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*Committee on Economic and Monetary Affairs*

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**2011/0298(COD)**

15.5.2012

# **AMENDMENTS**

## **641 - 944**

**Draft report**

**Markus Ferber**

(PE485.882v01-00)

on the proposal for a directive of the European Parliament and of the Council  
on markets in financial instruments repealing Directive 2004/39/EC of the  
European Parliament and of the Council (recast)

Proposal for a directive

(COM(2011)0656 – C7-0382/2011 – 2011/0298(COD))

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**Amendment 641**  
**Sylvie Goulard**

**Proposal for a directive**  
**Article 20**

*Text proposed by the Commission*

*Amendment*

**[...]**

***Article deleted***

Or. en

*Justification*

*The OTF category is deleted as all trading platforms operated by market operators or investment firms should be during multilateral trading subject to proper market rules (i.e. transparency, non-discretionary execution, non-discriminatory access, and full market surveillance).*

**Amendment 642**  
**Sirpa Pietikäinen**

**Proposal for a directive**  
**Article 20**

*Text proposed by the Commission*

*Amendment*

**[...]**

***Article deleted***

Or. en

**Amendment 643**  
**Wolf Klinz**

**Proposal for a directive**  
**Article 20 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

1. Member States shall require that investment firms and market operators operating an **OTFs** establish arrangements preventing the execution of client orders in

1. Member States shall require that investment firms and market operators operating an **OTF** establish arrangements preventing the execution of client orders in

an OTF against the proprietary capital of the investment firm or market operator operating the OTF. The investment firm shall not act as a systematic internaliser in an OTF operated by itself. An OTF shall not connect with another OTF in a way which enables orders in different OTFs to interact.

an OTF against the proprietary capital of the investment firm or market operator operating the OTF ***without the consent of the client***. The ***operator of the OTF shall publish on a regular basis data in accordance with Article 27(2) disaggregated by orders executed against the proprietary capital of the operator and orders between third party buying and selling interests***. The investment firm shall not act as a systematic internaliser in an OTF operated by itself. An OTF shall not connect with another OTF in a way which enables orders in different OTFs to interact ***unless the operator of the OTF can demonstrate compliance with the requirements in this Directive and Regulation (EU) No .../... [MiFIR] and that such an operational arrangement supports the requirements in Article 27***.

Or. en

#### **Amendment 644**

**Olle Schmidt**

on behalf of the ALDE Group

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

#### **Article 20 – paragraph 1**

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

1. Member States shall require that investment firms and market operators operating an ***OTFs*** establish arrangements preventing the execution of client orders in an OTF against the proprietary capital of the investment firm or market operator operating the OTF. The ***investment firm*** shall ***not act as a systematic internaliser in an OTF operated by itself***. An OTF shall not connect with another OTF in a way which enables orders in different OTFs to interact.

##### *Amendment*

1. Member States shall require that investment firms and market operators operating an ***OTF in shares, depositary receipts, exchange traded funds, certificates and other similar financial instruments*** establish arrangements preventing the execution of client orders in an OTF against the proprietary capital of the investment firm or market operator operating the OTF, ***except where this is undertaken on a matched principal basis or with the consent of the client***. The ***operator of the OTF shall publish on a regular basis data in accordance with***

*Article 27(2) disaggregated by orders executed against the proprietary capital of the operator and orders between third party buying and selling interests. An OTF shall not connect with another OTF in a way which enables orders in different OTFs to interact **unless the operator of the OTF can demonstrate compliance with the requirements in this Directive and Regulation (EU) No .../... [MiFIR] and that such an operational arrangement supports the requirements in Article 27.***

Or. en

### *Justification*

*The amendment ensures a level playing field between RMs, MTFs and OTFs in terms of conflicts of interest, through the ability of the client to opt in. The operator of an OTF should be allowed to execute orders against proprietary capital on a 'matched principal basis'. Banning proprietary trading could reduce liquidity in a market which is used by end investors for their risk management. The text also requires OTFs to publish to clients data showing execution quality.*

## **Amendment 645** **Kay Swinburne**

### **Proposal for a directive** **Article 20 – paragraph 1**

#### *Text proposed by the Commission*

1. Member States shall require that investment firms and market operators operating an ***OTFs establish arrangements preventing the execution of client orders in an OTF against the proprietary capital of the investment firm or market operator operating the OTF. The investment firm*** shall not act as a systematic internaliser in an OTF operated by itself. An OTF shall not connect with another OTF in a way which enables orders in different OTFs to interact.

#### *Amendment*

1. Member States shall require that investment firms and market operators operating an OTF shall not act as a systematic internaliser in an OTF operated by itself. An OTF shall not connect with another OTF in a way which enables orders in different OTFs to interact.

***Investment firms and market operators of an OTF shall allow clients to choose whether their orders are executed against the proprietary capital of the investment firm or market operator.***

Or. en

*Justification*

*In order for an OTF to work it is necessary that an investment firm use its own proprietary capital as buy-side firms do not wish to become each others counterparty, adding in unacceptable risk to the process. For this reason the OTF operator must be able to use its own capital to facilitate client trades and appropriately off set the risk incurred in executing against a client. However, a client should be given the choice over whether or not it wishes its orders to interact with proprietary capital or not.*

**Amendment 646**

**Diogo Feio**

**Proposal for a directive**

**Article 20 – paragraph 1**

*Text proposed by the Commission*

1. Member States shall require that investment firms and market operators operating an OTFs establish arrangements preventing the execution of client orders in an OTF against the proprietary capital of the investment firm or market operator operating the OTF. ***The investment firm shall not act as a systematic internaliser in an OTF operated by itself. An OTF shall not connect with another OTF in a way which enables orders in different OTFs to interact.***

*Amendment*

1. Member States shall require that investment firms and market operators operating an OTFs establish arrangements preventing the execution of client orders in an OTF against the proprietary capital of the investment firm or market operator operating the OTF, ***except where the relevant client has elected in writing to opt-in to arrangements permitting the execution of the client's orders in that OTF against proprietary capital of the investment firm or market operator operating that OTF for client facilitation purposes.***

Or. en

**Amendment 647**  
**Corien Wortmann-Kool**

**Proposal for a directive**  
**Article 20 – paragraph 1**

*Text proposed by the Commission*

1. Member States shall require that investment firms and market operators operating an OTFs establish arrangements preventing the execution of client orders in an OTF against the proprietary capital of the investment firm or market operator operating the OTF. The investment firm shall not act as a systematic internaliser in an OTF operated by itself. An OTF shall not connect with another OTF in a way which enables orders in different OTFs to interact.

*Amendment*

1. Member States shall require that investment firms and market operators operating an OTFs establish arrangements preventing the execution of client orders in an OTF against the proprietary capital of the investment firm or market operator operating the OTF, ***except where the proprietary capital is applied to enable the investment firm to fulfil orders initiated by clients, respond to a client's request to trade or otherwise obtain best execution on behalf of its client; or execute a hedge to unwind the risk related to client trades or reflect interests and positions that emanate from risks that it warehouses on the back of client trades.*** The deployment of proprietary capital in an OTF shall be subject to strict order handling rules to prevent conflicts of interest and the investment firm shall ***disclose to its clients how its proprietary capital may be applied in the OTF.*** The investment firm operating an OTF shall not act as a systematic internaliser in an OTF operated by itself. An OTF shall not connect with another OTF in a way which enables orders in different OTFs to interact.

Or. en

**Amendment 648**  
**Pascal Canfin**  
on behalf of the Verts/ALE Group

**Proposal for a directive**  
**Article 20 – paragraph 1**

*Text proposed by the Commission*

1. Member States shall require that investment firms and market operators operating an OTFs establish arrangements preventing the execution of client orders in an OTF against the proprietary capital of the investment firm or market operator operating the OTF. The investment firm shall not act as a systematic internaliser in an OTF operated by itself. An OTF shall not connect with another OTF in a way which enables orders in different OTFs to interact.

*Amendment*

1. Member States shall require that investment firms and market operators operating an OTFs establish arrangements preventing the execution of client orders in an OTF against the proprietary capital of the investment firm or market operator operating the OTF ***or from any entity part of the same corporate group and/ or legal entity as the investment firm and/ or market operator.*** The investment firm ***or market operator or any entity part of the same corporate group and/ or legal entity as the investment firm and/ or market operator*** shall not act as a systematic internaliser in an OTF operated by itself ***and an OTF shall not connect with a systematic internaliser in a way which enables orders in an OTF and orders or quotes in a SI to interact.*** An OTF shall not connect with another OTF in a way which enables orders in different OTFs to interact.

Or. en

**Amendment 649**

**Alfredo Pallone**

**Proposal for a directive**

**Article 20 – paragraph 1**

*Text proposed by the Commission*

1. Member States shall require that investment firms and market operators operating an OTFs establish arrangements preventing the execution of client orders in an OTF against the proprietary capital of the investment firm or market operator operating the OTF. The investment firm shall not act as a systematic internaliser in an OTF operated by itself. An OTF shall not connect with another OTF in a way

*Amendment*

1. Member States shall require that investment firms and market operators operating an OTFs establish arrangements preventing the execution of client orders in an OTF against the proprietary capital of the investment firm or market operator operating the OTF, ***unless they obtain the prior consent of their clients before proceeding to execute their orders and subject to the obligation set out in Article***



which enables orders in different OTFs to interact.

**27 (1).** The investment firm shall not act as a systematic internaliser in an OTF operated by itself. An OTF shall not connect with another OTF in a way which enables orders in different OTFs to interact.

Or. en

**Amendment 650**  
**Anne E. Jensen**

**Proposal for a directive**  
**Article 20 – paragraph 1**

*Text proposed by the Commission*

1. Member States shall require that investment firms and market operators operating **an** OTFs establish arrangements preventing the execution of client orders in an OTF against the proprietary capital of the investment firm or market operator operating the OTF. The investment firm shall not act as a systematic internaliser in an OTF operated by itself. An OTF shall not connect with another OTF in a way which enables orders in different OTFs to interact.

*Amendment*

1. Member States shall require that investment firms and market operators operating OTFs **that provide organised execution and arranging of trading in equities** establish arrangements preventing the execution of client orders in an OTF against the proprietary capital of the investment firm or market operator operating the OTF. The investment firm shall not act as a systematic internaliser in an OTF operated by itself. An OTF shall not connect with another OTF in a way which enables orders in different OTFs to interact.

Or. en

**Amendment 651**  
**Wolf Klinz**

**Proposal for a directive**  
**Article 20 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

**1 a. Investment firms or market operators operating an OTF shall have discretion**

*over how a transaction is to be executed  
and how clients interact.*

Or. en

**Amendment 652**

**Olle Schmidt**

on behalf of the ALDE Group

**Proposal for a directive**

**Article 20 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***1 a. Investment firms or market operators  
operating an OTF shall have discretion  
over how a transaction is to be executed  
and how clients interact.***

Or. en

*Justification*

*The amendment clarifies the nature of the discretion afforded to OTFs.*

**Amendment 653**

**Anne E. Jensen**

**Proposal for a directive**

**Article 20 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***1 a. Member States shall ensure that any  
access restrictions imposed by investment  
firms and market operators operating  
OTFs that provide organised execution  
and arranging of trading in equities only  
restrict access to the OTF to the  
investment firm's or operator's clients.***

Or. en

**Amendment 654**

**Olle Schmidt**

on behalf of the ALDE Group

**Proposal for a directive**

**Article 20 – paragraph 1 b (new)**

*Text proposed by the Commission*

*Amendment*

***1 b. Member States shall require that investment firms and market operators operating an OTF for bonds, structured finance products, emission allowances and derivatives, establish arrangements to identify clearly and manage the potential adverse consequences, for the operation of the OTF or for its participants, of any conflict of interest between the interest of the OTF, its owners or its operator and the sound functioning of the OTF.***

Or. en

*Justification*

*A sufficient level of investor protection is needed in the whole EU. Best practices should be shared between the Member States.*

**Amendment 655**

**Anne E. Jensen**

**Proposal for a directive**

**Article 20 – paragraph 1 b (new)**

*Text proposed by the Commission*

*Amendment*

***1 b. With regard to paragraph 1a clients do not include entities listed in Annex II, section I, (1), (a) and (b).***

Or. en

**Amendment 656**

**Anne E. Jensen**

**Proposal for a directive**

**Article 20 – paragraph 1 c (new)**

*Text proposed by the Commission*

*Amendment*

***1 c. For OTFs providing organised execution and arranging of trading in equities that have significant market share Member States shall require that the rules mentioned in Article 18(3) governing access to an OTF comply with the conditions established in Article 55(5).***

Or. en

**Amendment 657**

**Pascal Canfin**

on behalf of the Verts/ALE Group

**Proposal for a directive**

**Article 20 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

2. A request for authorisation as an OTF shall include a detailed explanation why the system does not correspond to and cannot operate as either a regulated market, MTF, or systematic internaliser.

2. A request for authorisation as an OTF shall include a detailed explanation why the system does not correspond to and cannot operate as either a regulated market, MTF, or systematic internaliser. ***This explanation shall be transmitted to ESMA. ESMA shall within one month issue an opinion on whether it considers the explanation demonstrates that the system does not correspond to and cannot operate as either a regulated market, MTF, or systematic internaliser.***

Or. en

**Amendment 658**

**Pascal Canfin**

on behalf of the Verts/ALE Group

**Proposal for a directive**  
**Article 20 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***2 a. After receiving the opinion of ESMA, the home Member State of the OTF shall only grant the authorisation to operate an OTF where the explanation given demonstrates that the system does not correspond to and cannot operate as either a regulated market, MTF, or systematic internaliser.***

Or. en

*Justification*

*OTF shall not substitute to existing MIFID categories.*

**Amendment 659**

**Pascal Canfin**

on behalf of the Verts/ALE Group

**Proposal for a directive**  
**Article 20 – paragraph 2 b (new)**

*Text proposed by the Commission*

*Amendment*

***2 b. Where a competent authority disagrees with the assessment of the home Member State of the OTF that the system does not correspond to and cannot operate as either a regulated market, MTF, or systematic internaliser, that competent authority may refer the matter back to ESMA, which may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No 1095/2010.***

Or. en

*Justification*

*Level playing field among the internal market cannot be ensured if no mechanism avoids different national interpretation.*

**Amendment 660**

**Pascal Canfin**

on behalf of the Verts/ALE Group

**Proposal for a directive**

**Article 20 – paragraph 3 a (new)**

*Text proposed by the Commission*

*Amendment*

***3 a. When a financial instrument is available on a regulated market or MTF, Member States shall ensure that OTFs are only authorised to execute large in scale orders from eligible counterparties of that particular financial instrument.***

Or. en

**Amendment 661**

**Sharon Bowles**

**Proposal for a directive**

**Article 20 – paragraph 4**

*Text proposed by the Commission*

*Amendment*

4. Member States shall require ***that, where OTFs allow for or enable algorithmic trading to take place through their systems, they*** have in place effective systems, procedures and arrangements to comply with the conditions of Article 51.

4. Member States shall require ***an OTF*** to have in place effective systems, procedures and arrangements to comply with the conditions of Article 51 ***or other procedures and arrangements relevant to the trading model of the OTF.***

Or. en

*Justification*

*The requirements for both MTFs and OTFs should be the same with regard to systems resilience, circuit breakers and electronic trading. This is aligned with the amendment to*

Article 19.4.

**Amendment 662**  
**Markus Ferber**

**Proposal for a directive**  
**Article 20 – paragraph 4**

*Text proposed by the Commission*

4. Member States shall require ***that, where*** OTFs ***allow for or enable algorithmic trading to take place through their systems, they*** have in place effective systems, procedures and arrangements to ***comply with the conditions of Article 51.***

*Amendment*

4. Member States shall require OTFs to ***comply with the conditions of Article 51 and 51a and to*** have in place effective systems, procedures and arrangements to ***do so.***

Or. en

**Amendment 663**  
**Diogo Feio**

**Proposal for a directive**  
**Article 20 – paragraph 4 a (new)**

*Text proposed by the Commission*

*Amendment*

***4 a. Member States shall require that investment firms or market operators operating an OTF take appropriate steps to identify and manage any conflicts of interest arising in connection with the oversight and operation of their OTF.***

Or. en

*Justification*

*Investment firms and market operators operating an OTF must be required to identify and manage conflicts of interest in order to ensure appropriate treatment of trades. This will ensure that clients are sufficiently protected also where proprietary capital is used for client facilitation purposes, which is what the complete proprietary capital prohibition was also aimed at ensuring.*

**Amendment 664**

**Pascal Canfin**

on behalf of the Verts/ALE Group

**Proposal for a directive**

**Article 20 – paragraph 4 a (new)**

*Text proposed by the Commission*

*Amendment*

***4 a. Where an OTF executes an equivalent volume of transactions as competing MTFs or regulated markets on the same financial instruments or a significant volume of transactions executed in that financial instrument, Member States shall require that that OTF complies with all the requirements of an MTF.***

Or. en

*Justification*

*Level playing field across trading venues shall be preserved. Same profile, same rules.*

**Amendment 665**

**Anne E. Jensen**

**Proposal for a directive**

**Article 20 – paragraph 4 a (new)**

*Text proposed by the Commission*

*Amendment*

***4 a. ESMA shall develop draft implementing technical standards to determine when an OTF is considered to have significant market share as referred to in paragraph 1c.***

Or. en



**Amendment 666**

**Olle Schmidt**

on behalf of the ALDE Group

**Proposal for a directive**

**Article 22 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***1 a. ESMA shall conduct peer reviews to identify best practices concerning on-going supervision in the Member States and shall advise the Commission by[...] at the latest on measures that could ensure a stronger supervision among the Member States.***

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***\*OJ please insert date: two years after the entry into force of this Directive***

Or. en

*Justification*

*A sufficient level of investor protection is needed in the whole EU. Best practises should be shared between the Member States.*

**Amendment 667**

**Sven Giegold**

on behalf of the Verts/ALE Group

**Proposal for a directive**

**Article 23 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

1. Member States shall require investment firms to take all appropriate steps to identify conflicts of interest between themselves, including their managers, employees and tied agents, or any person directly or indirectly linked to them by control and their clients **or** between one client and another that arise in the course of providing any investment and ancillary

1. Member States shall require investment firms to take all appropriate steps to identify **all** conflicts of interest between themselves, including their managers, employees and tied agents, or any person directly or indirectly linked to them by control and their clients, between one client and another that arise in the course of providing any investment and ancillary

services, or combinations thereof.

services, or ***conflicts of interests caused by inducements or conflicts occurring in investment firms selling own products, or combinations thereof.***

Or. en

**Amendment 668**  
**Olle Ludvigsson**

**Proposal for a directive**  
**Article 23 – paragraph 1**

*Text proposed by the Commission*

1. Member States shall require investment firms to take all ***appropriate*** steps to identify conflicts of interest between themselves, including their managers, employees and tied agents, or any person directly or indirectly linked to them by control and their clients or between one client and another that arise in the course of providing any investment and ancillary services, or combinations thereof.

*Amendment*

1. Member States shall require investment firms to take all ***the necessary*** steps to identify conflicts of interest between themselves, including their managers, employees and tied agents, or any person directly or indirectly linked to them by control and their clients or between one client and another that arise in the course of providing any investment and ancillary services, or combinations thereof.

Or. en

**Amendment 669**  
**Olle Schmidt**  
on behalf of the ALDE Group

**Proposal for a directive**  
**Article 23 – paragraph 2**

*Text proposed by the Commission*

2. Where organisational or administrative arrangements made by the investment firm in accordance with Article 16(3) to manage conflicts of interest are not sufficient to ensure, with reasonable confidence, that risks of damage to client interests will be prevented, the investment firm shall clearly

*Amendment*

2. Where organisational or administrative arrangements made by the investment firm in accordance with Article 16(3) to manage ***and avoid*** conflicts of interest are not sufficient to ensure, with reasonable confidence, that risks of damage to client interests will be prevented, the investment

disclose the general nature and/or sources of conflicts of interest to the client before undertaking business on its behalf.

firm shall clearly disclose the general nature and/or sources of conflicts of interest to the client before undertaking business on its behalf.

Or. en

*Justification*

*Conflict of interests between service providers and investors must be avoided.*

**Amendment 670**

**Sylvie Goulard**

**Proposal for a directive**

**Article 23 – paragraph 2**

*Text proposed by the Commission*

***2. Where organisational or administrative arrangements made by the investment firm in accordance with Article 16(3) to manage conflicts of interest are not sufficient to ensure, with reasonable confidence, that risks of damage to client interests will be prevented, the investment firm shall clearly disclose the general nature and/or sources of conflicts of interest to the client before undertaking business on its behalf.***

*Amendment*

***2. The arrangements adopted by investment firms for assessing, paying, rewarding or promoting the persons mentioned in paragraph (1) should not incentivise them to act at any time in a manner that would not comply with the best interest of their clients. In particular, these arrangements should not incentivise any person including themselves, their managers, employees and tied agents, or any person directly or indirectly linked to them by control to recommend a specific financial instrument or a specific category of financial instruments to their clients.***

Or. en

**Amendment 671**

**Syed Kamall, Kay Swinburne**

**Proposal for a directive**

**Article 23 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***2a. Member States shall ensure that any income received directly by any fund should be returned net of all direct costs to the fund's holders. Where these direct costs are set by associate companies of the fund management group, they must be proportionate to equivalent external costs and signed off by independent directors.***

Or. en

*Justification*

*Direct costs should be returned to the holder of the fund in question to reduce potential conflicts of interest.*

**Amendment 672**

**Sven Giegold**

on behalf of the Verts/ALE Group

**Proposal for a directive**

**Article 23 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

2. Where organisational or administrative arrangements made by the investment firm in accordance with Article 16(3) to manage conflicts of interest are not sufficient to ensure, with reasonable confidence, that risks of damage to client interests will be prevented, the investment firm shall ***clearly disclose the general nature and/or sources of conflicts of interest to the client before undertaking*** business on its behalf.

2. Where organisational or administrative arrangements made by the investment firm in accordance with Article 16 (3) to manage conflicts of interest are not sufficient to ensure, with reasonable confidence, that risks of damage to client interests will be prevented, the investment firm shall ***not undertake*** business on its behalf.

Or. en

**Amendment 673**

**Jürgen Klute**

**Proposal for a directive**  
**Article 23 – paragraph 2**

*Text proposed by the Commission*

2. Where organisational or administrative arrangements made by the investment firm in accordance with Article 16(3) to **manage** conflicts of interest are not sufficient to ensure, with reasonable confidence, that risks of damage to client interests will be prevented, the investment firm shall clearly disclose the general nature and/or sources of conflicts of interest to the client before undertaking business on its behalf.

*Amendment*

2. Where organisational or administrative arrangements made by the investment firm in accordance with Article 16(3) to **avoid** conflicts of interest are not sufficient to ensure, with reasonable confidence, that risks of damage to client interests will be prevented, the investment firm shall clearly disclose the general nature and/or sources of conflicts of interest to the client before undertaking business on its behalf.

Or. en

**Amendment 674**  
**Olle Schmidt**  
on behalf of the ALDE Group

**Proposal for a directive**  
**Article 23 – paragraph 3 – introductory part**

*Text proposed by the Commission*

3. **The Commission** shall **be empowered to adopt by means of delegated acts in accordance with Article 94 measures** to:

*Amendment*

3. **ESMA** shall **develop draft regulatory technical standards** to:

Or. en

*Justification*

*This is a technical question and an area on which ESMA has already issued guidance, therefore it is more appropriate that the power be given to ESMA.*

**Amendment 675**  
**Arlene McCarthy**

**Proposal for a directive**  
**Article 23 – paragraph 3 – point b**

*Text proposed by the Commission*

(b) establish appropriate criteria for determining the types of conflict of interest whose existence may damage the interests of the clients or potential clients of the investment firm.

*Amendment*

(b) establish appropriate criteria for determining the types of conflict of interest whose existence may damage the interests of the clients or potential clients of the investment firm. ***Areas covered should include, as a minimum, the use of sales targets for investment products, remuneration, rewards or payments in kind paid to its employees or agents involved in the advising on or selling of financial instruments to retail clients and the performance reviews of employees or agents which provide incentives for those employees or agents to act otherwise than in the best interests of each individual retail client.***

Or. en

**Amendment 676**  
**Olle Schmidt**  
on behalf of the ALDE Group  
**Ramon Tremosa i Balcells**

**Proposal for a directive**  
**Article 23 – paragraph 3 – point b**

*Text proposed by the Commission*

(b) establish appropriate criteria for determining the types of conflict of interest whose existence may damage the interests of the clients or potential clients of the investment firm.

*Amendment*

(b) establish appropriate criteria for determining the types of conflict of interest whose existence may damage the interests of the clients or potential clients of the investment firm. ***This includes disproportionate use of sales targets for investment products, which is potentially damaging to the quality and objectiveness of the provision of investment services.***

Or. en

### *Justification*

*Employees who want to act in accordance with legal rules and his or her own professionalism and competence sometimes end up in situations where the demand for good advice are conflicting with sales targets. Sales targets are not bad in themselves, but they should be adequate and proportional and not conflict in any way with the provision of quality advice.*

#### **Amendment 677**

**Sven Giegold**

on behalf of the Verts/ALE Group

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

#### **Article 23 – paragraph 3 – point b**

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

(b) establish appropriate criteria for determining the types of conflict of interest whose existence may damage the interests of the clients or potential clients of the investment firm.

##### *Amendment*

(b) establish appropriate criteria for determining the types of conflict of interest whose existence may damage the interests of the clients or potential clients of the investment firm, ***including conflicts of interest caused by inducements or conflicts occurring in investment firms selling own products.***

Or. en

#### **Amendment 678**

**Olle Schmidt**

on behalf of the ALDE Group

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

#### **Article 23 – paragraph 3 – subparagraph 1 a and 1 b (new)**

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

##### *Amendment*

***ESMA shall submit those draft regulatory technical standards to the Commission by [...]\*.***

***Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.***

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*\*OJ please insert date: ...*

Or. en

*Justification*

*This is a technical question and an area on which ESMA has already issued guidance, therefore it is more appropriate that the power be given to ESMA.*

**Amendment 679**

**Pervenche Berès**

**Proposal for a directive**

**Article 24 – paragraph 1**

*Text proposed by the Commission*

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

*Amendment*

1. Member States shall require that, when providing investment services or, where appropriate, ancillary services to clients, an investment firm act honestly, fairly and professionally in accordance with the best interests of its clients and *complies*, in particular, with ***the provisions of Regulation (EU) .../... on packaged retail investment products and Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation, and with*** the principles set out in this Article and in Article 25.

