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I-1	**Proposal for a** **DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL** **amending Directives (EU) 2009/65/EC, 2009/138/EC, 2011/61/EU, 2014/65/EU and (EU) 2016/97 as regards the Union retail investor protection rules** **(Text with EEA relevance)**	**Proposal for a** **DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL** **amending Directives (EU) 2009/65/EC, 2009/138/EC, 2011/61/EU, 2014/65/EU and (EU) 2016/97 as regards the Union retail investor protection rules** **(Text with EEA relevance)**
I-2	THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,	THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,
I-3	Having regard to the Treaty on the Functioning of the European Union, and in particular Article 53(1) and Article 62 thereof,	Having regard to the Treaty on the Functioning of the European Union, and in particular Article 53(1) and Article 62 thereof,
I-4	Having regard to the proposal from the European Commission,	Having regard to the proposal from the European Commission,
I-5	After transmission of the draft legislative act to the national parliaments,	After transmission of the draft legislative act to the national parliaments,
I-6	Having regard to the opinion of the European Economic and Social Committee[1],	Having regard to the opinion of the European Economic and Social Committee[2],
I-7	Acting in accordance with the ordinary legislative procedure,	Acting in accordance with the ordinary legislative procedure,
I-8	Whereas:	Whereas:

[1] OJ C , , p. .
[2] OJ C , , p. .

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I-9	(1) A core objective of the Capital Markets Union is to ensure that consumers can fully benefit from the investment opportunities offered by capital markets. To be able to do so, they must be supported by a regulatory framework that enables them to take investment decisions that correspond to their needs and aims and adequately protects them in the single market. The package of measures under the EU Retail investment strategy seeks to address the identified shortcomings.	(1) A core objective of the Capital Markets Union is to ensure that consumers can fully benefit from the investment opportunities offered by capital markets. To be able to do so, they must be supported by a regulatory framework that enables them to take investment decisions that correspond to their needs and aims and adequately protects them in the single market. The package of measures under the EU Retail investment strategy seeks to address the identified shortcomings.

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I-10	(2) Directives (EU) 2009/65/EC[3], 2009/138/EC[4], 2011/61/EU[5], 2014/65/EU[6] and (EU) 2016/97[7] of the European Parliament and of the Council. Are designed to protect retail investors and seek to increase the confidence and ability of retail investors as they make important financial decisions. The Commission's work to evaluate and assess this framework has identified a number of important problems, including difficulties for retail investors to understand and compare investment offers on the basis of disclosure documentation which is not sufficiently relevant and engaging	(2) Directives (EU) 2009/65/EC[8], 2009/138/EC[9], 2011/61/EU[10], 2014/65/EU[11] and (EU) 2016/97[12] of the European Parliament and of the Council **<u>are</u>** designed to protect retail investors and seek to increase the confidence and ability of retail investors as they make important financial decisions. The Commission's work to evaluate and assess this framework has identified a number of important problems, including difficulties for retail investors to understand and compare investment offers on the basis of disclosure documentation which is not sufficiently relevant and engaging to help their

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

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

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

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

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

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

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

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

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

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

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	to help their decision-making. In addition, the Commission's work pointed to the growing risks related to misleading marketing information and practices provided via digital channels and shortcomings in the way products are manufactured and distributed that may result in unjustifiably high levels of costs for retail investors. The Commission's work also pointed to risks of bias in the investment advice process.	decision-making. In addition, the Commission's work pointed to the growing risks related to misleading marketing information and practices provided via digital channels and shortcomings in the way products are manufactured and distributed that may result in unjustifiably high levels of costs for retail investors. The Commission's work also pointed to risks of bias in the investment advice process.
I-11	(3) Third party payments, such as fees, commissions or any monetary or non-monetary benefits paid to or received by investment firms and insurance undertakings and intermediaries by or from persons other than the client or customer, also termed as 'inducements', play a significant role in the distribution of retail investment products in the Union. The existing rules designed to manage conflicts of interests in Directives (EU) 2014/65 and (EU) 2016/97, including restrictions on and transparency around the payments of inducements, have not proven sufficiently effective in mitigating consumer detriment and have led to different levels of retail investor protection across product segments and distribution channels. It is therefore necessary to further strengthen the investor protection framework to	(3) Third**-**party payments, such as fees, commissions or any monetary or non-monetary benefits paid**, provided** ~~to~~ or received by investment firms and insurance undertakings and intermediaries**, to** ~~by~~ or from persons other than the client or customer, **which in the case of insurance-based investment products also includes payments between the insurance undertaking and the insurance distributor,** also termed as 'inducements', play a significant role in the distribution of retail investment products in the Union. The existing rules designed to manage conflicts of interests in Directives (EU) 2014/65 and (EU) 2016/97, including restrictions on and transparency around the payments of inducements, have not proven sufficiently effective in mitigating consumer detriment and have led to different levels of retail investor protection

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	ensure that retail clients' best interests are protected uniformly across the Union. In light of the potential disruptive impact caused by the introduction of a full prohibition of inducements, it is appropriate to have a staged approach and first strengthen the requirements around the payment and receipt of inducements to address the potential conflicts of interest and ensure better protection of retail investors and, at a second stage, to review the effectiveness of the framework, and propose alternative measures in line with Better Regulation rules, including a potential ban on inducements, if appropriate.	across product segments and distribution channels. It is therefore necessary to further strengthen the investor protection framework to ensure that retail clients' best interests are protected uniformly across the Union. In light of the potential disruptive impact caused by the introduction of a full prohibition of inducements, it is appropriate to have a staged approach and first strengthen the requirements around the payment and receipt of inducements to address the potential conflicts of interest and ensure better protection of retail investors and, at a second stage, to review the effectiveness of the framework**~~, and propose alternative measures in line with Better Regulation rules, including a potential ban on inducements, if appropriate~~**.
I-12	(4) In order to remove any consumer detriment as a consequence of the payment and receipt of inducements for non-advised sales, it is appropriate to prohibit the payment and receipt of such inducements. In the case of Directive (EU) 2014/65, such prohibition would cover the execution or reception and transmission of orders and in the case of Directive (EU) 2016/97, non-advised sales. To avoid restricting issuers' ability to raise funding, that prohibition should not apply to payments in relation to underwriting and	(4) **~~In order to remove any consumer detriment as a consequence of the payment and receipt of inducements for non-advised sales, it is appropriate to prohibit the payment and receipt of such inducements. In the case of Directive (EU) 2014/65, such prohibition would cover the execution or reception and transmission of orders and in the case of Directive (EU) 2016/97, non-advised sales. To avoid restricting issuers' ability to raise funding, that prohibition should not apply to payments in relation to underwriting~~**

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	placement services provided to an issuer, where the investment firm also provides an execution of order or reception and transmission of order service to an end-investor. Furthermore, investment advice is often combined with the provision of an execution or reception and transmission of order service. In such cases, the main service being investment advice, the prohibition should not apply to the execution or reception and transmission of order service relating to one or more transactions of that client covered by that advice. Minor non-monetary benefits which do not exceed 100 euros or are of a scale and nature that they could not be judged to impair compliance with the duty to act in the best interest of the retail investor should be allowed, to the extent that they are clearly disclosed.	~~**and placement services provided to an issuer, where the investment firm also provides an execution of order or reception and transmission of order service to an end-investor. Furthermore, investment advice is often combined with the provision of an execution or reception and transmission of order service. In such cases, the main service being investment advice, the prohibition should not apply to the execution or reception and transmission of order service relating to one or more transactions of that client covered by that advice.**~~ **Minor non-monetary benefits of a total value below EUR 100 per annum per third party** ~~**which do not exceed 100 euros**~~ **should qualify as acceptable benefits and should be allowed without any further assessment, to the extent that they are clearly disclosed. Minor non-monetary benefits exceeding EUR 100**~~**euros**~~**, which** ~~**or**~~ are of a scale and nature that they could not be judged to impair compliance with the duty to act in the best interest of the retail investor should **also** be allowed, **to the** extent that they are clearly disclosed.
I-13	(5) In order to ensure that retail customers are not misled, it is important to stipulate in Directive (EU) 2016/97 that, in line with existing rules in Directive (EU) 2014/65, insurance	(5) In order to ensure that retail customers are not misled, it is important to stipulate in Directive (EU) 2016/97 that, in line with existing rules in Directive (EU) 2014/65, insurance

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	intermediaries that indicate to their customers that they provide advice on an independent basis, should not accept inducements for such advice. This rule should not prevent insurance intermediaries offering advice to customers from accepting inducements, provided that the advice is not presented as independent, customers are informed of the inducements in line with applicable transparency requirements and that other legal requirements, including the requirement to act in the best interest of the customer, are complied with.	intermediaries that indicate to their customers that they provide advice on an independent basis, should not accept inducements for such advice. This rule should not prevent insurance intermediaries offering advice to customers from accepting inducements, provided that the advice is not presented as independent, **that** customers are informed of the inducements in line with applicable transparency requirements and that other legal requirements, including the **safeguards** ~~**requirement**~~ to act in the best interest of the customer, are complied with.
I-14	(6) The existing safeguards conditioning the payment or receipt of inducements, which under Directive (EU) 2014/65 require that the inducement is designed to enhance the quality of the service to the client, or under Directive (EU) 2016/97 should not have a detrimental effect on the quality of the service to the customer, have not been sufficiently effective in mitigating conflicts of interest. It is therefore appropriate to remove those criteria and introduce a new, common test, both in Directive (EU) 2014/65 and Directive (EU) 2016/97, that further clarifies how financial advisors should apply the principle of acting in the best interest of the client. Financial advisors should base their advice on an appropriate range of	(6**a**) The existing safeguards conditioning the payment or receipt of inducements, which under Directive (EU) 2014/65 require that the inducement is designed to enhance the quality of the service to the client, or under Directive (EU) 2016/97 should not have a detrimental effect on the quality of the service to the **client or** customer, have not **always** been sufficiently effective in mitigating conflicts of interest. It is therefore appropriate to ~~**remove those criteria and**~~ **introduce some general overarching principles to be respected at all times and** a new, common **"inducements"** test, both in Directive (EU) 2014/65 and Directive (EU) 2016/97, that further clarifies ~~**how financial advisors should**~~

