-161	(ii) understanding the impact of macro-economic developments, national/regional/global events on financial markets and on the value of financial instruments being offered or recommended to clients;	(ii) understanding the impact of macro-economic developments, national/regional/global events on financial markets and on the value of financial instruments being offered or recommended to clients;
IV-162	(iii) understanding of the difference between past performance and future performance scenarios as well as the limits of forecasting;	(iii) understanding of the difference between past performance and future performance scenarios as well as the limits of forecasting;
IV-163	(iv) understanding of specific market structures for the type of financial instruments offered or recommended to clients;	(iv) understanding of specific market structures for the type of financial instruments offered or recommended to clients;
IV-164	(v) understanding of the valuation principles for the type of financial instruments offered or recommended to clients;’;	(v) understanding of the valuation principles for the type of financial instruments offered or recommended to clients;’;
IV-165	(4) the following points (fa) and (fb) are inserted:	(4) the following points (fa) and (fb) are inserted:

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IV-166	‘(fa) minimum necessary knowledge to assess data relevant to the insurance-based investment products offered or recommended to clients such as key information documents, prospectuses, financial statements, or financial data;	‘(fa) minimum necessary knowledge to assess data relevant to the insurance-based investment products offered or recommended to clients such as key information documents, prospectuses, financial statements, or financial data;
IV-167	(fb) minimum necessary knowledge of the general implications of the main elements of the financial regulatory framework;’;	(fb) minimum necessary knowledge of the general implications of the main elements of the financial regulatory framework;’;
IV-168	(5) point (i) is replaced by the following:	(5) point (i) is replaced by the following:
IV-169	‘(i) minimum necessary knowledge of assessing customer needs, including understanding of how the type of insurance-based investment product provided by the firm may not be suitable for the client, having assessed the relevant information provided by the client against changes that have occurred since the relevant information was gathered;’;	‘(i) minimum necessary knowledge of assessing customer needs, including understanding of how the type of insurance-based investment product provided by the firm may not be suitable for the client, having assessed the relevant information provided by the client against changes that have occurred since the relevant information was gathered;’;
IV-170	(6) the following point (ia) is inserted:	(6) the following point (ia) is inserted:
IV-171	‘(ia) understanding the concept of sustainable investment and how to consider and integrate sustainability factors and customer’s sustainability preferences into the advisory processes;’	‘(ia) understanding the concept of sustainable investment and how to consider and integrate sustainability factors and customer’s sustainability preferences into the advisory processes;’
IV-172	(7) point (l) is deleted.	(7) point (l) is deleted.