Or. fr

**Amendment 680**

**Jean-Paul Gauzès**

**Proposal for a directive**

**Article 24 – paragraph 1 a (new)**



*Text proposed by the Commission*

*Amendment*

***1 a. Member States shall ensure that where investment firms design new investment products or structured deposits for advice given to professional or retail clients those products are designed to meet the needs of an identified target market within the relevant category of clients (professional or retail) and that the investment firm takes reasonable steps to ensure that the investment product is marketed and distributed to clients within the target market.***

Or. en

**Amendment 681**

**Olle Schmidt**

on behalf of the ALDE Group

**Ramon Tremosa i Balcells**

**Proposal for a directive**

**Article 24 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***1 a. Member States shall ensure that where investment firms design investment products or structured deposits for sale to professional or retail clients those products are designed to meet the needs of an identified target market within the relevant category of clients and that the investment firm takes reasonable steps to ensure that (i) when an investment firm or its affiliates conduct direct marketing to retail investors, the investment product is marketed and distributed to clients within the target group and/or, (ii) materials appropriate for the target market are prepared and made available by the investment firm to any third party distributing the investment product or structured deposit to retail clients.***

*Justification*

*The wording needs to be expanded to take account that product manufacturers distribute their product using a number of different channels, over which they cannot always exercise legal or contractual control. For example, advisers are appointed and can often be paid for by the end client and do not belong to the same group of companies as the product manufacturer. The investment firm manufacturing the product cannot then contractually enforce the sales process of a third party entity.*

**Amendment 682**  
**Leonardo Domenici**

**Proposal for a directive**  
**Article 24 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***1 a. Member States shall ensure that investment firms assess a general consistency of the financial instruments distributed, especially when directly designed, with due regard to their characteristics, against the characteristics and needs of the potential target group of clients to whom these instruments are being addressed. Member States shall require that investment firms take reasonable steps to ensure that the sale and distribution policy is consistent with suitability and appropriateness assessment rules.***

Or. en

*Justification*

*This amendment aims to clarify what investment firms are required to do in order to ensure that all financial instruments distributed, especially when directly designed, are previously assessed in order to ensure that their characteristics are compatible with the need of the potential target group of clients. Investment firm must take reasonable steps to ensure that the sale and distribution policy is consistent to the rules on suitability and appropriateness assessment.*

**Amendment 683**

**Astrid Lulling**

**Proposal for a directive**

**Article 24 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***1 a. Member States shall ensure that where investment firms design investment products or structured deposits for sale to retail clients those products are designed to meet the needs of an identified target market within the relevant category of clients and that the investment firm takes reasonable steps to ensure that the investment product is marketed and distributed to clients within the target group, unless the product is designed according to a specific client demand.***

Or. en

*Justification*

*Disclosure is a cornerstone of client information, transparency in the information shall be given at the appropriate level and time, bans will lead to excluding clients from advices specifically retail ones.*

**Amendment 684**

**Jürgen Klute**

**Proposal for a directive**

**Article 24 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***1 a. In particular, Member States should ensure that investment firms assess a general consistency of the financial instruments distributed (especially when directly designed), with due regard to their characteristics against the characteristics and needs of the potential target group of***

*clients to whom these instruments are being addressed. This assessment shall take into account the full customer protection offered by an issuer which is member of an institutional protection scheme as defined in Article 80(8) of Directive 2006/48/EC. Moreover, Member States shall require that investment firms take reasonable steps to ensure that the sale and distribution policy is consistent with the suitability and appropriateness assessment rules.*

Or. en

**Amendment 685**  
**Herbert Dorfmann**

**Proposal for a directive**  
**Article 24 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

*1 a. Member States shall ensure that investment firms assess a general consistency of the financial instruments distributed, especially when directly designed, with due regard to their characteristics, against the characteristics and needs of the potential target group of clients to whom these instruments are being addressed. This assessment takes into account the full customer protection offered by an issuer which is member of an institutional protection scheme as defined in Article 80(8) of the Directive 2006/48/EC. Moreover, Member States shall require that investment firms take reasonable steps to ensure that the sale and distribution policy is consistent with suitability and appropriateness assessment rules.*

Or. en

**Amendment 686**  
**Syed Kamall, Kay Swinburne**

**Proposal for a directive**  
**Article 24 – paragraph 2**

*Text proposed by the Commission*

2. All information, including marketing communications, addressed by the investment firm to clients or potential clients shall be fair, clear and not misleading. Marketing communications shall be clearly identifiable as such.

*Amendment*

2. All information, including **advertising and** marketing communications, addressed by the investment firm to clients or potential clients shall be fair, clear and not misleading. Marketing communications shall be clearly identifiable as such.

***Any advertising or marketing communications shall specify clearly and prominently, in the format outlined in Annex IIa:***

***a) the total provider cost, in the case of an investment service or financial instrument being promoted by an investment firm;***

***b) the total cost of investment, in the case of an investment service or financial instrument being promoted via a sales channel whereby additional charges or rebates are applied.***

Or. en

*Justification*

*High levels of disclosure, including both the total provider cost and the total cost of investment will ensure that investors are equipped with the necessary information to make informed investment decisions.*

**Amendment 687**  
**Robert Goebbels**

**Proposal for a directive**  
**Article 24 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***2 a. An investment firm shall only be***

*allowed to either provide non-independent investment advice or independent advice.*

Or. en

*Justification*

*Allowing for investment firms to offer both non-independent and independent advice can potentially be very misleading for clients.*

**Amendment 688**

**Sven Giegold**

on behalf of the Verts/ALE Group

**Proposal for a directive**

**Article 24 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***2 a. Member States shall ensure, that investment firms provide national competent authorities on an ongoing basis with:***

- their product range***
- a description of their target markets***
- a description of their client structure***
- internal sales targets***
- their actual sales***
- their code of conduct on internal inducements.***

***If the whole lot of products sold by an investment firm or its internal sales targets are not matching its client structure, sales targets shall be revised and the supervisor shall have the possibility to suspend sales of certain products.***

Or. en

**Amendment 689**  
**Astrid Lulling**

**Proposal for a directive**

**Article 24 – paragraph 3 – subparagraph 1 – introductory part**

*Text proposed by the Commission*

Appropriate information shall be provided to clients or potential clients about:

*Amendment*

Appropriate information shall be provided ***in a comprehensible form*** to clients or potential clients ***at the most appropriate time, taking into account the specificities of the client,*** about:

Or. en

**Amendment 690**  
**Anne E. Jensen**

**Proposal for a directive**

**Article 24 – paragraph 3 – subparagraph 1 – indent 1**

*Text proposed by the Commission*

– the investment firm and its services; when investment advice is provided, information shall specify whether the advice is provided ***on an independent basis*** and whether it is based on a broad or on a more restricted analysis of the market and shall indicate whether the investment firm will provide the client with ***the on-going*** assessment of the suitability of the financial instruments recommended to clients,

*Amendment*

– the investment firm and its services; when investment advice is provided, information shall specify ***in advance*** whether the advice is provided ***in conjunction with the acceptance or receipt of third-party inducements*** and whether it is based on a broad or on a more restricted analysis of the market and shall indicate whether the investment firm will provide the client with ***a periodical*** assessment of the suitability of the financial instruments recommended to clients ***and inform its client as to the total cost of investment advice as a single monetary amount including both fees paid directly by the client to the investment adviser as well as any inducements paid by a third party. This disclosure shall be provided to the client prior to the provision of the investment advice.***

***The disclosure of services and costs of advice shall be provided in a key services***

*document not exceeding [2 pages] setting out the principal services to be provided to the client, details of the qualification of the adviser as set out in [Article 24(8a)] and the aggregate cost of the advice to be provided to the client.*

*ESMA shall prepare binding technical standards setting out the mandatory contents of the key services document.*

*Where the cost of fees and inducements cannot be ascertained prior to the provision of the advice, then the manner of calculation shall be disclosed in a comprehensive, accurate and understandable manner in the key services documents with the total aggregate cost of the advice being disclosed to the client as soon as practically possible thereafter. Where investment advice is provided on an ongoing basis disclosure as to the cost of investment advice, including inducements shall be provided on a periodic basis and at least annually. The periodic report shall disclose all inducements paid or received in the preceding period.*

Or. en

## Amendment 691

Olle Schmidt

on behalf of the ALDE Group

### Proposal for a directive

#### Article 24 – paragraph 3 – subparagraph 1 – indent 1

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

– the investment firm and its services; when investment advice is provided, information shall specify ***whether*** the advice is provided ***on an independent basis and*** whether it is based on a broad or on a more restricted analysis of the market and shall indicate whether the investment

##### *Amendment*

– the investment firm and its services; when investment advice is provided, information shall specify ***in advance*** the ***basis on which the*** advice is provided ***including*** whether it is based on a broad or on a more restricted analysis of the market and shall indicate whether ***or not*** the



firm will provide the client with ***the on-going*** assessment of the suitability of the financial instruments recommended to clients,

investment firm will provide the client with ***a periodic*** assessment of the suitability of the financial instruments recommended to clients ***and inform its client as to the total cost of investment advice as a single monetary amount including both fees paid directly by the client to the investment adviser as well as any inducements paid by a third party. This disclosure shall be provided to the client prior to the provision of the investment advice.***

Or. en

#### *Justification*

*The amendment removes the term ‘independent’, due to the different interpretations between Member States. It should be an obligation also for “non-independent” advisers to inform that the investment advice is not provided on an independent basis. The amendment focuses on ensuring a client is informed whether advice is based on a consideration of instruments from across the market or a more limited range of products.*

#### **Amendment 692**

**Astrid Lulling**

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

#### **Article 24 – paragraph 3 – subparagraph 1 – indent 1**

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

– the investment firm and its services;  
***when investment advice is provided, information shall specify whether the advice is provided on an independent basis and whether it is based on a broad or on a more restricted analysis of the market and shall indicate whether the investment firm will provide the client with the on-going assessment of the suitability of the financial instruments recommended to clients,***

##### *Amendment*

– the investment firm and its services and  
***where more detailed information may be available and how to obtain it;***

Or. en

**Amendment 693**  
**Burkhard Balz**

**Proposal for a directive**  
**Article 24 – paragraph 3 – subparagraph 1 – indent 1**

*Text proposed by the Commission*

– the investment firm and its services;  
when investment advice is provided,  
information shall specify whether the  
advice is provided ***on an independent  
basis*** and whether it is based on a broad or  
on a more restricted analysis of the market  
and shall indicate whether the investment  
firm will provide the client with ***the on-  
going*** assessment of the suitability of the  
financial instruments recommended to  
clients,

*Amendment*

– the investment firm and its services;  
when investment advice ***or portfolio  
management*** is provided, information shall  
specify ***in advance*** whether the advice ***or  
portfolio management*** is provided ***in  
conjunction with the acceptance or receipt  
of third-party inducements*** and whether it  
is based on a broad or on a more restricted  
analysis of the market and shall indicate  
whether the investment firm will provide  
the client with ***a periodical*** assessment of  
the suitability of the financial instruments  
recommended to clients,

Or. en

**Amendment 694**  
**Sylvie Goulard**

**Proposal for a directive**  
**Article 24 – paragraph 3 – subparagraph 1 – indent 1**

*Text proposed by the Commission*

– the investment firm and its services;  
when investment advice is provided,  
information shall specify ***whether the  
advice is provided on an independent  
basis and*** whether it is based on a broad or  
on a more restricted analysis of the market  
and shall indicate whether the investment  
firm will provide the client with the on-  
going assessment of the suitability of the  
financial instruments recommended to  
clients,

*Amendment*

– the investment firm and its services;  
when investment advice is provided,  
information shall specify whether it is  
based on a broad or on a more restricted  
analysis of the market and shall indicate  
whether the investment firm will provide  
the client with the on-going ***periodical***  
assessment of the suitability of the  
financial instruments recommended to  
clients,

Or. en

**Amendment 695**  
**Wolf Klinz**

**Proposal for a directive**  
**Article 24 – paragraph 3 – subparagraph 1 – indent 1**

*Text proposed by the Commission*

– the investment firm and its services;  
when investment advice is provided,  
information shall specify whether the  
advice is provided ***on an independent  
basis*** and whether it is based on a broad or  
on a more restricted analysis of the market  
and shall indicate whether the investment  
firm will provide the client with the ***on-  
going*** assessment of the suitability of the  
financial instruments recommended to  
clients,

*Amendment*

– the investment firm and its services;  
when investment advice is provided,  
information shall specify whether the  
advice is provided ***in conjunction with the  
acceptance or receipt of third-party  
inducements*** and whether it is based on a  
broad or on a more restricted analysis of  
the market and shall indicate whether the  
investment firm will provide the client with  
the ***regular*** assessment of the suitability of  
the financial instruments recommended to  
clients,

Or. en

**Amendment 696**  
**Sirpa Pietikäinen**

**Proposal for a directive**  
**Article 24 – paragraph 3 – subparagraph 1 – indent 1**

*Text proposed by the Commission*

– the investment firm and its services;  
when investment advice is provided,  
information shall specify whether the  
advice is provided ***on an independent  
basis*** and whether it is based on a broad or  
on a more restricted analysis of the market  
and shall indicate whether the investment  
firm will provide the client with ***the on-  
going*** assessment of the suitability of the  
financial instruments recommended to  
clients,

*Amendment*

– the investment firm and its services;  
when investment advice is provided,  
information shall specify ***in advance***  
whether the advice is provided ***in  
conjunction with the acceptance or receipt  
of third-party inducements*** and whether it  
is based on a broad or on a more restricted  
analysis of the market and shall indicate  
whether the investment firm will provide  
the client with ***a periodical*** assessment of  
the suitability of the financial instruments  
recommended to clients,

**Amendment 697**  
**Arlene McCarthy**

**Proposal for a directive**  
**Article 24 – paragraph 3 – subparagraph 1 – indent 1**

*Text proposed by the Commission*

– the investment firm and its services;  
when investment advice is provided,  
information shall specify whether the  
advice is provided on an independent basis  
and whether it is based on a broad or on a  
more restricted analysis of the market and  
shall indicate whether the investment firm  
will provide the client with ***the on-going***  
assessment of the suitability of the  
financial instruments recommended to  
clients,

*Amendment*

– the investment firm and its services;  
when investment advice is provided,  
information shall specify ***in advance***  
whether the advice is provided on an  
independent basis and whether it is based  
on a broad or on a more restricted analysis  
of the market and shall indicate whether  
the investment firm will provide the client  
with ***a periodic*** assessment of the  
suitability of the financial instruments  
recommended to clients,

**Amendment 698**  
**Diogo Feio**

**Proposal for a directive**  
**Article 24 – paragraph 3 – subparagraph 1 – indent 1**

*Text proposed by the Commission*

– the investment firm and its services;  
when investment advice is provided,  
information shall specify ***whether*** the  
advice is provided on an independent basis  
and ***whether it is based*** on a ***broad or on a***  
***more restricted*** analysis of the market and  
shall indicate ***whether*** the investment firm  
will provide the client with the on-going  
assessment of the suitability of the  
financial instruments recommended to  
clients,

*Amendment*

– the investment firm and its services;  
when investment advice is provided,  
information shall specify ***that*** the advice is  
provided on an independent basis and on a  
***reasonable*** analysis of the market ***that***  
***suits the client's best interests*** and shall  
indicate ***periodicity with which*** the  
investment firm will provide the client with  
the on-going assessment of the suitability  
of the financial instruments recommended  
to clients,

**Amendment 699**

**Sven Giegold**

on behalf of the Verts/ALE Group

**Proposal for a directive**

**Article 24 – paragraph 3 – subparagraph 1 – indent 1 a (new)**

*Text proposed by the Commission*

*Amendment*

*– if the investment advice is considering  
the full portfolio of the client or if advice  
is just given concerning specific products,*

Or. en

**Amendment 700**

**Astrid Lulling**

**Proposal for a directive**

**Article 24 – paragraph 3 – subparagraph 1 – indent 1 a (new)**

*Text proposed by the Commission*

*Amendment*

*– the typology of products it proposes and  
if they are managed by an entity of the  
same group, in such case it shall identify  
those products,*

Or. en

**Amendment 701**

**Sven Giegold**

on behalf of the Verts/ALE Group

**Proposal for a directive**

**Article 24 – paragraph 3 – subparagraph 1 – indent 1 b (new)**

*Text proposed by the Commission*

*Amendment*

*– if the advice is given just for one*

*transaction, or on an ongoing basis,*

Or. en

## **Amendment 702**

**Syed Kamall, Kay Swinburne**

### **Proposal for a directive**

#### **Article 24 – paragraph 3 – subparagraph 1 – indent 2**

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

– financial instruments and proposed investment strategies; this should include appropriate guidance on and warnings of the risks associated with investments in those instruments or in respect of particular investment strategies,

##### *Amendment*

– financial instruments and proposed investment strategies; this should include ***a full breakdown of all underlying holdings held both directly and indirectly, and a commitment to provide a full percentage breakdown on at least a quarterly basis with a maximum reporting delay of 60 days and*** appropriate guidance on and warnings of the risks associated with investments in those instruments or in respect of particular investment strategies,

Or. en

##### *Justification*

*High levels of disclosure, including both the total provider cost and the total cost of investment will ensure that investors are equipped with the necessary information to make informed investment decisions.*

## **Amendment 703**

**Wolf Klinz**

### **Proposal for a directive**

#### **Article 24 – paragraph 3 – subparagraph 1 – indent 2**

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

– financial instruments and proposed investment strategies; this should include appropriate guidance on and warnings of

##### *Amendment*

– ***the intended target market,*** financial instruments, ***their structure*** and proposed investment strategies; this should include

the risks associated with investments in those instruments or in respect of particular investment strategies,

appropriate guidance on and warnings of the risks associated with investments in those ***financial*** instruments or in respect of particular investment strategies,

Or. en

**Amendment 704**  
**Astrid Lulling**

**Proposal for a directive**  
**Article 24 – paragraph 3 – subparagraph 1 – indent 2**

*Text proposed by the Commission*

– financial instruments and proposed investment strategies; this should include appropriate guidance on and warnings of the risks associated with investments in those instruments or in respect of particular investment strategies,

*Amendment*

– financial instruments and proposed investment strategies; this should include appropriate guidance on and warnings of the risks associated with investments in those instruments or in respect of particular investment strategies, ***whether the service or product may be subject to third parties monetary or non-monetary payment,***

Or. en

**Amendment 705**  
**Arlene McCarthy**

**Proposal for a directive**  
**Article 24 – paragraph 3 – subparagraph 1 – indent 3**

*Text proposed by the Commission*

– execution venues,

*Amendment*

– execution venues; ***when client orders are routed to an execution venue, information shall specify the relationships the investment firm maintains with this execution venue, which may include, but are not limited to routing arrangements, potential for earning maker rebates, shareholdings and ownership,***

Or. en

### *Justification*

*The competition that MiFID 1 successfully created has been almost exclusively driven by user-sponsored entry into the execution business: almost a third of lit equity trading occurs on user-controlled execution venues. However, conflicts of interests arising from a combination of the status of owner, operator and user of an organised trading venue which may impact on investor protection, the overall efficiency of the price formation process and market surveillance need to be addressed. In particular, there should be an appropriate upfront disclosure regime to clients concerning the relationships between the execution venue and investment firm, covering routing arrangements, maker rebates as well as the operation / ownership of other execution venues.*

#### **Amendment 706**

**Astrid Lulling**

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

##### **Article 24 – paragraph 3 – subparagraph 1 – indent 3**

*Text proposed by the Commission*

*Amendment*

– execution venues,

– ***major*** execution venues, ***and***

Or. en

#### **Amendment 707**

**Syed Kamall, Kay Swinburne**

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

##### **Article 24 – paragraph 3 – subparagraph 1 – indent 4**

*Text proposed by the Commission*

*Amendment*

– costs and associated charges.

– costs and associated charges, ***including a full breakdown of management fees, all underlying costs or charges, and:***

***a) the total provider cost, in the case of an investment service or financial instrument being promoted to a client or potential client by an investment firm;***

***b) the total cost of investment, in the case of an investment service or financial instrument being promoted to a client or potential client via a sales channel.***



*Justification*

*High levels of disclosure, including both the total provider cost and the total cost of investment will ensure that investors are equipped with the necessary information to make informed investment decisions.*

**Amendment 708**

**Olle Schmidt**

on behalf of the ALDE Group

**Proposal for a directive**

**Article 24 – paragraph 3 – subparagraph 1 – indent 4**

*Text proposed by the Commission*

– costs and associated charges.

*Amendment*

– costs and associated charges ***related both to the investment services and the financial instruments recommended to clients.***

*Justification*

*Costs and associated charges shall relate to both services and products.*

**Amendment 709**

**Olle Schmidt**

on behalf of the ALDE Group

**Proposal for a directive**

**Article 24 – paragraph 3 – subparagraph 1 – indent 4**

*Text proposed by the Commission*

– costs and associated charges.

*Amendment*

– costs and associated charges, ***including the cost of advice and how the client may pay for it.***

### *Justification*

*The amendment will ensure that the cost of advice is made clear to clients. This will allow consumers to judge the value of the services they receive, and improve competition by allowing them to compare firms' costs.*

#### **Amendment 710**

**Sven Giegold**

on behalf of the Verts/ALE Group

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

##### **Article 24 – paragraph 3 – subparagraph 1 – indent 4**

*Text proposed by the Commission*

– costs and associated charges.

*Amendment*

– costs and associated charges ***in a detailed manner separately for every transaction or service stating a percentage and a total amount including the cost of advice and how those costs shall be covered.***

Or. en

#### **Amendment 711**

**Arlene McCarthy**

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

##### **Article 24 – paragraph 3 – subparagraph 1 – indent 4**

*Text proposed by the Commission*

– costs and associated charges.

*Amendment*

– costs and associated charges, ***which must include the cost of advice and payment method.***

Or. en

#### **Amendment 712**

**Catherine Stihler**

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

##### **Article 24 – paragraph 3 – subparagraph 1 – indent 4**

*Text proposed by the Commission*

– costs and associated charges.

*Amendment*

– costs and associated charges, ***which must include the cost of advice and how the client may pay for it.***

Or. en

**Amendment 713**

**Astrid Lulling**

**Proposal for a directive**

**Article 24 – paragraph 3 – subparagraph 1 – indent 4**

*Text proposed by the Commission*

– costs and associated charges.

*Amendment*

– costs and associated charges ***where relevant.***

Or. en

**Amendment 714**

**Robert Goebbels**

**Proposal for a directive**

**Article 24 – paragraph 3 – subparagraph 2**

*Text proposed by the Commission*

The information referred to in the first subparagraph should be provided in a comprehensible form in such a manner that clients or potential clients are reasonably able to understand the nature and risks of the investment service and of the specific type of financial instrument that is being offered and, consequently, to take investment decisions on an informed basis. ***This information*** may ***be*** provided in a standardised format.

*Amendment*

The information referred to in the first subparagraph should be provided in a comprehensible form in such a manner that clients or potential clients are reasonably able to understand the nature and risks of the investment service and of the specific type of financial instrument that is being offered and, consequently, to take investment decisions on an informed basis. ***Member States may require that this information is*** provided in a standardised format.

Or. en

### *Justification*

*It is easier for customers to compare services and related costs available if Member States require information in standardised form.*

**Amendment 715**  
**Arlene McCarthy**

**Proposal for a directive**  
**Article 24 – paragraph 3 – subparagraph 2**

#### *Text proposed by the Commission*

The information referred to in the first subparagraph should be provided in a comprehensible form in such a manner that clients or potential clients are reasonably able to understand the nature and risks of the investment service and of the specific type of financial instrument that is being offered and, consequently, to take investment decisions on an informed basis. ***This information*** may *be* provided in a standardised format.

#### *Amendment*

The information referred to in the first subparagraph should be provided in a comprehensible form in such a manner that clients or potential clients are reasonably able to understand the nature and risks of the investment service and of the specific type of financial instrument that is being offered and, consequently, to take investment decisions on an informed basis. ***Member States may require that this information is*** provided in a standardised format.