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	financial products. After having identified suitable instruments for their clients, they should recommend the most cost-efficient of similar products to their clients. Furthermore, financial advisors should also systematically recommend at least one product without features that may not be necessary for the achievement of the client's investment objective, so that retail investors are presented also with alternative and possibly cheaper options to consider. Such features may include, as an example, funds with an investment strategy which implies higher costs, a capital guarantee and structured products with hedging elements. If advisors choose to also recommend a product that carries additional features which carry extra costs to the client or customer, they should explicitly provide the reason for such a recommendation and disclose the extra costs incurred. In the case of insurance-based investment products, advisors should also ensure that the insurance cover included in the product is consistent with the customer's insurance demands and needs.	~~**apply the principle of acting in the best interest of the client**~~. **the criteria for inducements (including inducement schemes) which are considered not to impair compliance with the duty of investment firms, insurance undertakings and insurance intermediairies to act honestly, fairly and professionally in accordance with the best interest of their clients.** **The words "where applicable" included with regard to the criteria of the "inducements" test are there to acknowledge that not all criteria could be relevant in both Directive 2014/65/EU and Directive (EU) 2016/97 in all circumstances. If a criteria is not taken into account, this should be explained by the investment firm, insurance undertaking or insurance intermediairy to its competent authority.** **Investment firms, insurance undertakings and insurance intermediaries should be able to demonstrate to competent authorities that the overarching principles are taken into account and should explain in their inducement policy or procedures how they ensure that they comply with the overarching principles.** **The inducements test should, where applicable, be performed when setting up the inducement (including inducements schemes) between the payer and the receiver**

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		of the inducement and in case of changes to the existing inducement. The inducements test should – where linked to a product - be part of the product approval process. The analysis of the inducement should in any case be performed before any payment has been made or received. In case of ongoing inducements, firms must fulfil the requirements of the inducements test on an ongoing basis as long as they continue to pay or accept and retain the inducement. This does not change however the timing of the inducements test. Possible examples of qualitative criteria reflecting compliance with applicable regulations could be the number of legitimate complaints, the results of internal controls or inspections or compliance with the target market. As regards transparency requirements in relation to research fees, the specific rules of the [*include reference to the Listing Act when adopted*] should apply.
I-14a		(6**b**) **In order to ensure that financial advisors act in the best interest of the client or customer, the existing requirements on suitability should be further strengthened by means of additional safeguards. The best interest test and the suitability test are designed to provide a higher quality advice. They can be achieved through a single client or**

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		customer assessment in order to simplify the implementation of these successive requirements for the industry and to keep them easily understandable for the clients or customers. Financial advisors should **consider** an appropriate range of **suitable** ~~financial~~ products, **which in the case of insurance-based investment products should also meet the demands and needs of the customer**. **The requirement to provide advice on the basis of an appropriate range of products can be met by providing advice on products from one or more manufacturers**. **The appropriate range of products can also be met by tied insurance intermediaries through products from one manufacturer. The requirement can furthermore be met by providing advice on the basis of a single insurance-based investment product, such as multi-option products, if the product offers an appropriate range of underlying investment assets. Investment firms, insurance undertakings and insurance intermediaries that provide advice on an independent basis are already under an obligation to assess a sufficient range of financial instruments, or a sufficiently large number of insurance-based investment products, in accordance with Directive**

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		2014/65/EU and Directive (EU) 2016/97. They should therefore be considered to comply with the requirement to base their assessment on an appropriate range of products. When comparing ~~equivalent~~ products identified as suitable to the client and offering similar features, including ESG characteristics, financial advisors should recommend the most-cost efficient product. The assessment of cost-efficiency should take into account the performance and the costs, associated charges and inducements linked to the products, as well as other factors of the product relevant to the client or customer, such as performance and expected return. The assessment of cost-efficiency should be distinguished from the Value for Money assessment, which as part of the product approval process, will aim to establish whether a specific product should offer value to the identified target market. The cost-efficiency assessment should aim to establish, at the advice stage, which product(s), among the range of suitable products with similar features that, ~~which~~ are expected to offer value to the particular client or customer, would be the most cost-efficient.

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		~~**Furthermore, financial advisors should also systematically recommend at least one product without features that may not be necessary for the achievement of the client's or customer's investment objectives, so that retail investors are presented also with alternative and possibly cheaper options to consider. Such additional features may include, for example, products with a strategy which implies higher costs, a capital guarantee or capital protection structure, stop-loss mechanisms (with or without automatic switching of underlying investment assets), and structured products with hedging elements, where such characteristics are not necessary for the achievement of the client's or customer's investment objectives.**~~ ~~**For insurance-based investment products, additional features could also consist of elements of the insurance cover, such as comprehensive entitlements, or additional benefits, such as protection against accident or personal injury, disability or incapacity for employment, which may not always be necessary for the achievement of the customer's objectives.**~~ ~~**If advisors choose to also recommend a product that carries additional features which carry extra costs to the client or**~~

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		~~**customer, they should explicitly provide the reason for such a recommendation and disclose the extra costs incurred. In the case of insurance-based investment products, advisors should also comply with their general obligation to ensure that the insurance cover included in the product is consistent with the customer's insurance demands and needs.**~~
I-15	(7) The existing requirements on disclosure of inducements should be further strengthened to ensure that retail investors understand the general concept of inducements, the potential for conflict of interest, as well as the impact of inducements on the overall costs and expected returns.	(7) The existing requirements on disclosure of inducements should be further strengthened to ensure that retail investors understand the general concept of inducements, the potential for conflict of interest, as well as the impact of inducements on the overall costs and expected returns.
I-16	(8) In order to enable the development of independent advice at a reasonable cost, independent advisors should be allowed to provide advice to retail investors on well-diversified, non-complex and cost-efficient products based on a more limited set of data collected for the suitability assessment. The scope of such advice should be clearly disclosed to retail investors in good time before the provision of the advice. Given the diversified nature of the advised products, independent financial advisors should not be required to obtain and assess information from the clients	(8) In order to enable the development of independent advice at a reasonable cost, independent advisors should be allowed to provide advice to retail investors on well-diversified, non-complex and cost-efficient products based on a more limited set of data collected for the suitability assessment. **Cost-efficient products are those that carry lower costs in relation to their performance. Well-diversified products are products that allow for the diversification of the risks for the client due to their underlying asset composition.** The scope of such advice should be clearly disclosed to retail investors in good time

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	relating to their knowledge and experience or existing portfolios.	before the provision of the advice. Given the diversified nature of the advised products, independent financial advisors should not be required to obtain and assess information from the clients relating to their knowledge and experience or existing portfolios.
I-17	(9) In order to assess the effectiveness of these measures, three years after the date of entry into force of this Directive and after having consulted the European Securities and Markets Authority ('ESMA') and European Insurance and Occupational Pensions Authority ('EIOPA'), the Commission should prepare a report on the effects of third-party payments on retail investments which, where necessary, should be accompanied by proposals to further strengthen the framework.	(9) In order to assess the effectiveness of these measures, **five** ~~three~~ years after the date of entry into force of this Directive and after having consulted the European Securities and Markets Authority ('ESMA') and European Insurance and Occupational Pensions Authority ('EIOPA'), the Commission should prepare a report on the effects of ~~third-party payments~~ **inducements** on retail investments which, where necessary, should be accompanied by proposals to further strengthen the framework.
I-18	(10) The level of costs and charges associated with investment and insurance-based investment products can have a significant impact on investment returns, something that may not always be evident for retail investors. To ensure that products offer Value for Money for retail investors, Member States should ensure that firms authorised under Directive (EU) 2014/65 or Directive (EU) 2016/97 to manufacture or distribute investment products have clear pricing processes	(10) The level of costs and charges associated with investment and insurance-based investment products **intended for distribution to retail investors** can have a significant impact on investment returns, something that may not always be evident for retail investors. To ensure that products offer ~~Value for Money~~ **value-for-money** for retail investors, Member States should ensure that ~~firms authorised~~ **economic operators entitled** under **Directive 2009/138/EC,** Directive

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	that enable a clear identification and quantification of all costs charged to retail investors and are designed to ensure that the costs and charges that are included in investment products or that are linked to their distribution are justified and proportionate in respect of the characteristics, objectives, strategy and expected performance of the product.	~~(EU)~~ 2014/65/**EU** or Directive (EU) 2016/97 to manufacture or distribute **packaged retail** investment products have clear **value-for-money assessment** ~~pricing~~ processes that enable a clear identification and quantification of all costs charged to retail investors **and of their performance and that also include a clear identification and, where possible, quantification of the other benefits of the product, such as an insurance risk coverage. Member States should ensure that the value-for-money assessment processes** ~~and~~ **are** designed to ensure that the costs and charges that are included in investment products or that are linked to their distribution are justified and proportionate in respect of the characteristics, objectives, strategy**,** ~~and~~ **the** ~~expected~~ performance **~~and~~ the other benefits** of the product.
I-19	(11) Since the charging structure of the packaged retail investment product is designed by the manufacturer, it is for the manufacturer to assess whether the costs and charges that are included in investment products are justified and proportionate. Building on those assessments, distributors should make similar assessments, so that the costs of distribution and other costs not already included in the manufacturer's assessment are additionally taken into account.	(11) Since the charging structure of the packaged retail investment product is designed by the manufacturer, it is for the manufacturer to assess whether the costs and charges that are included in investment products are justified and proportionate**, in relation to the performance and other benefits and characteristics of investment products covered by the packaged retail investment product**. Building on those assessments, distributors should make **their own**~~similar~~