Or. en

**Amendment 716**  
**Sven Giegold**  
on behalf of the Verts/ALE Group

**Proposal for a directive**  
**Article 24 – paragraph 3 – subparagraph 2 a (new)**

#### *Text proposed by the Commission*

#### *Amendment*

***The information about costs and charges shall include all depreciations of the investment, which are not caused by the occurrence of underlying risk.***

Or. en

**Amendment 717**

**Sven Giegold**

on behalf of the Verts/ALE Group

**Proposal for a directive**

**Article 24 – paragraph 3 – subparagraph 2 b (new)**

*Text proposed by the Commission*

*Amendment*

***The information has to be presented regularly, but at least annually and shall specify exact amounts.***

Or. en

**Amendment 718**

**Sirpa Pietikäinen**

**Proposal for a directive**

**Article 24 – paragraph 3 a (new)**

*Text proposed by the Commission*

*Amendment*

***3 a. Any fees, commission, monetary or non-monetary benefit paid or provided to or by a third party in relation to the provision of an investment or ancillary service to the client should be displaced visibly in the location of the investment firm, and clearly disclosed to the client prior to the provision of the relevant service, including in any marketing material, and should be designed to enhance the quality of the relevant service to the client and not impair compliance with the firm's duty to act in the best interest of the client. Disclosure should include the existence, nature and amount of the fee, commission or other benefits.***

***ESMA shall develop draft implementing technical standards to specify the conditions for investment firms to meet the requirements of this paragraph.***

*ESMA shall submit those draft implementing technical standards to the Commission by [...]\**

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

---

*\*OJ please insert date: ...*

Or. en

**Amendment 719**

**Astrid Lulling**

**Proposal for a directive  
Article 24 – paragraph 5**

*Text proposed by the Commission*

*Amendment*

***5. When the investment firm informs the client that investment advice is provided on an independent basis, the firm:***

***deleted***

***(i) shall assess a sufficiently large number of financial instruments available on the market. The financial instruments should be diversified with regard to their type and issuers or product providers and should not be limited to financial instruments issued or provided by entities having close links with the investment firm,***

***(ii) shall not accept or receive fees, commissions or any monetary benefits paid or provided by any third party or a person acting on behalf of a third party in relation to the provision of the service to clients.***

Or. en

**Amendment 720**  
**Anne E. Jensen**

**Proposal for a directive**  
**Article 24 – paragraph 5**

*Text proposed by the Commission*

*Amendment*

**5. When the investment firm informs the client that investment advice is provided on an independent basis, the firm:** **deleted**

**(i) shall assess a sufficiently large number of financial instruments available on the market. The financial instruments should be diversified with regard to their type and issuers or product providers and should not be limited to financial instruments issued or provided by entities having close links with the investment firm,**

**(ii) shall not accept or receive fees, commissions or any monetary benefits paid or provided by any third party or a person acting on behalf of a third party in relation to the provision of the service to clients.**

Or. en

**Amendment 721**  
**Wolf Klinz**

**Proposal for a directive**  
**Article 24 – paragraph 5 – introductory part**

*Text proposed by the Commission*

*Amendment*

**5. When the investment firm *informs the client that* investment advice *is provided on an independent basis*, the firm:**

**5. When the investment firm *provides* investment advice, the firm:**

Or. en

**Amendment 722**

**Olle Schmidt**

on behalf of the ALDE Group

**Proposal for a directive**

**Article 24 – paragraph 5 – introductory part**

*Text proposed by the Commission*

5. When the investment firm ***informs the client that*** investment advice ***is provided on an independent basis***, the firm:

*Amendment*

5. When the investment firm ***provides*** investment advice, the firm ***shall***:

Or. en

**Amendment 723**

**Kay Swinburne**

**Proposal for a directive**

**Article 24 – paragraph 5 – introductory part**

*Text proposed by the Commission*

5. ***When the*** investment firm ***informs*** the client ***that*** investment advice is provided on an independent basis, the firm:

*Amendment*

5. ***An*** investment firm ***shall inform*** the client ***whether its*** investment advice is provided on an independent basis ***or restricted basis, and, in the case of independent advice the*** firm:

Or. en

*Justification*

*The UK has introduced higher standards of consumer protection in the form of the Retail Distribution Review. In the interests of the EU single market and in order to provide protection to all consumers in the EU as well as a level playing field between financial advisers, it is appropriate to apply these higher standards throughout MiFID.*

**Amendment 724**

**Sirpa Pietikäinen**

**Proposal for a directive**

**Article 24 – paragraph 5 – introductory part**



*Text proposed by the Commission*

5. When the investment firm informs the client that investment advice is provided on ***an independent*** basis, the firm:

*Amendment*

5. When the investment firm informs the client that investment advice is provided on ***a fee-paying*** basis, the firm:

Or. en

**Amendment 725**

**Corien Wortmann-Kool**

**Proposal for a directive**

**Article 24 – paragraph 5 – introductory part**

*Text proposed by the Commission*

5. When the investment firm informs the client that investment advice is provided on an independent basis, the firm:

*Amendment*

***5. When the investment firm informs the client that investment advice is provided the firm shall also inform the client whether the financial instruments recommended will be limited to financial instruments issued or provided by entities having close links with the investment firm.***

When the investment firm informs the client that investment advice is provided on an independent basis, the firm:

Or. en

**Amendment 726**

**Burkhard Balz**

**Proposal for a directive**

**Article 24 – paragraph 5 – introductory part**

*Text proposed by the Commission*

5. When the investment firm informs the client that investment advice is provided on ***an independent*** basis, the firm:

*Amendment*

5. When the investment firm informs the client that investment advice ***or portfolio management*** is provided on ***fee-paying*** basis, the firm ***shall also inform the client whether the financial instruments***

*recommended will be limited to financial instruments issued or provided by entities having close links with the investment firm.*

Or. en

**Amendment 727**

**Burkhard Balz**

**Proposal for a directive**

**Article 24 – paragraph 5 – point i**

*Text proposed by the Commission*

*Amendment*

*(i) shall assess a sufficiently large number of financial instruments available on the market. The financial instruments should be diversified with regard to their type and issuers or product providers and should not be limited to financial instruments issued or provided by entities having close links with the investment firm,*

*deleted*

Or. en

**Amendment 728**

**Burkhard Balz**

**Proposal for a directive**

**Article 24 – paragraph 5 – point ii**

*Text proposed by the Commission*

*Amendment*

*(ii) shall not accept or receive fees, commissions or any monetary benefits paid or provided by any third party or a person acting on behalf of a third party in relation to the provision of the service to clients.*

*deleted*

Or. en

**Amendment 729**  
**Diogo Feio**

**Proposal for a directive**  
**Article 24 – paragraph 5 – introductory part**

*Text proposed by the Commission*

5. When the investment firm ***informs the client that investment advice is provided on an independent basis***, the firm:

*Amendment*

5. When the investment firm ***provides*** investment advice, the firm:

Or. en

**Amendment 730**  
**Sylvie Goulard**

**Proposal for a directive**  
**Article 24 – paragraph 5 – point i**

*Text proposed by the Commission*

(i) shall ***assess a sufficiently large number of financial instruments available on the market. The financial instruments should be diversified with regard to their type and issuers or product providers and should not be limited to financial instruments issued or provided by entities having close links with the investment firm,***

*Amendment*

(i) shall ***inform the client whether and to what extent it has accepted or received fees, commissions or any monetary benefits paid or provided by any third party or a person acting on behalf of a third party in relation to the provision of the service to clients. Fees, commissions or any monetary benefits paid or provided by any third party or a person acting on behalf of a third party in relation to the provision of the service to clients shall be deducted in all from the fees, commissions or any monetary benefits paid by the client with regards to the investment advice***

Or. en

**Amendment 731**  
**Wolf Klinz**

**Proposal for a directive**  
**Article 24 – paragraph 5 – point i**

*Text proposed by the Commission*

(i) shall ***assess a sufficiently large number of financial instruments available on the market. The financial instruments should be diversified*** with regard to ***their type and issuers or product providers and should*** not be limited to financial instruments issued or provided by entities having close links with the investment firm,

*Amendment*

(i) shall ***diversify its offer*** with regard to ***the type of financial instrument or investment strategy. The offer does*** not ***have to*** be limited to financial instruments issued or provided by entities having close links with the investment firm,

Or. en

**Amendment 732**  
**Kay Swinburne**

**Proposal for a directive**  
**Article 24 – paragraph 5 – point i**

*Text proposed by the Commission*

(i) shall assess a ***sufficiently large number*** of financial instruments available ***on*** the market. The financial instruments should be diversified with regard to their type and issuers or product providers and should not be limited to financial instruments issued or provided by entities having close links with the investment firm,

*Amendment*

(i) shall assess a ***comprehensive range*** of financial instruments available ***across*** the ***entire relevant*** market. The financial instruments ***considered*** should be diversified with regard to ***both*** their type and issuers or product providers and should not be limited to financial instruments issued or provided by entities having close links with the investment firm. ***Firms which cannot provide sufficiently broad analysis of financial instruments across the market must make clear to the client that their advice is not independent.***

Or. en

*Justification*

*The UK has introduced higher standards of consumer protection in the form of the Retail Distribution Review. In the interests of the EU single market and in order to provide protection to all consumers in the EU as well as a level playing field between financial*

*advisers, it is appropriate to apply these higher standards throughout MiFID.*

**Amendment 733**

**Olle Schmidt**

on behalf of the ALDE Group

**Proposal for a directive**

**Article 24 – paragraph 5 – point i**

*Text proposed by the Commission*

(i) shall assess a sufficiently large number of financial instruments available on the market. The financial instruments ***should*** be diversified with regard to their type and issuers or product providers and ***should*** not be limited to financial instruments issued or provided by entities having close links with the investment firm,

*Amendment*

(i) shall assess a sufficiently large number of financial instruments available on the market. The financial instruments ***considered shall*** be diversified with regard to their type and issuers or product providers and ***shall*** not be limited to financial instruments issued or provided by entities having close links with the investment firm,

Or. en

*Justification*

*It is better to use the word “shall” instead of “should” in this sentence.*

**Amendment 734**

**Sven Giegold**

on behalf of the Verts/ALE Group

**Proposal for a directive**

**Article 24 – paragraph 5 – point i**

*Text proposed by the Commission*

(i) shall ***assess a sufficiently large number of financial instruments available on*** the market. The financial instruments should be diversified with regard to their type and issuers or product providers and should not be limited to financial instruments issued or provided by entities having close links

*Amendment*

(i) shall ***carry out a comprehensive and fair analysis*** of the ***relevant*** market ***and provide advice which is unbiased and unrestricted***. The financial instruments should be diversified with regard to their type and issuers or product providers and should not be limited to financial instruments issued or provided by entities

with the investment firm,

having close links with the investment firm.

Or. en

*Justification*

*following a proposal from BEUC*

**Amendment 735**

**Peter Simon**

**Proposal for a directive**

**Article 24 – paragraph 5 – point i**

*Text proposed by the Commission*

(i) shall assess ***a sufficiently large number of financial instruments available on*** the market. The financial instruments should be diversified with regard to their type and issuers or product providers and should not be limited to financial instruments issued or provided by entities having close links with the investment firm,

*Amendment*

(i) shall ***comprehensively*** assess the ***relevant*** market ***and provide clients with advice which is unbiased and unrestricted.*** The financial instruments should be diversified with regard to their type and issuers or product providers and should not be limited to financial instruments issued or provided by entities having close links with the investment firm,

Or. de

**Amendment 736**

**Jürgen Klute**

**Proposal for a directive**

**Article 24 – paragraph 5 – point i**

*Text proposed by the Commission*

(i) shall ***assess a sufficiently large number of financial instruments available on*** the market. The financial instruments should be diversified with regard to their type and issuers or product providers and should not

*Amendment*

(i) shall ***carry out a comprehensive and fair analysis*** of the ***relevant*** market ***and provide advice which is unbiased and unrestricted.*** The financial instruments should be diversified with regard to their

be limited to financial instruments issued or provided by entities having close links with the investment firm,

type and issuers or product providers and should not be limited to financial instruments issued or provided by entities having close links with the investment firm,

Or. en

**Amendment 737**  
**Arlene McCarthy**

**Proposal for a directive**  
**Article 24 – paragraph 5 – point i**

*Text proposed by the Commission*

(i) shall *assess a sufficiently large number of financial instruments available on the market*. The financial instruments should be diversified with regard to their type and issuers or product providers and should not be limited to financial instruments issued or provided by entities having close links with the investment firm,

*Amendment*

(i) shall *carry out a comprehensive and fair analysis of the relevant market and provide advice which is unbiased and unrestricted*. The financial instruments should be diversified with regard to their type and issuers or product providers and should not be limited to financial instruments issued or provided by entities having close links with the investment firm,

Or. en

*Justification*

*The Commission's criteria for independent investment advice does not go sufficiently far in ensuring that independent advisers consider the whole market and provide impartial advice.*

**Amendment 738**  
**Robert Goebbels, Antolín Sánchez Presedo**

**Proposal for a directive**  
**Article 24 – paragraph 5 – point i**

*Text proposed by the Commission*

(i) shall assess a sufficiently large number

*Amendment*

(i) shall assess a sufficiently large number

of financial instruments available on the market. The financial instruments should be diversified with regard to their type and issuers or product providers and should not be limited to financial instruments issued or provided by entities having close links with the investment firm,

of financial instruments available on the market ***and provide advice which is unbiased and unrestricted***. The financial instruments should be diversified with regard to their type and issuers or product providers and should not be limited to financial instruments issued or provided by entities having close links with the investment firm,

Or. en

*Justification*

*It should be ensured that independent investment advisers provide impartial advice.*

**Amendment 739**

**Olle Schmidt**

on behalf of the ALDE Group

**Proposal for a directive**

**Article 24 – paragraph 5 – point ii**

*Text proposed by the Commission*

*Amendment*

***(ii) shall not accept or receive fees, commissions or any monetary benefits paid or provided by any third party or a person acting on behalf of a third party in relation to the provision of the service to clients.***

***deleted***

Or. en

*Justification*

*Is against the introduction of a ban on any kind of inducements when providing investment advice on an independent basis.*

**Amendment 740**

**Kay Swinburne**



**Proposal for a directive**  
**Article 24 – paragraph 5 – point ii**

*Text proposed by the Commission*

*Amendment*

*(ii) shall not accept or receive fees, commissions or any monetary benefits paid or provided by any third party or a person acting on behalf of a third party in relation to the provision of the service to clients.*

*deleted*

Or. en

*Justification*

*Restrictions on fees should be dealt with separately. The UK has introduced higher standards of consumer protection in the form of the Retail Distribution Review. In the interests of the EU single market and in order to provide protection to all consumers in the EU as well as a level playing field between financial advisers, it is appropriate to apply these higher standards throughout MiFID.*

**Amendment 741**

**Sven Giegold**

on behalf of the Verts/ALE Group

**Proposal for a directive**  
**Article 24 – paragraph 5 – point ii**

*Text proposed by the Commission*

*Amendment*

(ii) shall not accept **or** receive fees, commissions or any monetary benefits paid or provided by any third party or a person acting on behalf of a third party in relation to the provision of the service to clients.

(ii) shall not accept **any inducements and shall not** receive fees, commissions or any monetary benefits paid or provided by any third party or a person acting on behalf of a third party in relation to the provision of the service to clients **except those fees, commissions or monetary benefits are transferred to the client.**

***The investment firms are neither authorised to offer services remunerated by fees, commissions or any benefits paid or provided by a financial institution or a person acting on behalf of a financial institution that issues investment products***

*they advise except they are transferring fees, commissions or any benefits to the investor.*

Or. en

**Amendment 742**  
**Philippe De Backer**

**Proposal for a directive**  
**Article 24 – paragraph 5 – point ii**

*Text proposed by the Commission*

(ii) shall ***not accept or receive*** fees, commissions or any monetary benefits paid or provided by any third party or a person acting on behalf of a third party in relation to the provision of the service to clients.

*Amendment*

(ii) ***the client*** shall ***be given the possibility, contractually, of being informed about*** fees, commissions or any monetary benefits paid or provided ***to the investment firm*** by any third party or a person acting on behalf of a third party in relation to the provision of the service to clients.

Or. nl

**Amendment 743**  
**Sirpa Pietikäinen**

**Proposal for a directive**  
**Article 24 – paragraph 5 – point ii**

*Text proposed by the Commission*

(ii) shall ***not accept or receive fees, commissions or any monetary benefits paid or provided by any third party or a person acting on behalf of a third party in relation to the provision of the service to clients.***

*Amendment*

(ii) shall ***inform the client whether the financial instruments recommended will be limited to financial instruments issued or provided by entities having close links with the investment firm.***

Or. en

**Amendment 744**  
**Wolf Klinz**

**Proposal for a directive**  
**Article 24 – paragraph 5 – point ii**

*Text proposed by the Commission*

(ii) shall ***not accept or receive*** fees, commissions or any monetary benefits paid or provided by any third party or a person acting on behalf of a third party in relation to the provision of the service to clients.

*Amendment*

(ii) shall ***inform its client prior the agreement about expected*** fees, commissions or any monetary benefits ***to be*** paid or provided by any third party or a person acting on behalf of a third party in relation to the provision of the service to clients.

Or. en

**Amendment 745**  
**Robert Goebbels, Antolín Sánchez Presedo**

**Proposal for a directive**  
**Article 24 – paragraph 5 – point ii**

*Text proposed by the Commission*

(ii) shall not accept or receive fees, commissions or ***any monetary benefits*** paid or provided by any third party or a person acting on behalf of a third party in relation to the provision of the service to clients.

*Amendment*

(ii) shall not accept or receive fees, commissions, ***benefits or other inducements*** paid or provided by any third party or a person acting on behalf of a third party in relation to the provision of the service to clients.

Or. en

**Amendment 746**  
**Sylvie Goulard**

**Proposal for a directive**  
**Article 24 – paragraph 5 – point ii**

*Text proposed by the Commission*

(ii) shall not ***accept or receive*** fees,

*Amendment*

(ii) shall not ***perceive*** fees, commissions or

commissions or any monetary benefits paid or provided by any third party or a person acting on behalf of a third party in relation to the provision of the service to clients.

any monetary benefits paid or provided by any third party or a person acting on behalf of a third party in relation to the provision of the service to clients, ***that are in excess of the remuneration due to be paid by the client in relation to its investment advice.***

Or. en

**Amendment 747**  
**Peter Simon**

**Proposal for a directive**  
**Article 24 – paragraph 5 – point ii**

*Text proposed by the Commission*

(ii) shall not accept or receive fees, commissions ***or*** any monetary benefits paid or provided by any third party or a person acting on behalf of a third party in relation to the provision of the service to clients.

*Amendment*

(ii) shall not accept or receive fees, commissions, any monetary benefits ***or benefits in kind or other inducements*** paid or provided by any third party or a person acting on behalf of a third party, ***or a person having close links with the investment firm,*** in relation to the provision of the service to clients.

Or. de

**Amendment 748**  
**Jürgen Klute**

**Proposal for a directive**  
**Article 24 – paragraph 5 – point ii**

*Text proposed by the Commission*

(ii) shall not accept or receive fees, commissions or any monetary benefits paid or provided by any third party or a person acting on behalf of a third party in relation to the provision of the service to clients.

*Amendment*

(ii) shall not accept or receive fees, commissions or any monetary benefits paid or provided by any third party or a person acting on behalf of a third party in relation to the provision of the service to clients.  
***The investment firms are neither authorised to offer services remunerated by fees, commissions or any benefits paid***

*or provided by a financial institution or a person action on behalf of a financial institution that issues investment products they advise.*

Or. en

**Amendment 749**  
**Arlene McCarthy**

**Proposal for a directive**  
**Article 24 – paragraph 5 – point ii**

*Text proposed by the Commission*

(ii) shall not accept or receive fees, commissions or any **monetary** benefits paid or provided by any third party or a person acting on behalf of a third party in relation to the provision of the service to clients.

*Amendment*

(ii) shall not accept or receive fees, commissions or any benefits paid or provided by any third party or a person acting on behalf of a third party in relation to the provision of the service to clients **but only be remunerated through charges payable by or on behalf of the client.**

Or. en

*Justification*

*The Commission's criteria for independent investment advice does not go sufficiently far in ensuring that independent advisers consider the whole market and provide impartial advice.*

**Amendment 750**  
**Sylvie Goulard**

**Proposal for a directive**  
**Article 24 – paragraph 5 – point ii a (new)**

*Text proposed by the Commission*

*Amendment*

**(ii a) shall not perceive excessive fees, commissions or any monetary benefits, from the portfolio turnover of its client.**

Or. en

**Amendment 751**  
**Sylvie Goulard**

**Proposal for a directive**  
**Article 24 – paragraph 5 – point ii b (new)**

*Text proposed by the Commission*

*Amendment*

*(ii b) shall receive any fees, commissions or any monetary benefits from any third party or a person acting on behalf of a third party on an ongoing basis only to the extent that during the same period of time it provides an ongoing periodical assessment of the financial instruments recommended. Such an ongoing assessment shall include, at least, the application of a warning mechanism for products which behaviour diverges from what might have been anticipated in normal circumstance or which gain probabilities are greatly altered from what might have been anticipated.*

Or. en

**Amendment 752**  
**Sven Giegold**  
on behalf of the Verts/ALE Group

**Proposal for a directive**  
**Article 24 – paragraph 5 – subparagraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

*Member States shall allow investment firms which are not allowed to keep monetary benefits from third parties according to this article to charge own commissions on every sales process and to set off inducements transferred to the investors against advisory fees.*

Or. en

**Amendment 753**

**Olle Schmidt**

on behalf of the ALDE Group

**Proposal for a directive**

**Article 24 – paragraph 5 a (new)**

*Text proposed by the Commission*

*Amendment*

***5 a. When the investment firm provides investment advice, the firm:***

***(i) shall consider a sufficiently large number of financial instruments within the firm's product range and***

***(ii) recommend one or several suitable financial instruments according to the client's preferences, needs, financial situation and personal circumstances.***

Or. en

*Justification*

*The investment firm shall always act in the interest of the client.*

**Amendment 754**

**Antolín Sánchez Presedo**

**Proposal for a directive**

**Article 24 – paragraph 5 a (new)**

*Text proposed by the Commission*

*Amendment*

***5 a. Member States shall ensure that the manner in which an investment firm remunerates its staff, appointed representatives or other investment firms does not impede compliance with its obligation to act in the best interests of clients. Member States shall ensure that where staff advise on or sell financial instruments to retail clients, the remuneration structures of the staff***

*involved do not prejudice their ability to provide an objective recommendation, where relevant, or to provide information in a manner that is fair, clear and not misleading, including by ensuring that remuneration is not solely dependent on targets for the sale or profitability of financial instruments and does not otherwise give rise to undue conflicts of interest.*

Or. en

**Amendment 755**

**Sylvie Goulard**

**Proposal for a directive**

**Article 24 – paragraph 5 a (new)**

*Text proposed by the Commission*

*Amendment*

***5 a. ESMA shall develop draft regulatory technical standards to determine acceptable ratios of portfolio turnover and induced compensation.***

***ESMA shall submit those draft regulatory technical standards to the Commission by 31 December 2014.***

***Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2012.***

Or. en

**Amendment 756**

**Sharon Bowles, Olle Schmidt**

**Proposal for a directive**

**Article 24 – paragraph 5 a (new)**



*Text proposed by the Commission*

*Amendment*

***5 a. The investor shall be provided with details of all deductions, including fees and costs, elaborated at a cumulative level. This shall include an illustration of the long term effect on returns by way of a direct comparison of return to the investor compared with total deductions. This shall be given in advance of investment on the basis of a reasonable projection and at least once a year for each actual investment. ESMA shall issue guidelines concerning appropriate formats of projections and presentations.***

Or. en

*Justification*

*The level of cumulative deductions on some investments means the effective rate of return is very poor. This is hidden in layers of investment or not realised when stated in small percentage terms, hence the effect on returns needs to be shown.*

**Amendment 757**

**Pablo Zalba Bidegain**

**Proposal for a directive**

**Article 24 – paragraph 5 a (new)**

*Text proposed by the Commission*

*Amendment*

***5 a. An investment firm will be able to expressly agree with each of its clients or potential clients not to provide any investment advice if:***

***(i) the agreement is unequivocal and properly documented in the pre contractual and contractual stages of the investment, and***

***(ii) clients or potential clients are duly informed of the implications and consequences of not receiving the***

*investment advice service.*

Or. en

*Justification*

*The amendment aims set out the boundaries of what constitutes “investment advice”, and seeks to differentiate it from other investment services, such as non-personal recommendations or recommendations not presented as suitable, and from other non-investment related services, such as marketing. If both the provider and receiver of the investment service are aware of the kind of service provided and the risks and consequences associated with it and, on that basis, agree to go ahead, the receiver will not be entitled to claim that it expected to receive a service other than that agreed on and the provider will not be entitled to breach the legal requirements in respect thereof, alleging lack of clarity. In order to bolster legal certainty in respect of the requirements the investment service must meet, the matter must be dealt with in the MiFID revision.*

**Amendment 758**

**Olle Schmidt**

on behalf of the ALDE Group

**Proposal for a directive**

**Article 24 – paragraph 5 b (new)**

*Text proposed by the Commission*

*Amendment*

***5 b. Where an investment firm is providing advice, portfolio management or other services where the client may reasonably depend upon the firm to act in their best interests, Member States shall ensure that firms do not accept fees, commissions or monetary benefits where these could influence or bias advice or decisions made on behalf of the client.***

Or. en

*Justification*

*There should be an expectation that firms should avoid receiving third party payments or benefits in situations where this might prejudice the firm’s duty to act in the best interests of their client. However, this allows flexibility for member states to consider the best way to safeguard client’s interests, based on the specificities of their national market.*

**Amendment 759**  
**Burkhard Balz**

**Proposal for a directive**  
**Article 24 – paragraph 6**

*Text proposed by the Commission*

*Amendment*

**6. When providing portfolio management the investment firm shall not accept or receive fees, commissions or any monetary benefits paid or provided by any third party or a person acting on behalf of a third party in relation to the provision of the service to clients.**

**deleted**

Or. en

**Amendment 760**  
**Wolf Klinz**

**Proposal for a directive**  
**Article 24 – paragraph 6**

*Text proposed by the Commission*

*Amendment*

6. When providing portfolio management the investment firm shall **not accept or receive** fees, commissions or any monetary benefits paid or provided by any third party or a person acting on behalf of a third party in relation to the provision of the service to clients.

6. When providing portfolio management **to professional or retail clients in accordance with Article 4(2) the investment firm shall prior the agreement inform its client about expected fees, commissions or any monetary benefits to be paid or provided by any third party or a person acting on behalf of a third party in relation to the provision of the service to clients. The periodic report disclosed by the investment firm every 6 months shall disclose all** fees, commissions or any monetary benefits paid or provided by any third party or a person acting on behalf of a third party in relation to the provision of the service to clients.

Or. en

## **Amendment 761**

**Olle Schmidt**

on behalf of the ALDE Group

### **Proposal for a directive**

#### **Article 24 – paragraph 6**

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

6. When providing portfolio management the investment firm shall not accept or receive fees, commissions or any monetary benefits paid or provided by any third party or a person acting on behalf of a third party in relation to the provision of the service to clients.

##### *Amendment*

6. When providing portfolio management the investment firm shall not accept or receive fees, commissions or any monetary benefits paid or provided by any third party or a person acting on behalf of a third party in relation to the provision of the service to clients, ***except if:***

***a) the client has been duly informed of such fees, commissions or monetary benefits before the provision of the relevant service;***

***b) these fees, commissions or monetary benefits are to the ultimate benefit of the client.***

Or. en

##### *Justification*

*Monetary inducements in the case of portfolio management should not be banned entirely. Non-monetary benefits such as soft commissions (broker research, financial analysis or pricing information systems) provide important assistance for asset managers in the process of taking investment decisions or transmitting orders for execution and are subject to MiFID Level 2 requirement that they enhance the quality of the service. Soft commissions should be allowed in relation to portfolio management, as they help to reduce fees to clients, and assist investment managers in providing a better service to their clients.*

## **Amendment 762**

**Kay Swinburne**

### **Proposal for a directive**

#### **Article 24 – paragraph 6**

6. ***When providing*** portfolio management the investment firm shall not accept ***or receive*** fees, commissions or any monetary benefits paid or provided by any third party or a person acting on behalf of a third party in ***relation to*** the ***provision*** of the ***service to clients***.

6. ***An investment firm that provides investment advice or portfolio management to a retail client, or sells a financial instrument to a retail client without advice, must only receive remuneration for these and any closely related services from the client. In relation to all of these services an*** investment firm:

***i)*** shall not accept fees, commissions or any monetary ***or non-monetary*** benefits paid or provided by any third party or a person acting on behalf of a third party ***even where the firm intends to refund any such payments to the client,***

***ii)*** shall clearly set out its charges for the retail client in a single monetary figure or simple percentage terms,

***iii)*** when distributing its own products, shall not bundle advice, portfolio management or distribution charges with product charges, but must disclose the cost of such activities separately, based upon their economic cost,

***iv)*** must not assess employee performance, or calculate employee remuneration in a way that is significantly dependent on sales volumes or profits generated by the employee for the firm.

Or. en

*Justification*

*The UK has introduced higher standards of consumer protection in the form of the Retail Distribution Review. In the interests of the EU single market and in order to provide protection to all consumers in the EU as well as a level playing field between financial advisers, it is appropriate to apply these higher standards throughout MiFID.*

**Amendment 763**  
**Catherine Stihler**

**Proposal for a directive**  
**Article 24 – paragraph 6**

*Text proposed by the Commission*

6. When providing portfolio management the investment firm shall not accept or receive fees, commissions or any **monetary** benefits paid or provided by any third party or a person acting on behalf of a third party in relation to the provision of the service to clients.

*Amendment*

6. When providing **investment advice**, portfolio management **or another service whereby a retail client is entitled to rely upon its judgement** the investment firm:

**a) shall only be remunerated through charges payable by or on behalf of the client, and shall not solicit or accept any other payments or benefits in relation to these services; and**

**b) shall not accept or receive fees, commissions or any other benefits paid or provided by any third party or a person acting on behalf of a third party in relation to the provision of the service to clients.**

Or. en

**Amendment 764**  
**Thomas Mann**

**Proposal for a directive**  
**Article 24 – paragraph 6**

*Text proposed by the Commission*

6. When providing portfolio management the investment firm shall **not accept or receive fees, commissions or any monetary benefits paid or provided by any third party or a person acting on behalf of a third party in relation to the provision of the service to clients.**

*Amendment*

6. When providing portfolio management **to professional or retail clients within the meaning of Article 4 (2) point (9) and (10)** the investment firm shall, **prior to the agreement, inform its client about the expected scale of inducements. The periodic report shall disclose all inducements paid or received in the preceding period.**

Or. en

### *Justification*

*Investment firms providing financial portfolio management services are prohibited from accepting any monetary benefits paid by a third party for such services (except when received directly from investors). The obligation quoted fails to take into consideration that retail and professional clients generally require a higher level of protection compared to eligible counterparties. Against this background, the scope of this regulation should be limited to situations where financial portfolio management services are rendered to retail and professional clients.*

#### **Amendment 765**

**Robert Goebbels**

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

#### **Article 24 – paragraph 6**

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

6. When providing portfolio management the investment firm shall not accept or receive fees, commissions or ***any monetary benefits*** paid or provided by any third party or a person acting on behalf of a third party in relation to the provision of the service to clients.

##### *Amendment*

6. When providing portfolio management ***or investment advice*** the investment firm shall not accept or receive fees, commissions, ***benefits*** or ***other inducements*** paid or provided by any third party or a person acting on behalf of a third party in relation to the provision of the service to clients.

Or. en

### *Justification*

*Commission on all investment advice should be banned as it creates a serious conflict of interest between the investment adviser and the client.*

#### **Amendment 766**

**Philippe De Backer**

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

#### **Article 24 – paragraph 6**

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

6. When ***providing*** portfolio management the ***investment firm*** shall ***not accept or***

##### *Amendment*

6. When portfolio management ***is provided***, the ***client*** shall ***be given the possibility***,

*receive* fees, commissions or any monetary benefits paid or provided by any third party or a person acting on behalf of a third party ***in relation to the provision of the service to clients.***

***contractually, of being informed about*** fees, commissions or any monetary benefits paid or provided ***to the investment firm*** by any third party or a person acting on behalf of a third party.

Or. nl

**Amendment 767**  
**Astrid Lulling**

**Proposal for a directive**  
**Article 24 – paragraph 6**

*Text proposed by the Commission*

6. When providing portfolio management the investment firm shall ***not accept*** or receive fees, commissions or ***any*** monetary benefits ***paid or provided by any third party or a person acting on behalf of a third party in relation to the provision of the service to clients.***

*Amendment*

6. When providing portfolio management the investment firm shall ***disclose on a specific or general manner when it may*** receive fees, commissions or monetary benefits ***from third parties and where and how clients can have detailed information about such payment.***

Or. en

**Amendment 768**  
**Sirpa Pietikäinen**

**Proposal for a directive**  
**Article 24 – paragraph 6**

*Text proposed by the Commission*

6. When providing portfolio management the investment firm shall ***not accept or receive fees, commissions or any monetary benefits paid or provided by any third party or a person acting on behalf of a third party in relation to the provision of the service to clients.***

*Amendment*

6. When providing portfolio management the investment firm shall, ***prior to the agreement, inform its client about the expected scale of inducements. The periodic report shall disclose all inducements paid or received in the preceding period.***

Or. en



**Amendment 769**  
**Corien Wortmann-Kool**

**Proposal for a directive**  
**Article 24 – paragraph 6**

*Text proposed by the Commission*

6. When providing portfolio management the investment firm shall not accept or receive fees, commissions or any monetary benefits paid or provided by any third party or a person acting on behalf of a third party in relation to the provision of the service to clients.

*Amendment*

6. When providing portfolio management, ***investment advice or another service whereby the client is entitled to rely upon its judgement, the*** investment firm shall not accept or receive fees, commissions or any monetary benefits paid or provided by any third party or a person acting on behalf of a third party in relation to the provision of the service to clients.

Or. en

**Amendment 770**  
**Sven Giegold**  
on behalf of the Verts/ALE Group

**Proposal for a directive**  
**Article 24 – paragraph 6**

*Text proposed by the Commission*

6. When providing portfolio management the investment firm shall not accept or receive fees, commissions or any monetary benefits paid or provided by any third party or a person acting on behalf of a third party in relation to the provision of the service to clients.

*Amendment*

6. When providing portfolio management the investment firm shall not accept or receive fees, commissions or any monetary benefits paid or provided by any third party or a person acting on behalf of a third party in relation to the provision of the service to clients. ***If any monetary benefit is foreseen it has to be passed to the investor***

Or. en

**Amendment 771**  
**Arlene McCarthy**

**Proposal for a directive**  
**Article 24 – paragraph 6 a (new)**

*Text proposed by the Commission*

*Amendment*

***6a When providing investment advice or portfolio management a firm and anyone acting on behalf of the investment firm, shall, in relation to these services:***

***(i) not accept or receive fees, commissions or any benefits paid or provided by any third party or a person acting on behalf of a third party but only be remunerated through charges payable by or on behalf of the client;***

***(ii) clearly disclose to the client a tariff of its charges and, where the firm offers services in relation to one or more in-house financial instruments, ensure that the charges are presented separately from charges for any financial instrument;***

***(iii) ensure that neither the remuneration, rewards or payments in kind paid to its employees or agents involved in the advising on or selling of financial instruments to retail clients, nor the performance reviews of such employees or agents, provide any incentive for those employees or agents to act otherwise than in the best interests of each individual retail client;***

***(iv) inform the client whether the financial instruments recommended will be limited to financial instruments issued or provided by entities having close links with the investment firm.***

Or. en

*Justification*

*Commission on all investment advice should be banned as it creates a serious conflict of interest between the investment adviser and the client. In addition remuneration practices (for both advice and sales) within firms and extends the ban on commission to all types of*

*advice must be addressed.*

**Amendment 772**

**Olle Schmidt**

on behalf of the ALDE Group

**Proposal for a directive**

**Article 24 – paragraph 6 a (new)**

*Text proposed by the Commission*

*Amendment*

***6 a. Member States shall ensure that an investment firm's remuneration policies in relation to its employees, representatives or other associated investment firms do not impair its ability to act in the best interests of clients. For those employees who advise on or sell financial instruments to retail clients, Member States shall ensure that their remuneration by the firm will not affect employees' impartiality in making a suitable recommendation or appropriate sale or presenting information in a form that is fair, clear and not misleading. Remuneration in such situations shall not be solely dependent on sales targets or the profit to the firm from a specific financial instrument.***

Or. en

*Justification*

*This new paragraph allows member states to take action on remuneration practices within firms to prevent the risks of bias in advice and sales of financial instruments to clients. Remuneration schemes, such as significant sales bonuses attached to a specific financial instrument, should not be permitted where they risk an investment firm inappropriately recommending or selling products or services to clients.*

**Amendment 773**

**Kay Swinburne**

**Proposal for a directive**  
**Article 24 – paragraph 6 a (new)**

*Text proposed by the Commission*

*Amendment*

***6 a. An investment firm must not offer or pay any fees, commissions or monetary or non-monetary benefits to another investment firm or third party for the benefit of another firm, in relation to the other firm advising, selling to, or managing financial instruments for retail clients, or any closely related services.***

Or. en

*Justification*

*The UK has introduced higher standards of consumer protection in the form of the Retail Distribution Review. In the interests of the EU single market and in order to provide protection to all consumers in the EU as well as a level playing field between financial advisers, it is appropriate to apply these higher standards throughout MiFID.*

**Amendment 774**  
**Sven Giegold**  
on behalf of the Verts/ALE Group

**Proposal for a directive**  
**Article 24 – paragraph 6 a (new)**

*Text proposed by the Commission*

*Amendment*

***6 a. An investment firm which advises on or sells financial instruments to retail clients shall ensure it does not remunerate or assess the performance of its staff in a way that conflicts with its duty to act in the best interests of its clients. In particular it shall not make any arrangement by way of remuneration or otherwise that could benefit staff such that they are incentivised to recommend a particular financial instrument to a retail client when the firm could offer another financial instrument which would better***

*meet that client's needs.*

Or. en

*Justification*

*following a proposal of the FSA*

**Amendment 775**

**Catherine Stihler**

**Proposal for a directive**

**Article 24 – paragraph 6 a (new)**

*Text proposed by the Commission*

*Amendment*

***6 a. An Investment firm which advises on or sells financial instruments to retail clients shall ensure it does not remunerate or assess the performance of its staff in a way that conflicts with its duty to act in the best interests of its clients. In particular it shall not make any arrangement by way of remuneration or otherwise that could benefit staff such that they are incentivised to recommend a particular financial instrument to a retail client when the firm could offer another financial instrument which would better meet that client's needs.***

Or. en

**Amendment 776**

**Werner Langen**

**Proposal for a directive**

**Article 24 – paragraph 7**

*Text proposed by the Commission*

*Amendment*

***7. When an investment service is offered together with another service or product***

***deleted***

*as part of a package or as a condition for the same agreement or package, the investment firm shall inform the client whether it is possible to buy the different components separately and shall provide for a separate evidence of the costs and charges of each component.*

*ESMA shall develop by [] at the latest, and update periodically, guidelines for the assessment and the supervision of cross-selling practices indicating, in particular, situations in which cross-selling practices are not compliant with obligations in paragraph 1.*

Or. de

#### *Justification*

*The requirements for the ESMA guidelines are very complicated to meet and, in terms of cost-effectiveness, are indefensibly out of proportion to the likely increases in transparency.*

**Amendment 777**  
**Astrid Lulling**

**Proposal for a directive**  
**Article 24 – paragraph 7**

*Text proposed by the Commission*

*Amendment*

*7. When an investment service is offered together with another service or product as part of a package or as a condition for the same agreement or package, the investment firm shall inform the client whether it is possible to buy the different components separately and shall provide for a separate evidence of the costs and charges of each component.*

*deleted*

*ESMA shall develop by [] at the latest, and update periodically, guidelines for the assessment and the supervision of cross-selling practices indicating, in particular, situations in which cross-selling practices*

*are not compliant with obligations in paragraph 1.*

Or. en

**Amendment 778**

**Sven Giegold**

on behalf of the Verts/ALE Group

**Proposal for a directive**

**Article 24 – paragraph 7 – subparagraph 1**

*Text proposed by the Commission*

When an investment service is offered together with another service or product as part of a package or as a condition for the same agreement or package, the investment firm shall inform the client whether it is possible to buy the different components separately and shall provide for a separate evidence of the costs and charges of each component.

*Amendment*

When an investment service is offered together with another service or product as part of a package or as a condition for the same agreement or package, the investment firm shall inform the client whether it is possible to buy the different components separately and shall provide for a separate evidence of the costs and charges of each component. ***Investment products may not be offered in a contingent sale with other investment products, deposits or financial services with the exception of current account or securities account.***

Or. en

*Justification*

*following a proposal from BEUC*

**Amendment 779**

**Jürgen Klute**

**Proposal for a directive**

**Article 24 – paragraph 7 – subparagraph 1**

*Text proposed by the Commission*

When an investment service is offered

*Amendment*

When an investment service is offered

together with another service or product as part of a package or as a condition for the same agreement or package, the investment firm shall inform the client whether it is possible to buy the different components separately and shall provide for a separate evidence of the costs and charges of each component.

together with another service or product as part of a package or as a condition for the same agreement or package, the investment firm shall inform the client whether it is possible to buy the different components separately and shall provide for a separate evidence of the costs and charges of each component. ***A product combining investment and savings products may not be offered to retail investors.***

Or. en

#### **Amendment 780**

**Robert Goebbels, Markus Ferber, Arlene McCarthy**

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

#### **Article 24 – paragraph 7 – subparagraph 2**

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

ESMA shall develop by [] at the latest, and update periodically, guidelines for the assessment and the supervision of cross-selling practices indicating, in particular, situations in which cross-selling practices are not compliant with obligations in paragraph 1.

##### *Amendment*

**ESMA, in cooperation with EBA and EIOPA, through the Joint Committee,** shall develop by [] at the latest, and update periodically, guidelines for the assessment and the supervision of cross-selling practices indicating, in particular, situations in which cross-selling practices are not compliant with obligations in paragraph 1.

Or. en

##### *Justification*

*Cooperation among all three ESAs in developing guidelines is of high relevance to cross-selling, since in this situation there is clear involvement of different financial sectors such as insurance and banking. (ECB suggestion)*

#### **Amendment 781**

**Sylvie Goulard**



**Proposal for a directive**

**Article 24 – paragraph 7 – subparagraph 2**

*Text proposed by the Commission*

ESMA shall develop by [] at the latest, and update periodically, guidelines for the assessment and the supervision of cross-selling practices indicating, in particular, situations in which cross-selling practices are not compliant with obligations in paragraph 1.

*Amendment*

ESMA, ***in cooperation with EBA and EIOPA, through the Joint Committee,*** shall develop by [] at the latest, and update periodically, guidelines for the assessment and the supervision of cross-selling practices indicating, in particular, situations in which cross-selling practices are not compliant with obligations in paragraph 1.

Or. en

*Justification*

*Cooperation among all three ESAs in developing guidelines is of high relevance to cross-selling, since in this situation there is clear involvement of different financial sectors such as insurance and banking.*

**Amendment 782**

**Sven Giegold**

on behalf of the Verts/ALE Group

**Proposal for a directive**

**Article 24 – paragraph 7 – subparagraph 2**

*Text proposed by the Commission*

ESMA shall develop by [] at the latest, and update periodically, guidelines for the assessment and the supervision of cross-selling practices indicating, in particular, situations in which cross-selling practices are not compliant with obligations in paragraph 1.

*Amendment*

ESMA shall develop by [] at the latest, and update periodically, guidelines for the assessment and the supervision of cross-selling practices indicating, in particular, situations in which cross-selling practices are not compliant with obligations in paragraph 1 ***and Article 25.***

Or. en

*Justification*

*following a proposal by BEUC*

**Amendment 783**

**Olle Schmidt**

on behalf of the ALDE Group

**Proposal for a directive**

**Article 24 – paragraph 8**

*Text proposed by the Commission*

*Amendment*

**8. The Commission shall be empowered to adopt delegated acts in accordance with Article 94 concerning measures to ensure that investment firms comply with the principles set out therein when providing investment or ancillary services to their clients. Those delegated acts shall take into account:** **deleted**

**(a) the nature of the service(s) offered or provided to the client or potential client, taking into account the type, object, size and frequency of the transactions;**

**(b) the nature of the products being offered or considered including different types of financial instruments and deposits referred to in Article 1 (2) ;**

**(c) the retail or professional nature of the client or potential clients or, in the case of paragraph 3, their classification as eligible counterparties.**

Or. en

*Justification*

*Given the diversity of investment services provided across the EU, it is more appropriate that flexibility is given to Member States to cater for differences in their implementation of the Directive. Therefore this measure is not necessary.*

**Amendment 784**

**Kay Swinburne**

**Proposal for a directive**  
**Article 24 – paragraph 8 a (new)**

*Text proposed by the Commission*

*Amendment*

***8 a. Member States shall require that individuals providing any kind of investment advice or, where appropriate, ancillary services to clients, possess an appropriate level of knowledge and competence based upon recognised qualifications.***

Or. en

*Justification*

*Each member states should have a minimum level of qualification expected from those selling financial products to retail clients, however this should be Member state specific due to the many differences in knowledge and experience of investors in each member state.*

**Amendment 785**  
**Anne E. Jensen**

**Proposal for a directive**  
**Article 24 – paragraph 8 a (new)**

*Text proposed by the Commission*

*Amendment*

***8 a. The provision of financial advice to retail investors is subject to the adviser being qualified to a minimum standard European level. ESMA shall provide binding technical standards setting out the mandatory contents of the underlying certification and training programmes. ESMA shall agree in consultation with national competent authorities which existing qualifications shall be deemed equivalent to this standard.***

Or. en

**Amendment 786**  
**Jean-Paul Gauzès**

**Proposal for a directive**  
**Article 24 a (new)**

*Text proposed by the Commission*

*Amendment*

**Article 24 a**

***1. Member States shall require any investment firm that uses an internal trade matching system to apply to the competent authority for prior authorisation. Before granting such authorisation the competent authority shall ensure that the system:***

***(a) forms part of the investment firm's best execution policy;***

***(b) does not grant any type of participant any special privileges with regard to information or order execution;***

***(c) is not linked to any other internal trade matching system;***

***(d) enables each participant to choose the types of counterparty with which it agrees to execute its orders;***

***(e) is specifically identified in connection with post-trade transparency obligations.***

***In connection with point (b), wherever appropriate, special care shall be taken to ensure that the investment firm's own-account orders are treated in exactly the same way as orders on behalf of third parties.***

***ESMA shall develop draft implementing technical standards to establish which types of counterparty must, as a minimum requirement, identify internal order execution systems.***

***ESMA shall submit those draft implementing technical standards to the Commission by [...] at the latest.***

***Power is conferred on the Commission to adopt the implementing technical***

*standards in accordance with Article 15 of Regulation (EU) No 1095/2010.*

---

*\* OJ: please insert date.*

Or. fr

**Amendment 787**

**Sven Giegold**

on behalf of the Verts/ALE Group

**Proposal for a directive**

**Article 24 a (new)**

*Text proposed by the Commission*

*Amendment*

**Article 24 a**

*Member States shall ensure that competent authorities are responsible for the implementation of the investor protection provisions set by this Directive.*

Or. en

**Amendment 788**

**Jean-Paul Gauzès**

**Proposal for a directive**

**Article 24 b (new)**

*Text proposed by the Commission*

*Amendment*

**Article 24b**

*The competent authorities shall require internal trade matching systems which account for a proportion of the total transactions handled by all trading systems that is above a given threshold to be converted into MTFs.*

*ESMA shall develop draft implementing technical standards to lay down the*

*procedures for calculating that threshold.*

*ESMA shall submit those draft  
implementing technical standards to the  
Commission by [...] \* at the latest.*

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

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*\* OJ: please insert date.*

Or. fr

**Amendment 789**

**Sven Giegold**

on behalf of the Verts/ALE Group

**Proposal for a directive**

**Article 24 b (new)**

*Text proposed by the Commission*

*Amendment*

**Article 24 b**

*Member States may establish independent  
bodies besides their competent authorities  
to monitor markets and approve the  
suitability of products for retail investors.*

Or. en

**Amendment 790**

**Sven Giegold**

on behalf of the Verts/ALE Group

**Proposal for a directive**

**Article 25 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

1. When providing investment advice or  
portfolio management the investment firm  
shall obtain the necessary information

1. When providing **product information**,  
investment advice or portfolio management  
the investment firm shall obtain the

regarding the client's or potential client's knowledge and experience in the investment field relevant to the specific type of product or service, his financial situation and his investment objectives so as to enable the firm to recommend to the client or potential client the investment services and financial instruments that are suitable for him.

necessary information regarding the client's or potential client's knowledge and experience in the investment field relevant to the specific type of product or service, his financial situation ***including credit obligations, his current risk exposure, the acceptance of economical losses*** and his investment objectives so as to enable the firm to recommend to the client or potential client the investment services and financial instruments that are suitable for him.

***ESMA shall develop by [...] \* at the latest, guidelines for minimum information to be obtained from the client and for the assessment of the suitability of the financial instrument or service.***

---

***\*OJ please insert date: ...***

Or. en

#### *Justification*

*inspired by a proposal from BEUC*

#### **Amendment 791 Jean-Paul Gauzès**

#### **Proposal for a directive Article 25 – paragraph 1**

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

1. When providing investment advice or portfolio management the investment firm shall obtain the necessary information regarding the client's or potential client's knowledge and experience in the investment field relevant to the specific type of product or service, his financial situation and his investment objectives so as to enable the firm to recommend to the client or potential client the investment

##### *Amendment*

1. When providing investment advice or portfolio management the investment firm shall obtain the necessary information regarding the client's or potential client's knowledge and experience in the investment field relevant to the specific type of product or service, his financial situation and his investment objectives ***(including his risk tolerance)*** so as to enable the firm to recommend to the client

services and financial instruments that are suitable for him.

or potential client the investment services and financial instruments that are suitable for him.

Or. en

**Amendment 792**

**Sven Giegold**

on behalf of the Verts/ALE Group

**Proposal for a directive**

**Article 25 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***1 a. When providing product information, investment advice or portfolio management the investment firm shall demonstrate that the product sold was the most suitable from the product range to meet the client's needs.***

Or. en

**Amendment 793**

**Sven Giegold**

on behalf of the Verts/ALE Group

**Proposal for a directive**

**Article 25 – paragraph 1 b (new)**

*Text proposed by the Commission*

*Amendment*

***1 b. When providing product information, investment advice or portfolio management the investment firm shall assess if any investment is suitable for a client, especially when the client has open loan liabilities. If an investment is deemed as unsuitable at this moment, the investment firm shall issue a warning to the client.***

Or. en



**Amendment 794**  
**Wolf Klinz**

**Proposal for a directive**  
**Article 25 – paragraph 2 – subparagraph 1**

*Text proposed by the Commission*

Member States shall ensure that investment firms, when providing investment services other than those referred to in paragraph 1, ask the client or potential client to provide information regarding his knowledge and experience in the investment field relevant to the specific type of product or service offered or demanded so as to enable the investment firm to assess whether the investment service or product envisaged is appropriate for the client.

*Amendment*

Member States shall ensure that investment firms, when providing investment services other than those referred to in paragraph 1, ask the client or potential client to provide information regarding his knowledge and experience in the investment field relevant to the specific type of product or service offered or demanded so as to enable the investment firm to assess whether the investment service or product envisaged is appropriate for the client. ***This shall not apply to the service of safekeeping and administration of financial instruments as specified in Section A (9) of Annex I.***

Or. en

**Amendment 795**  
**Sven Giegold**  
on behalf of the Verts/ALE Group

**Proposal for a directive**  
**Article 25 – paragraph 2 – subparagraph 3 a (new)**

*Text proposed by the Commission*

*Amendment*

***ESMA shall develop by [...] at the latest, guidelines for minimum information to be asked regarding clients' knowledge and experience in the investment field relevant to the specific type of product or service offered or demanded and for the assessment of the appropriateness of the product or service with respect to the knowledge and experience of the client.***

---

*\*OJ please insert date: ...*

Or. en

**Amendment 796**

**Sven Giegold**

on behalf of the Verts/ALE Group

**Proposal for a directive**

**Article 25 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***2 a. Member States shall ensure that investment firms providing products bundled by cross-selling practices pursuant to Article 24(7) are assessing the suitability for the investor of each product separately as well as the suitability of the whole package.***

Or. en

**Amendment 797**

**Syed Kamall, Kay Swinburne**

**Proposal for a directive**

**Article 25 – paragraph 3 – subparagraph 1 – introductory part**

*Text proposed by the Commission*

*Amendment*

Member States shall allow investment firms when providing investment services that only consist of execution or the reception and transmission of client orders with or without ancillary services , ***with the exclusion of the ancillary service specified in Section B (1) of Annex 1*** , to provide those investment services to their clients without the need to obtain the information or make the determination provided for in paragraph 2 where all the following

Member States shall allow investment firms when providing investment services that only consist of execution or the reception and transmission of client orders with or without ancillary services to provide those investment services to their clients without the need to obtain the information or make the determination provided for in paragraph 2 where all the following conditions are met:

conditions are met:

Or. en

#### **Amendment 798**

**Astrid Lulling**

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

#### **Article 25 – paragraph 3 – subparagraph 1 – introductory part**

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

Member States shall allow investment firms when providing investment services that only consist of execution or the reception and transmission of client orders with or without ancillary services , ***with the exclusion of the ancillary service specified in Section B (1) of Annex 1*** , to provide those investment services to their clients without the need to obtain the information or make the determination provided for in paragraph 2 where all the following conditions are met:

##### *Amendment*

Member States shall allow investment firms when providing investment services that only consist of execution or the reception and transmission of client orders with or without ancillary services, to provide those investment services to their clients without the need to obtain the information or make the determination provided for in paragraph 2 where all the following conditions are met:

Or. en

#### **Amendment 799**

**Olle Schmidt**

on behalf of the ALDE Group

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

#### **Article 25 – paragraph 3 – subparagraph 1 – introductory part**

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

Member States shall allow investment firms when providing investment services that only consist of execution or the reception and transmission of client orders with or without ancillary services , ***with the exclusion of the ancillary service specified in Section B (1) of Annex 1*** , to provide those investment services to their clients

##### *Amendment*

Member States shall allow investment firms when providing investment services that only consist of execution or the reception and transmission of client orders with or without ancillary services to provide those investment services to their clients without the need to obtain the information or make the determination

without the need to obtain the information or make the determination provided for in paragraph 2 where all the following conditions are met:

provided for in paragraph 2 where all the following conditions are met:

Or. en

#### *Justification*

*This amendment seeks to achieve the objective to ensure a level playing field for the granting of loans or credits. Under the original proposal, 3rd parties would be able to grant such credits to clients without applying the obligations included in this article.*

#### **Amendment 800** **Alfredo Pallone**

##### **Proposal for a directive** **Article 25 – paragraph 3 – subparagraph 1 – point a – introductory part**

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

a) the services *referred to any of the following* financial instruments:

###### *Amendment*

a) the services *do not refer* to financial instruments *that, embedding derivatives, incorporating a structure or being considered illiquid, make difficult for the client to understand the risk involved.*

Or. en

#### **Amendment 801** **Alfredo Pallone**

##### **Proposal for a directive** **Article 25 – paragraph 3 – subparagraph 1 – point a – point i**

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

*(i) shares admitted to trading on a regulated market or on an equivalent third-country market or on a MTF, where these are shares in companies, and excluding shares in non-UCITS collective investment undertakings and shares that*

###### *Amendment*

*deleted*

*embed a derivative;*

Or. en

## **Amendment 802**

**Astrid Lulling**

### **Proposal for a directive**

#### **Article 25 – paragraph 3 – subparagraph 1 – point a – point i**

*Text proposed by the Commission*

*Amendment*

**(i)** shares admitted to trading on a regulated market or on an equivalent third-country market or on a MTF, where these are shares in companies, **and excluding shares in non-UCITS collective investment undertakings and shares that embed a derivative;**

**1.** shares admitted to trading on a regulated market or on an equivalent third country market, or on a MTF, where these are shares in companies,

Or. en

#### *Justification*

*Because instruments listed and traded on regulated markets are subject to common EU rules regarding publication of information, disclosure of key facts or subject to specific provision in terms of risk management and deposit (UCITS and AIF), these products shall be generally available for execution by investors.*

## **Amendment 803**

**Syed Kamall, Kay Swinburne**

### **Proposal for a directive**

#### **Article 25 – paragraph 3 – subparagraph 1 – point a – point i**

*Text proposed by the Commission*

*Amendment*

**(i)** shares admitted to trading on a regulated market or on an equivalent third-country market or on a MTF, where these are shares in companies, **and excluding shares in non-UCITS collective investment undertakings and shares that embed a**