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		assessments, so that the costs of distribution and other costs not already included in the manufacturer's assessment are additionally taken into account.
I-20	(12) The pricing process, conducted at both the level of manufacturer and distributor should, as part of the product governance framework, enhance the existing concept that investment products aimed at a particular target market should be designed to bring value to that target market.	(12) The **value-for-money assessment** ~~**pricing**~~ process, conducted at both the level of manufacturer and distributor should, as part of the product governance framework, enhance the existing concept that investment products aimed at a particular target market should be designed to bring value to that target market.
I-20a		**(12a) Product governance obligations should be strengthened by obliging manufacturers and, where appropriate, distributors to have robust value-for-money assessment processes, where value for money of investment products should be established through appropriate testing and assessments, taking into account the specificities of the investment products. The value-for-money process should include, subject to data availability, a market comparison to similar investment products in the Union, by comparing costs and charges and performance of investment products to costs and charges and performance of a peer group of investment products in the Union with similar characteristics. The peer-group comparison should assess**

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		whether the investment product is an outlier compared to the peer group. Outliers should be investment products that are at a significant distance from the average of the peer group to the detriment of the client and thereby have an increased risk of poor value for money. At the same time, ESMA and EIOPA should develop Union supervisory benchmarks as a tool for competent authorities to help them efficiently identify products with an increased risk of poor value for money, and which consequently merit a more in-depth analysis of compliance with value for money processes. Union supervisory benchmarks should assist competent authorities to detect outliers in the market according to a common methodology and to facilitate a coherent application of binding value-for-money rules based on the supervisory powers laid down by Directive 2014/65/EU and Directive (EU) 2016/97. The peer-group comparison and the Union supervisory benchmarks should be built using data sourced as much as possible from existing Union law disclosure and reporting obligations. Union supervisory benchmarks should be made public and should be applicable after a test has demonstrated their relevance. Competent authorities should be closely and

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		thoroughly involved during the entire development and testing process. The publication should be accompanied by a statement on the indicative nature of the benchmarks and their purpose as a supervisory tool. The relevant data to build the peer groups should be made available to manufacturers and distributors by ESMA and EIOPA at a limited cost. This should facilitate communication between competent authorities and manufacturers and distributors. Where appropriate, data that is not publicly available should be anonymized or aggregated. Member States should be authorised to provide that manufacturers and distributors may opt to compare their investment products with Union supervisory benchmarks for product clusters that are applicable to their investment products instead of performing a peer-group comparison once relevant Union supervisory benchmarks have been published. When Union supervisory benchmarks are not yet public, those manufacturers and distributors should establish value for money through appropriate product testing and assessments, including peer-group comparison. ESMA and EIOPA should, to the extent feasible, publish relevant Union supervisory benchmarks at the same time as they

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		make available the data to build the peer groups. A positive outcome of a peer-group comparison or of the comparison with the relevant Union supervisory benchmark where a manufacturer or distributor opts to compare its product to that benchmark, should be an indication of value for money that is complementary to the product testing and assessments undertaken as part of the product governance activities and the value-for-money assessment process.
I-20b		**(12b) A distributor should be able to rely on the value-for-money assessment of the manufacturer if the manufacturer's assessment takes into account all costs and charges related to the distribution. In this case, the distributor should assess whether the investment product is appropriate taking into account the target market's objectives and needs.**
I-20c		**(12c) The value-for-money assessment process should include a comparison of the costs and charges and the performance of the investment product to a peer group of other investment products in the Union with similar characteristics. Investment products with similar characteristics should be selected on the basis of relevant and objective criteria. The selection process, including the**

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		<u>dataset that is the starting point for the selection and the selection filters, should be adequately documented. Where the investment product is at a significant distance from the average of the peer group to the detriment of the client or falls outside the relevant Union supervisory benchmark when a manufacturer or distributor opts to compare its product to that benchmark, value for money should be substantiated through additional testings and further assessments. Where necessary, the manufacturer or the distributor should take appropriate actions to ensure value for moneyand the conclusions should be adequately documented and described in the compliance report to the management body. Additional testings and further assessments could for example establish that a product offers value for money if it contains additional special features such as niche investment strategies that would be considered relevant for a particular group of investors with identified needs and objectives, but which are not reflected in the description of the group of investment products in the peer group. Appropriate actions to ensure value for money could for instance include a significant adjustment of the investment strategy or an adjustment of the contract of a</u>

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		service provider resulting in a reduction of costs and charges for the client. Manufacturers and distributors should retain flexibility on the actions to be taken taking into account the features of the investment product and the interest of retail investors, provided that these actions can reasonably be considered to ensure that the investment product offers value for money. Competent authorities should, as part of their general supervisory mandate and taking into account their supervisory policy, their risk-based approach and the supervisory tools at their disposal, supervise the appropriateness of the value-for-money process.
I-21	(13) To make the pricing process more objective and to equip manufacturers, distributors and competent authorities with a tool allowing for an efficient comparison of costs among investment products from the same product type, both ESMA and EIOPA should develop benchmarks, based on data related to the cost and performance of investment products, which should be taken into consideration by manufacturers and distributors in their pricing processes. If the result of the comparison with a relevant benchmark indicates that the costs and performance for investors are not	(13) To ~~**make the pricing process more objective and to**~~ equip ~~**manufacturers, distributors and**~~ competent authorities with a tool allowing for an efficient ~~**comparison of costs among investment products from the same product type**~~ **identification of investment products with increased risk of poor value for money**, both ESMA and EIOPA should develop ~~**European**~~ **Union supervisory** benchmarks, based on data related to the cost and performance of investment products**. Those benchmarks should serve as a supervisory tool for competent authorities and should contribute to a**

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	aligned to the benchmark, the product should not be marketed to retail investors, unless additional testing and further assessments have established that the product nevertheless offers Value for Money to the target market, for example in the case of a product containing additional special features that would be considered relevant for a particular group of investors with identified specific needs and objectives, but which are not reflected in the description of the group of investment products for which the benchmark was developed.	**consistent risk-based supervisory approach across different sectors, by identifying outliers in the market according to a common methodology. Those benchmarks should identify investment products that are at a significant distance from the average of the relevant product cluster to the detriment of the client. Falling outside the benchmark should be an indication for competent authorities that the investment product has an increased risk of poor value for money. Competent authorities of Member States where national benchmarks have been implemented with respect to insurance-based investment products before 1 July 2024, should be allowed to continue to use these benchmarks in relation to insurance-based investment products with national specificities only distributed in their Member State. It should however be ensured that the methodology for such national benchmarks is comparable to the methodology for Union supervisory benchmarks and that any methodological differences are limited to those that are needed to appropriately take into account the national specificities in order to protect the clients. Competent authorities should substantiate this appropriately to EIOPA and should review this periodically and inform**

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		EIOPA thereof. National benchmarks should be made public in a similar manner as Union supervisory benchmarks. Such national benchmarks should not be used to impede the distribution of underlying investment products from other Member States. When developing the methodology for the relevant Union supervisory benchmarks, EIOPA should consider whether and how insurance-based investment products covered by national benchmarks should be reflected in those Union supervisory benchmarks. When developing the Union supervisory benchmarks, ESMA and EIOPA should ensure that they allow for a fair identification of investment products with increased risk of poor value for money. In particular, the Union supervisory benchmarks should account for the fact that distribution costs or part thereof are sometimes charged as part of the product cost, while in other cases distribution costs are paid separately by the retail investor to the distributor.
I-21a		**(13a) Neither the peer-group comparisons nor the Union supervisory benchmarks should amount to price regulation. The development of Union supervisory benchmarks and the comparison with other products**

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		should not lead to a standardisation of products or limit innovation in the market. The benchmarks should serve as a tool for competent authorities to identify outliers and supervise the value for money assessments, while respecting the diversity of products and business models. Peer-group comparisons should strengthen the value-for-money assessment processes of manufacturers and distributors. If a product is assessed to be at a significant distance from the average of the peer group to the detriment of the client, additional testing and further assessment should be conducted and, where necessary, appropriate actions taken to ensure value for money. Manufacturers and distributors should be able to demonstrate value for money on objective grounds even when investment products are at a significant distance from the average of the peer group to the detriment of the client. The purpose of Union supervisory benchmarks should be to provide competent authorities with a reference point for the supervision of value-for-money of investment products by identifying outliers in the market and not to govern prices. Prices of investment products should be determined on the basis of competition and supply and demand in the various investment product

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		markets. At the same time, manufacturers and distributors should ensure that investment products offer value for money relative to their costs and charges, their performance and other benefits and characteristics.
I-21b		**(13b) To enable ESMA and EIOPA to develop reliable Union supervisory benchmarks, based on reliable data, and to increase the objectivity and the comparability of peer groups, manufacturers and distributors of investment products should be required to report necessary data to competent authorities, for onward transmission to ESMA and EIOPA. To limit, to the greatest extent possible, costs related to the new reporting obligations and to avoid unnecessary duplication, data sets should as far as possible be based on existing disclosure and reporting obligations under Union law. ESMA and EIOPA should develop draft regulatory technical standards to determine the data sets, data standards and methods and formats for the information to be reported. In particular, due consideration should be given to the technical regulatory and implementing standards on reporting to be adopted under Directives 2009/65/EC, 2009/138/EC and 2011/61/EU. Where possible, necessary data should be added to these**