**(i)** shares admitted to trading on a regulated market or on an equivalent third-country market or on a MTF, where these are shares in companies;

*derivative;*

Or. en

*Justification*

*Instruments listed and traded on regulated markets are already subject to EU legislation relating to disclosure of key information, or are subject to risk management provisions. For this reason, these products should be available for execution by investors.*

**Amendment 804**

**Sven Giegold**

on behalf of the Verts/ALE Group

**Proposal for a directive**

**Article 25 – paragraph 3 – subparagraph 1 – point a – point i**

*Text proposed by the Commission*

(i) shares admitted to trading on a regulated market or on an equivalent third-country market or on a MTF, where these are shares in companies, ***and excluding shares in non-UCITS collective investment undertakings and*** shares that embed a derivative;

*Amendment*

(i) shares admitted to trading on a regulated market or on an equivalent third-country market or on a MTF, where these are shares in companies, excluding shares that embed a derivative;

Or. en

**Amendment 805**

**Olle Schmidt**

on behalf of the ALDE Group

**Proposal for a directive**

**Article 25 – paragraph 3 – subparagraph 1 – point a – point i**

*Text proposed by the Commission*

(i) shares admitted to trading on a regulated market or on an equivalent third-country market or on a MTF, where these are shares in companies, and excluding shares in non-UCITS collective investment

*Amendment*

(i) shares admitted to trading on a regulated market or on an equivalent third-country market or on a MTF, where these are shares in companies, and excluding shares in non-UCITS collective investment

undertakings and shares that embed a derivative;

undertakings and shares that embed a derivative ***unless the derivative does not increase risk to the investor;***

Or. en

*Justification*

*This amendment seeks to achieve the objective ensuring that derivative does not increase risk to the end investor.*

**Amendment 806**  
**Alfredo Pallone**

**Proposal for a directive**

**Article 25 – paragraph 3 – subparagraph 1 – point a – point ii**

*Text proposed by the Commission*

*Amendment*

*(ii) bonds or other forms of securitised debt, admitted to trading on a regulated market or on an equivalent third country market or on a MTF, excluding those that embed a derivative or incorporate a structure which makes it difficult for the client to understand the risk involved;*

*deleted*

Or. en

**Amendment 807**  
**Syed Kamall, Kay Swinburne**

**Proposal for a directive**

**Article 25 – paragraph 3 – subparagraph 1 – point a – point ii**

*Text proposed by the Commission*

*Amendment*

*(ii) bonds or other forms of securitised debt, admitted to trading on a regulated market or on an equivalent third country market or on a MTF, **excluding those that embed a derivative or incorporate a structure which makes it difficult for the***

*(ii) bonds or other forms of securitised debt, admitted to trading on a regulated market or on an equivalent third country market or on a MTF;*

*client to understand the risk involved;*

Or. en

*Justification*

*Instruments listed and traded on regulated markets are already subject to EU legislation relating to disclosure of key information, or are subject to risk management provisions. For this reason, these products should be available for execution by investors.*

**Amendment 808**

**Astrid Lulling**

**Proposal for a directive**

**Article 25 – paragraph 3 – subparagraph 1 – point a – point ii**

*Text proposed by the Commission*

**(ii)** bonds or other forms of securitised debt, admitted to trading on a regulated market or on an equivalent third country market or on a MTF, ***excluding those that embed a derivative or incorporate a structure which makes it difficult for the client to understand the risk involved;***

*Amendment*

**2.** bonds or other forms of securitised debt, admitted to trading on a regulated market or on an equivalent third country market or on a MTF, ***for which a prospectus has been issued;***

Or. en

*Justification*

*Because instruments listed and traded on regulated markets are subject to common EU rules regarding publication of information, disclosure of key facts or subject to specific provision in terms of risk management and deposit (UCITS and AIF), these products shall be generally available for execution by investors.*

**Amendment 809**

**Olle Schmidt**

on behalf of the ALDE Group

**Proposal for a directive**

**Article 25 – paragraph 3 – subparagraph 1 – point a – point ii**



*Text proposed by the Commission*

*Amendment*

(ii) bonds or other forms of securitised debt, admitted to trading on a regulated market or on an equivalent third country market or on a MTF, excluding those that embed a derivative or incorporate a structure which **makes** it difficult for **the** client to understand the risk involved;

(ii) bonds or other forms of securitised debt, admitted to trading on a regulated market or on an equivalent third country market or on a MTF, excluding those that embed a derivative or incorporate a structure which **would make** it difficult for **a** client to understand the risk involved **or the derivative does not increase risk to the investor**;

Or. en

*Justification*

*This amendment seeks to achieve the objective ensuring that derivative does not increase risk to the end investor.*

**Amendment 810**

**Alfredo Pallone**

**Proposal for a directive**

**Article 25 – paragraph 3 – subparagraph 1 – point a – point iii**

*Text proposed by the Commission*

*Amendment*

***(iii) money market instruments, excluding those that embed a derivative or incorporate a structure which makes it difficult for the client to understand the risk involved;***

***deleted***

Or. en

**Amendment 811**

**Astrid Lulling**

**Proposal for a directive**

**Article 25 – paragraph 3 – subparagraph 1 – point a – point iii**

*Text proposed by the Commission*

*Amendment*

**(iii) money market instruments, *excluding those that embed a derivative or incorporate a structure which makes it difficult for the client to understand the risk involved*;**

**3. money market instruments;**

Or. en

*Justification*

*Because instruments listed and traded on regulated markets are subject to common EU rules regarding publication of information, disclosure of key facts or subject to specific provision in terms of risk management and deposit (UCITS and AIF), these products shall be generally available for execution by investors.*

#### **Amendment 812**

**Syed Kamall, Kay Swinburne**

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

#### **Article 25 – paragraph 3 – subparagraph 1 – point a – point iii**

*Text proposed by the Commission*

*Amendment*

**(iii) money market instruments, *excluding those that embed a derivative or incorporate a structure which makes it difficult for the client to understand the risk involved*;**

**(iii) money market instruments;**

Or. en

*Justification*

*Instruments listed and traded on regulated markets are already subject to EU legislation relating to disclosure of key information, or are subject to risk management provisions. For this reason, these products should be available for execution by investors.*

#### **Amendment 813**

**Olle Schmidt**

**on behalf of the ALDE Group**

**Proposal for a directive**

**Article 25 – paragraph 3 – subparagraph 1 – point a – point iii**

*Text proposed by the Commission*

(iii) money market instruments, excluding those that embed a derivative or incorporate a structure which **makes** it difficult for **the** client to understand the risk involved;

*Amendment*

(iii) money market instruments, excluding those that embed a derivative or incorporate a structure which **would make** it difficult for **a** client to understand the risk involved **or the derivative does not increase the risk to the investor**;

Or. en

*Justification*

*This amendment seeks to achieve the objective ensuring that derivative does not increase risk to the end investor.*

**Amendment 814**

**Sven Giegold**

on behalf of the Verts/ALE Group

**Proposal for a directive**

**Article 25 – paragraph 3 – subparagraph 1 – point a – point iv**

*Text proposed by the Commission*

**(iv) shares or units in UCITS excluding structured UCITS as referred to in Article 36 paragraph 1 subparagraph 2 of Commission Regulation 583/2010;**

*Amendment*

**deleted**

Or. en

*Justification*

*As long as there is no legal decision about the suitability of certain UCITS products for retail investors, exemption from the suitability test should be subsumed under Article 25 Paragraph 3 point v. It is our task to find a definition for UCITS in the revision of the UCITS directive which guarantees suitability of all UCITS for retail investors.*

**Amendment 815**  
**Sylvie Goulard**

**Proposal for a directive**  
**Article 25 – paragraph 3 – subparagraph 1 – point a – point iv**

*Text proposed by the Commission*

*Amendment*

*(iv) shares or units in UCITS excluding structured UCITS as referred to in Article 36 paragraph 1 subparagraph 2 of Commission Regulation 583/2010;* *deleted*

Or. en

*Justification*

*The notion of complex / non-complex product is not in line with the UCITS reality.*

**Amendment 816**  
**Alfredo Pallone**

**Proposal for a directive**  
**Article 25 – paragraph 3 – subparagraph 1 – point a – point iv**

*Text proposed by the Commission*

*Amendment*

*(iv) shares or units in UCITS excluding structured UCITS as referred to in Article 36 paragraph 1 subparagraph 2 of Commission Regulation 583/2010;* *deleted*

Or. en

**Amendment 817**  
**Wolf Klinz**

**Proposal for a directive**  
**Article 25 – paragraph 3 – subparagraph 1 – point a – point iv**

*Text proposed by the Commission*

*Amendment*

*(iv) shares or units in UCITS excluding structured UCITS as referred to in Article* *(iv) shares or units in UCITS;*

**36 paragraph 1 subparagraph 2 of  
Commission Regulation 583/2010;**

Or. en

**Amendment 818**

**Olle Schmidt**

on behalf of the ALDE Group

**Proposal for a directive**

**Article 25 – paragraph 3 – subparagraph 1 – point a – point iv**

*Text proposed by the Commission*

*Amendment*

(iv) shares or units in UCITS ***excluding structured UCITS as referred to in Article 36 paragraph 1 subparagraph 2 of Commission Regulation 583/2010;***

(iv) shares or units in UCITS;

Or. en

*Justification*

*The very successful UCITS brand could suffer damage in the eyes of non-EU regulators and investors if some UCITS were no longer considered automatically non-complex, as they may be seen as unsuitable for retail investors. European investors' confidence in UCITS might also be affected. Complexity is not equal to risk. On the contrary, many of the UCITS features reduce risks for investors which are high in "plain vanilla" financial instruments such as stocks and bonds.*

**Amendment 819**

**Jean-Paul Gauzès, Burkhard Balz**

**Proposal for a directive**

**Article 25 – paragraph 3 – subparagraph 1 – point a – point iv**

*Text proposed by the Commission*

*Amendment*

(iv) shares or units in UCITS ***excluding structured UCITS as referred to in Article 36 paragraph 1 subparagraph 2 of Commission Regulation 583/2010;***

(iv) shares or units in UCITS ;

**Amendment 820**  
**Robert Goebbels, Elisa Ferreira**

**Proposal for a directive**  
**Article 25 – paragraph 3 – subparagraph 1 – point a – point iv**

*Text proposed by the Commission*

*Amendment*

(iv) shares or units in UCITS ***excluding structured UCITS as referred to in Article 36 paragraph 1 subparagraph 2 of Commission Regulation 583/2010;***

(iv) shares or units in UCITS;

Or. en

*Justification*

*A categorisation of UCITS would cast doubt on the soundness of the UCITS framework. Complexity, stemming from innovation in asset management, does not necessarily involve higher risks from an investment performance perspective. Focus should therefore not be on complexity as such, but rather on the difficulty for clients to understand the risks involved. This should be addressed within the current UCITS framework rather than within MiFID.*

**Amendment 821**  
**Syed Kamall, Kay Swinburne**

**Proposal for a directive**  
**Article 25 – paragraph 3 – subparagraph 1 – point a – point iv**

*Text proposed by the Commission*

*Amendment*

(iv) shares or units in UCITS ***excluding structured UCITS as referred to in Article 36 paragraph 1 subparagraph 2 of Commission Regulation 583/2010;***

(iv) shares or units in UCITS;

Or. en

*Justification*

*Instruments listed and traded on regulated markets are already subject to EU legislation*

*relating to disclosure of key information, or are subject to risk management provisions. For this reason, these products should be available for execution by investors.*

## **Amendment 822**

**Werner Langen**

### **Proposal for a directive**

#### **Article 25 – paragraph 3 – subparagraph 1 – point a – point iv**

*Text proposed by the Commission*

*Amendment*

(iv) shares or units in UCITS ***excluding structured UCITS as referred to in Article 36 paragraph 1 subparagraph 2 of Commission Regulation 583/2010;***

(iv) shares or units in UCITS;

Or. de

#### *Justification*

*By definition, UCITS are non-complex financial instruments. They meet all relevant requirements in line with the current definition under Article 38 of the MiFID implementing directive and are currently being provided with ‘key investor information’ so as to guarantee better investor protection. Any differentiation between funds causes needless red tape and dilutes the UCITS brand without guaranteeing that investors are better protected.*

## **Amendment 823**

**Astrid Lulling**

### **Proposal for a directive**

#### **Article 25 – paragraph 3 – subparagraph 1 – point a – point iv**

*Text proposed by the Commission*

*Amendment*

(iv) shares or units in UCITS ***excluding structured UCITS as referred to in Article 36 paragraph 1 subparagraph 2 of Commission Regulation 583/2010;***

***4. shares or units in UCITS or AIF as defined in Directive 2011/61/EU where they are offered to retail investors;***

Or. en

### *Justification*

*Because instruments listed and traded on regulated markets are subject to common EU rules regarding publication of information, disclosure of key facts or subject to specific provision in terms of risk management and deposit (UCITS and AIF), these products shall be generally available for execution by investors.*

## **Amendment 824**

**Diogo Feio**

### **Proposal for a directive**

#### **Article 25 – paragraph 3 – subparagraph 1 – point a – point iv**

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

(iv) shares or units in UCITS excluding structured UCITS as referred to in Article 36 paragraph 1 subparagraph 2 of Commission Regulation 583/2010;

##### *Amendment*

(iv) shares or units in UCITS excluding structured UCITS as referred to in Article 36 paragraph 1 subparagraph 2 of Commission Regulation 583/2010 ***and other UCITS based on complex portfolio management techniques;***

Or. en

### *Justification*

*not only structured UCITS, but also UCITS based on complex portfolio management techniques should be considered as complex financial instruments, since the UCITS regime allows them to be materially complex as other structured instruments.*

## **Amendment 825**

**Pablo Zalba Bidegain**

### **Proposal for a directive**

#### **Article 25 – paragraph 3 – subparagraph 1 – point a – point iv**

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

(iv) shares or units in UCITS excluding structured UCITS as referred to in Article 36 paragraph 1 subparagraph 2 of Commission Regulation 583/2010;

##### *Amendment*

(iv) shares or units in UCITS excluding structured UCITS as referred to in Article 36 paragraph 1 subparagraph 2 of Commission Regulation (EU) No 583/2010 ***which do not comply with requirements established in Article 38 of***



Or. en

**Amendment 826**

**Alfredo Pallone**

**Proposal for a directive**

**Article 25 – paragraph 3 – subparagraph 1 – point a – point v**

*Text proposed by the Commission*

*Amendment*

**(v) other *non-complex* financial instruments for the purpose of this paragraph .**

***deleted***

Or. en

**Amendment 827**

**Astrid Lulling**

**Proposal for a directive**

**Article 25 – paragraph 3 – subparagraph 1 – point a – point v**

*Text proposed by the Commission*

*Amendment*

**(v) other *non-complex* financial instruments for the purpose of this paragraph .**

**5. other *similar* financial instruments *listed and traded on a regulated market or MTF for which a prospectus has been issued*, for the purpose of this paragraph.**

Or. en

*Justification*

*Because instruments listed and traded on regulated markets are subject to common EU rules regarding publication of information, disclosure of key facts or subject to specific provision in terms of risk management and deposit (UCITS and AIF), these products shall be generally available for execution by investors.*

**Amendment 828**  
**Syed Kamall, Kay Swinburne**

**Proposal for a directive**  
**Article 25 – paragraph 3 – subparagraph 1 – point a – point v**

*Text proposed by the Commission*

(v) other ***non-complex*** financial instruments ***for the purpose of this paragraph*** .

*Amendment*

(v) other financial instruments, ***including structured UCITS and shares in non-UCITS, which are assessed by an investment firm as non-complex.***

Or. en

*Justification*

*It would be appropriate for there to be a case by case test of the complexity of a financial instrument, rather than deeming them all to be complex.*

**Amendment 829**  
**Sylvie Goulard**

**Proposal for a directive**  
**Article 25 – paragraph 4**

*Text proposed by the Commission*

4. ***The investment firm shall establish a record that includes the document or documents agreed between the firm and the client that set out the rights and obligations of the parties, and the other terms on which the firm will provide services to the client. The rights and duties of the parties to the contract may be incorporated by reference to other documents or legal texts.***

*Amendment*

4. ***When the investment service relates to an investment advice in relation to a complex product as mentioned in paragraph 3. a) which has been subscribed by a client, the investment firm shall provide the client with an ongoing periodical assessment of the appropriateness or suitability of such financial instrument.***

Or. en

**Amendment 830**  
**Olle Schmidt**

on behalf of the ALDE Group

**Proposal for a directive**  
**Article 25 – paragraph 5**

*Text proposed by the Commission*

5. The client must receive from the investment firm adequate reports on the service provided to its clients. **These** reports shall include periodic communications to clients, **taking into account the type and the complexity** of financial instruments **involved** and the **nature** of the **service provided to the client** and shall include, where applicable, the costs associated with the transactions and services undertaken on behalf of the client. When providing investment advice, the investment firm shall specify how the advice given meets the personal characteristics of the client.

*Amendment*

5. The client must receive from the investment firm adequate reports on the service provided to its clients. ***In case of portfolio management or under the condition that an investment firm offers and concludes such a service with its clients these*** reports shall include periodic communications to clients ***about the performance of the relevant*** financial instruments and ***periodic assessment of the suitability of the recommended financial instruments. These reports*** shall include, where applicable, the costs associated with the transactions and services undertaken on behalf of the client. When providing investment advice ***in accordance with Article 24(3)***, the investment firm shall specify how the advice given meets the ***preferences, needs and other*** personal characteristics of the client.

Or. en

*Justification*

*This text makes it clear that this service has to be provided in case of portfolio management or in case of investment advice if offered by the investment firm to its clients and expressly agreed upon with them. Supports that investment firms, when providing investment advice, shall specify how the advice given meets the characteristics of the client. A clarification should be done to also include preferences and needs of the client.*

**Amendment 831**  
**Burkhard Balz**

**Proposal for a directive**  
**Article 25 – paragraph 5**

*Text proposed by the Commission*

5. The client must receive from the investment firm adequate reports on the service provided to its clients. ***These reports shall include periodic communications to clients, taking into account the type and the complexity of financial instruments involved and the nature of the service provided to the client and*** shall include, where applicable, the costs associated with the transactions and services undertaken on behalf of the client. When providing investment advice, the investment firm shall specify how the advice given meets the personal characteristics of the client.

*Amendment*

5. The client must receive from the investment firm adequate reports on the service provided to its clients. ***If advisory services are provided on a periodical basis, firms shall inform clients about the frequency of the communications. These reports shall include, where applicable the costs associated with the transactions and services undertaken on behalf of the client. When providing investment advice pursuant to Article 24 (3), the investment firm shall specify how the advice given meets the personal characteristics of the client.***

Or. en

**Amendment 832**

**Sven Giegold**

on behalf of the Verts/ALE Group

**Proposal for a directive**

**Article 25 – paragraph 5**

*Text proposed by the Commission*

5. The client must receive from the investment firm adequate reports on the service provided to its clients. These reports shall include periodic communications to clients, taking into account the type and the complexity of financial instruments involved and the nature of the service provided to the client and shall include, where applicable, the costs associated with the transactions and services undertaken on behalf of the client. When providing investment advice, the investment firm shall specify how the advice given meets the personal characteristics of the client.

*Amendment*

5. The client must receive from the investment firm adequate reports ***in writing or on a durable medium on*** the service provided to its clients. These reports shall include periodic communications to clients, taking into account the type and the complexity of financial instruments involved and the nature of the service provided to the client and shall include, where applicable, the costs associated with the transactions and services undertaken on behalf of the client. ***If the services included the conclusion of sales the report shall state if the sale was in accordance with internal sales targets of the investment firm.*** When providing

investment advice, the investment firm shall specify how the advice given meets the personal characteristics of the client.

***ESMA shall develop by [...] \* at the latest, guidelines for the content and the layout of the adequate reports to be provided to the client.***

---

***\*OJ please insert date: ...***

Or. en

**Amendment 833**  
**Gay Mitchell**

**Proposal for a directive**  
**Article 25 – paragraph 5**

*Text proposed by the Commission*

5. The client must receive from the investment firm adequate reports on the service provided to its clients. These reports shall include periodic communications to clients, taking into account the type and the complexity of financial instruments involved and the nature of the service provided to the client and shall include, where applicable, the costs associated with the transactions and services undertaken on behalf of the client. When providing investment advice, the investment firm shall specify how the advice given meets the personal characteristics of the client.

*Amendment*

5. The client must receive from the investment firm adequate reports ***in writing*** on the service provided to its clients. These reports shall include periodic communications to clients, taking into account the type and the complexity of financial instruments involved and the nature of the service provided to the client and shall include, where applicable, the costs associated with the transactions and services undertaken on behalf of the client. When providing investment advice, the investment firm shall specify how the advice given meets the personal characteristics of the client.

Or. en

**Amendment 834**  
**Herbert Dorfmann**

**Proposal for a directive**  
**Article 25 – paragraph 5 a (new)**

*Text proposed by the Commission*

*Amendment*

***5 a. Taking into account the type and complexity of financial instruments and the nature of the service involved, Member States shall allow investment firms to provide yearly communications to clients by a standardized form.***

Or. en

**Amendment 835**

**Olle Schmidt**

on behalf of the ALDE Group

**Proposal for a directive**

**Article 25 – paragraph 6 – introductory part**

*Text proposed by the Commission*

*Amendment*

***6. The Commission shall be empowered to adopt by means of delegated acts in accordance with Article 94*** measures to ensure that investment firms comply with the principles set out therein when providing investment or ancillary services to their clients.

***6. ESMA shall develop draft regulatory technical standards to specify the*** measures to ensure that investment firms comply with the principles set out therein when providing investment or ancillary services to their clients.

***ESMA shall submit those draft regulatory technical standards to the Commission by [...]\****

***Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.***

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***\*OJ please insert date: ...***

Or. en

*Justification*

*This is a technical issue which should therefore be undertaken by ESMA.*

**Amendment 836**

**Jürgen Klute**

**Proposal for a directive**

**Article 25 – paragraph 6 a (new)**

*Text proposed by the Commission*

*Amendment*

***6 a. When investment advice is given to a client and related to this advice any kind of inducement is provided to the advisor, the advisor shall inform each client regularly, but at least once a year, of the kind and volume of inducement he received for the investment advice and the respective orders related to the respective client.***

Or. en

**Amendment 837**

**Astrid Lulling**

**Proposal for a directive**

**Article 25 – paragraph 7**

*Text proposed by the Commission*

*Amendment*

7. ESMA shall develop by [] at the latest, and update periodically, ***guidelines*** for the assessment of financial instruments ***incorporating*** a structure ***which*** makes it ***difficult*** for the ***client*** to ***understand*** the risk ***involved in accordance with*** paragraph 3 (a).

7. ESMA shall develop by [***18 months***] at the latest, and update periodically, ***technical standards*** for the assessment of financial instruments ***referred to in paragraph 3 that embed derivatives or incorporate*** a structure ***that*** makes it ***highly complex*** for a retail investor to ***understand, to determine which among those could fall under the scope of the regime referred to in that paragraph with the exception of UCITS. In its assessment, ESMA shall take into account whether***

*complexity in each of these products reduces risk to investors, as compared to products in paragraph 3.*

Or. en

#### *Justification*

*ESMA shall be able to update the list of products under 25.3 on an appropriate basis taking into account risk criteria. Products listed above are subject to specific EU regulations. Changes to the UCITS regulation shall be introduced under their specific regime soon under review. In addition complexity does not always increase risks.*

#### **Amendment 838**

**Alfredo Pallone**

#### **Proposal for a directive Article 25 – paragraph 7**

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

7. ESMA shall develop by [] at the latest, and update periodically, **guidelines** for the assessment of financial instruments incorporating a structure which makes **it** difficult for the client to understand the **risk** involved in accordance with paragraph 3 (a).

##### *Amendment*

7. ESMA shall develop by [] at the latest, and update periodically, **technical standards** for the assessment of financial instruments **embedding a derivative**, incorporating a structure **or being illiquid so as to determine** which **among these products could fall under the scope of paragraph 3. In its assessment, ESMA shall take into account whether complexity and/or illiquidity in each of these products** makes difficult for the client to understand the **risks** involved in accordance with paragraph 3 (a).

Or. en

#### **Amendment 839**

**Diogo Feio**

#### **Proposal for a directive Article 25 – paragraph 7**



*Text proposed by the Commission*

7. ESMA shall develop by [] at the latest, and update periodically, guidelines for the assessment of financial instruments incorporating a structure which makes it difficult for the client to understand the risk involved in accordance with paragraph 3 (a).

*Amendment*

7. ESMA shall develop by [] at the latest, and update periodically, guidelines for the assessment of financial instruments incorporating a structure which makes it difficult for the client to understand the risk involved in accordance with paragraph 3 (a) ***and of UCITS based on complex portfolio management techniques.***

Or. en

**Amendment 840**  
**Pervenche Berès**

**Proposal for a directive**  
**Article 25 – paragraph 7 a (new)**

*Text proposed by the Commission*

*Amendment*

***7a. Investment firms shall comply with the provisions of the regulation on packaged retail investment products.***

Or. fr

**Amendment 841**  
**Olle Ludvigsson**

**Proposal for a directive**  
**Article 25 a (new)**

*Text proposed by the Commission*

*Amendment*

***Article 25 a***

***Recruitment policies and working conditions for frontline employees***

***In order to ensure that the provisions on investor protection in Articles 24 and 25 of this Directive are met, Member States shall require that investment firms***

*maintain appropriate recruitment policies and working conditions for those employees who give advice, provide services and sell financial products to clients. These employees shall:*

*(a) be at sufficiently high qualification and knowledge levels with regard to the services and products on offer,*

*(b) be continuously provided with adequate training and updated information on new services and products,*

*(c) be given the time and resources necessary to be able to deliver balanced and comprehensive advice and to provide clients with all relevant information,*

*(d) not be made subject to biased sales strategies, based for example on excessive sales targets or sales instructions pointing to a specific service or product, which create incentives to deviate from giving fair and honest recommendations in line with the best interests of clients.*

Or. en

**Amendment 842**

**Pervenche Berès**

**Proposal for a directive**

**Article 26 – paragraph 3 a (new)**

*Text proposed by the Commission*

*Amendment*

*Investment firms shall comply with the provisions of Regulation (EU) No .../... on packaged retail investment products.*

Or. fr

**Amendment 843**

**Olle Schmidt**

on behalf of the ALDE Group

**Proposal for a directive**  
**Article 26 a (new)**

*Text proposed by the Commission*

*Amendment*

**Article 26 a**

***Minimum competence requirements***

***1. Member States shall ensure that the staff of investment firms possess an appropriate level of knowledge and competence in relation to investment services or, where appropriate, ancillary services in order to satisfy the requirements of Article 24 of this Directive.***

***2. Member States shall ensure that the appropriate level of knowledge and competence is determined on the basis of qualifications they recognise or experience.***

***3. Member States shall ensure that investment firms provide sufficient and appropriate training to their staff to ensure that these provisions are complied with.***

***4. Member States shall make public the criteria they have established in order for investment firms' staff to meet their competence requirements. Such criteria shall include a list of any qualifications they recognise.***

***5. The Commission shall be empowered to adopt by means of delegated acts in accordance with Article 94 measures to specify the requirements provided in paragraphs 1 and 2, and in particular, the necessary requirements for appropriate knowledge and competence.***

Or. en

### *Justification*

*A sufficient level of qualifications must be ensured for staff providing investment services. Continuous training and competence development must be the responsibility of the company. In the Commission proposal for Directive on Credit Agreements Relating to Residential Property 2011/0062(COD), a similar formulation is suggested. Given the complexity of investment products, the introduction of qualification requirements is even more relevant in the MiFID directive.*

#### **Amendment 844**

**Pascal Canfin**

on behalf of the Verts/ALE Group

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

#### **Article 27 – paragraph 1**

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

1. Member States shall require that investment firms take all **reasonable** steps to obtain, when executing orders, the best possible result **for their clients** taking into account price, costs, speed, likelihood of execution and settlement, size, nature or any other consideration relevant to the execution of the order. **Nevertheless, whenever there is a specific instruction from the client the investment firm shall execute the order following** the specific instruction.