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		existing reporting frameworks. Standardization or specification of key information on investment products, including in relation to product categorization and, where relevant, distribution costs, should also be pursued to the extent feasible with a view to achieving the overall objective to limit the extra reporting burden on manufacturers and distributors, when the standardization or specification at the same time contributes to the proper understanding by retail investors of the key features of investment products or allows retail investors to better compare investment products.
I-22	(14) To assist manufacturers and distributors in their assessments, the Commission should be empowered to adopt delegated acts to specify the criteria to be used in determining whether costs and performance are justified and proportionate.	(14) **In order to** assist manufacturers and distributors in their assessments, **the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of the specification of** ~~the Commission should be empowered to adopt delegated acts to specify the criteria to be used in determining whether costs and performance are justified and proportionate~~ **the methodology to be used by manufacturers and distributors to perform the comparison with investment products with similar characteristics. This should increase the objectivity and the comparability of the**

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		peer-group comparison. In developing the methodology for peer grouping, a fair and balanced comparison across products of their total costs and different components, as incurred by the retail investor, should be ensured. In particular, that methodology should account for the fact that distribution costs or part thereof are sometimes charged as part of the product cost, while in other cases distribution costs are paid separately by the retail investor to the distributor. Peer groups should be established on the basis of mandatory information to be published according to Union law, such as key information documents, and on the basis of common data to be made available to manufacturers and distributors by ESMA and EIOPA. This should also enhance the comparability and the objectivity of the peer-group comparison and should reduce the costs for manufacturers and distributors. This common data should be based on the data ESMA and EIOPA use for the purpose of the development of Union supervisory benchmarks and, to the extent that they are not publicly available, should be anonymised or aggregated where appropriate. ESMA and EIOPA should perform a cost-benefit analysis before deciding whether or not to charge

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		fees to manufacturers and distributors for the service of making available the data for the peer-group comparison. The fee structure should in any case not exceed the direct costs incurred and should, to the greatest extent possible, be proportionate to the volumes of each user.
I-23	(15) To enable ESMA and EIOPA to develop reliable benchmarks, based on reliable data, manufacturers and distributors of investment products should be required to report necessary data to competent authorities, for onward transmission to ESMA and EIOPA. To limit, to the greatest extent possible, costs related to the new reporting obligations and to avoid unnecessary duplication, data sets should as far as possible be based on disclosure and reporting obligations stemming from EU law. ESMA and EIOPA should develop regulatory technical standards to determine the data sets, data standards and methods and formats for the information to be reported.	**(15)** ~~**To enable ESMA and EIOPA to develop reliable benchmarks, based on reliable data, manufacturers and distributors of investment products should be required to report necessary data to competent authorities, for onward transmission to ESMA and EIOPA. To limit, to the greatest extent possible, costs related to the new reporting obligations and to avoid unnecessary duplication, data sets should as far as possible be based on disclosure and reporting obligations stemming from EU law. ESMA and EIOPA should develop regulatory technical standards to determine the data sets, data standards and methods and formats for the information to be reported.**~~ **For derivatives and specific types of transferable securities with characteristics that are similar to derivatives, where the performance replicates the performance of the underlying assets or values on the basis of a formula, peer-group comparison should be performed with respect to costs and**

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		charges only. This should also apply to the Union supervisory benchmarks. The Commission should be empowered to adopt a delegated act to specify for which specific types of transferable securities the peer-group comparison should only be performed in relation to costs and charges.
I-24	(16) Certain manufacturers of financial instruments that fall under the definition of packaged retail products in accordance with Article 4(1) of Regulation (EU) No 1286/2014 may not be subject to the reporting obligation laid down in art. 16-a(2), or any other equivalent reporting obligation. In such cases, an investment firm that offers or recommends such financial instruments should report to their home competent authorities details of costs and charges and characteristics of these products. The reporting obligations covering the above data, established in UCITSD and AIFMD regulatory package, should be considered equivalent.	(16) Certain manufacturers of financial instruments that fall under the definition of packaged retail **investment** products in accordance with Article 4(1) of Regulation (EU) No 1286/2014 may not be subject to the reporting obligation laid down in art. 16-a(2), or any other equivalent reporting obligation. In such cases, an investment firm that offers or recommends such financial instruments should report to their home competent authorities details of costs and charges and characteristics of these products. The reporting obligations covering the above data, established in UCITSD and AIFMD regulatory package, should be considered equivalent.
I-25	(17) In view of the extent of diversity of retail investment product offerings, the development of benchmarks by ESMA and EIOPA should be an evolutionary process, beginning with the investment products most commonly purchased by retail investors and progressively building on the experience	(17) In view of the extent of diversity of retail investment product offerings, the development of **Union supervisory** benchmarks by ESMA and EIOPA should be an evolutionary process, beginning with the investment products most commonly purchased by retail investors and progressively

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	gathered over time in order to broaden coverage and refine their quality.	building on the experience gathered over time in order to broaden coverage and refine their quality.
I-26	(18) Directives 2009/65/EC and 2011/61/EU require alternative investment funds (AIFs) and undertakings for the collective investment in transferable securities (UCITS) management companies to act with due skill, care and diligence in the best interests of the investment fund they manage and of their investors. AIFs and UCITS management companies should therefore prevent undue costs from being charged to investment funds and their investors. AIFs and UCITS management companies should be required to establish a sound pricing process which should comprise the identification, analysis and review of costs charged, directly or indirectly, to investment funds or their unit holders, and thus borne by investors. Costs should be considered to be due if they comply with UCITS and AIFs pre-contractual documents, are necessary to their functioning, and are borne by investors in a fair way.	(18) Directives 2009/65/EC and 2011/61/EU require alternative investment funds (AIFs) and undertakings for the collective investment in transferable securities (UCITS) management companies to act with due skill, care and diligence in the best interests of the investment fund they manage and of their investors. AIFs and UCITS management companies should therefore prevent undue costs from being charged to investment funds and their investors. AIFs and UCITS management companies should be required to establish a sound ~~**pricing**~~ **undue costs** process which should comprise the identification, analysis and review of costs charged, directly or indirectly, to investment funds or their unit holders, and thus borne by investors. Costs should be considered to be due if they comply with UCITS and AIFs pre-contractual documents, are necessary to their functioning, and are borne by investors in a fair way.
I-27	(19) UCITS and AIFs management companies should compensate investors where undue costs have been charged, including where costs have been miscalculated to the detriment	(19) UCITS and AIFs management companies should compensate investors where undue costs have been charged, including where costs have been miscalculated to the detriment

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	of investors, and inform the competent authorities, financial auditors of the investment funds and their managers, and the depositary of those funds thereof. To promote better enforcement and achieve concrete results for retail investors, harmonisation of Member States' administrative and sanctioning powers is necessary. The obligation to compensate investors should be added as a possible administrative measure and sanction so that this possibility exists in all Member States.	of investors, and inform the competent authorities, financial auditors of the investment funds and their managers, and the depositary of those funds thereof. To promote better enforcement and achieve concrete results for retail investors, harmonisation of Member States' administrative and sanctioning powers is necessary. The obligation to compensate investors should be added as a possible administrative measure and sanction, so that this possibility exists in all Member States.
I-28	(20) The pricing process under Directives 2009/65/EC and 2011/61/EU should ensure that costs borne by retail investors are justified and proportionate to the characteristics of the product, and in particular to the investment objective and strategy, level of risk and expected returns of the funds, so that UCITS and AIFs deliver Value for Money to investors. UCITS and AIFs management companies should remain responsible for the quality of their pricing process. In particular, they should ensure that costs are comparable to market standards, including by comparing the costs of funds with similar investment strategies and characteristics available on publicly available databases. However, to make the pricing process more objective and to equip UCITS and AIFs management companies, and competent authorities with a tool	(20) The **value-for-money assessment** ~~pricing~~ process under Directives 2009/65/EC and 2011/61/EU should ensure that costs borne by retail investors are justified and proportionate to the characteristics of the product, and in particular to the investment objective and strategy, level of risk ~~and~~ **, performance and the other benefits**~~expected returns~~ of the funds, so that UCITS and AIFs deliver **value for money**~~Value for Money~~ to investors. UCITS and AIFs management companies should remain responsible for the quality of their **value-for-money assessment** ~~pricing~~ process. ~~In particular, they~~ **They** should **establish value for money through appropriate product testing and assessments, taking into account the specificities of the funds. As part of those product testings and assessments, they should include**

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	allowing for an efficient comparison of costs among investment products from the same product type, ESMA should develop benchmarks, based on data related to the cost and performance of investment products that ESMA receives as part of the supervisory reporting, against which an assessment of Value for Money can be carried out, in addition to the other criteria included in the pricing process of UCITS and AIFs management companies. Considering the Commission's priority to avoid unnecessary administrative burdens and to simplify reporting requirements, those benchmarks should build on existing data from public disclosures and supervisory reporting, unless additional data are exceptionally necessary. Investment funds offering poor Value for Money or deviating from ESMA's benchmarks should not be marketed to retail investors unless further assessment has established that the product nevertheless offers Value for Money. The assessment and the measures taken should be documented and provided to competent authorities upon their request.	**a market comparison to other funds in the Union with similar characteristics, subject to data availability, by comparing the costs and charges and the performance of the funds to the costs and charges of a peer group of funds in the Union with similar characteristics. This peer-group comparison should establish whether the funds offer value for money Where the UCITS or the AIF is at a significant distance from the average of the peer group to the detriment of the client, value for money should be substantiated through additional testings and further assessments, and where necessary, appropriate actions to ensure value for money should be taken by the management company and their conclusions should be adequately documented and described in the compliance report to the management body.** However, ~~to make the pricing process more objective and~~ to equip ~~UCITS and AIFs management companies, and~~ competent authorities with a tool **to help them efficiently identify products with an increased risk of poor value for money, and which consequently merit a more in-depth analysis of compliance with value for money processes, ESMA should develop Union supervisory benchmarks, which should assist competent authorities to**