##### *Amendment*

1. Member States shall require that investment firms **obtain, when executing orders, the best possible price.** **Nevertheless, whenever there is a specific instruction from the client the investment firm shall** take all **necessary** steps to obtain, when executing orders, the best possible result, taking into account price, costs, speed, likelihood of execution and settlement, size, nature or any other consideration relevant to the execution of the order, **taking into consideration** the specific instruction.

Or. en

### *Justification*

*Best execution principle has been highly ineffective so far.*

#### **Amendment 845**

**Kay Swinburne**

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

#### **Article 27 – paragraph 1**

*Text proposed by the Commission*

1. Member States shall require that investment firms take all reasonable steps to obtain, when executing orders, the best possible result for their clients taking into account price, costs, speed, likelihood of execution and settlement, size, nature or any other consideration relevant to the execution of the order. Nevertheless, whenever there is a specific instruction from the client the investment firm shall execute the order following the specific instruction.

*Amendment*

1. Member States shall require that investment firms take all reasonable steps to obtain, when executing orders, the best possible result for their clients taking into account price, costs, speed, likelihood of execution and settlement, size, nature or any other consideration relevant to the execution of the order. Nevertheless, whenever there is a specific instruction from the client the investment firm shall execute the order following the specific instruction. ***Following execution of a transaction on behalf of a client, the investment firm shall make available upon request, information on how the order was executed and upon which venue.***

Or. en

*Justification*

*In order to make the best execution requirements more meaningful to investors it is important that they are told how and where their transactions were executed should they ask for the information.*

**Amendment 846**

**Olle Schmidt**

on behalf of the ALDE Group

**Proposal for a directive**

**Article 27 – paragraph 2**

*Text proposed by the Commission*

2. Member States shall require that each execution venue makes available to the public, ***without any charges***, data relating to the quality of execution of transactions on that venue on at least an annual basis. Periodic reports shall include details about price, speed of execution and likelihood of

*Amendment*

2. Member States shall require that each execution venue makes available to the public ***on request*** data relating to the quality of execution of transactions on that venue on at least an annual basis. Periodic reports shall include details about price, speed of execution and likelihood of

execution for individual financial instruments.

execution for individual financial instruments.

Or. en

*Justification*

*There is a need to carefully consider the costs against the benefits for the clients to publish data. The venue must be able to charge those who want the data on request.*

**Amendment 847**

**Pascal Canfin**

on behalf of the Verts/ALE Group

**Proposal for a directive**

**Article 27 – paragraph 3 a (new)**

*Text proposed by the Commission*

*Amendment*

***3 a. An investment firm shall not receive any remuneration or advantage to route orders to a particular venue or any other trading arrangements and shall not put in place any arrangement which results in routing flows on a systematic basis to some venues or any other trading arrangements.***

Or. en

*Justification*

*Remuneration of order flows is in full contradiction with the principle of best execution.*

**Amendment 848**

**Pascal Canfin**

on behalf of the Verts/ALE Group

**Proposal for a directive**

**Article 27 – paragraph 4 – subparagraph 3**

*Text proposed by the Commission*

Member States shall require that, where the order execution policy provides for the possibility that client orders may be executed outside a regulated market, MTF or OTF, the investment firm shall, in particular, inform its clients about this possibility. Member States shall require that investment firms obtain the prior express consent of their clients before proceeding to execute their orders outside a regulated market MTF or OTF or an MTF. Investment firms *may* obtain this consent ***either in the form of a general agreement or in*** respect of individual transactions.

*Amendment*

Member States shall require that, where the order execution policy provides for the possibility that client orders may be executed outside a regulated market, MTF or OTF, the investment firm shall, in particular, inform its clients about this possibility. Member States shall require that investment firms obtain the prior express consent of their clients before proceeding to execute their orders outside a regulated market MTF or OTF or an MTF. Investment firms ***shall*** obtain this consent in respect of individual transactions. ***When executing orders outside of a regulated market or a MTF, an investment firm shall obtain the best possible price for their clients.***

Or. en

**Amendment 849**

**Sylvie Goulard**

**Proposal for a directive**

**Article 27 – paragraph 4 – subparagraph 3**

*Text proposed by the Commission*

Member States shall require that, where the order execution policy provides for the possibility that client orders may be executed outside a regulated market, ***MTF or OTF***, the investment firm shall, in particular, inform its clients about this possibility. Member States shall require that investment firms obtain the prior express consent of their clients before proceeding to execute their orders outside a regulated market ***MTF or OTF*** or an MTF. Investment firms may obtain this consent either in the form of a general agreement or in respect of individual transactions.

*Amendment*

Member States shall require that, where the order execution policy provides for the possibility that client orders may be executed outside a regulated market ***or MTF***, the investment firm shall, in particular, inform its clients about this possibility. Member States shall require that investment firms obtain the prior express consent of their clients before proceeding to execute their orders outside a regulated market or an MTF. Investment firms may obtain this consent either in the form of a general agreement or in respect of individual transactions.

**Amendment 850**

**Pascal Canfin**

on behalf of the Verts/ALE Group

**Proposal for a directive**

**Article 27 – paragraph 5 – subparagraph 1**

*Text proposed by the Commission*

Member States shall require investment firms to monitor the effectiveness of their order execution arrangements and execution policy in order to identify and, where appropriate, correct any deficiencies. In particular, they shall assess, on a regular basis, whether the execution venues included in the order execution policy provide for the best possible result for the client or whether they need to make changes to their execution arrangements. Member States shall require investment firms to notify clients of any material changes to their order execution arrangements or execution policy.

*Amendment*

Member States shall require investment firms to monitor the effectiveness of their order execution arrangements and execution policy in order to identify and, where appropriate, correct any deficiencies ***and transmit the result of this monitoring to the competent authority at least every three months***. In particular, they shall assess, on a regular basis, whether the execution venues included in the order execution policy provide for the best possible result for the client or whether they need to make changes to their execution arrangements. Member States shall require investment firms to notify clients of any material changes to their order execution arrangements or execution policy. ***Member States shall withdraw the authorisation of investment firms which order execution policy fails to ensure the best possible result for their clients on a regular and highly significant basis when executing orders outside of a regulated market or MTF.***

**Amendment 851**

**Arlene McCarthy**

**Proposal for a directive**

**Article 27 – paragraph 5 – subparagraph 2**



*Text proposed by the Commission*

Member States shall require investment firms to **summarize and** make public on **an annual** basis, for each class of financial instruments, the top five execution venues where they executed client orders in the preceding **year**.

*Amendment*

Member States shall require investment firms to make public on **a monthly** basis, for each class of financial instruments, the top five execution venues **in terms of trading volumes sent** where they executed client orders in the preceding **months, with data on execution quality, and potential price improvements received for the execution of these client orders on these execution venues. This data shall be calculated by independent third parties.**

Or. en

*Justification*

*It is important to have disclosure regimes on investment firms to make public for each class of financial instruments the top five execution venues where they execute client orders should be strengthened in terms of its frequency and data on the execution quality.*

**Amendment 852**

**Pascal Canfin**

on behalf of the Verts/ALE Group

**Proposal for a directive**

**Article 27 – paragraph 5 – subparagraph 2**

*Text proposed by the Commission*

Member States shall require investment firms to summarize and make public on an **annual** basis, for each class of financial instruments, the top five execution venues where they executed client orders in the preceding year.

*Amendment*

Member States shall require investment firms to summarize and make public on an **monthly** basis, for each class of financial instruments, the top five execution venues where they executed client orders in the preceding year. **These summaries shall include the criteria for the selection of venues and detail the effectiveness of their order execution arrangements and execution policy to ensure best execution to their clients.**

Or. en

### *Justification*

*Annual summary is not relevant for investors. Detail information shall be available to make it possible for investors to compare the quality of execution offered by different investment firms.*

#### **Amendment 853**

**Kay Swinburne**

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

#### **Article 27 – paragraph 5 – subparagraph 2**

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

Member States shall require investment firms to summarize and make public on an annual basis, for each class of financial instruments, the top five execution venues where they executed client orders in the preceding year.

##### *Amendment*

Member States shall require investment firms to summarize and make public on an annual basis, for each class of financial instruments, the top five execution venues where they executed client orders in the preceding year ***unless they have chosen in their best execution policy to only execute client orders on the primary market.***

Or. en

### *Justification*

*It must be made clear that it is still possible to only execute on the primary market so as not to impose additional burdens on small brokers.*

#### **Amendment 854**

**Olle Schmidt**

on behalf of the ALDE Group

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

#### **Article 27 – paragraph 5 – subparagraph 2**

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

Member States shall require investment firms to summarize and make public on ***an annual basis***, for each class of financial instruments, the top five execution venues where they executed client orders in the

##### *Amendment*

Member States shall require investment firms to summarize and make public on ***request***, for each class of financial instruments, the top five execution venues where they executed client orders in the

preceding year.

preceding year.

Or. en

*Justification*

*There is a need to carefully consider the costs against the benefits for the clients to publish data. The investment firm must be able to charge those who want the data on request.*

**Amendment 855**

**Pascal Canfin**

on behalf of the Verts/ALE Group

**Proposal for a directive**

**Article 27 – paragraph 6**

*Text proposed by the Commission*

6. Member States shall require investment firms to be able to demonstrate to their clients, at their request, that they have executed their orders in accordance with the firm's execution policy.

*Amendment*

6. Member States shall require investment firms to be able to demonstrate to their clients, at their request, that they have executed their orders in accordance with the firm's execution policy *and in accordance with this Directive.*  
*Investment firms shall, on request of a client, disclose to its client the identity of the venue to which the client's orders were routed for execution in the six months prior to the request, and the time of the transactions, if any, that resulted from such orders and the price and size of other transactions executed during the same period.*

Or. en

*Justification*

*Clients should be in a real position to check the quality of execution of their orders by the investment firm.*

**Amendment 856**

**Olle Schmidt**

on behalf of the ALDE Group

**Proposal for a directive**

**Article 27 – paragraph 7 – introductory part**

*Text proposed by the Commission*

*Amendment*

**7. The Commission** shall *be empowered* to *adopt delegated acts in accordance with Article 94 concerning:*

**7. ESMA** shall *develop draft regulatory technical standards* to *specify:*

Or. en

*Justification*

*It seems unnecessary for both the Commission and ESMA to work on similar issues. Since this issue is more technical than political, ESMA should undertake the work.*

**Amendment 857**

**Sven Giegold**

on behalf of the Verts/ALE Group

**Proposal for a directive**

**Article 27 a (new)**

*Text proposed by the Commission*

*Amendment*

**Article 27 a**

**Member States shall ensure that national competent authorities supervise the compliance of investment firms with the best execution provisions set in this Directive.**

Or. en

**Amendment 858**

**Sharon Bowles**

**Proposal for a directive**

**Article 28 – paragraph 3 – introductory part**

*Text proposed by the Commission*

*Amendment*

3. **The** Commission shall be empowered to adopt delegated acts in accordance with Article 94 concerning measures which define:

3. ***In order to ensure that measures for the protection of investors and fair and orderly functioning of markets take account of technical developments in financial markets, and to ensure the uniform application of paragraphs 1 and 2, the*** Commission shall be empowered to adopt delegated acts in accordance with Article 94 concerning measures which define:

Or. en

*Justification*

*Commission's original wording from MiFID I is reinserted, as it remains a key element to the directive.*

**Amendment 859**

**Olle Schmidt**

on behalf of the ALDE Group

**Proposal for a directive**

**Article 28 – paragraph 3 – introductory part**

*Text proposed by the Commission*

*Amendment*

3. **The Commission** shall ***be empowered to adopt delegated acts in accordance with Article 94 concerning measures which*** define:

3. ***ESMA*** shall ***develop draft regulatory technical standards to specify:***

Or. en

*Justification*

*This is a technical question, therefore ESMA is best placed to make proposals on this issue.*

**Amendment 860**

**Olle Schmidt**

on behalf of the ALDE Group

**Proposal for a directive**

**Article 28 – paragraph 3 – subparagraph 1 a and 1 b (new)**

*Text proposed by the Commission*

*Amendment*

***ESMA shall submit those draft regulatory technical standards to the Commission by [...]\*.***

***Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.***

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***\*OJ please insert date: ...***

Or. en

**Amendment 861**

**Ildikó Gáll-Pelcz, Werner Langen**

**Proposal for a directive**

**Article 29 – paragraph 2 – subparagraph 2**

*Text proposed by the Commission*

*Amendment*

Member States ***shall prohibit*** tied agents registered in their territory ***from handling*** clients' money and/or financial instruments.

Member States ***may allow, in accordance with Article 16(6), (8) and (9),*** tied agents registered in their territory ***to handle*** clients' money and/or financial instruments ***on behalf of and under the full responsibility of the investment firm of which they are acting within their territory or, in the case of a cross-border operation, in the territory of a Member State which allows a tied agent to handle clients' money, provided that the investment firm, for which the tied agent is acting, is authorised to handle clients' money.***

Or. en

## *Justification*

*MiFID 1 gave Member States an option to allow tied agents in their territory to handle clients' money and/or financial instruments if the agents are under the full responsibility of the investment firm for which they are acting. In the current proposal however COM proposed to delete this option. Several Member States have used this discretion for tied agents of investment firms which were handling client money as well, and they did not have any negative experience or complaints.*

### **Amendment 862**

**Sven Giegold**

on behalf of the Verts/ALE Group

### **Proposal for a directive**

### **Article 29 – paragraph 3 – subparagraph 1**

#### *Text proposed by the Commission*

3. *1* Tied agents shall be registered in the public register in the Member State ***where they are established***. ESMA shall publish on its website references or hyperlinks to the public registers established under this Article by the Member States that decide to allow investment firms to appoint tied agents.

#### *Amendment*

3. Tied agents shall be registered in the public register in the Member State. ESMA shall publish on its website references or hyperlinks to the public registers established under this Article by the Member States that decide to allow investment firms to appoint tied agents.

Or. en

### **Amendment 863**

**Robert Goebbels**

### **Proposal for a directive**

### **Article 29 – paragraph 3 – subparagraph 2**

#### *Text proposed by the Commission*

Member States shall ensure that tied agents are only admitted to the public register if it has been established that they ***are of sufficiently good repute and that they*** possess appropriate ***general, commercial and professional knowledge*** so as to be able to communicate accurately all relevant

#### *Amendment*

Member States shall ensure that tied agents are only admitted to the public register if it has been established that they possess ***an appropriate level of knowledge and competences based on recognised qualifications*** so as to be able to communicate accurately all relevant

information regarding the proposed service to the client or potential client.

information regarding the proposed service to the client or potential client.

Or. en

*Justification*

*Investment advice has an enormous impact on citizens' lives. As such tied agents should possess an appropriate level of qualifications to advise clients on how to invest their funds.*

**Amendment 864**

**Kay Swinburne**

**Proposal for a directive**

**Article 29 – paragraph 3 – subparagraph 2**

*Text proposed by the Commission*

Member States shall ensure that tied agents are only admitted to the public register if it has been established that they are of sufficiently good repute and that they possess appropriate **general, commercial** and **professional knowledge** so as to be able to communicate accurately all relevant information regarding the proposed service to the client or potential client.

*Amendment*

Member States shall ensure that tied agents are only admitted to the public register if it has been established that they are of sufficiently good repute and that they possess **an appropriate level of knowledge and competence based upon recognised qualifications** so as to be able to communicate accurately all relevant information regarding the proposed service to the client or potential client.

Or. en

*Justification*

*Each member states should have a minimum level of qualification expected from those selling financial products to retail clients, however this should be Member state specific due to the many differences in knowledge and experience of investors in each member state.*

**Amendment 865**

**Arlene McCarthy**

**Proposal for a directive**

**Article 29 – paragraph 3 – subparagraph 2**



*Text proposed by the Commission*

Member States shall ensure that tied agents are only admitted to the public register *if* it has been established that they are of sufficiently good repute and that they possess appropriate ***general, commercial and professional knowledge*** so as to be able to communicate accurately all relevant information regarding the proposed service to the client or potential client.

*Amendment*

Member States shall ensure that tied agents are only admitted to the public register ***once*** it has been established that they are of sufficiently good repute and that they possess ***an appropriate level of knowledge and competence based on recognised qualifications*** so as to be able to communicate accurately all relevant information regarding the proposed service to the client or potential client. ***Tied agents shall be required to undergo professional training on an ongoing basis to update and validate their knowledge and competence.***

Or. en

*Justification*

*Investment advice has an enormous impact on people's lives. As such tied agents should possess an appropriate level of qualifications to advise clients on how to invest their funds.*

**Amendment 866**

**Antolín Sánchez Presedo**

**Proposal for a directive**

**Article 29 – paragraph 3 – subparagraph 2**

*Text proposed by the Commission*

Member States shall ensure that tied agents are only admitted to the public register if it has been established that they are of sufficiently good repute and that they possess appropriate ***general, commercial and professional knowledge*** so as to be able to communicate accurately all relevant information regarding the proposed service to the client or potential client.

*Amendment*

Member States shall ensure that tied agents are only admitted to the public register if it has been established that they are of sufficiently good repute and that they possess appropriate ***level of knowledge and competences based on recognised qualifications*** so as to be able to communicate accurately all relevant information regarding the proposed service to the client or potential client.

Or. en

**Amendment 867**

**Sven Giegold**

on behalf of the Verts/ALE Group

**Proposal for a directive**

**Article 29 – paragraph 3 – subparagraph 2**

*Text proposed by the Commission*

Member States shall ensure that tied agents ***are only admitted to the public register if it has been established that they*** are of sufficiently good repute and that they possess appropriate general, commercial and professional knowledge so as to be able to communicate accurately all relevant information regarding the proposed service to the client or potential client.

*Amendment*

Member States shall ensure that tied agents are of sufficiently good repute and that they possess appropriate general, commercial and professional knowledge so as to be able to communicate accurately all relevant information regarding the proposed service to the client or potential client.

Or. en

**Amendment 868**

**Sven Giegold**

on behalf of the Verts/ALE Group

**Proposal for a directive**

**Article 29 – paragraph 3 – subparagraph 3**

*Text proposed by the Commission*

Member States ***may decide*** that investment firms ***can*** verify whether the tied agents which they have appointed are of sufficiently good repute and possess the knowledge as referred to in the third subparagraph.

*Amendment*

Member States ***shall ensure*** that investment firms verify whether the tied agents which they have appointed are of sufficiently good repute and possess the knowledge as referred to in the third subparagraph.

Or. en

**Amendment 869**

**Syed Kamall, Kay Swinburne**

**Proposal for a directive**

**Article 29 – paragraph 5 – subparagraphs 1 a and 1 b (new)**

*Text proposed by the Commission*

*Amendment*

***Investment firms shall provide full and complete information on their investment services and financial instruments to tied agents, to be updated on at least a quarterly basis with a maximum reporting delay of 60 days.***

***Tied agents shall be required to provide this information to the client or potential client in advance of receiving orders or placing financial instruments.***

Or. en

*Justification*

*To ensure investors are fully informed of potential conflicts of interests, it is vital that investment firms and tied agents are completely transparent about relationships between providers and agents.*

**Amendment 870**

**Olle Schmidt**

on behalf of the ALDE Group

**Proposal for a directive**

**Article 30 – paragraph 1 – subparagraph 1**

*Text proposed by the Commission*

*Amendment*

Member States shall ensure that investment firms authorised to execute orders on behalf of clients and/or to deal on own account and/or to receive and transmit orders, may bring about or enter into transactions with eligible counterparties without being obliged to comply with the obligations under Articles 24 (***with the exception of paragraph 3***), 25 (***with the exception of paragraph 5***), 27 and 28(1) in respect of those transactions or in respect of any ancillary service directly

Member States shall ensure that investment firms authorised to execute orders on behalf of clients and/or to deal on own account and/or to receive and transmit orders, may bring about or enter into transactions with eligible counterparties without being obliged to comply with the obligations under Articles 24, 25, 27 and 28(1) in respect of those transactions or in respect of any ancillary service directly related to those transactions.

related to those transactions.

Or. en

### *Justification*

*The proposal extends the scope of information that must be provided to eligible counterparties (Articles 24(3) and 25(5)). Retail clients should enjoy the highest level of protection, while eligible counterparties are capable to take care of their own interests, for example be able to decide what information etc. they desire, and the references to Articles 24 and 25 should therefore be excluded in Article 30 (which means that deletions should be made also in Article 25(6)(c)).*

## **Amendment 871**

**Pablo Zalba Bidegain**

### **Proposal for a directive**

#### **Article 30 – paragraph 1 – subparagraph 1**

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

Member States shall ensure that investment firms authorised to execute orders on behalf of clients and/or to deal on own account and/or to receive and transmit orders, may bring about or enter into transactions with eligible counterparties without being obliged to comply with the obligations under Articles 24 (***with the exception of paragraph 3***), 25 (***with the exception of paragraph 5***), 27 and 28(1) in respect of those transactions or in respect of any ancillary service directly related to those transactions.

##### *Amendment*

Member States shall ensure that investment firms authorised to execute orders on behalf of clients and/or to deal on own account and/or to receive and transmit orders, may bring about or enter into transactions with eligible counterparties without being obliged to comply with the obligations under Articles 24, 25, 27 and 28(1) in respect of those transactions or in respect of any ancillary service directly related to those transactions.

Or. en

### *Justification*

*Eligible counterparties are authorised to sell (or invest on behalf of third parties) and give financial advice by virtue of their knowledge, experience and skills, which have been previously assessed by their supervisors in order to give such authorisation. Therefore, it is completely unreasonable to require the provision of the information under Articles 24.3 and 30 when ECPs are dealing with other ECPs. Moreover, if ECPs consider that they need such*

information to “understand the nature and risks of the investment service and of the specific type of financial instrument that is being offered”, they are perfectly aware of their right to request to be treated as retail investors.

## **Amendment 872**

**Sven Giegold**

on behalf of the Verts/ALE Group

### **Proposal for a directive**

#### **Article 30 – paragraph 1 – subparagraph 1**

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

Member States shall ensure that investment firms authorised to execute orders on behalf of clients and/or to deal on own account and/or to receive and transmit orders, may bring about or enter into transactions with eligible counterparties without being obliged to comply with the obligations under Articles 24 (with the exception of paragraph 3), 25 (with the exception of paragraph 5) , 27 and 28(1) in respect of those transactions or in respect of any ancillary service directly related to those transactions.

##### *Amendment*

Member States shall ensure that investment firms authorised to execute orders on behalf of clients and/or to deal on own account and/or to receive and transmit orders, may bring about or enter into transactions with eligible counterparties without being obliged to comply with the obligations under Articles 24 (with the exception of paragraph 3, **5, 6, 7**), 25 (with the exception of paragraph 5) , 27 and 28(1) in respect of those transactions or in respect of any ancillary service directly related to those transactions.

Or. en

## **Amendment 873**

**Thomas Mann**

### **Proposal for a directive**

#### **Article 30 – paragraph 1 – subparagraph 1**

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

Member States shall ensure that investment firms authorised to execute orders on behalf of clients and/or to deal on own account and/or to receive and transmit orders, may bring about or enter into transactions with eligible counterparties without being obliged to comply with the

##### *Amendment*

Member States shall ensure that investment firms authorised to execute orders on behalf of clients and/or to deal on own account and/or to receive and transmit orders **and/or providing portfolio management**, may bring about or enter into transactions with eligible

obligations under Articles 24 (with the exception of paragraph 3), 25 (with the exception of paragraph 5) , 27 and 28(1) in respect of those transactions or in respect of any ancillary service directly related to those transactions.

counterparties without being obliged to comply with the obligations under Articles 24 (with the exception of paragraph 3), 25 (with the exception of paragraph 5) , 27 and 28(1) in respect of those transactions or in respect of any ancillary service directly related to those transactions.

Or. en

### *Justification*

*Investment firms providing financial portfolio management services are prohibited from accepting any monetary benefits paid by a third party for such services (except when received directly from investors). The obligation quoted fails to take into consideration that retail and professional clients generally require a higher level of protection compared to eligible counterparties. Against this background, the scope of this regulation should be limited to situations where financial portfolio management services are rendered to retail and professional clients.*

## **Amendment 874** **Jürgen Klute**

### **Proposal for a directive** **Article 30 – paragraph 2 – subparagraph 1**

#### *Text proposed by the Commission*

Member States shall recognise as eligible counterparties for the purposes of this Article investment firms, credit institutions, insurance companies, UCITS and their management companies, pension funds and their management companies, other financial institutions authorised or regulated under Union legislation or the national law of a Member State, undertakings exempted from the application of this Directive under Article 2(1)(k) , national governments and their corresponding offices including public bodies that deal with public debt at national level , central banks and supranational organisations.

#### *Amendment*

Member States shall recognise as eligible counterparties for the purposes of this Article investment firms, credit institutions, insurance companies, UCITS and their management companies, pension funds and their management companies, other financial institutions authorised or regulated under Union legislation or the national law of a Member State, undertakings exempted from the application of this Directive under Article 2(1)(k), national governments and their corresponding offices including public bodies that deal with public debt at national level, central banks and supranational organisations. ***However, municipal authorities and regional administrative***

*bodies are exempt.*

Or. en

## **Amendment 875**

**Kay Swinburne**

### **Proposal for a directive**

#### **Article 30 – paragraph 2 – subparagraph 2**

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

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

##### *Amendment*

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

Or. en

##### *Justification*

*When an institutional investor is acting on behalf of one of their clients, they are required to offer their clients best execution etc, yet as they are eligible counterparties the broker they are acting through does not have any obligation to provide them with best execution, meaning they cannot fulfil their obligation to their client. MiFID I allowed for a request to be treated as a professional client instead of an eligible counterparty, but this has not been a successful approach as the requests have not been taken into account in many circumstances. As such, this should be changed to a notification procedure.*

## **Amendment 876**

**Olle Schmidt**

on behalf of the ALDE Group

### **Proposal for a directive**

#### **Article 30 – paragraph 5**

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

***5. The Commission shall be empowered to***

##### *Amendment*

***deleted***

*adopt delegated acts in accordance with Article 94 to specify measures which define:*

*(a) the procedures for requesting treatment as clients under paragraph 2;*

*(b) the procedures for obtaining the express confirmation from prospective counterparties under paragraph 3;*

*(c) the predetermined proportionate requirements, including quantitative thresholds that would allow an undertaking to be considered as an eligible counterparty under paragraph 3.*

Or. en

#### *Justification*

*It is not necessary to specify procedures for meeting obligations provided for in EU law and scope should be allowed in implementation for Member States to cater for national idiosyncrasies.*

**Amendment 877**  
**Kay Swinburne**

**Proposal for a directive**  
**Article 30 – paragraph 5 – point a**

*Text proposed by the Commission*

*Amendment*

(a) the procedures for ***requesting treatment*** as clients under paragraph 2;

(a) the procedures for ***notifying a broker of their right to be treated*** as clients under paragraph 2;

Or. en

#### *Justification*

*When an institutional investor is acting on behalf of one of their clients, they are required to offer their clients best execution etc, yet as they are eligible counterparties the broker they are acting through does not have any obligation to provide them with best execution, meaning they cannot fulfil their obligation to their client. MiFID I allowed for a request to be treated as a professional client instead of an eligible counterparty, but this has not been a successful*



*approach as the requests have not been taken into account in many circumstances. As such, this should be changed to a notification procedure.*

## **Amendment 878**

**Sylvie Goulard**

### **Proposal for a directive**

#### **Article 31 – title**

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

Monitoring of compliance with the rules of the MTF **or the OTF** and with other legal obligations

##### *Amendment*

Monitoring of compliance with the rules of the MTF and with other legal obligations

Or. en

## **Amendment 879**

**Astrid Lulling**

### **Proposal for a directive**

#### **Article 31 – paragraph 1**

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

1. Member States shall require that investment firms **and** market operators operating **an** MTF or OTF establish and maintain **effective** arrangements and procedures, relevant to the MTF or OTF, for the regular monitoring of the compliance by its users or clients with their rules. Investment firms and market operators operating **an** MTF or an OTF shall monitor **the** transactions **undertaken** by their users or clients under their systems in order to identify breaches of those rules, disorderly trading conditions or conduct that may involve market abuse.

##### *Amendment*

1. Member States shall require that investment firms **or** market operators operating **a** MTF or **an** OTF establish and maintain arrangements and procedures, relevant to the MTF or OTF, for the regular monitoring of the compliance by its users or clients with their rules. Investment firms and market operators operating **a** MTF or an OTF shall monitor **orders placed and** transactions **executed and order cancelled** by their users or clients under their systems in order to identify breaches of those rules, disorderly trading conditions or conduct that may involve market abuse.

Or. en

### *Justification*

*This amendment is introduced to ensure that besides Regulated Markets (article 51.3) MTF and OTF operators are also monitoring the ratio of orders placed to cancelled. The most appropriate place to set a ratio shall be the Market Abuse regulation in article 8.3.C under a new indent “-cancellation of orders above a daily ratio of 30% of orders executed to orders placed, unless explained in writing to the authority”*

#### **Amendment 880**

**Pascal Canfin**

on behalf of the Verts/ALE Group

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

#### **Article 31 – paragraph 1**

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

1. Member States shall require that investment firms and market operators operating an MTF or OTF establish and maintain effective arrangements and procedures, relevant to the MTF or OTF, for the regular monitoring of the compliance by its users or clients with their rules. Investment firms and market operators operating an MTF or an OTF shall monitor the transactions undertaken by their users or clients under their systems in order to identify breaches of those rules, disorderly trading conditions or conduct that may involve market abuse.

##### *Amendment*

1. Member States shall require that investment firms and market operators operating an MTF or OTF establish and maintain effective arrangements and procedures, relevant to the MTF or OTF, for the regular monitoring of the compliance by its users or clients with their rules. Investment firms and market operators operating an MTF or an OTF shall monitor the transactions undertaken by their users or clients under their systems in order to identify breaches of those rules, disorderly trading conditions or conduct that may involve market abuse. ***Member States shall ensure that market operators operating an MTF or an OTF have sufficient resources in place to ensure an effective monitoring.***

Or. en

#### **Amendment 881**

**Sylvie Goulard**

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

#### **Article 31 – paragraph 1**

*Text proposed by the Commission*

1. Member States shall require that investment firms and market operators operating an MTF **or OTF** establish and maintain effective arrangements and procedures, relevant to the MTF **or OTF**, for the regular monitoring of the compliance by its users or clients with their rules. Investment firms and market operators operating an MTF **or an OTF** shall monitor the transactions undertaken by their users or clients under their systems in order to identify breaches of those rules, disorderly trading conditions or conduct that may involve market abuse.

*Amendment*

1. Member States shall require that investment firms and market operators operating an MTF establish and maintain effective arrangements and procedures, relevant to the MTF, for the regular monitoring of the compliance by its users or clients with their rules. Investment firms and market operators operating an MTF shall monitor the transactions undertaken by their users or clients under their systems in order to identify breaches of those rules, disorderly trading conditions or conduct that may involve market abuse.

Or. en

**Amendment 882**  
**Jürgen Klute**

**Proposal for a directive**  
**Article 31 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***1 a. Member States shall ensure that investment firms and market operators, operating a trading venue, record their transaction to ensure identification of the client ("trade marking").***

Or. en

**Amendment 883**  
**Sylvie Goulard**

**Proposal for a directive**  
**Article 31 – paragraph 2**

*Text proposed by the Commission*

2. Member States shall require investment firms and market operators operating an MTF **or an OTF** to report significant breaches of its rules or disorderly trading conditions or conduct that may involve market abuse to the competent authority. Member States shall also require investment firms and market operators operating an MTF **or an OTF** to supply the relevant information without delay to the authority competent for the investigation and prosecution of market abuse and to provide full assistance to the latter in investigating and prosecuting market abuse occurring on or through its systems.

*Amendment*

2. Member States shall require investment firms and market operators operating an MTF to report significant breaches of its rules or disorderly trading conditions or conduct that may involve market abuse to the competent authority. Member States shall also require investment firms and market operators operating an MTF to supply the relevant information without delay to the authority competent for the investigation and prosecution of market abuse and to provide full assistance to the latter in investigating and prosecuting market abuse occurring on or through its systems.

Or. en

**Amendment 884**

**Pascal Canfin**

on behalf of the Verts/ALE Group

**Proposal for a directive**

**Article 31 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***2 a. ESMA shall develop draft regulatory technical standards to determine the resources that have to be put in place to ensure an effective monitoring of a MTF or OTF.***

***ESMA shall submit those draft regulatory technical standards to the Commission by [...]\****

***Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1095/2010.***

---

*\*OJ please insert date: ...*

Or. en

*Justification*

*Effective monitoring impose that there is no competition between markets in that respect.*

**Amendment 885**

**Pascal Canfin**

on behalf of the Verts/ALE Group

**Proposal for a directive**

**Article 32 – title**

*Text proposed by the Commission*

Suspension and removal of instruments  
from trading on an MTF

*Amendment*

Suspension and removal of instruments  
from trading on an MTF *or an OTF*

Or. en

**Amendment 886**

**Olle Schmidt**

**Proposal for a directive**

**Article 32 – paragraph 1**

*Text proposed by the Commission*

1. Member States shall require that an investment firm or a market operator operating an MTF *that suspends or removes* from trading a financial instrument makes public this decision, communicates it to regulated markets, other MTFs and OTFs trading the same financial instrument and communicates relevant information to the competent authority. The competent authority shall inform the competent authorities of the other Member States. Member States shall

*Amendment*

1. Member States shall require that an investment firm or a market operator operating an MTF *to suspend or remove* from trading a financial instrument *following the decision of the regulated market where the instrument was primarily admitted to trading and when the reason for the suspension is of global nature*, makes public this decision, communicates it to regulated markets, other MTFs and OTFs trading the same financial instrument and communicates

require ***that*** other regulated markets, MTFs and OTFs ***trading the same financial instrument shall also*** suspend or remove ***that*** financial instrument from trading ***where the suspension or removal is due to the non-disclosure of information about the issuer or financial instrument except where this could cause significant damage to the investors' interests or the orderly functioning of the market. Member States shall require the other regulated markets, MTFs and OTFs to communicate their decision*** to their competent authority and all regulated markets, MTFs and OTFs trading the same financial instrument, including an explanation ***if*** the decision was not to suspend or remove the financial instrument from trading.

relevant information to the competent authority. The competent authority shall inform the competent authorities of the other Member States. Member States shall require ***the*** other regulated markets, MTFs and OTFs ***to communicate their decision not to*** suspend or remove ***the*** financial instrument from trading to their competent authority and all regulated markets, MTFs and OTFs trading the same financial instrument, including an explanation ***why*** the decision was not to suspend or remove the financial instrument from trading.

Or. en

#### *Justification*

*With regard to the balanced provisions of the 'Transparency Directive', MiFID II should not foresee implicit extended reporting duties at the expense of issuers which are also traded on MTFs or OTFs. Given the provisions of the 'Transparency Directive' the "non-disclosure of information about the issuer" can not be assessed by MTFs or OTFs as they are not aimed to be receivers of the corporate disclosure.*

#### **Amendment 887**

**Pascal Canfin**

on behalf of the Verts/ALE Group

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

#### **Article 32 – paragraph 1**

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

1. Member States shall require that an investment firm or a market operator operating an MTF that suspends or removes from trading a financial instrument makes public this decision, communicates it to regulated markets, other MTFs and OTFs trading the same

##### *Amendment*

1. ***Without prejudice to the right of the competent authority under Article 72(1)(d) and (e) to demand suspension or removal of an instrument from trading, the operator of a regulated market, an MTF or an OTF may suspend or remove from trading a financial instrument which***

financial instrument and communicates relevant information to the competent authority. The competent authority shall inform the competent authorities of the other Member States. **Member States** shall require that other regulated markets, MTFs and OTFs trading the same financial instrument shall also suspend or remove that financial instrument from trading **where the suspension or removal is due to the non-disclosure of information about the issuer or financial instrument except where this could cause significant damage to the investors' interests or the orderly functioning of the market.** Member States shall require the other regulated markets, MTFs and OTFs to communicate their decision to their competent authority and all regulated markets, MTFs and OTFs trading the same financial instrument, including an explanation if the decision was not to suspend or remove the financial instrument from trading.

***no longer complies with the rules of the regulated market, the MTF, or OTF unless such a step would be likely to cause significant damage to the investors' interests or the orderly functioning of the market.***

Member States shall require that an investment firm or a market operator operating **a regulated market, an MTF, or an OTF** that suspends or removes from trading a financial instrument makes public this decision, communicates it to regulated markets, other MTFs and OTFs trading the same financial instrument and communicates relevant information to the competent authority. The competent authority shall inform the competent authorities of the other Member States. **Where the suspension or removal is due to the non-disclosure of information about the issuer or financial instrument, the relevant competent authority as defined in point (7) of Article 2 of Commission Regulation (EC) No 1287/2006** shall require that other regulated markets, MTFs and OTFs **or any other trading arrangement trading** the same financial instrument shall also suspend or remove **immediately** that financial instrument from trading. Member States shall require the

other regulated markets, MTFs and OTFs to communicate their decision to their competent authority and all regulated markets, MTFs and OTFs trading the same financial instrument, including an explanation if the decision was not to suspend or remove the financial instrument from trading.

Or. en

### *Justification*

*No justification to have different rules for regulated market, MTF, OTF in that respect. Relevant competent authority for the financial instrument shall have the power to suspend or remove the financial instrument from trading for all trading venues.*

## **Amendment 888** **Sylvie Goulard**

### **Proposal for a directive** **Article 32 – paragraph 1**

#### *Text proposed by the Commission*

1. Member States shall require that an investment firm or a market operator operating an MTF that suspends or removes from trading a financial instrument makes public this decision, communicates it to regulated markets, other MTFs **and OTFs** trading the same financial instrument and communicates relevant information to the competent authority. The competent authority shall inform the competent authorities of the other Member States. Member States shall require that other regulated markets, MTFs **and OTFs** trading the same financial instrument shall also suspend or remove that financial instrument from trading where the suspension or removal is due to the non-disclosure of information about the issuer or financial instrument except where this could cause significant damage to the

#### *Amendment*

1. Member States shall require that an investment firm or a market operator operating an MTF that suspends or removes from trading a financial instrument makes public this decision, communicates it to regulated markets, other MTFs trading the same financial instrument and communicates relevant information to the competent authority. The competent authority shall inform the competent authorities of the other Member States. Member States shall require that other regulated markets, MTFs trading the same financial instrument shall also suspend or remove that financial instrument from trading where the suspension or removal is due to the non-disclosure of information about the issuer or financial instrument except where this could cause significant damage to the



investors' interests or the orderly functioning of the market. Member States shall require the other regulated markets, MTFs **and OTFs** to communicate their decision to their competent authority and all regulated markets, MTFs **and OTFs** trading the same financial instrument, including an explanation if the decision was not to suspend or remove the financial instrument from trading.

investors' interests or the orderly functioning of the market. Member States shall require the other regulated markets, MTFs to communicate their decision to their competent authority and all regulated markets, MTFs trading the same financial instrument, including an explanation if the decision was not to suspend or remove the financial instrument from trading.

Or. en

#### **Amendment 889**

**Olle Schmidt**

on behalf of the ALDE Group

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

#### **Article 32 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

**2. ESMA shall develop draft implementing technical standards to determine format and timing of the communications and the publication referred to in paragraph 1.**

**deleted**

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

**ESMA shall submit those draft implementing technical standards to the Commission by [XXX].**

Or. en

#### *Justification*

*In view of the workload of ESMA, a degree of prioritisation should be provided. Standards on the format and timing of a communication do not seem necessary.*

**Amendment 890**  
**Kay Swinburne**

**Proposal for a directive**  
**Article 32 – paragraph 3**

*Text proposed by the Commission*

3. ***The Commission*** shall ***be empowered to adopt delegated acts in accordance with Article 94 to*** list the specific situations constituting significant damage to the investors' interests and the orderly functioning of the internal market referred to in paragraphs 1 and 2 and to determine issues relating to the non-disclosure of information about the issuer or financial instrument as referred to in paragraph 1.

*Amendment*

3. ***ESMA*** shall ***develop draft regulatory technical standards*** to list the specific situations constituting significant damage to the investors' interests and the orderly functioning of the internal market referred to in paragraphs 1 and 2 and to determine issues relating to the non-disclosure of information about the issuer or financial instrument as referred to in paragraph 1.

***ESMA shall submit those draft regulatory technical standards to the Commission by [...]\****.

***Power is delegated to the Commission to adopt the regulatory technical standards referred to in first subparagraph in accordance with Articles 10-14 of Regulation (EU) No 1095/2010.***

---

***\*OJ please insert date 12 months after entry into force of this Directive.***

Or. en

**Amendment 891**  
**Olle Schmidt**  
on behalf of the ALDE Group

**Proposal for a directive**  
**Article 32 – paragraph 3**

*Text proposed by the Commission*

3. ***The Commission*** shall ***be empowered to adopt delegated acts in accordance with Article 94 to*** list the specific situations

*Amendment*

3. ***ESMA*** shall ***develop draft regulatory technical standards*** to list the specific situations constituting significant damage

constituting significant damage to the investors' interests and the orderly functioning of the internal market referred to in paragraphs 1 and 2 and to determine issues relating to the non-disclosure of information about the issuer or financial instrument as referred to in paragraph 1.

to the investors' interests and the orderly functioning of the internal market referred to in paragraphs 1 and 2 and to determine issues relating to the non-disclosure of information about the issuer or financial instrument as referred to in paragraph 1.

***ESMA shall submit those draft regulatory technical standards to the Commission by [...]\****

***Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.***

---

***\*OJ please insert date: ...***

Or. en

#### *Justification*

*The question of the specific situations which might cause harm to an investor's interests is largely a technical one, therefore ESMA is best placed to make proposals on this issue.*

**Amendment 892**  
**Pervenche Berès**

**Proposal for a directive**  
**Article 32 – paragraph 3 – subparagraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***Within one month following receipt of the notification referred to in Article 32(3) of Regulation (EU) No .../... [MiFIR], ESMA may adopt individual decisions requiring competent authorities to take the necessary action to respond to adverse developments which may seriously jeopardise the orderly functioning and integrity of financial markets or the stability of the whole or may seriously threaten the investor protection with***

*respect to its own competence in emergency situations. Furthermore, ESMA may extend the implementation of the individual decisions to other national competent authorities.*

Or. en

**Amendment 893**

**Sylvie Goulard**

**Proposal for a directive**

**Article 33**

*Text proposed by the Commission*

*Amendment*

**[...]**

***Article deleted***

Or. en

**Amendment 894**

**Olle Schmidt**

on behalf of the ALDE Group

**Proposal for a directive**

**Article 33 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

***2. ESMA shall develop draft implementing technical standards determining format and timing of the communications and the publication referred to in paragraph 1.***

***deleted***

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

***ESMA shall submit those draft implementing technical standards to the Commission by [XXX].***

*Justification*

*In view of the workload of ESMA, a degree of prioritisation should be provided. Standards on the format and timing of a communication do not seem necessary.*

**Amendment 895**

**Sylvie Goulard**

**Proposal for a directive**

**Article 34 – title**

*Text proposed by the Commission*

Cooperation and exchange of information  
for MTFs *and OTFs*

*Amendment*

Cooperation and exchange of information  
for MTFs

Or. en

**Amendment 896**

**Sylvie Goulard**

**Proposal for a directive**

**Article 34 – paragraph 1 – introductory part**

*Text proposed by the Commission*

1. Member States shall require that an investment firm or a market operator operating an MTF *or an OTF* immediately informs investment firms and market operators of other MTFs, *OTFs* and regulated markets of:

*Amendment*

1. Member States shall require that an investment firm or a market operator operating an MTF immediately informs investment firms and market operators of other MTFs and regulated markets of:

Or. en

**Amendment 897**

**Olle Schmidt**

on behalf of the ALDE Group

**Proposal for a directive**  
**Article 34 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***1 a. Member States shall require that an investment firm or a market operator operating a regulated market, an MTF or an OTF cooperates with the regulated market where a security is admitted to trading and which is designated to carry out cross-market surveillance in accordance with Article 11 [MAR].***

Or. en

*Justification*

*As the opportunities to abuse and manipulate markets with the use of cross-market strategies have increased with fragmentation of markets, the surveillance functions of these markets need to cooperate to ensure that also such cross-market strategies can be detected. The primary listing venue has the best opportunities to take the overall responsibility, due to it being closer to the information flow of the issuer. The secondary markets need to be required to cooperate*

**Amendment 898**  
**Sirpa Pietikäinen**

**Proposal for a directive**  
**Article 34 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***1 a. Member States shall require that an investment firm or a market operator operating a regulated market, or an MTF cooperate with the designated competent authority or a third party to whom the task of overall real-time surveillance has been delegated, in order for it to carry out its obligations in accordance with [Article 17a (new) MAR].***

Or. en

### *Justification*

*As the opportunities to abuse and manipulate markets with the use of cross-market strategies have increased with fragmentation of markets, the competent authorities and surveillance functions of these markets need to cooperate to ensure that such cross-market strategies can be detected. The secondary markets need to be required to cooperate.*

**Amendment 899**  
**Gunnar Hökmark**

**Proposal for a directive**  
**Article 34 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***1 a. Member States shall require that an investment firm or a market operator operating a regulated market, an MTF or an OTF, that are secondary trading venues to a specific share, cooperate with the primary listing venue of this share, in order for it to carry out its obligations in accordance with [Article 11 MAR].***

Or. en

### *Justification*

*With the fragmentation of trading occurring as a result of the implementation of MiFID, opportunities to abuse and manipulate markets with the use of cross-market strategies have increased. There is no real-time surveillance function looking at the overall trading in one share, not the trading venues, nor the competent authorities. This loophole needs to be fixed. The surveillance function of the primary listing venue should do this job as it is closest to the information-flow of the issuer.*

**Amendment 900**  
**Olle Schmidt**  
on behalf of the ALDE Group

**Proposal for a directive**  
**Article 34 – paragraph 2 – subparagraph 1**

*Text proposed by the Commission*

ESMA shall develop draft regulatory technical standards to determine the specific circumstances that trigger an information requirement as referred to in paragraph 1.

*Amendment*

ESMA shall develop draft regulatory technical standards to determine the specific circumstances that trigger an information requirement as referred to in paragraph 1 ***and the specific requirements and conditions for the cooperation between primary and secondary listing venues referred to in paragraph 1a.***

Or. en

*Justification*

*ESMA should develop guidelines for implementing rules on surveillance cooperation between different trading venues.*

**Amendment 901**  
**Sirpa Pietikäinen**

**Proposal for a directive**  
**Article 34 – paragraph 2 – subparagraph 1**

*Text proposed by the Commission*

ESMA shall develop draft regulatory technical standards to determine the specific circumstances that trigger an information requirement as referred to in paragraph 1.

*Amendment*

ESMA shall develop draft regulatory technical standards to determine the specific circumstances that trigger an information requirement as referred to in paragraph 1 ***and the specific requirements and conditions for the cooperation referred to in paragraph 1a.***

Or. en

*Justification*

*As the opportunities to abuse and manipulate markets with the use of cross-market strategies have increased with fragmentation of markets, the competent authorities and surveillance functions of these markets need to cooperate to ensure that such cross-market strategies can be detected. The secondary markets need to be required to cooperate. ESMA is best placed to further detail these rules.*



**Amendment 902**

**Jürgen Klute**

**Proposal for a directive**

**Article 35 – paragraph 3 – point a a (new)**

*Text proposed by the Commission*

*Amendment*

***(aa) the majority of financial products traded on the market are products which are directly funding small and medium sized enterprises, not including financial institutions.***

Or. en

*Justification*

*Without exempting financial institutions from SME markets, a loophole could be created watering down the MTF regulation.*

**Amendment 903**

**Robert Goebbels, Arlene McCarthy, Elisa Ferreira**

**Proposal for a directive**

**Article 35 – paragraph 7**

*Text proposed by the Commission*

*Amendment*

7. Member States shall require that where a financial instrument of an issuer is admitted to trading on one SME growth market, the financial instrument may ***also*** be traded on another SME growth market ***without*** the consent of the issuer. ***In such a case however, the issuer shall not be subject to any obligation relating to corporate governance or initial, ongoing or ad hoc disclosure with regard to the latter SME market.***

7. Member States shall require that where a financial instrument of an issuer is admitted to trading on one SME growth market, the financial instrument may ***only*** be traded on another SME growth market ***with*** the consent of the issuer.

Or. en

### *Justification*

*The decision on where its instruments are traded should remain the sole decision of the SME.*

#### **Amendment 904**

**Sylvie Goulard**

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

#### **Article 35 – paragraph 7**

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

7. Member States shall require that where a financial instrument of an issuer is admitted to trading on one SME growth market, the financial instrument may also be traded on another SME growth market ***without*** the consent of the issuer. In such a case however, the issuer shall not be subject to any obligation relating to corporate governance or initial, ongoing or ad hoc disclosure with regard to the latter SME market.

##### *Amendment*

7. Member States shall require that where a financial instrument of an issuer is admitted to trading on one SME growth market, the financial instrument may also be traded on another SME growth market ***but only with*** the ***explicit*** consent of the issuer. In such a case however, the issuer shall not be subject to any obligation relating to corporate governance or initial, ongoing or ad hoc disclosure with regard to the latter SME market.

Or. en

### *Justification*

*There are several negative impacts that could potentially arise from allowing the shares of a company listed on an SME growth market to be traded on other markets. These include a fragmentation of the liquidity on their stock producing diverging prices, more difficult control and visibility by SMEs over their share ownership, and potentially diminished investor confidence. It is therefore crucial that SMEs retain the ability to decide whether or not they want their stock to be traded on additional SME growth markets.*

#### **Amendment 905**

**Pervenche Berès**

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

#### **Article 35 – paragraph 7**

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

7. Member States shall require that where a

##### *Amendment*

7. Member States shall require that where a

financial instrument of an issuer is admitted to trading on one SME growth market, the financial instrument may **also** be traded on another SME growth market **without** the consent of the issuer. In such a case however, the issuer shall not be subject to any obligation relating to corporate governance or initial, ongoing or ad hoc disclosure with regard to the latter SME market.

financial instrument of an issuer is admitted to trading on one SME growth market, the financial instrument may **only** be traded on another SME growth market **with** the **explicit** consent of the issuer. In such a case however, the issuer shall not be subject to any obligation relating to corporate governance or initial, ongoing or ad hoc disclosure with regard to the latter SME market.

Or. en

### *Justification*

*Allowing the shares of companies listed on SME Growth Markets to be traded on other SME Growth Markets without the explicit consent of the issuer will reduce liquidity, impact investor confidence and diminish SME issuers' control over where their stock is traded. It will lead to a fragmentation in the liquidity of SME stocks (which often already suffer from low liquidity), producing price discrepancies across venues and resulting in a loss of investor confidence in price formation. This will be compounded by the strong 'home bias' of investors in SMEs, where the proximity of the investor to the issuer is key. The trading of SME stock on other SME Growth Markets should only occur with the explicit consent of the SME issuer.*

### **Amendment 906**

**Olle Schmidt**

on behalf of the ALDE Group

### **Proposal for a directive**

### **Article 37 – paragraph 8 – subparagraph 1**

#### *Text proposed by the Commission*

The competent authority of the Member State in which the branch is located shall assume responsibility for ensuring that the services provided by the branch within its territory comply with the obligations laid down in Articles 24, 25, 27, 28, of this Directive and Articles 13 to 23 of Regulation (EU) No .../... [MiFIR] and in measures adopted pursuant thereto.

#### *Amendment*

The competent authority of the Member State in which the branch is located shall assume responsibility for ensuring that the services provided by the branch within its territory comply with the obligations laid down in Articles 24, 25, **26a**, 27, 28 of this Directive and Articles 13 to 23 of Regulation (EU) No .../... [MiFIR] and in measures adopted pursuant thereto.

Or. en

### *Justification*

*To allow new, more detailed requirements on knowledge and qualification to be introduced, as set out in the previous amendment on article 26, responsibilities must be placed on host member states in this regard.*

#### **Amendment 907**

**Olle Schmidt**

on behalf of the ALDE Group

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

#### **Article 37 – paragraph 8 – subparagraph 2**

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

The competent authority of the Member State in which the branch is located shall have the right to examine branch arrangements and to request such changes as are strictly needed to enable the competent authority to enforce the obligations under Articles 24, 25, 27, 28, of this Directive and Articles 13 to 23 of Regulation (EU) No .../... [MiFIR] and measures adopted pursuant thereto with respect to the services and/or activities provided by the branch within its territory.