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		detect outliers in the market according to a common methodology and facilitate a coherent application of binding value for money rules based on the supervisory powers laid down in Directive 2009/65/EC and Directive 2011/61/EU. The peer-group comparison and the Union supervisory benchmarks should be ~~**allowing for an efficient identification of funds with an increased risk of poor value for moneycomparison of costs among investment products from the same product type, ESMA should develop benchmarks,**~~ based on data related to the cost and performance of ~~**investment products**~~ **funds** that ESMA receives as part of the supervisory reporting~~**, against which an assessment of Value for Money can be carried out, in addition to the other criteria included in the pricing process of UCITS and AIFs management companies**~~. Considering the Commission's priority to avoid unnecessary administrative burdens and to simplify reporting requirements, those benchmarks should build on existing data from public disclosures and supervisory reporting, unless additional data are exceptionally necessary. **Member States should be authorised to provide that UCITS and AIFs management companies may opt to compare their funds with Union supervisory benchmarks for product**

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		clusters that are applicable to their funds instead of performing a peer-group comparison. ~~**Investment funds offering poor Value for Money or deviating from ESMA's benchmarks should not be marketed to retail investors unless further assessment has established that the product nevertheless offers Value for Money. The assessment and the measures taken should be documented and provided to competent authorities upon their request.**~~
I-29	(21) The Commission should be empowered to adopt delegated acts specifying the minimum requirements for the pricing process to prevent undue costs from being charged to the UCITS, AIFs and their unit-holders, and for carrying out the Value for Money assessment and, where needed, for taking corrective measures where costs are not justified or proportionate to the expected returns of the UCITS and AIFs where available, their level of risk, investment objective and strategy, and for documenting such assessment and measures.	(21) The Commission should be empowered to adopt delegated acts specifying the minimum requirements for the **undue costs and value-for-money assessment**~~**pricing**~~ process**es** to prevent undue costs from being charged to the UCITS, AIFs and their unit-holders, and for carrying out the **value-for-money**~~**Value for Money**~~ assessment ~~**and, where needed, for taking corrective measures where costs are not justified or proportionate to the expected returns of the UCITS and AIFs where available, their level of risk, investment objective and strategy, and for documenting such assessment and measures**~~.
I-29a		**(21a) After [5] years of application of the value-for-money assessment, the framework should be evaluated. Competent**

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		<u>authorities should submit their reports to ESMA and EIOPA on the impact and the added value of the peer-group comparison and the Union supervisory and, where relevant, national benchmarks on the value-for-money assessment process of investment products and their supervision. These reports should include the opinion of competent authorities on the application of the benchmarks in the value-for-money assessment process of manufacturers and distributors and on any national specific issue that should be taken into account. By … [OJ: insert date of application of this amending Directive referred to in Article 6(2) + 6 years] ESMA and EIOPA should submit to the Commission their report analysing the impact and the added value of the peer-group comparison and the Union supervisory benchmarks on the value-for-money assessment process of investment products and on the consistency and efficiency of their supervision in the Union. ESMA and EIOPA should also evaluate the application of those benchmarks in the value-for-money assessment process of manufacturers and distributors, any national specific issues that should be taken into account and whether and how the approach to the data that should</u>

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		<u>be made available to manufacturers and distributors for the peer-group comparison should be modified. By … [OJ: insert date of application of this amending Directive referred to in Article 6(2) + 7 years], the Commission should submit a report to the Council and the European Parliament presenting the conclusions of the review. If appropriate, the report should be accompanied by legislative proposals.</u>
I-30	(22) Knowledge and competence of staff are key to ensuring good quality advice. The standards of what is considered necessary vary significantly between advisors operating under Directive 2014/65/EU, Directive (EU) 2016/97 and under non-harmonised national law. To improve the quality of advice and to ensure a level playing field across the EU, strengthened minimum common standards on the necessary knowledge and competence requirements should be laid down. That is particularly relevant given the increased complexity and continuous innovation in the design of financial instruments and insurance-based investment products, and the increasing importance of sustainability-related considerations. Member States should require investment firms, and insurance and reinsurance distributors,	(22) Knowledge and competence of staff are key to ensuring good quality advice. The standards of what is considered necessary vary significantly between advisors operating under Directive 2014/65/EU, Directive (EU) 2016/97 and under non-harmonised national law. To improve the quality of advice and to ensure a level playing field across the EU, strengthened minimum common standards on the necessary knowledge and competence requirements should be laid down. That is particularly relevant given the increased complexity and continuous innovation in the design of financial instruments and insurance based investment products, and the increasing importance of sustainability related considerations. **<u>Member States should also be allowed to lay down additional requirements where</u>**

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

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		of hours per year of professional training and development and that they prove the successful completion of such training and development by a certificate **or equivalent proof of completion of such training and development**.
I-30a		**(22a) Member States should have in place mechanisms to effectively assess compliance with the knowledge and competence requirements and with the regular professional development requirements. In this context, Member States should determine, and publish all relevant information on, the types of certificates and comparable forms of evidence that they consider acceptable. This relevant information should include the practical modalities of demonstrating compliance with these requirements. Thus, Member States are not required to develop or issue such evidence of compliance themselves, as these could also be issued, for example, by third parties, including universities and other professional bodies, based on objective criteria determined by the Member States. Member States may also define the modalities and frequency of their supervisory actions, for example the frequency with which compliance is to be demonstrated.**

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I-31	(23) The increasing provision of investment services via digital means creates new opportunities for retail investors. At the same time, those services enable investment firms and insurance distributors to distribute investment products and services faster and to a wider group of retail investors, which can entail additional risks. Competent authorities should therefore be equipped with powers and procedures that are adequate to promptly address any non-compliance with existing rules, including when provided via digital means and by unauthorised entities. It is therefore appropriate that competent authorities are able to take the necessary actions when they have well-founded reasons to believe that a natural or legal person is providing investment services without being duly authorised or an insurance intermediary or insurance undertaking is distributing insurance-based investment products without being registered or authorised. When those actions concern a natural person, the publication of the decision made by the competent authority should remain subject to the case-by-case assessment of the proportionality of the publication of personal data provided under Article 71(1). The competent authorities should inform ESMA and EIOPA about such behaviour, and ESMA and EIOPA should	(23) The increasing provision of investment services via digital means creates new opportunities for retail investors. At the same time, those services enable investment firms and insurance distributors to distribute investment products and services faster and to a wider group of retail investors, which can entail additional risks. Competent authorities should therefore be equipped with powers and procedures that are adequate to promptly address any non-compliance with existing rules, including when provided via digital means and by unauthorised entities. It is therefore appropriate that competent authorities are able to take the necessary actions when they have well-founded reasons to believe that a natural or legal person is providing investment services without being duly authorised or an insurance intermediary or insurance undertaking is distributing insurance-based investment products without being registered or authorised. When those actions concern a natural person, the publication of the decision made by the competent authority should remain subject to the case-by-case assessment of the proportionality of the publication of personal data provided under Article 71(1). The competent authorities should inform ESMA and EIOPA about such behaviour, and ESMA and EIOPA should consolidate and

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	consolidate and publish all related decisions issued by competent authorities so that such information is available to retail investors for them to be able to identify potential frauds. As regards natural persons, in order to avoid the disclosure of personal information deemed disproportionate by a competent authority when publishing the consolidated list of all decisions issued by competent authorities, ESMA and EIOPA should abstain from disclosing any additional information compared to that disclosed by the competent authority itself.	publish all related decisions issued by competent authorities so that such information is available to retail investors for them to be able to identify potential frauds. As regards natural persons, in order to avoid the disclosure of personal information deemed disproportionate by a competent authority when publishing the consolidated list of all decisions issued by competent authorities, ESMA and EIOPA should abstain from disclosing any additional information compared to that disclosed by the competent authority itself.
I-32	(24) The provision of cross-border investment services is essential for the development of the Capital Markets Union and proper enforcement of the rules is a key element of the single market. While the home Member State is responsible for the supervision of an investment firm in cases of cross-border provision of services, the single market relies on trust that stems from the adequate supervision of investment firms by the home competent authorities. The principle of mutual recognition requires efficient cooperation between home and host Member States to ensure that a sufficient level of investor protection is maintained. Directive (EU) 2014/65 already provides for a mechanism that allows, under strict conditions and where the home Member State does not take	(24) The provision of cross-border investment services is essential for the development of the Capital Markets Union and proper enforcement of the rules is a key element of the single market. While the home Member State is responsible for the supervision of an investment firm in cases of cross-border provision of services, the single market relies on trust that stems from the adequate supervision of investment firms by the home competent authorities. The principle of mutual recognition requires efficient cooperation between home and host Member States to ensure that a sufficient level of investor protection is maintained. Directive (EU) 2014/65 already provides for a mechanism that allows, under strict conditions and where the home Member State does not take appropriate action,

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	appropriate action, competent authorities of host Member States to take precautionary measures to protect investors. To facilitate cooperation between competent authorities, and to further strengthen the supervisory efforts, that mechanism should be simplified and those competent authorities that observe highly similar or identical behaviours on their territory to those already signalled by another authority should be able to refer to the findings of that initiating authority to initiate a procedure under Article 86 of Directive (EU) 2014/65.	competent authorities of host Member States to take precautionary measures to protect investors. To facilitate cooperation between competent authorities, and to further strengthen the supervisory efforts, that mechanism should be simplified and those competent authorities that observe highly similar or identical behaviours on their territory to those already signalled by another authority should be able to refer to the findings of that initiating authority to initiate a procedure under Article 86 of Directive (EU) 2014/65.
I-33	(25) Passport notifications under Directives (EU) 2014/65 and (EU) 2016/97 do not require that information on the scale of the cross-border services is provided. To provide ESMA, EIOPA and competent authorities with a proper understanding of the extent of cross-border services and to enable them to adapt their supervisory activities to those cross-border services, competent authorities should collect information on the provision of such services. Where an investment firm or an insurance intermediary provides services to clients located in another Member State, the investment firm or insurance intermediary should provide its competent authority with basic information on those services.	(25) Passport notifications under Directives (EU) 2014/65 and (EU) 2016/97 do not require that information on the scale of the cross-border services is provided. To provide ESMA, EIOPA and competent authorities with a proper understanding of the extent of cross-border services and to enable them to adapt their supervisory activities to those cross-border services, competent authorities should collect information on the provision of such services. Where an investment firm or an insurance intermediary provides services to clients located in another Member State, the investment firm or insurance intermediary should provide its competent authority with basic information on those services. For proportionality purposes,