##### *Amendment*

The competent authority of the Member State in which the branch is located shall have the right to examine branch arrangements and to request such changes as are strictly needed to enable the competent authority to enforce the obligations under Articles 24, 25, **26a**, 27, 28 of this Directive and Articles 13 to 23 of Regulation (EU) No .../... [MiFIR] and measures adopted pursuant thereto with respect to the services and/or activities provided by the branch within its territory.

Or. en

### *Justification*

*To allow new, more detailed requirements on knowledge and qualification to be introduced, as set out in the previous amendment, responsibilities must be placed on host member states in this regard.*

#### **Amendment 908**

**Sylvie Goulard**

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

#### **Article 39 – paragraph 1 – subparagraph 2**

*Text proposed by the Commission*

Member States shall require that access of those investment firms to such facilities be subject to the same non-discriminatory, transparent and objective criteria as apply to local participants. Member States shall not restrict the use of those facilities to the clearing and settlement of transactions in financial instruments undertaken on a regulated market or MTF **or OTF** in their territory.

*Amendment*

Member States shall require that access of those investment firms to such facilities be subject to the same non-discriminatory, transparent and objective criteria as apply to local participants. Member States shall not restrict the use of those facilities to the clearing and settlement of transactions in financial instruments undertaken on a regulated market or MTF in their territory.

Or. en

**Amendment 909**

**Sylvie Goulard**

**Proposal for a directive**

**Article 39 – paragraph 2 – subparagraph 2**

*Text proposed by the Commission*

This assessment of the competent authority of the regulated market shall be without prejudice to the competencies of the **national** central banks as overseers of settlement systems or other supervisory authorities on such systems. The competent authority shall take into account the oversight/supervision already exercised by those institutions in order to avoid undue duplication of control.

*Amendment*

This assessment of the competent authority of the regulated market shall be without prejudice to the competencies of the **relevant** central banks as overseers of settlement systems or other supervisory authorities on such systems. The competent authority shall take into account the oversight/supervision already exercised by those institutions in order to avoid undue duplication of control.

Or. en

*Justification*

*The central banks overseeing the clearing and settlement systems may also be the ECB and not only a national central bank.*

**Amendment 910**  
**Slawomir Witold Nitras**

**Proposal for a directive**  
**Article 39 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***2a. The rights of investment firms under paragraphs 1 and 2 shall be without prejudice to the right of operators of central counterparty, clearing or securities settlement systems to refuse on legitimate commercial grounds to make the requested services available, in particular the right to refuse to conclude agreements with entities that do not meet specific interoperability requirements.***

Or. pl

**Amendment 911**  
**Olle Schmidt**  
on behalf of the ALDE Group

**Proposal for a directive**  
**Article 40 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***1 a. The provision of this Directive regulating the provision of services by third country firms in the Union should not affect the possibility for persons established in the Union to make use of investment services provided by a third country firm at their own initiative. When a third country firm provides services at the own initiative of a person established in the Union, the services should not be deemed as provided in the territory of the Union. In case a third country firm solicits clients or potential clients in the Union or promotes or advertises investment services or activities together with ancillary services in the Union,***

*otherwise than in the course of an existing relationship requiring a continuing service provided by the firm to its client, it should not be deemed as a service provided at the own initiative of the client.*

Or. en

*Justification*

*The proposed Recital 74 of MiFID allows eligible counterparties to receive investment services by a third country firm only at their own initiative. It should be made clear that such passive marketing regime applies to all European clients and allows them to benefit from investment services provided by third country firms. Inclusion of Recital 74 of the proposed MiFID into an Article 40a (new) to make this provision clearly binding.*

**Amendment 912**

**Sylvie Goulard**

**Proposal for a directive**

**Article 40 – paragraph 2 – subparagraph 2**

*Text proposed by the Commission*

In order to avoid undue duplication of control, the competent authority shall take into account the oversight and supervision of the clearing and settlement system already exercised by the ***national*** central banks as overseers of clearing and settlement systems or by other supervisory authorities with a competence in such systems.

*Amendment*

In order to avoid undue duplication of control, the competent authority shall take into account the oversight and supervision of the clearing and settlement system already exercised by the ***relevant*** central banks as overseers of clearing and settlement systems or by other supervisory authorities with a competence in such systems.

Or. en

*Justification*

*The central banks overseeing the clearing and settlement systems may also be the ECB and not only a national central bank.*

**Amendment 913**  
**Jean-Paul Gauzès**

**Proposal for a directive**  
**Chapter 4**

*Text proposed by the Commission*

*Amendment*

**[...]**

***Chapter deleted***

Or. en

**Amendment 914**  
**Sylvie Goulard**

**Proposal for a directive**  
**Chapter 4**

*Text proposed by the Commission*

*Amendment*

**[...]**

***Chapter deleted***

Or. en

*Justification*

*This whole chapter should be in the regulation.*

**Amendment 915**  
**Olle Schmidt**  
on behalf of the ALDE Group

**Proposal for a directive**  
**Chapter 4 – title**

*Text proposed by the Commission*

*Amendment*

Provision of services by third country firms

Provision of services ***or activities*** by third country firms

Or. en



**Amendment 916**

**Olle Schmidt**

on behalf of the ALDE Group

**Proposal for a directive**

**Chapter 4 – section 1 – title**

*Text proposed by the Commission*

Provision of services **with** establishment of a branch

*Amendment*

Provision of services **or activities by** establishment of a branch **with a passport**

Or. en

**Amendment 917**

**Olle Schmidt**

on behalf of the ALDE Group

**Proposal for a directive**

**Article 41 – title**

*Text proposed by the Commission*

Establishment of a branch

*Amendment*

Establishment of a branch **with a passport**

Or. en

**Amendment 918**

**Olle Schmidt**

on behalf of the ALDE Group

**Proposal for a directive**

**Article 41 – paragraph 1 – introductory part**

*Text proposed by the Commission*

1. Member States shall **require** that a third country firm **intending to** provide investment services or activities together with any ancillary services in their territory through a branch **acquire a prior authorisation** by the competent authorities **of those Member States** in accordance with the following provisions:

*Amendment*

1. Member States shall **ensure** that a third country firm **may** provide investment services or **perform investment** activities together with any ancillary services in their territory through a branch **established in their territory or in another Member State, where the branch has been authorised** by the competent authorities **in**

*the Member State in which the branch is established in* accordance with the following provisions:

Or. en

*Justification*

*The text sets the conditions on which a third country firm can establish a branch in one Member State which benefits from a passport to do business in other Member States. This should not preclude Member States from continuing to authorise branches of third country firms that do not benefit from a passport. The arrangements should not mandate a requirement for branch capital.*

**Amendment 919**  
**Robert Goebbels**

**Proposal for a directive**  
**Article 41 – paragraph 1 – introductory part**

*Text proposed by the Commission*

1. Member States shall require that a third country firm intending to provide investment services *or* activities together with any ancillary services in their territory through a branch acquire a prior authorisation by the competent authorities of those Member States in accordance with the following provisions:

*Amendment*

1. Member States shall require that a third country *investment* firm *or market operator* intending to provide investment services, activities together with any ancillary services *or trading venue services* in their territory through a branch acquire a prior authorisation by the competent authorities of those Member States in accordance with the following provisions:

Or. en

**Amendment 920**  
**Wolf Klinz**

**Proposal for a directive**  
**Article 41 – paragraph 1 – introductory part**

*Text proposed by the Commission*

1. Member States shall require that a third country firm intending to provide investment services or activities together with any ancillary services in their territory through a branch acquire a prior authorisation by the competent authorities of those Member States in accordance with the following provisions:

*Amendment*

1. Member States shall require that a third country firm intending to provide investment services or activities together with any ancillary services *to retail clients* in their territory through a branch acquire a prior authorisation by the competent authorities of those Member States in accordance with the following provisions:

Or. en

**Amendment 921**

**Pascal Canfin**

on behalf of the Verts/ALE Group

**Proposal for a directive**

**Article 41 – paragraph 1 – introductory part**

*Text proposed by the Commission*

1. Member States shall require that a third country firm intending to provide investment services or activities together with any ancillary services in their territory through a branch acquire a prior authorisation by *the competent authorities of those Member States* in accordance with the following provisions:

*Amendment*

1. Member States shall require that a third country firm intending to provide investment services or activities together with any ancillary services in their territory through a branch *to professional clients* acquire a prior authorisation by *ESMA* in accordance with the following provisions:

Or. en

**Amendment 922**

**Olle Schmidt**

on behalf of the ALDE Group

**Proposal for a directive**

**Article 41 – paragraph 1 – point a**

*Text proposed by the Commission*

(a) the Commission has adopted a decision

*Amendment*

(a) the Commission has adopted a decision

in accordance with paragraph 3;

in accordance with paragraph 3  
***recognising that the prudential  
framework of the third country is  
equivalent;***

Or. en

*Justification*

*The text sets the conditions on which a third country firm can establish a branch in one Member State which benefits from a passport to do business in other Member States. This should not preclude Member States from continuing to authorise branches of third country firms that do not benefit from a passport. The arrangements should not mandate a requirement for branch capital.*

**Amendment 923**

**Wolf Klinz**

**Proposal for a directive**

**Article 41 – paragraph 1 – point a**

*Text proposed by the Commission*

(a) the Commission has adopted a decision  
***in accordance*** with paragraph 3;

*Amendment*

(a) ***this requirement shall apply only if*** the  
Commission has adopted a ***negative***  
***equivalence*** decision ***in accordance*** with  
paragraph 3;

Or. en

**Amendment 924**

**Olle Schmidt**

on behalf of the ALDE Group

**Proposal for a directive**

**Article 41 – paragraph 1 – point b**

*Text proposed by the Commission*

(b) the provision of services for which the  
third country firm requests authorisation is  
subject to authorisation and supervision in  
the third country where the firm is

*Amendment*

(b) the provision of services for which the  
third country firm requests authorisation is  
subject to authorisation and supervision in  
the third country where the ***head office of***

established and the **requesting** firm is properly authorised. The third country where the third country firm is established shall not be listed as Non-Cooperative Country and Territory by the Financial Action Task Force on anti-money laundering and terrorist financing;

**the** firm is established and the **third country** firm is properly authorised **in that country**. The third country where the **head office of the** third country firm is established shall not be listed as Non-Cooperative Country and Territory by the Financial Action Task Force on anti-money laundering and terrorist financing;

Or. en

#### *Justification*

*The text sets the conditions on which a third country firm can establish a branch in one Member State which benefits from a passport to do business in other Member States. This should not preclude Member States from continuing to authorise branches of third country firms that do not benefit from a passport. The arrangements should not mandate a requirement for branch capital.*

#### **Amendment 925**

**Olle Schmidt**

on behalf of the ALDE Group

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

#### **Article 41 – paragraph 1 – point c**

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

(c) cooperation arrangements, that include provisions regulating the exchange of information for the purpose of preserving the integrity of the market and protecting investors, are in place between the competent authorities in the Member State **concerned** and competent supervisory authorities of the third country where the firm is established;

##### *Amendment*

(c) cooperation arrangements, that include provisions regulating the exchange of information for the purpose of preserving the integrity of the market and protecting investors, are in place between the competent authorities in the Member State **where the branch is established** and the competent supervisory authorities of the third country where the **head office of the third country** firm is established;

Or. en

#### *Justification*

*The text sets the conditions on which a third country firm can establish a branch in one*

*Member State which benefits from a passport to do business in other Member States. This should not preclude Member States from continuing to authorise branches of third country firms that do not benefit from a passport. The arrangements should not mandate a requirement for branch capital.*

**Amendment 926**

**Olle Schmidt**

on behalf of the ALDE Group

**Proposal for a directive**

**Article 41 – paragraph 1 – point d**

*Text proposed by the Commission*

*Amendment*

***(d) sufficient initial capital is at free disposal of the branch;***

***deleted***

Or. en

*Justification*

*The text sets the conditions on which a third country firm can establish a branch in one Member State which benefits from a passport to do business in other Member States. This should not preclude Member States from continuing to authorise branches of third country firms that do not benefit from a passport. The arrangements should not mandate a requirement for branch capital.*

**Amendment 927**

**Olle Schmidt**

on behalf of the ALDE Group

**Proposal for a directive**

**Article 41 – paragraph 1 – point f**

*Text proposed by the Commission*

*Amendment*

(f) the third country where the third country firm is established has signed an agreement with the Member State where the branch ***should be*** established, which fully ***comply*** with the standards laid down in Article 26 of the OECD Model Tax Convention on Income and on Capital and ensures an effective exchange of

(f) the third country where the ***head office of the*** third country firm is established has signed an agreement with the Member State where the branch ***is*** established, which fully ***complies*** with the standards laid down in Article 26 of the OECD Model Tax Convention on Income and on Capital and ensures an effective exchange

information in tax matters, including, if any, multilateral tax agreements;

of information in tax matters, including, if any, multilateral tax agreements;

Or. en

*Justification*

*The text sets the conditions on which a third country firm can establish a branch in one Member State which benefits from a passport to do business in other Member States. This should not preclude Member States from continuing to authorise branches of third country firms that do not benefit from a passport. The arrangements should not mandate a requirement for branch capital.*

**Amendment 928**

**Robert Goebbels, Markus Ferber**

**Proposal for a directive**

**Article 41 – paragraph 1 – point g**

*Text proposed by the Commission*

(g) the firm ***has requested membership of*** an investor-compensation scheme authorised or recognised in accordance with Directive 97/9/EC of the European Parliament and of the Council of 3 March 1997 on Investor-Compensation Schemes.

*Amendment*

(g) the firm ***belongs to*** an investor-compensation scheme authorised or recognised in accordance with Directive 97/9/EC of the European Parliament and of the Council of 3 March 1997 on Investor-Compensation Schemes, ***at the time of authorisation.***

Or. en

*Justification*

*To provide effective protection of retail clients, membership and not a mere request should be the precondition to authorisation, according to the provision concerning investment firms established in the Union (see Article 14 of the proposed MiFID and Article 2(1) of Directive 97/9/EC referred to therein). Moreover, the ECB underlines the need to ensure the consistency of this regime under the proposed MiFID with Article 11 of Directive 97/9/EC which provides Member States with the discretion to evaluate the equivalence between Union cover and the cover provided in the third country where the branch has its head office. (ECB suggestion)*

## Amendment 929

Olle Schmidt

on behalf of the ALDE Group

### Proposal for a directive

#### Article 41 – paragraph 1 – point g

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

(g) the firm has requested membership of an investor-compensation scheme authorised or recognised in accordance with Directive 97/9/EC of the European Parliament and of the Council of 3 March 1997 on Investor-Compensation Schemes.

##### *Amendment*

(g) the firm has requested membership of an investor-compensation scheme authorised or recognised in ***the Member State in which the branch is established in*** accordance with Directive 97/9/EC of the European Parliament and of the Council of 3 March 1997 on Investor-Compensation Schemes ***unless the firm is not conducting investment business with investors covered by any such scheme.***

Or. en

##### *Justification*

*The text sets the conditions on which a third country firm can establish a branch in one Member State which benefits from a passport to do business in other Member States. This should not preclude Member States from continuing to authorise branches of third country firms that do not benefit from a passport. The arrangements should not mandate a requirement for branch capital.*

## Amendment 930

Olle Schmidt

on behalf of the ALDE Group

### Proposal for a directive

#### Article 41 – paragraph 2

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

2. Member States shall require that a third country firm intending to provide investment services or activities together with any ancillary services to retail clients in those Member States' territory shall establish a branch in the Union.

##### *Amendment*

2. ***Without prejudice to Articles 46a and 46b,*** Member States shall require that a third country firm intending to provide investment services or activities together with any ancillary services to retail clients in those Member States' territory shall



establish a branch in the Union *except where those services are provided at the exclusive initiative of the person to whom the service is provided or are otherwise provided outside the Union.*

Or. en

#### *Justification*

*The restriction on third country firms providing services to retail clients is inconsistent with the freedom of Member States to continue their current arrangements for the authorisation of third country firms that do not wish to have access to a passport. It is also inconsistent with Recital 74 as it would appear to preclude retail investors accessing third country firms on their own exclusive initiative (or e.g. if they receive investment services while travelling outside the EU).*

#### **Amendment 931** **Robert Goebbels**

#### **Proposal for a directive** **Article 41 – paragraph 2**

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

2. Member States shall require that a third country firm intending to provide investment services or activities together with any ancillary services to retail clients in those Member States' territory shall establish a branch in the Union.

##### *Amendment*

2. Member States shall require that a third country firm intending to provide investment services or activities together with any ancillary services to retail ***and/or professional*** clients in those Member States' territory shall establish a branch in the Union.

Or. en

#### *Justification*

*The implicit intention of the Commission is to apply the same branch and authorisation provisions to both retail and professional clients. However, in order to avoid legal loopholes, this intention needs to be made explicit in the text.*

#### **Amendment 932** **Pascal Canfin**

on behalf of the Verts/ALE Group

**Proposal for a directive**  
**Article 41 – paragraph 2**

*Text proposed by the Commission*

2. Member States shall require that a third country firm intending to provide investment services or activities together with any ancillary services to retail clients in those Member States' territory shall establish a **branch** in the Union.

*Amendment*

2. Member States shall require that a third country firm intending to provide investment services or activities together with any ancillary services to retail clients in those Member States' territory shall establish a **subsidiary company** in the Union.

Or. en

**Amendment 933**

**Olle Schmidt**

on behalf of the ALDE Group

**Proposal for a directive**  
**Article 41 – paragraph 3 – subparagraph 1**

*Text proposed by the Commission*

The Commission may adopt a decision in accordance with the procedure referred to in Article 95 in relation to a third country if the legal and supervisory arrangements of that third country ensure that firms authorised in that third country comply with legally binding requirements which have equivalent effect to the requirements set out in this Directive, in Regulation (EU) No .../... [MiFIR] and in Directive 2006/49/EC [Capital Adequacy Directive] and their implementing measures and that third country provides for equivalent **reciprocal** recognition of the prudential framework applicable to investment firms authorised in accordance with this directive.

*Amendment*

The Commission may adopt a decision in accordance with the procedure referred to in Article 95 in relation to a third country if the legal and supervisory arrangements of that third country ensure that firms authorised in that third **country** comply with legally binding requirements **with respect to prudential matters** which have equivalent effect to the requirements **with respect to the prudential matters** set out in this Directive, in Regulation (EU) No .../... [MiFIR] and in Directive 2006/49/EC [Capital Adequacy Directive] and their implementing measures and that third country provides for **effective** equivalent recognition of the prudential framework applicable to investment firms authorised in accordance with this directive.

### *Justification*

*A requirement for "equivalent reciprocal recognition" of the prudential framework could potentially be used against EU firms. The wording should be aligned with EMIR. In the corresponding provisions in EMIR, there are no explicit references to "reciprocity", see Article 23(3) ("effective ... equivalent recognition") and Articles 3(2) and 23(2).*

#### **Amendment 934**

**Robert Goebbels**

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

#### **Article 41 – paragraph 3 – subparagraph 1**

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

The Commission *may* adopt a decision in accordance with the procedure referred to in Article 95 in relation to a third country if the legal and supervisory arrangements of that third country ensure that firms authorised in that third country comply with legally binding requirements which have equivalent effect to the requirements set out in this Directive, in Regulation (EU) No .../... [MiFIR] and in Directive 2006/49/EC [Capital Adequacy Directive] and their implementing measures and that third country provides for equivalent reciprocal recognition of the prudential framework applicable to investment firms authorised in accordance with this directive.

##### *Amendment*

The Commission *shall* adopt a decision in accordance with the procedure referred to in Article 95 in relation to a third country if the legal and supervisory arrangements of that third country ensure that firms authorised in that third *country* comply with legally binding requirements which have equivalent effect to the requirements set out in this Directive, in Regulation (EU) No .../... [MiFIR] and in Directive 2006/49/EC [Capital Adequacy Directive] and their implementing measures and that third country provides for equivalent reciprocal recognition of the prudential framework applicable to investment firms authorised in accordance with this directive.

#### **Amendment 935**

**Kay Swinburne**

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

#### **Article 41 – paragraph 3 – subparagraph 1**

*Text proposed by the Commission*

The Commission may adopt a decision in accordance with the procedure referred to in Article 95 in relation to a third country if the legal and supervisory arrangements of that third country ensure that firms authorised in that third country comply with legally binding requirements which have equivalent effect to the requirements set out in this Directive, in Regulation (EU) No .../... [MiFIR] and in Directive 2006/49/EC [Capital Adequacy Directive] and their implementing measures ***and that third country provides for equivalent reciprocal recognition of the prudential framework applicable to investment firms authorised in accordance with this directive.***

*Amendment*

The Commission may adopt a decision in accordance with the procedure referred to in Article 95 in relation to a third country if the legal and supervisory arrangements of that third country ensure that firms authorised in that third country comply with legally binding requirements which have equivalent effect to the requirements set out in this Directive, in Regulation (EU) No .../... [MiFIR] and in Directive 2006/49/EC [Capital Adequacy Directive] and their implementing measures.

Or. en

*Justification*

*Reciprocity is not warranted and is against WTO provisions. At a time when we need outside investment into the EU it is illogical to put up trade barriers.*

**Amendment 936**  
**Wolf Klinz**

**Proposal for a directive**  
**Article 41 – paragraph 3 – subparagraph 1**

*Text proposed by the Commission*

The Commission ***may*** adopt a decision in accordance with the procedure referred to in Article 95 in relation to a third country if the legal and supervisory arrangements of that third country ensure that firms authorised in that third country comply with legally binding requirements which have equivalent effect to the requirements set out in this Directive, in Regulation (EU)

*Amendment*

The Commission ***shall by 31 December 2014*** adopt a decision in accordance with the procedure referred to in Article 95 in relation to a third country if the legal and supervisory arrangements of that third country ensure that firms authorised in that third country comply with legally binding requirements which have equivalent effect to the requirements set out in this

No .../... [MiFIR] and in Directive 2006/49/EC [Capital Adequacy Directive] and their implementing measures and that third country provides for equivalent reciprocal recognition of the prudential framework applicable to investment firms authorised in accordance with this directive.

Directive, in Regulation (EU) No .../... [MiFIR] and in Directive 2006/49/EC [Capital Adequacy Directive] and their implementing measures and that third country provides for equivalent reciprocal recognition of the prudential framework applicable to investment firms authorised in accordance with this directive.

Or. en

**Amendment 937**  
**Gunnar Hökmark**

**Proposal for a directive**  
**Article 41 – paragraph 3 – subparagraph 1**

*Text proposed by the Commission*

The Commission may adopt a decision in accordance with the procedure referred to in Article 95 in relation to a third country if the legal and supervisory arrangements of that third country ensure that firms authorised in that third comply with legally binding requirements ***which have equivalent effect to the requirements*** set out in this Directive, in Regulation (EU) No .../... [MiFIR] and in Directive 2006/49/EC [Capital Adequacy Directive] and their implementing measures ***and that third country provides for equivalent reciprocal recognition of the prudential framework applicable to investment firms authorised in accordance with this directive.***

*Amendment*

The Commission may adopt a decision in accordance with the procedure referred to in Article 95 in relation to a third country if the legal and supervisory arrangements of that third country ensure that firms authorised in that third comply with legally binding requirements set out in this Directive, in Regulation (EU) No..../.... [MiFIR] and in Directive 2006/49/EC [Capital Adequacy Directive] and their implementing measures.

Or. en

**Amendment 938**  
**Olle Schmidt**  
on behalf of the ALDE Group

**Proposal for a directive**

**Article 41 – paragraph 3 – subparagraph 2 – introductory part**

*Text proposed by the Commission*

The prudential framework of a third country **may** be considered equivalent where that framework fulfils all the following conditions:

*Amendment*

The prudential framework of a third country **shall** be considered equivalent where that framework fulfils all the following conditions:

Or. en

**Amendment 939**

**Kay Swinburne**

**Proposal for a directive**

**Article 41 – paragraph 3 – subparagraph 2 – introductory part**

*Text proposed by the Commission*

The prudential framework of a third country may be considered equivalent where that framework fulfils all the following conditions:

*Amendment*

The prudential framework of a third country may be considered **to have** equivalent **effect** where that framework fulfils all the following conditions:

Or. en

*Justification*

*Aligns with wording in EMIR*

**Amendment 940**

**Gunnar Hökmark**

**Proposal for a directive**

**Article 41 – paragraph 3 – subparagraph 2 – introductory part**

*Text proposed by the Commission*

The prudential framework of a third country may be considered equivalent where that framework fulfils all the following conditions:

*Amendment*

The prudential framework of a third country may be considered **to have** equivalent **effect** where that framework fulfils all the following conditions:

**Amendment 941**

**Pascal Canfin**

on behalf of the Verts/ALE Group

**Proposal for a directive**

**Article 41 – paragraph 3 – subparagraph 2 – point d a (new)**

*Text proposed by the Commission*

*Amendment*

***(d a) the third country applies reciprocal access conditions for EU-based investment firms and a mutual recognition regime has been implemented in that third country.***

Or. en

**Amendment 942**

**Olle Schmidt**

on behalf of the ALDE Group

**Proposal for a directive**

**Article 41 – paragraph 3 – subparagraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***A decision of the Commission under this paragraph may be limited to a category or categories of firms. In that case, a third country firm may be authorised for the purposes of paragraph 1 if it falls within a category covered by the Commission's decision.***

Or. en

*Justification*

*A requirement for reciprocity will undermine the effectiveness of the proposed regime. It may be the case that the prudential framework is only equivalent with respect to some but not all firms (e.g. because some investment services are not licensable in the third country).*

**Amendment 943**

**Robert Goebbels, Antolín Sánchez Presedo**

**Proposal for a directive**

**Article 41 – paragraph 3 a (new)**

*Text proposed by the Commission*

*Amendment*

***3 a. The third country can be considered to give equivalent and reciprocal recognition if all of the following conditions are met:***

***(a) the recognition refers to the whole EU framework and access is provided on an equal basis to all EU countries;***

***(b) the rights and duties imposed on the firms are similar in the EU and in the third country.***

Or. en

*Justification*

*An equivalent and reciprocal recognition implies that all EU investment firms and market operators will be subject to the same conditions of access to the 3rd country's market as applies to 3rd country firms accessing the EU.*

**Amendment 944**

**Olle Schmidt**

on behalf of the ALDE Group

**Proposal for a directive**

**Article 41 – paragraph 4**

*Text proposed by the Commission*

*Amendment*

4. The third country firm referred to in paragraph 1 shall submit its application to the competent authority of the Member State ***where it intends to establish a*** branch after the adoption by the Commission of the decision determining that the legal and supervisory framework of the third country

4. The third country firm referred to in paragraph 1 shall submit its application to the competent authority of the Member State ***in which the branch is or will be established*** after the adoption by the Commission of the decision determining that the legal and supervisory framework



in which the third country firm is authorised is equivalent to the requirements described in paragraph 3.

of the third country in which the third country firm is authorised ***with respect to prudential matters*** is equivalent to the requirements described in paragraph 3

Or. en

*Justification*

*Third country firms that already have established a branch in a Member State should be able to apply for authorisation under paragraph 1 in order to obtain access to the passport if they can satisfy the conditions for the passport.*