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	For proportionality purposes, this reporting requirement should not apply to firms serving fewer than fifty clients on a cross-border basis. Competent authorities should make that information available to ESMA and EIOPA, who should in turn make the information accessible to all competent authorities and publish an annual statistical report on cross-border services. To limit, to the greatest extent possible, costs related to the reporting obligations related to cross-border activities and to avoid unnecessary duplication, information should as far as possible be based on existing disclosure and reporting obligations.	this reporting requirement should not apply to **investment** firms serving fewer than fifty clients on a cross-border basis **or insurance intermediaries serving fewer than five hundred clients on a cross-border basis**. Competent authorities should make that information available to ESMA and EIOPA, who should in turn make the information accessible to all competent authorities and publish an annual statistical report on cross-border services. To limit, to the greatest extent possible, costs related to the reporting obligations related to cross-border activities and to avoid unnecessary duplication, information should as far as possible be based on existing disclosure and reporting obligations.
I-34	(26) To foster supervisory convergence and facilitate cooperation between competent authorities, ESMA should be able to set up cooperation platforms on its own initiative, or at the initiative of one or more competent authorities, where justified concerns exist about investor detriment related to the provision of cross-border investment services, and where such activities are significant with respect to the market of the host Member State. EIOPA, which already has the power to set up collaboration platforms under Article 152b of Directive 2009/138/EC, should have the same power with regard to	(26) To foster supervisory convergence and facilitate cooperation between competent authorities, ESMA should be able to set up cooperation platforms ~~**on its own initiative, or**~~ at the initiative of ~~**one**~~ **at least two** ~~**or more**~~ competent authorities, where justified concerns exist about investor detriment related to the provision of cross-border investment services, and where such activities are significant with respect to the market of the host Member State. ~~**EIOPA, which already has the power to set up collaboration platforms under Article 152b of Directive 2009/138/EC, should have**~~

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	insurance distribution activities under Directive (EU) 2016/97 since similar cross border supervision issues may occur in insurance distribution. Where there are serious concerns about potential investor detriment and where the supervisory authorities involved in the collaboration platforms cannot reach an agreement on issues related to an investment firm or insurance distributor which is operating on a cross-border basis, ESMA and EIOPA may in accordance with Article 16 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council[13] and Regulation (EU) No 1094/2010 of the European Parliament and of the Council[14], respectively, issue a recommendation to the competent authority of the home Member State to consider the concerns of the other relevant competent authorities, and to launch a joint on-site inspection together with other competent authorities concerned.	~~**the same power with regard to insurance distribution activities under Directive (EU) 2016/97 since similar cross border supervision issues may occur in insurance distribution.**~~ Where there are serious concerns about potential investor detriment and where the supervisory authorities involved in the collaboration platforms cannot reach an agreement on issues related to an investment firm or insurance distributor which is operating on a cross-border basis, ESMA and EIOPA may in accordance with Article 16 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council[15] and Regulation (EU) No 1094/2010 of the European Parliament and of the Council[16], respectively, issue a recommendation to the competent authority of the home Member State to consider the concerns of the other relevant competent authorities, and to launch a joint on-site inspection together with other competent authorities concerned.

[13] Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC (OJ L 331, 15.12.2010, p.48).

[14] Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331 15.12.2010, p.84).

[15] Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC (OJ L 331, 15.12.2010, p.48).

[16] Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331 15.12.2010, p.84).

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I-35	(27) Costs, associated charges and third-party payments linked to investment products can have a great impact on expected returns. The disclosure of such costs associated charges and third-party payments are a key aspect of investor protection. Retail investors should be presented with clear information on costs, associated charges and third-party payments, in good time prior to taking an investment decision. To enhance comparability of such costs, associated charges and third-party payments, such information should be provided in a standardised manner. Regulatory technical standards should specify and harmonise the content and format of disclosures relating to such costs, associated charges and third-party payments including explanations that investment firms should provide to retail clients, in particular as regards the third-party payments.	(27) Costs, associated charges and ~~third-party payments~~ **inducements** linked to investment products can have a ~~great~~ **substantial** impact on ~~expected~~ returns. The disclosure of such costs associated charges and ~~third-party payments~~ **inducements** are a key aspect of investor protection. Retail investors should be presented with clear information on costs, associated charges and ~~third-party payments~~ **inducements**, in good time prior to taking an investment decision. **This should also include implicit costs, such as costs included in the spread or the turnover costs, that are not easy to identify by retail clients and customers.** To enhance comparability of such costs, associated charges and ~~third-party payments~~ **inducements**, such information should be provided in a standardised manner. Regulatory technical standards should specify and harmonize the content and format of disclosures relating to such costs, associated charges and ~~third-party payments~~ **inducements**, including explanations that investment firms should provide to retail clients **and customers**, in particular as regards the ~~third-party payments~~ **inducements**.
I-36	(28) To further increase transparency, retail clients and customers should receive a periodic overview of their	(28) To further increase transparency, retail clients and customers should receive a periodic overview of their

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	investments. For that reason, firms that provide investment services together with a service of safekeeping and administration of financial instruments, or insurance intermediaries and insurance undertakings distributing insurance-based investment products, should provide an annual statement to their retail clients and customers which should include an overview of the products those clients and customers hold, of all costs, associated charges and third-party payments, and of all payments, including dividends and the interests paid and received by the client and customer over a period of one year, together with an overview of the performance of those financial products. That annual statement should enable retail investors to get a better understanding of the impact of those elements on the performance of their portfolio. For investment services that only consist of the reception, transmission and execution of orders, the annual statement should contain all costs, associated charges and third-party payments paid in connection with the services and the financial instruments. For services that only consist of safekeeping and administration of financial instruments, the annual statement should contain all costs, associated charges and payments	investments. For that reason, firms that provide investment services together with a service of safekeeping and administration of financial instruments, or insurance intermediaries and insurance undertakings distributing insurance-based investment products, should provide an annual statement to their retail clients and customers which should include an overview of the products those clients and customers hold, of all costs, associated charges and ~~third-party payments~~ **inducements**, and of all payments, including dividends and the interests paid and received by the client and customer over a period of one year, together with an overview of the performance of those financial products. That annual statement should enable retail investors to get a better understanding of the impact of those elements on the performance of their portfolio. For investment services that only consist of the reception, transmission and execution of orders, the annual statement should contain all costs, associated charges and ~~third-party payments~~ **inducements** paid in connection with the services and the financial instruments. For services that only consist of safekeeping and administration of financial instruments, the annual statement should contain all costs, associated charges and ~~payments~~ **inducements** received

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	received by the client in relation to the services and the financial instruments. For all those services, the service provider should provide the retail client upon request with a detailed breakdown of that information per financial instrument. In view of the long-term characteristics of insurance-based investment products which are often used for retirement purposes, the annual statement for such products should contain additional elements, including adjusted individual projections of the expected outcome at the end of the contract, or recommended holding period and a summary of the insurance cover.	by the client in relation to the services and the financial instruments. For all those services, the service provider should provide the retail client upon request with a detailed breakdown of that information per financial instrument. In view of the long-term characteristics of insurance-based investment products which are often used for retirement purposes, the annual statement for such products should contain additional elements, including adjusted individual projections of the expected outcome at the end of the contract, or recommended holding period and a summary of the insurance cover.
I-37	(29) Diverging or overlapping disclosure requirements for the distribution of insurance products across different legal acts is a cause for legal uncertainty and unnecessary cost for insurance undertakings and insurance intermediaries. It is therefore appropriate to set out all disclosure requirements in one legal act by removing such requirements from Directive 2009/138/EC and by amending Directive (EU) 2016/97. At the same time, building on the experiences gained in the supervision of these requirements, it is appropriate to adapt them so that they are effective and comprehensive. Complementing the already well-established insurance product	(29) Diverging or overlapping disclosure requirements for the distribution of insurance products across different legal acts is a cause for legal uncertainty and unnecessary cost for insurance undertakings and insurance intermediaries. It is therefore appropriate to set out all disclosure requirements in one legal act by removing such requirements from Directive 2009/138/EC and by amending Directive (EU) 2016/97. At the same time, building on the experiences gained in the supervision of these requirements, it is appropriate to adapt them so that they are effective and comprehensive. Complementing the already well-established insurance product

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	information document for non-life insurance products, an insurance product information document should also be in place for life insurance products other than insurance-based investment products to provide standardised information. For insurance-based investment products, standard information should be provided by the PRIIPs key information document under Regulation (EU) No 1286/2014.	information document for non-life insurance products, an insurance product information document should also be in place for life insurance products other than insurance-based investment products to provide standardised information. For insurance-based investment products, standard information should be provided by the PRIIPs key information document under Regulation (EU) No 1286/2014.
I-38	(30) Changes in the manner by which investment firms, insurance undertakings and insurance intermediaries advertise financial products and services, including the use of influencers, social media and the use of behavioural biases, increasingly affect retail investors' behaviour. It is therefore appropriate to introduce requirements for marketing communication and practices, which may also include third-party content, design, promotions, branding, campaigning, product placement and reward schemes. Those requirements should in particular specify what the requirement to be fair, clear and not misleading entails in the context of marketing communications and practices. Requirements for a balanced presentation of risks and benefits, and suitability for the intended target audience, should also help to improve the application of investor protection principles. Those	(30) Changes in the manner by which investment firms, insurance undertakings and insurance intermediaries advertise financial products and services, including the use of influencers, social media and the use of behavioural biases, increasingly affect retail investors' behaviour. It is therefore appropriate to introduce requirements for marketing communication and practices, which may also include third-party content, design, **online interface,** promotions, branding, campaigning, product placement and reward schemes. Those requirements should in particular specify what the requirement to be fair, clear and not misleading entails in the context of marketing communications and practices. Requirements for a balanced presentation of risks and benefits, and suitability for the intended target audience, should also help to improve the application of investor protection principles. Those

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	requirements should extend to marketing practices, where those practices are used to enhance marketing communications' reach and effectiveness, or the perception of their relatability, reliability, or comparability. However, to ensure that providers of investment products are not discouraged or prevented from providing financial educational material and from promoting and improving the financial literacy of investors, it should be specified that such materials and activities do not fall under the definition of marketing communication and marketing practice.	requirements should extend to marketing practices, where those practices are used to enhance marketing communications' reach ~~and~~ **or** effectiveness, or the perception of their relatability, reliability, or comparability. **The notion of "effectiveness" concerns aspects such as increasing the effect that marketing has on people, while the notion of "reach" covers aspects such as how many people may receive marketing communications.** However, to ensure that providers of investment products are not discouraged or prevented from providing financial educational material and from promoting and improving the financial literacy of investors, it should be specified that such materials and activities do not fall under the definition of marketing communication and marketing practice. **The present directive should not prevent the Member States from allowing their competent authorities to require prior notification of marketing communications for the purpose of ex-ante verification of compliance. This Directive is without prejudice to existing Union law provisions – such as Regulation 2017/1129 or Directive 2009/138/EC – assigning the power to exercise control over the compliance of marketing communications to the**

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		<u>Member State where they are disseminated.</u>
I-39	(31) To address developments in marketing practices, including the use of third parties for indirect promotion of products or services, and to ensure an appropriate level of investor protection, it is necessary to strengthen the requirements regarding marketing communications. It is therefore necessary to require that marketing communications should enable the easy identification of the investment firm, insurance undertaking or insurance intermediary on whose behalf the marketing communications are made. For retail clients, such marketing communications should also contain essential information presented in a clear and balanced manner, on the products and services on offer. To ensure that investor protection obligations are properly applied in practice, investment firms should have a policy on marketing communications and practices and adequate internal controls and reporting procedures to the investment firms' management body to ensure compliance with such policy. When developing marketing communications and practices, investment firms, insurance intermediaries and insurance undertakings should take into account the target audience of the target market concerned.	(31) To address developments in marketing practices, including the use of third parties for indirect promotion of products or services, and to ensure an appropriate level of investor protection, it is necessary to strengthen the requirements regarding marketing communications. It is therefore necessary to require that marketing communications should enable the easy identification of the investment firm, insurance undertaking or insurance intermediary on whose behalf the marketing communications are made. For retail clients, such marketing communications should also contain essential information presented in a clear and balanced manner on the products and services on offer. **<u>The same should apply also in case of character-limited media and short-form contents.</u>** To ensure that investor protection obligations are properly applied in practice, investment firms should have a policy on marketing communications and practices and adequate internal controls and reporting procedures to the investment firms' management body to ensure compliance with such policy. When developing marketing communications and practices, investment firms, insurance intermediaries and insurance undertakings should take into account the target audience ~~**of the**~~

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		~~target market concerned.~~ **<u>The target audience, which is a more generic notion than the target market, is based on the target market assessment and the distribution strategy of the product in the context of the product oversight and governance requirements.</u>**
I-40	(32) The rapid pace at which marketing communications and practices can be provided and changed, in particular through the use of digital tools and channels, should not prevent the adequate enforcement of applicable regulatory requirements. It is therefore necessary that Member States ensure that national competent authorities have the necessary powers to supervise and where necessary intervene in a timely manner. In addition, competent authorities should have access to the necessary information related to marketing communications and practices to perform their supervisory and enforcement duties and ensure consumer protection. For that purpose, investment firms and insurance undertakings should keep records of marketing communications provided or made accessible to retail clients or potential retail client and any related elements relevant for competent authorities. To capture marketing communications disseminated by third parties, such as for instance influencers and advertisement	(32) The rapid pace at which marketing communications and practices can be provided and changed, in particular through the use of digital tools and channels, should not prevent the adequate enforcement of applicable regulatory requirements. It is therefore necessary that Member States ensure that national competent authorities have the necessary powers to supervise and where necessary intervene in a timely manner. In addition, competent authorities should have access to the necessary information related to marketing communications and practices to perform their supervisory and enforcement duties and ensure consumer protection. For that purpose, investment firms and insurance undertakings should keep records of marketing communications provided or made accessible to retail clients or potential retail client and any related elements relevant for competent authorities. To capture marketing communications disseminated by third parties, such as for instance influencers and advertisement agencies, it is necessary that details on such

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	agencies, it is necessary that details on such third parties' identity are also recorded. As issues with financial products and services may arise several years after the investment, investment firms, insurance undertakings and insurance intermediaries should keep records of the above information for a period of five years and, where requested by the competent authority, for a period of up to seven years.	third parties' identity are also recorded. As issues with financial products and services may arise several years after the investment, investment firms, insurance undertakings and insurance intermediaries should keep records of the above information for a period of five years and, where requested by the competent authority, for a period of up to seven years.
I-41	(33) The suitability and appropriateness assessments are an essential element of investor protection. Investment firms, insurance undertakings and insurance intermediaries should assess the suitability or appropriateness of investment products and services recommended to or demanded by the client, respectively, on the basis of information obtained from the client. Where necessary, the investment firm, insurance undertaking or insurance intermediary, may also use information that they may have obtained on the basis of other legitimate reasons, including existing relationships with the client or customer. The investment firms, insurance undertakings and insurance intermediaries should explain to their clients and customers the purpose of these assessments and the importance of providing accurate and complete information. They should inform their clients and customers,	(33) The suitability and appropriateness assessments are an essential element of investor protection. Investment firms, insurance undertakings and insurance intermediaries should assess the suitability or appropriateness of investment products and services recommended to or **requested** ~~**demanded**~~ by the client, respectively, on the basis of information obtained from the client. Where necessary, the investment firm, insurance undertaking or insurance intermediary, may also use information that they may have obtained on the basis of other legitimate reasons, including existing relationships with the client or customer. The investment firms, insurance undertakings and insurance intermediaries should explain to their clients and customers the purpose of these assessments and the importance of providing accurate and complete information. They should inform their clients and customers,

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	through standardised warnings, that providing inaccurate and incomplete information may have negative consequences on the quality of the assessment. To ensure harmonisation and efficiency of the different warnings, ESMA and EIOPA should develop regulatory technical standards to specify the content and format of such warnings.	through standardised warnings, that providing inaccurate **or** ~~and~~ incomplete information may have negative consequences on the quality of the assessment **or will prevent them from determining whether the product or service envisaged is suitable or appropriate for the client or customer and, in case of advice, from proceeding with the recommendation**. To ensure harmonisation and efficiency of the different warnings, ESMA and EIOPA should develop regulatory technical standards to specify the content and format of such warnings.
I-42	(34) To ensure that, in the context of advised services, due consideration is given to portfolio diversification, financial advisors should be systematically required to consider the needs of such diversification for their clients or customers, as part of the suitability assessments, including on the basis of information provided by those clients or customers on their existing portfolio of financial and non-financial assets.	(34) To ensure that, in the context of advised services, due consideration is given to portfolio diversification, financial advisors should be ~~systematically~~ required to consider, ~~as far as necessary~~ **where possible,** the needs of such diversification for their clients or customers, as part of the suitability assessments, including on the basis of information provided by those clients or customers on their existing portfolio of financial and non-financial assets. **If the client or customer, following a request by the investment firm, insurance intermediary or insurance undertaking, is not willing to provide information on their existing portfolio held with other investment firms or insurance undertakings, the**

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		financial advisor should base the assessment of the need for portfolio diversification on the information that is available to them. The level of consideration of the need for portfolio diversification may be more limited in specific cases where, for instance, a client or customer asks for specific advice on how to invest a given amount of money that represents a relatively small part of their overall portfolio or where the client or customer requires advice on a specific asset class to meet a particular need of the client or customer.
I-43	(35) To ensure that appropriateness tests enable investment firms, insurance undertakings and insurance intermediaries to effectively assess if a financial product or service is appropriate for their clients and customers, those firms, insurance undertakings and insurance intermediaries should obtain from them information not only about their knowledge and experience on such financial instruments or services, but for retail clients or customers also about their capacity to bear full or partial losses and their risk tolerance. In the case of a negative appropriateness assessment, an investment firm, insurance undertaking or insurance intermediary distributor should, in addition to the obligation to provide a warning to the client or customer, only be allowed to proceed with the	(35) ~~**To ensure that appropriateness tests enable investment firms, insurance undertakings and insurance intermediaries to [more] effectively assess if a financial product or service is appropriate for their clients and customers, those firms, insurance undertakings and insurance intermediaries should obtain from them information not only about their knowledge and experience on such financial instruments or services, but for retail clients or customers also about their capacity to bear full or partial losses and their risk tolerance.**~~ **To ensure that appropriateness tests enable investment firms, insurance undertakings and insurance intermediaries to more effectively assess if a financial product or service is**

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	transaction where the client or customer concerned explicitly request so.	**appropriate for their clients and customers, those investment firms, insurance undertakings and insurance intermediaries should obtain from them information not only about their knowledge and experience with such financial instruments or services, but for retail clients or customers also about their capacity to bear full or partial losses and their risk tolerance.**—In the case of a negative appropriateness assessment, an investment firm, insurance undertaking or insurance intermediary distributor should, in addition to **having** ~~the obligation~~ to provide a warning to the client or customer, only be allowed to proceed with the transaction where the client or customer concerned explicitly request so.
I-44	(36) A wide diversity of financial instruments can be offered to retail investors, with each financial instrument entailing different levels of risks of potential losses. Retail investors should therefore be able to easily identify investment products that are particularly risky. It is therefore appropriate to require that investment firms, insurance undertakings and insurance intermediaries identify those investment products that are particularly risky and include, in information transmitted to retail clients and customers,	(36) A wide diversity of ~~financial instruments~~ **insurance-based investment products and financial instruments** can be offered to ~~retail investors~~ **customers and retail clients**~~,~~**.** ~~with~~ **Each** ~~financial instrument~~ **insurance-based investment product or, where applicable, underlying investment asset, and each financial instrument** entail**s**~~ing~~ different levels of risks of potential losses. ~~Retail investors~~ **Customers and retail clients** should therefore be able to easily identify ~~investment products~~ **insurance-based**

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	including marketing communications, warnings on those risks. To assist investment firms, insurance undertakings and insurance intermediaries in identifying such particularly risky products, ESMA and EIOPA should issue guidelines on how to identify such products, taking due account of the different types of existing investment products and insurance-based investment products. To harmonise such risk warnings across the EU, ESMA and EIOPA should submit technical standards as regards the content and format of such risk warnings. Member States should empower competent authorities to impose the use of risk warnings for specific investment products and, where the use or absence of use of those risk warnings throughout the EU would be inconsistent or would create a material impact in terms of investor protection, ESMA and EIOPA should have the power to impose the use of such warnings by investment firms throughout the EU.	**investment products and financial instruments** that are particularly risky. It is therefore appropriate to require that~~,~~ **insurance undertakings,** ~~and~~ **insurance intermediaries and investment firms** identify those **insurance-based** investment products **and financial instruments** that are particularly risky and include ~~in information transmitted to retail clients and customers, including marketing communications,~~ warnings on those risks **in information materials, including marketing communications, provided to customers and retail clients**. To assist ~~investment firms,~~ insurance undertakings**,** ~~and~~ insurance intermediaries **and investment firms** in identifying such particularly risky products, ESMA and EIOPA should **develop** ~~guidelines~~ **draft regulatory technical standards** on how to identify such products **and submit those regulatory technical standards to the Commission**, taking due account of the **specificities of** different types of existing ~~investment products and~~ insurance-based investment products **and financial instruments and the different types of communication media and without prejudice to any national regimes in relation to particularly complex investment products. The specificities of the products may in particular relate to**

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		specific market risks, credit risks or liquidity risks of a financial instrument or insurance-based investment product or, where applicable, an underlying investment asset. **Indicative examples of specificities of particularly risky financial products could be the presence of high leverage, the necessity of a margin or a significant risk of loss of a substantial part of the investment. Not every product that may involve losses should be considered as a particularly risky product.** To harmonise such risk warnings across the EU, ESMA and EIOPA should submit **draft regulatory** technical standards as regards the content and format of such risk warnings. Member States should empower competent authorities to impose the use of risk warnings for specific **insurance-based investment products and financial instruments** ~~investment products~~. **In case of concerns regarding** ~~Where~~ the use or **the** absence of use **or the supervision of the use** of those risk warnings **in one or more Member States, that would create a material impact in terms of investor protection** ~~throughout the EU would be inconsistent~~, ESMA and EIOPA **may, after having consulted the competent authorities concerned, issue a recommendation addressed to the relevant competent**

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		<u>authorities to impose the use of risk warnings for specific insurance-based investment products and financial instruments</u>. ~~should have the power to impose the use of such warnings by investment firms throughout the EU~~.
I-45	(37) Increasing the level of financial literacy of retail clients and customers, and of prospective retail clients and potential customers, is key to providing those retail clients and customers with a better understanding of how to invest responsibly, to adequately balance the risks and benefits involved with investing. Member States should therefore promote formal and informal learning measures that support the financial literacy of retail clients and customers, and of prospective retail clients and potential customers in relation to responsible investing. Investing responsibly refers to retail investors' ability to make informed investment decisions in line with their personal and financial objectives, provided that they are aware of the range of available investment products and services, their key features, and the risks and benefits involved with investing, and provided that they understand the investment advice they receive and are able to react to it appropriately. Prospective retail investors should be able to access educational material that supports their financial	(37) Increasing the level of financial literacy of retail clients and customers, and of prospective retail clients and potential customers, is key to providing those retail clients and customers with a better understanding of how to invest responsibly, to adequately balance the risks and benefits involved with investing. Member States should therefore promote formal and informal learning measures that support the financial literacy of retail clients and customers, and of prospective retail clients and potential customers in relation to responsible investing. Investing responsibly refers to retail investors' ability to make informed investment decisions in line with their personal and financial objectives, provided that they are aware of the range of available investment products and services, their key features, and the risks and benefits involved with investing, and provided that they understand the investment advice they receive and are able to react to it appropriately. Prospective retail investors should be able to access educational material that supports their financial literacy at all times, and the

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	literacy at all times, and the material should in particular take account of differences in age, education levels and the technological capabilities of retail investors. That is in particular relevant for retail clients and customers that access financial instruments, investment services, and insurance-based investment products for the first time, and those using digital tools.	material should in particular take account of differences in age, education levels and the technological capabilities of retail investors. That is in particular relevant for retail clients and customers that access financial instruments, investment services, and insurance-based investment products for the first time, and those using digital tools.
I-46	(38) It is necessary to ensure that the criteria for determining whether a client possesses the necessary experience, knowledge and expertise to be treated as a professional client where such client requests such treatment, are appropriate and fit for purpose. The identification criteria should therefore also take into account experience gathered outside the financial services sector and certified training and education that the client has completed. The identification criteria should also be proportionate and not discriminatory with respect to the Member State of residence of the client. The criteria based on wealth and size of a legal entity should therefore be amended to account for clients residing in Member States with lower average GDP per capita.	(38) It is necessary to ensure that the criteria for determining whether a client possesses the necessary experience, knowledge and expertise to be treated as a professional client where such client requests such treatment, are appropriate and fit for purpose. The identification criteria should therefore also take into account **relevant** experience gathered outside the financial services sector and certified training and education that the client has completed. **The relevance of the certified training or education can be assessed by the investment firm on a case-by-case basis, depending on the transactions or services envisaged. Specialised higher education degrees as well as certified courses and accreditations that are relevant when working in the field of finance could be considered examples of relevant education and training. Investment firms should be able to demonstrate why they**

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		consider the certified training and education courses and accreditations to be relevant. **The criterion on the number of transactions should reflect an ongoing experience over the last three years. Monthly transactions in an investment plan should generally be considered as only one transaction (instead of twelve transactions) unless it can be demonstrated that the monthly amounts are of significant size.** The identification criteria should also be proportionate and not discriminatory with respect to the Member State of residence of the client. The criteria based on wealth and size of a legal entity should therefore be amended **and the threshold lowered to EUR 250,000** to account for clients residing in Member States with lower average GDP per capita. **In order to assess the average value of the client's financial instrument portfolio over the last three years, the investment firm may use the last three annual statements that include the client's relevant information at the end of each of the last three calendar years preceding that client's request to be classified as professional. Where such annual statements are not available or if any other more recent statement is available, the investment firm may use such other periodic statements containing information on the**

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		client's financial instrument portfolio over the last three years. In the case of natural persons, in the absence of annual statements, the size of the client's portfolio could be determined based on periodic portfolio statements or bank statements or any other overview that gives an indication of the client's cash deposits and financial instruments.
I-46a		**(38a) Member States shall apply the national provisions transposing this Directive from [OJ: please insert date 36 months after the entry into force of this Directive]. Notwithstanding the foregoing, the provisions on requirements relating to the risk warnings concerning particularly risky investment products cannot practically be applied before the delegated acts provided in those provisions have entered into force – as the concept of particularly risky investment product will be further specified in the said delegated acts – Member States should therefore not apply those provisions until 12 months after the entry into force of those delegated acts.**
I-47	(39) The European Data Protection Supervisor was consulted in accordance with Article 42(1) of Regulation (EU) 2018/1725 of the European Parliament and of the Council and delivered an opinion on [XX XX 2023].	(39) The European Data Protection Supervisor was consulted in accordance with Article 42(1) of Regulation (EU) 2018/1725 of the European Parliament and of the Council and delivered an opinion on [XX XX 2023].

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I-48	(40) Regulation (EU) 2016/679 of the European Parliament and of the Council applies to the processing of personal data for the purposes of this Directive. Regulation (EU) 2018/1725 of the European Parliament and of the Council applies to the processing of personal data by the Union institutions and bodies for the purposes of this Directive. Member States should ensure that processing of data carried out in application of this Directive fully respects Directive 2002/58/EC of the European Parliament and of the Council where that Directive is applicable.	(40) Regulation (EU) 2016/679 of the European Parliament and of the Council applies to the processing of personal data for the purposes of this Directive. Regulation (EU) 2018/1725 of the European Parliament and of the Council applies to the processing of personal data by the Union institutions and bodies for the purposes of this Directive. Member States should ensure that processing of data carried out in application of this Directive fully respects Directive 2002/58/EC of the European Parliament and of the Council where that Directive is applicable.
I-49	(41) Directives (EU) 2009/65/EC, 2009/138/EC, 2011/61/EU, 2014/65/EU and (EU) 2016/97 should therefore be amended accordingly.	(41) Directives (EU) 2009/65/EC, 2009/138/EC, 2011/61/EU, 2014/65/EU and (EU) 2016/97 should therefore be amended accordingly.
I-49a		**(42) The objective of this Directive, namely (XXX), can only be achieved by setting a common regulatory framework that ensures the same level of retail investor protection across Member States. By reason of the scale and effects of this Directive, the objective cannot be achieved by the Member States alone, but would rather be better achieved at Union level, and the Union may thus adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance**

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		<u>with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.</u>
I-50	HAVE ADOPTED THIS DIRECTIVE:	HAVE ADOPTED THIS DIRECTIVE: