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NOTE

From:	Presidency
To:	Permanent Representatives Committee/Council
Subject:	Market Integration and Supervision Package Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directives 2009/65/EC, 2011/61/EU and 2014/65/EU as regards the further development of capital market integration and supervision within the Union *- General Approach*

2025/0382 (COD)

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Directives 2009/65/EC, 2011/61/EU and 2014/65/EU as regards the further development of capital market integration and supervision within the Union

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 53 and 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee[1],

Having regard to the opinion of the European Central Bank,

Acting in accordance with the ordinary legislative procedure,

[1] OJ C , , p. .

Whereas:

(1) The Savings and Investments Union (SIU) strategy is part of the Commission strategy to provide a vision of the Union as an economic powerhouse. For that purpose, it is necessary to establish a single market for financial services by addressing market inefficiencies resulting from fragmentation and to create the truly integrated European capital markets which are accessible to all citizens and businesses across the Union. It is also important that ***the*** financial markets' potential of the Union is unlocked by providing access to more efficient capital-market based financing and by facilitating cross-border capital flows, which in turn should support the economy of the Union, stimulate job creation and enhance competitiveness.

(2) It is necessary to foster a seamless capital market across the EU by strengthening the supervisory framework and addressing regulatory fragmentation, thereby ensuring better integration of capital markets throughout the Union. In particular, while the integration of capital markets in the Union should ultimately be a market-driven process, certain barriers stemming notably from the Union legislative framework can obstruct progress. The Union should therefore focus on removing barriers in the sectors of trading, post-trading and asset management, and barriers hindering the uptake of new technologies. As market integration ***is*** deepened, it is also crucial for the Union supervisory framework to evolve in accordance with it.

(3) In the context of the political objective of simplifying financial services legislation and delivering more effective and efficient implementation of Union policies, the Commission, after having consulted the European Supervisory Authorities, AMLA, the Council and the European Parliament, sent a letter on 1 October 2025 deprioritising empowerments non-essential for the effective functioning of the Level 1 legislations. For those deprioritised empowerments where the Commission would be legally required to act ('shall + a date') legal clarity for stakeholders would be enhanced when the basic act is also amended.

(4) Directive 2009/65/EC of the European Parliament and of the Council[2] should be aligned with Directive 2011/61/EU of the European Parliament of the Council[3] with regard to the notification of material changes to the scope of authorisation. Undertakings for Collective Investment in Transferable Securities ('UCITS') and their management companies should therefore be required to notify the competent authorities of their home Member State before implementing any material changes to the conditions for initial authorisation and those authorities should be able, within a defined and extendable period, to oppose or restrict such changes.

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[2] Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (recast) (OJ L 302, 17.11.2009, p. 32, ELI: http://data.europa.eu/eli/dir/2009/65/oj).

[3] Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010, OJ L 174, 1.7.2011, p. 1, ELI: http://data.europa.eu/eli/dir/2011/61/oj).

(5) Directive 2009/65/EC and Directive 2011/61/EU do not recognise the notion of an asset management group and the hereto related synergies and risks. Currently, asset management groups that operate across the Union are required to maintain standalone human and technical resources at each group entity level and the delegation of functions to other entities within the same group is subject to the full scope of delegation requirements. To facilitate the operations of asset management groups in the Single Market, Directive 2009/65/EC and Directive 2011/61/EU should recognise the notion of an EU group of management companies and Alternative Investment Fund Managers ('AIFMs'), which should comprise all authorised management companies and AIFMs, as well as investment firms and credit institutions that are established in the Union and that are duly authorised under Directive 2014/65/EU of the European Parliament and of the Council[4] and Directive 2013/36/EU of the European Parliament and of the Council[5], respectively. To facilitate the sharing of group-wide resources and to avoid unnecessary duplication of resources across different EU entities within the group, it should be further specified that management companies and AIFMs should be able to utilise the human and technical resources of other entities within their EU group to conduct their business. ***Given EU group entities are subject to a common*** regulatory ***framework, certain requirements can be disapplied where*** management companies and AIFMs ***delegate*** functions or services ***to*** other entities within the ***same*** EU group. ***This simplified framework alleviates the*** regulatory ***burden for EU group operating models while maintaining effective*** supervisory ***oversight and*** investor protection ***given such*** arrangements ***can still give rise to certain risks***.

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4 Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (recast) OJ L 173, 12.6.2014, p. 349, ELI: http://data.europa.eu/eli/dir/2014/65/oj).

5 Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19, ELI: http://data.europa.eu/eli/dir/2013/34/oj).

(6) To reduce national disparities in the legal and operational conditions applicable to asset managers and investment funds across the Union, national discretions in the transposition and implementation of certain provisions that allow Member States to interpret, supplement, or derogate from core rules and which impose barriers to the development of the Single Market as currently laid down in Directive 2009/65/EC and Directive 2011/61/EU should be removed.

(7) Each Member State currently draws up national rules of conduct and prudential rules with which management companies and AIFMs are required to comply, leading to diverging national rulebooks that hinder the development of a true Single Market for fund managers. To ensure a uniform application and a consistent implementation of the prudential rules and rules conduct for management companies and AIFMs across the Union, ESMA may develop guidelines to specify the content of those rules.
To benefit from existing best practices and national supervisory experience, ESMA should establish a temporary joint-project team with national competent authorities to develop efficient, effective and harmonised guidelines. In carrying out that work, ESMA and the competent authorities should have due regard to existing national laws, regulations and administrative provisions, the principle of proportionality, legal certainty and the need to avoid unnecessary administrative burdens and costs for market participants.

(8) To reduce the regulatory burden of management companies and AIFMs that manage or intend to manage UCITS and AIFs at the initiative of a third party, it is necessary to require management companies and AIFMs to disclose the fact that they manage or intend to manage UCITS and AIFs at the initiative of a third party to the competent authorities of their home Member State at the time of authorisation and to be in a position to demonstrate to them only upon request that they have taken all reasonable steps to prevent, manage, monitor or, where applicable, disclose conflicts of interest.

(9) To avoid unjustified procedural burdens for cross-border activities, it is necessary to ensure a more efficient application of the management passport under Directive 2009/65/EC and Directive 2011/61/EU. For that reason, the periods within which the competent authorities of the home Member State of the management company and AIFM are to forward to the authorities of the host Member State the information on the management company's or AIFM's intention to operate in that territory, with or without a branch, should be reduced to one month and 15 ***working*** days respectively. In parallel, the time available to the host authorities of the management company to make the necessary supervisory arrangements should also be curtailed to one month. To align Directive 2009/65/EC with Directive 2011/61/EU, ensure uniform rules for the cross-border activities of management companies and eliminate national divergences that create unnecessary administrative obstacles, it should be laid down that host Member States may not impose additional requirements on management companies operating in their territory.

(10) To ▌ complement the existing management and marketing passports for UCITS, management companies and AIFMs and remove regulatory barriers that hinder the cross-border provision of depositary services, it is appropriate to introduce an ***option for Member States to allow UCITS and AIFs established in their territory to appoint depositaries located in other Member States***. ***Introducing such a derogation to*** the current restriction requiring the depositary to be established in the same Member State as the fund ▌ will allow AIFMs and UCITS ***in Member States*** to appoint a depositary established anywhere in the Union. To ***ensure investor protection*** and mitigate ***against potential*** financial stability risks, ***for UCITS, this*** should ***only be permitted where the*** depositaries ▌ are ***authorised as credit institutions under Directive 2013/36/EU, and for AIFs, only for depositaries*** authorised as credit institutions under Directive 2013/36/EU or as investment firms under Directive 2014/65/EU and which are subject to prudential requirements and supervision that ▌ ensure ***the depositaries are capable of meeting their regulatory obligations in respect of the custody and safekeeping of the fund's assets and oversight of the fund's activities. These arrangements should be further supported by appropriate cooperation and information sharing arrangements between the competent authorities of the depositary and those of the UCITS, AIFs, management companies and AIFMs that clarify the respective supervisory responsibilities and maintain*** consistent safeguards across Member States.

▌

(13) To ensure a consistent implementation and greater harmonisation of marketing requirements across Member States, the provisions of Directive 2009/65/EC and Directive 2011/61/EU as regards the marketing of EU AIFs managed by EU AIFMs to professional investors and the marketing of UCITS across the Union, as well as the provisions on the powers of the competent authorities of host Member States over UCITS and AIFs marketed in their territories, are transferred to Regulation (EU) 2019/1156 to be directly applicable in Member States.

(14) To ***strengthen supervisory convergence*** and remove barriers to ***the*** cross-border ***activities of large asset-management*** groups***, a co-ordination college*** should be ***established for each*** large ▌ cross-border ▌ group ▌ of management companies and AIFMs ***meeting objective criteria relating to assets*** managed ▌ in the ***Union and cross-border activities. Each co-ordination college should provide a forum for convergence, co-operation, co-ordination and information exchange between ESMA and the competent authorities responsible for supervising entities belonging to the group, including relevant host authorities. The co-ordination college should identify material divergences, gold plating, gaps, duplication or inconsistencies in supervisory approaches and support co-ordinated responses to matters affecting more than one Member State.***

The co-ordination college should rely, as far as possible, on existing information and avoid unnecessary reporting and supervisory ***duplication. Relevant third-country authorities and representatives of the group should be able to participate where appropriate, subject to confidentiality and professional-secrecy safeguards. The co-ordination college should not exercise supervisory or decision-making powers or alter the responsibilities of ESMA or competent authorities. Its observations should be non-binding***. ESMA should ***use the horizontal insight gained through participation in the co-ordination colleges to*** identify ***regulatory gaps, inconsistencies, duplication, gold plating and other barriers to the efficient functioning of*** the Union ***supervisory framework and, where appropriate, address them through its supervisory-convergence tools***.

(15) ▌

(16) To ensure the effective functioning of the Single Market for investment funds, asset managers and depositaries and remove supervisory obstacles that impede the cross-border exercise of passporting rights, ESMA should be empowered to detect and address instances of divergent, duplicative, redundant or deficient supervisory practices that hinder the operations of asset managers and depositaries in the Single Market or instances where those undertakings operate on a cross-border basis without complying with EU law. In those cases, ESMA should implement an escalation process, starting with engaging with national authorities and stakeholders, fostering greater convergence between them, and, where necessary, making use of its coordination and intervention powers, so that unjustified restrictions on cross-border activities or cases of non-compliance with EU law are remedied in a timely and efficient manner.

For the same reasons, it is necessary to ensure that, if those problems persist despite this escalation process, ESMA should then***, on the basis of a reasoned recommendation from its Executive Board, bring the matter before its Board of Supervisors. The Board of Supervisors should determine whether the conditions for exercising the relevant*** powers ***under*** Regulation (EU) No 1095/2010 ***are met and whether such action is necessary and proportionate.***

(17) To align Directive 2009/65/EC with Directive 2011/61/EU and to ensure consistent supervision and effective cooperation between the competent authorities of different Member States, competent authorities should be able to refer to ESMA any disagreements on assessments, actions, or omissions in areas where Directive 2009/65/EC requires coordination, so that ESMA can intervene using the powers conferred on it under Article 19 of Regulation (EU) No 1095/2010.

(18) To reduce unnecessary ***and duplicative*** regulatory burdens for UCITS management companies and investment companies, it is appropriate to remove the obligation to draw up a key investor information ▌ document**.**

(19) Regulation (EU) No 600/2014 of the European Union and the Council lays down harmonised rules on the authorisation and operation of trading venues. Most of those rules derive from provisions that have been previously set out in Directive 2014/65/EU of the European and of the Council, including provisions relating to the authorisation and operation of regulated markets and requirements for investment firms operating a multilateral trading facility ('MTF') or an organised trading facility ('OTF'). To adequately reflect the transfer of those provisions from Directive 2014/65/EU to Regulation (EU) No 600/2014, it is appropriate to delete or amend, where relevant, those provisions in Directive 2014/65/EU. At the same time, certain provisions of Directive 2014/65/EU regarding the authorisation of investment firms should be retained since investment firms operating an MTF or an OTF remain subject to the general authorisation requirements for investment firms under that Directive.

(20) Article 37 of Directive 2014/65/EU provides for rules relating to the access of an investment firm from other Member States to a central counterparty ('CCP'), clearing and settlement facilities as well as the right for members and participants of a regulated market to designate a settlement system. Article 38 of Directive 2014/65/EU provides for the possibility for a MTF to enter into access arrangements with a CCP and a settlement system of another Member State in order to enable the clearing and settlement of transactions concluded in its systems. Given the fact that access provisions are now set out in Regulation (EU) No 648/2012 of the Parliament and the Council and in Regulation (EU) No 909/2014 of the Parliament and the Council, and that Regulation (EU) No 600/2014 further harmonises those access provisions, it is appropriate to delete both Article 37 and Article 38 from Directive 2014/65/EU.

(21) Articles 57 and 58 of Directive 2014/65/EU set out rules as regards the trading of commodity derivatives, emission allowances, and derivatives of emission allowances. Some of those rules are applicable to trading venues. As rules regarding the operation of trading venues are transferred from Directive 2014/65/EU to Regulation (EU) No 600/2014, it is appropriate to amend Articles 57 and 58 of Directive 2014/65/EU to ensure that those rules when applicable to trading venues are also transferred to Regulation (EU) No 600/2014.

(22) ▌ ESMA should be financed ***through 60 %*** Union funds and ***40 % Member State*** contributions ▌ made in accordance with the weighting of votes set out in Article 3(3) of the Protocol (No 36) on transitional provisions for ***ESMA's*** tasks ▌ that are not fee funded. ***The adjustment of the relative funding shares should not, in itself, lead to a reduction in ESMA's overall co-funded budget, without prejudice to the annual budgetary procedure and the multiannual financial framework. Within 12 months of entry into force of this Regulation, the Commission should assess whether the existing methodology produces proportionate, stable and predictable allocations of contributions among Member States, and, if not, propose appropriate legislative revisions to the European Parliament and to the Council. Those revisions should balance the collective benefits of integrated and resilient Union capital markets with fair reflection of individual Member States' market activity and supervisory responsibilities. The existing methodology should remain in effect until any revision enters into force. The Commission should review the applicable methodology periodically to ensure indicators remain representative and to evaluate the distributional impact across Member States.***

(23) Although Directive 2009/65/EC and Directive 2011/61/EU have introduced harmonised rules for the authorisation of UCITS, management companies and AIFMs, as well as for the information to be submitted to national competent authorities, divergent national practices in the authorisation process continue to persist. These inconsistencies complicate cross-border operations and hinder the functioning of the management passport. In order to ensure consistent harmonisation in the authorisation of UCITS, management companies and AIFMs, power should be delegated to the Commission to adopt, by means of delegated acts in accordance with Article 290 of the Treaty on the Functioning of the European Union, regulatory technical standards developed by ESMA in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council[6]. Those regulatory technical standards should specify the ▌ information to be provided to the competent authorities as part of the application for authorisation of UCITS, management companies and AIFMs and the methods and arrangements for their delivery. ***This Directive and the regulatory technical standards should confirm that national competent authorities may continue to request further clarifications or information.*** To standardise the authorisation process, those regulatory technical standards should also establish ***standard*** templates, data standards, formats and instructions for the provision of that information. Furthermore, to ensure a consistent application of the provisions related to the information to be notified by investment firms providing investment services or performing investment activities through the freedom to provide services, the Commission should be empowered to adopt, in accordance with Article 290 TFEU and Articles 10 to 14 of Regulation (EU) No 1095/2010, regulatory technical standards developed by ESMA.

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[6] ▌ OJ L 331, 15.12.2010, pp. 84–119.

(23a) To benefit from existing best practices and national supervisory experience, ESMA should establish a temporary joint-project team with National Competent Authorities to develop efficient, effective and harmonised authorisation procedures. In carrying out that work, ESMA and the competent authorities should have due regard to existing national laws, regulations and administrative provisions, the principle of proportionality, legal certainty and the need to avoid unnecessary administrative burdens and costs for market participants.

(24) To ensure a consistent implementation of the provisions related to the format of information to be notified by investment firms providing investment services or performing investment activities through the freedom to provide services, and related to position reports of investment firms trading in commodity derivatives or in derivatives of emission allowances outside a trading venue, the Commission should be empowered to adopt, in accordance with Article 291 TFEU and with Article 15 of Regulation (EU) No 1095/2010, implementing technical standards developed by ESMA.

(25) Since the objectives of this Directive cannot be sufficiently achieved by the Member States on the account that the differing transposition of Directives relevant to this proposal has created regulatory gaps which can be resolved only through action at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.

(26) The Directive introduces binding requirements for cross-border digital public services within the meaning of Regulation (EU) 2024/903. An interoperability assessment has therefore been completed. The Digital Dimensions chapter of the Legislative Financial and Digital Statement constitutes the resulting report. This will also be published on the Interoperable Europe Portal following the Act's adoption.

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Amendments to Directive 2009/65/EC

Directive 2009/65/EC is amended as follows:

(1) in Article 1, paragraph 6 is replaced by the following:

‘6. Without prejudice to the provisions of Union law governing capital movements and those of Regulation (EU) 2019/1156, no Member State shall apply any other provisions in the field covered by this Directive to UCITS established in another Member State or to the units issued by such UCITS, where those UCITS market their units within the territory of that Member State.;’

(2) in Article 2, paragraph 1 is amended as follows:

(a) point (n) is replaced by the following:

‘(n) “transferable securities” means transferable securities as defined in Article 4(44) of Directive 2014/65/EU of the European Parliament and of the Council[1];;

[1] Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (recast) Text with EEA relevance (OJ L 173, 12.6.2014, p. 349, ELI: http://data.europa.eu/eli/dir/2014/65/oj).'

(b) point (r) is replaced by the following:

'(r) domestic merger' means a merger between UCITS established in the same Member State where at least one of the involved UCITS has been notified pursuant to Article 17c Regulation (EU) 2019/1156 of the European Parliament and of the Council[1];;

[1] Regulation (EU) 2019/1156 of the European Parliament and of the Council of 20 June 2019 on facilitating cross-border distribution of collective investment undertakings and amending Regulations (EU) No 345/2013, (EU) No 346/2013 and (EU) No 1286/2014 (OJ L 188, 12.7.2019, p. 55, ELI: http://data.europa.eu/eli/reg/2019/1156/oj).'

(c) the following points (v) to ***(y)*** are added:

‘(v) ‘EU group of a management company and AIFM means in relation to a given management company or AIFM, a group as defined in Article 2, point (11) of Directive 2013/34/EU of the European Parliament and ***of*** the Council[1] that consists of any of the following:

(a) management companies, as defined in Article 2(1), point (b) of this Directive, that are established in the Union, and which are authorised in accordance with this Directive;

(b) managers of alternative investment funds, as defined in Article 4(1), point (b) of Directive 2011/61/EU of the European Parliament and of the Council[1] that are established in the Union, and which are authorised in accordance with that Directive;

(c) investment firms, as defined in Article 4(1), point (1) of Directive 2014/65/EU that are established in the Union, and which are authorised in accordance with that Directive;

(d) credit institutions as defined in Article ***4(1)***, point ***1 of Regulation (EU) No 575/2013*** of the European Parliament and of the Council[1] that are established in the Union, and which are authorised in accordance with that ***Regulation***.;

(w) ‘SFT’ means security financing transaction as defined in Article 3, point (11) of Regulation (EU) 2015/2365 of the European Parliament and of the Council[1];

(x) ‘AIFM’ means an alternative investment fund manager as defined in Article 4(1), point (b) of Directive 2011/61/EU.;

(y) 'date of the UCITS first investment’ means the date on which the UCITS first executes a transaction, or enters into an unconditional and legally binding obligation to execute a transaction, for the purpose of implementing the investment objectives and investment policy set out in its fund rules, instruments of incorporation or prospectus, whichever occurs first. A transaction or obligation entered into exclusively for the establishment or operation of the UCITS, cash or liquidity management, or the temporary placement of uninvested capital shall not constitute the UCITS’ first investment unless that transaction or obligation itself implements those investment objectives and investment policy.

[1] Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19, ELI: http://data.europa.eu/eli/dir/2013/34/oj).

[1] Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (OJ L 174, 1.7.2011, p. 1, ELI: http://data.europa.eu/eli/dir/2011/61/oj).

[1] ***Regulation (EU) No 575/2013*** of the European Parliament and of the Council of 26 June 2013 on ***prudential requirements for credit institutions and investment firms and*** amending ***Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, pp. 1–337)***

[1] Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of reuse and amending Regulation (EU) No 648/2012 (OJ L 337, 23.12.2015, p. 1, ELI: http://data.europa.eu/eli/reg/2015/2365/oj).'

(3) Article 5 is amended as follows:

(a) paragraph 6 is replaced by the following:

'6. Member States shall require that a UCITS before implementation notifies the competent authorities of its home Member State of any foreseen material changes to the conditions for initial authorisation, in particular foreseen material changes as regards the management company or the depositary, or any foreseen material change to its fund rules or the instruments of incorporation.

If the competent authorities of the UCITS home Member State decide to impose restrictions or reject those changes, they shall, within 1 month of receipt of the notification referred to in the first subparagraph, inform the UCITS thereof. The competent authorities may prolong that period for up to 1 month where they consider that to be necessary because of the specific circumstances of the case and after having notified the UCITS thereof. The changes shall be implemented if the relevant competent authorities do not oppose the changes within the relevant assessment period.;'

(b) paragraph 8 is replaced by the following:

‘8. In order to ensure consistent harmonisation of this Article the European Supervisory Authority (European Securities and Markets Authority) (hereinafter 'ESMA'), established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council[1], shall develop draft regulatory technical standards, specifying:

(a) ▌ the information to be provided to the competent authorities in the application for the authorisation of the UCITS, in accordance with this Article;

(b) ***the conditions relevant for*** the procedures and timelines to be followed as part of the application for authorisation of a UCITS, in accordance with this Article***, including the criteria under which an application shall be considered complete for the purposes of those timelines***; ***and***

(c) the methods and arrangements for delivery of the information ***referred to in point (a).***

When developing the draft regulatory technical standards referred to in this paragraph, ESMA shall establish a temporary joint-project team composed of representatives of competent authorities possessing relevant supervisory expertise.

The provision of the information referred to in point (a) shall not prevent the competent authorities from requesting additional information as they consider necessary for the assessment of an application on a case-by-case basis, having regard to the nature, complexity and particular circumstances of the case.

ESMA shall develop IT solutions, including ***standard*** templates, data standards, formats and instructions for providing the information referred to in point (a).

ESMA shall submit those draft regulatory technical standards to the Commission by [Please insert date = 12 months after the entry into force of this Directive].

Power is delegated to the Commission to supplement this Directive by adopting the regulatory technical standards referred to in the first subparagraph of this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.;

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[1] Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84, ELI: http://data.europa.eu/eli/reg/2010/1095/oj).';'

(4) In Article 6(3), first subparagraph, the introductory wording is replaced by the following:

'By way of derogation from paragraph 2, Member States shall ensure that a management company may be authorised to provide, in addition to the management of the UCITS, the following services:;'

(5) Article 7 is amended as follows:

(a) paragraph 1 is amended as follows:

(1) the first subparagraph is amended as follows:

(a) the introductory wording is replaced by the following:

'The competent authorities shall not authorise a management company unless the following conditions are met:;'

(b) in point (c) the introductory wording is replaced by the following:

‘(c) the application for authorisation is accompanied by a programme of activity setting out the organisational structure of the management company, and specifying the human and technical resources that will be used to conduct the business of the management company and information about the persons effectively conducting the business of that management company, including:;’

(c) in point (e) the introductory wording is replaced by the following:

‘(e) information is provided by the management company on arrangements made for the delegation and sub-delegation to third parties of functions in accordance with Article 13, comprising the following:;’

(d) second subparagraph is replaced by the following:

‘For the purposes of the first subparagraph, point (a), competent authorities shall not require management companies to provide up to 50 % of the additional amount of own funds referred to in point (a)(i) where those management companies benefit from a guarantee of the same amount given by a credit institution or an insurance undertaking which has its registered office in a Member State, or in a third country where it is subject to prudential rules considered by the competent authorities as equivalent to those laid down in Union law.;’

(2) the following paragraph 1a is inserted:

‘1a. ▌

The application for authorisation of a management company that relies on the human and technical resources of one or more entities that belong to ***the same EU group*** to conduct its business, shall in addition to the information referred to in paragraph 1, point (c), specify those human and technical resources. The authorisation of a management company shall not be made conditional on the requirement that the management company refrains from utilising resources of one or more entities within that same EU group.;’

(3) paragraph 6 is replaced by the following:

‘6. In order to ensure consistent harmonisation of this Article and Article 29, ESMA shall develop draft regulatory technical standards specifying:

(a) ▌ the information to be provided to the competent authorities in the application for the authorisation of the management company or investment company in accordance with this Article and Article 29, including the programme of activity; ▌

(b) ***the conditions relevant for*** the procedures and timelines to be followed as part of the application for authorisation of the management company or investment company***, including the criteria under which an application shall be considered complete for the purposes of those timelines***; ***and***

(c) the methods and arrangements for delivery of the information ***referred to in point (a)***.

When developing the draft regulatory technical standards referred to in this paragraph, ESMA shall establish a temporary joint-project team composed of representatives of competent authorities possessing relevant supervisory expertise.

The provision of the information referred to in point (a) shall not prevent the competent authorities from requesting additional information as they consider necessary for the assessment of an application on a case-by-case basis, having regard to the nature, complexity and particular circumstances of the case.

ESMA shall develop IT solutions, including ***standard*** templates, data standards, formats and instructions for providing the information referred to in point (a).

ESMA shall submit those draft regulatory technical standards to the Commission by [Please insert date = 12 months after the entry into force of this Directive].

Power is conferred on the Commission to supplement this Directive by adopting the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.;'

(4) in paragraph 7, the following subparagraph is added:

'If the competent authorities of the management company's home Member State decide to impose restrictions or reject the changes referred to in the first subparagraph, they shall, within 1 month of receipt of the notification referred to in the first subparagraph, inform the management company thereof. The competent authorities may prolong that period for up to 1 month where they consider that to be necessary because of the specific circumstances of the case and after having notified the management company thereof. The changes shall be implemented if the relevant competent authorities do not oppose the changes within the relevant assessment period.;'

(6) in Article 8(3), the introductory wording is replaced by the following:

‘3. A competent authority that has granted an authorisation to one of the following management companies shall inform the competent authorities of the other Member State involved of such authorisation:;’

(7) Article 12 is amended as follows:

(a) in paragraph 1, the first subparagraph is replaced by the following:

‘Management companies authorised in a Member State shall comply at all times with prudential rules ▌ ;’

(b) paragraph 3 is replaced by the following:

‘3. The Commission shall be empowered to adopt, delegated acts in accordance with Article 112a, to specify:

(a) the rules, procedures and arrangements as referred to in paragraph 1;

(b) the structures and organisational requirements to minimise conflicts of interests as referred to under paragraph 1, second subparagraph, point (b).

In order to ensure a uniform application of the prudential rules for management companies and to ensure a consistent implementation across Member States, ESMA may adopt guidelines to specify the content of those rules.
When developing the draft guidelines referred to in this paragraph, ESMA shall establish a temporary joint-project team composed of representatives of competent authorities possessing relevant supervisory expertise.;'

(8) Article 13 is amended as follows:

(a) in paragraph 1 the following subparagraph is inserted:

'Where a management company delegates to one or more entities that belong to the same EU group of a management company and AIFM for the performance of the functions referred to in Annex II or the services referred to in Article 6 paragraph 3, points (f), (g), (h) and (j) shall not apply.'

(b) in paragraph 4 the following subparagraphs are added:

' The third party may sub-delegate any of the functions or services delegated to it provided that the following conditions are met:

(a) the management company consented prior to the sub-delegation;

(b) the management company notified the competent authorities of its home Member State before the sub-delegation arrangements become effective; and

(c) the conditions set out in paragraph 1, shall apply, mutatis mutandis, to any sub-delegation.

Where the sub-delegate belongs to the same EU group as the management company and the delegate, points (f), (g), (h), and (j) of paragraph 1 shall not apply.

Where a function referred to in Annex II or service referred to in Article 6 paragraph 3 is further sub-delegated, the preceding subparagraphs shall apply at each successive level only where every entity in the relevant delegation chain belongs to the same EU group as the management company.
Where a function or service is delegated or sub-delegated to an entity that does not belong to that same EU group, the first subparagraph of paragraph 1 shall apply in full to that delegation or sub-delegation and to any subsequent sub-delegation by that entity. '

(c) paragraph 2 is amended as follows:

‘2. The liability of the management company or the depositary shall not be affected by the fact that the management company has delegated functions or services to a third party***, or by any further sub-delegation,*** or has ***delegated to*** one or more entities within ***the same*** EU group to carry out its functions ***or services***. The management company shall not delegate the functions or services ***to*** one or more entities ▌ to the extent that, in essence, it can no longer be considered to be the manager of the UCITS or the provider of the services referred to in Article 6(3) and to the extent that it becomes a letter-box entity.;’

▌

(9) Article 14 is amended as follows:

(a) in paragraph 1 the introductory wording is replaced by the following:

‘Management companies authorised in a Member State shall comply at all times with rules of conduct. Those rules of conduct shall ensure that a management company:;’

(b) in paragraph 2, the following subparagraph is added:

‘In order to ensure a uniform application of the rules of conduct referred to in paragraph 1 and to ensure a consistent implementation across Member States, ESMA may adopt guidelines, to specify the content of those rules.
When developing the draft guidelines referred to in this paragraph, ESMA shall establish a temporary joint-project team composed of representatives of competent authorities possessing relevant supervisory expertise.;’

(c) paragraph 2a is replaced by the following:

‘2a. Where a management company manages or intends to manage a UCITS at the initiative of a third party, including cases where that UCITS uses the name of a third-party initiator or where a management company appoints a third-party initiator as a delegate pursuant to Article 13, the management company shall inform the competent authorities of its home Member State thereof at the time of authorisation and, taking account of any conflicts of interest, upon request demonstrate to the competent authorities of its home Member State that it complies with paragraph 1, point (d). In particular, the management company shall demonstrate the reasonable steps it has taken to prevent conflicts of interest arising from the relationship with the third party or, where those conflicts of interest cannot be prevented, how it identifies, manages, monitors and, where applicable, discloses, those conflicts of interest to prevent those conflicts of interest from adversely affecting the interests of the UCITS and its investors.;’

(10) in Article 15, the first subparagraph is replaced by the following:

‘Management companies or, where relevant, investment companies shall make available the facilities referred to in Article 17b of Regulation (EU) 2019/1156 and establish appropriate procedures and arrangements to ensure that they deal properly with investor complaints and that there are no restrictions on investors exercising their rights in the event that the management company is authorised in a Member State other than the UCITS home Member State. Those measures shall allow investors to file complaints in the official language or one of the official languages of their Member State.;’

(11) in Article 16(1), the second subparagraph is replaced by the following:

‘Where a management company so authorised proposes, without establishing a branch, only to market the units of the UCITS it manages as provided for in Annex II, point 2, ***(2)*** in a Member State other than the UCITS home Member State, without proposing to pursue any other activities or services, such marketing shall be subject only to the requirements of Regulation (EU) 2019/1156.;’

(12) Article 17 is amended as follows:

(a) in paragraph 3, the first subparagraph is replaced by the following:

‘3. Unless the competent authorities of the management company's home Member State have reason to doubt the adequacy of the administrative structure or the financial situation of a management company, taking into account the activities envisaged, they shall, within one month of receiving all the information referred to in paragraph 2, communicate that information to the competent authorities of the management company's host Member State and shall inform the management company accordingly. They shall also communicate details of any compensation scheme intended to protect investors.;’

(b) paragraph 4 is replaced by the following:

‘4. A management company which pursues activities by a branch within the territory of the host Member State shall comply with the rules referred to in Article 14, as implemented by the management company’s host Member State.;’

(c) paragraph 6 is replaced by the following:

‘6. Before the branch of a management company starts business, the competent authorities of the management company’s host Member State shall, within one month of receiving the information referred to in paragraph 2, prepare for supervising the compliance of the management company within the rules under their responsibility.;’

(d) the following paragraph 7a is inserted:

‘7a. The management company’s host Member State shall not impose any additional requirements on the management company in respect of matters covered by this Directive.;’

(13) Article 18 is amended as follows:

(a) paragraph 2 is replaced by the following:

‘2. The competent authorities of the management company's home Member State shall, within 15 ***working*** days of receiving the information referred to in paragraph 1, forward that information to the competent authorities of the management company's host Member State;;’

(b) the following paragraph 2a is inserted:

‘2a. The management company’s host Member State shall not impose any additional requirements on the management company in respect of matters covered by this Directive.;’

(c) paragraph 3 is replaced by the following:

‘3. A management company which pursues activities under the freedom to provide services shall comply with the rules referred to in Article 14, as implemented by the management company’s home Member State.;’

(14) in Article 19(3), point (h) is replaced by the following:

‘(h) the disclosure and reporting requirements of the UCITS, including the prospectus and periodic reports;;’

(15) in Article 20a, paragraph 3 is amended as follows:

(a) the first subparagraph is replaced by the following:

‘The competent authorities of the UCITS home Member State shall ensure that all information gathered under this Article in respect of all UCITS that they supervise is made available to other relevant competent authorities, ESMA, EBA, EIOPA and the European Systemic Risk Board (ESRB), whenever necessary for the purpose of carrying out their duties, by means of the procedures set out in Article 101.;’

(b) the third subparagraph is replaced by the following:

‘The competent authorities of the UCITS home Member State or of the management company's home Member State shall, without delay, provide information by means of the procedures set out in Article 101, and bilaterally to the competent authorities of other Member States directly concerned, if a management company under their responsibility, or a UCITS managed by that management company, potentially constitutes an important source of counterparty risk to a credit institution or other systemically relevant institutions in other Member States, or to the stability of the financial system in another Member State.;’

(16) in Article 23(1), the following ***subparagraphs are*** added:

‘By way of derogation from the first subparagraph, ***a UCITS home Member State may allow its authorised UCITS to appoint a*** depositary ***that has*** its registered office or ***is*** established in ***another*** Member State, ***provided that the depositary*** falls ***within*** the category referred to in paragraph 2, point (b) and ***is*** duly authorised to provide services in other Member States pursuant to Directive 2013/36/EU***, and is supervised as a depositary in the depositary's home Member State***.

Member States exercising the option in the second subparagraph shall inform ESMA and the Commission thereof. ESMA shall compile and maintain a list of such Member States and provide it to national competent authorities and publish the list on ESMA's website.

Without prejudice to the following subparagraph, the depositary referred to in the second subparagraph shall not be subject to any additional regulatory or supervisory requirements on the basis of its appointment to UCITS authorised in another Member State.

Where a depositary is appointed pursuant to the second subparagraph, it shall, in the performance of its duties in respect of the UCITS, comply with the laws, regulations and administrative provisions applicable to that UCITS in its home Member State and with any lawful direction issued by the competent authorities of the UCITS home Member State in relation to that UCITS. The depositary shall make the arrangements necessary to ensure such compliance. This shall be without prejudice to the laws, regulations and administrative provisions of the depositary's home Member State.;’

(16a) Article 26a is replaced by the following:

'The depositary shall upon request make available to the authority or authorities responsible for its supervision, and to the competent authorities of the UCITS and to the competent authorities of the management company, all information obtained in the performance of its duties that may be necessary for the exercise of their respective responsibilities under this Directive.

The depositary shall without delay notify the competent authorities of the UCITS home Member State and the management company of any material breach of the laws, regulations or administrative provisions applicable to the UCITS, of any requirement imposed by the competent authorities of the UCITS home Member State, or of any provision of the UCITS' fund rules, instruments of incorporation or prospectus.

Where the authority or authorities responsible for the supervision of the depositary, the competent authorities of the UCITS and the competent authorities of the management company are different, they shall exchange without delay any information received pursuant to this Article or otherwise obtained in the exercise of their supervisory functions, insofar as that information is necessary for the performance of their respective responsibilities under this Directive.;'

(16b) the following Article 26aa is inserted:

'Article 26aa

1. The authority or authorities responsible for the supervision of the depositary and the competent authorities of the UCITS and the management company shall cooperate and exchange information to the extent necessary for the purpose of exercising their powers under this Directive and national law in relation to the depositary referred to in Article 23(1), second subparagraph.

2. Where the competent authorities of the UCITS home Member State or of the management company have reasonable grounds for believing that a depositary referred to in Article 23(1), second subparagraph, is carrying out or has carried out acts contrary to this Directive, they shall without delay notify their findings to the authority or authorities responsible for the supervision of the depositary, which shall take the appropriate measures and inform the notifying authorities of the outcome.
This paragraph shall be without prejudice to the competences of the notifying competent authorities.

3. If, despite the measures taken by the authority or authorities responsible for the supervision of the depositary or because such measures prove to be inadequate, or because the authorities fails to act within a reasonable timeframe, the depositary continues to act in a manner that may be prejudicial to the interests of the investors of the UCITS, or otherwise breaches this Directive, the competent authorities of the UCITS home Member State, may:

(a) after informing the authority or authorities responsible for the supervision of the depositary, take all the appropriate measures necessary in order to protect investors of the UCITS, including temporarily prevent the depositary from accepting new appointments in respect of UCITS authorised in that Member State. The competent authorities of the UCITS home Member State shall inform ESMA and the authority or authorities responsible for the supervision of the depositary of such measures without undue delay; or

(b) refer the matter to ESMA, which may act in accordance with the powers conferred on it under Regulation (EU) No 1095/2010.'

(17) Article 29 is amended as follows:

(a) in paragraph 1, first subparagraph, the introductory wording is replaced by the following:

'The competent authorities of the investment company's home Member State shall not grant authorisation to an investment company that has not designated a management company unless the investment company has a sufficient initial capital of at least EUR 300 000.;'

(b) paragraphs 5 and 6 are deleted;

(18) Article 31 is amended as follows:

(a) the first subparagraph is replaced by the following:

‘Each investment company's home Member State shall require investment companies that have not designated a management company authorised pursuant to this Directive to comply at all times with prudential rules.;’

(b) the following paragraph is added:

‘2. In order to ensure a uniform application of the prudential rules for investment companies and to ensure a consistent implementation across Member States, ESMA may adopt guidelines to further to specify the content of the rules referred to in paragraph 1.
When developing the draft guidelines referred to in this paragraph, ESMA shall establish a temporary joint-project team composed of representatives of competent authorities possessing relevant supervisory expertise.;’

(19) Article 39 is amended as follows:

(a) in paragraph 2, point (b) is replaced by the following:

‘(b) an up-to-date version of the prospectus of the receiving UCITS, if established in another Member State;;’

(b) in paragraph 4, point (b) is replaced by the following:

‘b. the receiving UCITS has been notified, in accordance with Article 17c of Regulation (EU) 2019/1156, to market its units in all Member States where the merging UCITS is either authorised or has been notified to market its units in accordance with Article 17c of Regulation (EU) 2019/1156; and;’

(c) paragraph 6 is replaced by the following:

‘6. Competent authorities shall allow receiving UCITS to derogate from Articles 52 to 55 for six months following the date of completion of the merger, in accordance with the Article 57(1), second subparagraph.;’

(20) Article 43 is amended as follows:

(a) in paragraph 3, point (e) is deleted;

(b) paragraph 4 is replaced by the following:

‘4. If the merging or the receiving UCITS has been notified in accordance with Article 17c of Regulation (EU) 2019/1156, the information referred to in paragraph 3 shall be provided in the official language, or one of the official languages, of the relevant UCITS host Member State, or in a language approved by its competent authorities. The UCITS required to provide the information shall be responsible for producing the translation. That translation shall faithfully reflect the content of the original.;’

(21) in Article 45, paragraph 2 is amended as follows:

‘2. Without prejudice to paragraph 1, for mergers between UCITS and by way of derogation from Article 84(1), ▌ Member States shall ensure that the competent authorities ***have the power to*** require or ***permit*** the temporary suspension of the subscription, repurchase ***and*** redemption of units ***where*** such suspension is justified ***in the interests of*** unit-holders. ▌

(22) Article 51 is amended as follows:

(a) paragraph 2 is replaced by the following:

‘2. UCITS may invest in SFTs relating to transferable securities and money market instruments under the conditions and within the limits laid down in this Directive.

Under no circumstances shall those SFTs cause the UCITS to diverge from its investment objectives as laid down in the UCITS’ fund rules, instruments of incorporation or prospectus.;’

(b) in paragraph 3, the third subparagraph is replaced by the following:

'A UCITS may invest, as a part of its investment policy and within the limit laid down in Article 52(5), in financial derivative instruments provided that the exposure to the underlying assets does not exceed in aggregate the investment limits laid down in Article 52. When a UCITS invests in index-based financial derivative instruments, those investments shall not be combined for the purposes of the limits laid down in Article 52.;'

(23) Article 52 is amended as follows:

(a) in paragraph 2, the first subparagraph is replaced by the following:

'2. Member States shall ensure that the 5% limit laid down in the first subparagraph of paragraph 1 is raised to 10%, provided that the total of the transferable securities and the money market instruments held by the UCITS in the issuing bodies in each of which it invests more than 5 % of its assets does not exceed 40% of the value of its assets. That limitation shall not apply to deposits or OTC derivative transactions made with financial institutions subject to prudential supervision.;'

(b) paragraph 3 is replaced by the following:

‘3. Member States shall ensure that the 5 % limit laid down in paragraph 1, first subparagraph is raised to 35 %, where the transferable securities or money market instruments are issued or guaranteed by a Member State, by its local authorities, by a third country or by a public international body to which one or more Member States belong.;’

(c) paragraph 4 is replaced by the following:

‘4. Member States shall ensure that the 5 % limit laid down in paragraph 1, first subparagraph is raised to 25 %, where bonds were issued before 8 July 2022 and met the requirements set out in this paragraph as applicable on the date of their issue, or where bonds fall under the definition of covered bonds as defined in Article 3, point (1) of Directive (EU) 2019/2162 of the European Parliament and of the Council[1]’;

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[1] Directive (EU) 2019/2162 of the European Parliament and of the Council of 27 November 2019 on the issue of covered bonds and covered bond public supervision and amending Directives 2009/65/EC and 2014/59/EU (OJ L 328, 18.12.2019, p. 29, ELI: http://data.europa.eu/eli/dir/2019/2162/oj).’;’

(d) in paragraph 5, the fourth subparagraph is replaced by the following:

‘Member States shall allow UCITS to invest cumulatively in transferable securities and money market instruments within the same group up to a limit of 20%.;’

▌

(25) In Article 54, paragraph 1 is replaced by the following:

‘1. By way of derogation from Article 52, competent authorities shall allow a UCITS to invest in accordance with the principle of risk-spreading up to 100 % of their assets in different transferable securities and money market instruments issued or guaranteed by a Member State, one or more of its local authorities, a third country, or a public international body to which one or more Member States belong, provided that the UCITS can demonstrate to the competent authorities of its home Member State that its unit-holders have protection equivalent to that of unit-holders in UCITS complying with the limits laid down in Article 52.

Such a UCITS shall hold securities from at least six different issues, but securities from any single issue shall not account for more than 30 % of its total ***net*** assets.;’

(26) Article 55 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. Competent authorities shall allow a UCITS to acquire the units of UCITS or other collective investment undertakings referred to in Article 50(1), point (e), provided that no more than 20 % of its ***net*** assets are invested in units of a single UCITS or other collective investment undertaking.;’

(b) in paragraph 2, the second subparagraph is replaced by the following:

‘Where a UCITS has acquired units of another UCITS or other collective investment undertakings, ***the*** assets ***of the UCITS are not required to be*** combined ***with those of the other UCITS or other collective investment undertakings*** for the purposes of the limits laid down in Article 52.;’

▌

(28) in Article 57(1), the second subparagraph is replaced by the following:

‘While ensuring observance of the principle of risk spreading, competent authorities shall allow recently authorised UCITS to derogate from Articles 52 to 55 for six months following the date ***of the UCITS first investment***.;’

(29) in Article 58(4), point (b) is replaced by the following:

‘If a master UCITS does not raise capital from the public in a Member State other than that in which it is established but only has one or more feeder UCITS in that Member State, Regulation (EU) 2019/1156 shall not apply.;’

(30) in Article 59(3), point (b) is replaced by the following:

‘(b) the prospectus of the feeder and the master UCITS;’

(31) in Article 63, paragraph 3 is replaced by the following:

‘3. In addition to the requirements laid down in Articles 74 and 82, the feeder UCITS shall send the prospectus and any amendment thereto, as well as the annual and half-yearly reports of the master UCITS, to the competent authorities of its home Member State.;’

(32) Article 64 is amended as follows:

(a) in paragraph 1, point (b) is deleted;

(b) paragraph 2 is replaced by the following:

‘2. In the event that the feeder UCITS has been notified in accordance with Article 17c of Regulation (EU) 2019/1156, the information referred to in paragraph 1 shall be provided in the official language, or one of the official languages, of the feeder UCITS host Member State or in a language approved by its competent authorities. Member States shall ensure that the feeder UCITS is responsible for producing the translation. That translation shall faithfully reflect the content of the original.;’

(33) Article 69 is amended as follows:

(a) paragraph 2 is replaced by the following:

‘2. The prospectus shall contain the information provided for in Schedule A of Annex I, in so far as that information does not already appear in the fund rules or instruments of incorporation annexed to the prospectus in accordance with Article 71(1).;’

(b) paragraph 4 is replaced by the following:

‘4. The half-yearly report shall contain the information provided for in Sections I to IV of Schedule B of Annex I. Where a UCITS has paid or proposes to pay an interim dividend, the figures must indicate the results after tax for the half-year concerned and the interim dividend paid or proposed.;’

(34) in Article 70, paragraph 2 is replaced by the following:

‘2. Where a UCITS invests principally in any category of assets referred to in Article 50 other than transferable securities or money market instruments, or where a UCITS replicates a stock or debt securities index ▌, its prospectus and, where necessary, marketing communications shall contain a prominent statement drawing attention to the investment policy of the UCITS and its focus on those investments.;’

(35) in Article 75, paragraph 3 is replaced by the following:

‘3. The annual and half-yearly reports shall be available to investors in the manner specified in the prospectus. A paper copy of the annual and half-yearly reports shall be delivered to the investors on request and free of charge.;’

(36) in Chapter IX, Section 3 is deleted;

(37) in Article 82b (1), the first subparagraph is replaced by the following:

‘From 10 January 2028, Member States shall ensure that, when making public any information referred to in Articles 68(1) of this Directive, management companies and investment companies submit that information at the same time to the collection body referred to in paragraph 3 of this Article for the purpose of making it accessible on the European single access point (ESAP) established under Regulation (EU) 2023/2859 of the European Parliament and of the Council[1].;

_____

[1] Regulation (EU) 2023/2859 of the European Parliament and of the Council of 13 December 2023 establishing a European single access point providing centralised access to publicly available information of relevance to financial services, capital markets and sustainability (OL L, 2023/2859, 20.12.2023, ELI: http://data.europa.eu/eli/reg/2023/2859/oj).’

(38) in Article 83(2), first subparagraph, the introductory wording is replaced by the following:

‘By way of derogation from paragraph 1, competent authorities shall allow a UCITS to borrow provided that such borrowing is:;’

(39) Article 84 is amended as follows:

(a) paragraph 3b is replaced by the following:

‘3b. The competent authorities of the management company's home Member State may request the competent authorities of the UCITS home Member State to exercise the powers referred to in paragraph 2, point (b), specifying the reasons for that request and informing ESMA and, where there are potential risks to the stability and integrity of the financial system, the ESRB thereof.;’

(b) paragraph 3d is replaced by the following:

‘3d. On the basis of the information received pursuant to paragraphs 3b and 3c, ESMA shall issue to the competent authorities of the UCITS home Member State an opinion on the exercise of powers pursuant to paragraph 2, point (b) without undue delay. ESMA shall communicate that opinion to the competent authorities of the management company’s home Member State.;’

(c) paragraph 3f is replaced by the following:

‘3f. ESMA may develop guidelines providing indications to guide the competent authorities in their exercise of the powers set out in paragraph 2, point (b), and indications as to the situations that might lead to the requests referred to in paragraph 3b being put forward. When developing those guidelines, ESMA shall consider the potential implications of such supervisory intervention for investor protection and financial stability in another Member State or in the Union. Those guidelines shall recognise that the primary responsibility for liquidity risk management remains with the UCITS.;’

(40) Chapter XI is deleted;

(41) in Article 97, paragraph 3 is replaced by the following:

‘3. The competent authorities of the UCITS home Member State shall be competent to supervise that UCITS including, where relevant, pursuant to Article 19 of this Directive. However, the competent authorities of the UCITS host Member State shall be competent to supervise ***compliance with the requirements for which they are responsible under*** Article 14a of Regulation (EU) 2019/1156.;’

(42) in Article 98, paragraphs 3 and 4 are deleted;

(43) in Article 99a, point (s) is replaced by the following:

‘(s) a UCITS marketing its units in a Member State other than its home Member State fails to comply with the procedure laid down in Article 17c of Regulation (EU) 2019/1156.;’

(44) in Article 101, paragraph 9 is deleted;

(45) in Article 106(1), the second subparagraph is replaced by the following:

‘That person shall have a duty to report any facts and decisions of which he becomes aware in the course of carrying out a task, as described in the first subparagraph, in an undertaking having close links resulting from a control relationship with the UCITS or an undertaking contributing towards the business activity of the UCITS, within which that person is carrying out that task.;’

(46) Article 108 is amended as follows:

(a) in paragraph 1, the second subparagraph is replaced by the following:

‘The first paragraph shall be without prejudice to the powers of the competent authorities of the UCITS host Member State to take action against that UCITS pursuant to Article 14a of Regulation (EU) 2019/1156.;’

(b) paragraph 2 is replaced by the following:

‘2. Where the management company of a UCITS is established in another Member State, the competent authorities of the UCITS home Member State shall without delay communicate to the competent authorities of the management company's home Member State ***and the UCITS host Member States*** any decision to withdraw authorisation, or any other serious measure taken against a UCITS, or any suspension of the issue, repurchase or redemption of its units imposed upon it.;’

(c) paragraphs 4 and 5 are deleted;

(d) paragraph 6 is replaced by the following:

‘6. Member States shall ensure that within their territories it is legally possible to serve the legal documents necessary for the measures which may be taken by the UCITS home Member State against the ***UCITS*** pursuant to paragraphs 2.;’

(47) the following Articles 110b to 110d are inserted:

‘Article 110b

Co-ordination colleges for large ***cross-border*** EU groups of management companies and AIFMs

1. By [***OP:*** insert date = ***18*** months from ***the date of*** entry into force ***of this Directive***]***,*** ESMA shall identify ***groups of EU*** management companies and AIFMs that ***meet both*** of the following conditions:

(a) the aggregate ▌ net asset ***value of assets managed in the Union by EU*** management companies and AIFMs ***belonging to*** the group ***is equal to or exceeds*** EUR 300 billion***, calculated as a rolling average over the preceding 24 months***; ***and***

(b) ▌ management companies ***or*** AIFMs ***belonging to*** the group are established in more than one Member ***State, or the group carries out material asset-management activities*** in more than one Member State ***through the management or marketing of UCITS or AIFs.***

▌

2. ***ESMA shall publish and maintain a list of the groups identified pursuant to*** paragraph 1***. It*** shall ***review that list every two years***.

In conducting the review, ESMA shall have regard to developments in the scale and structure of the Union asset-management sector and to the need to ensure that this Article remains limited to groups whose size, complexity and cross-border activities warrant enhanced supervisory co-ordination for the purpose of any advice provided pursuant to paragraph 5.

3. ***A group included on the list*** shall ***remain subject to this Article until completion*** of the ***next biennial review. During that period, the*** relevant ***co-ordination college shall consider the*** group***'s activities and cross-border operations in accordance with*** paragraph ***8***.

Following completion of the ***biennial*** review, ESMA shall ***remove the group from the list where it no longer meets the conditions laid down in paragraph 1***.

ESMA shall specify the date on which removal takes effect, allowing sufficient time for the orderly conclusion of the ongoing work of the co-ordination college established under this Article.

4. ***For the purposes of this Article,*** **'**group' ***means a parent undertaking and its subsidiary undertakings within the meaning of Article 2, point (11), of Directive 2013/34/EU, where at least two management companies or AIFMs belonging to that group are established in the Union.***

5. ***The Commission is empowered to adopt delegated acts in accordance with Article 112a to amend the threshold*** referred to in paragraph ***1, point (a), having regard to developments in the scale and structure of the Union asset-management sector and to the need to ensure that this Article remains limited to groups whose size, complexity and cross-border activities warrant enhanced supervisory co-ordination.***

Before providing advice to the Commission concerning an amendment to the threshold, ESMA shall consult the competent authorities and shall support its advice with appropriate market, supervisory and statistical evidence.

▌

6. ▌ ESMA shall ***develop draft regulatory technical standards specifying:***

(a) the methodology for calculating the net asset value of assets referred to in paragraph 1, point (a), including the treatment of intra-group management arrangements and the avoidance of double counting;

(b) the reference dates, data sources and procedures to be used for identifying groups that meet the conditions laid down in paragraph 1;

(c) the methodology for identifying the management company or AIFM that manages the largest proportion of the aggregate value of assets for the purposes of paragraph 9;

(d) the procedures for establishing, maintaining and updating the list referred to in paragraph 2; and

(e) the criteria to be applied in determining whether a host Member State is materially affected by the cross-border activities of a management company or AIFM for the purposes of paragraph 9(c).

ESMA shall ***submit those draft regulatory technical standards*** to the ***Commission by [OP: insert date]***.

Power is delegated to the Commission to supplement this Directive by adopting the regulatory technical standards referred to in this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

7. ***Within 30 calendar days of the publication or updating of the list*** referred to in paragraph ***2, ESMA*** shall ***notify*** the competent authorities ***referred to in paragraph 9. A single co-ordination college shall be established for each group included on the list. The co-ordination college shall be deemed established on the date of that notification***.

8. ***The co-ordination college shall facilitate convergence, co-operation, consultation, co-ordination and the exchange of information among its members in relation to*** the management companies and ▌ AIFMs ***belonging to the*** group***. It*** shall ***not exercise supervisory or decision-making*** powers conferred on ***ESMA or on a competent authority***.

The co-ordination college shall, in particular:

(a) facilitate the exchange of relevant supervisory information, assessments and views;

(b) promote a common understanding of the group's activities, governance, risk-management arrangements and cross-border operations;

(c) identify material divergences in supervisory approaches and practices;

(d) identify gaps, duplication or inconsistencies in supervisory activities; and

(e) facilitate co-ordinated responses to material developments affecting more than one Member State.

(f) consider submissions from the group identifying concrete and evidenced

examples of barriers to the functioning of the Single Market arising from divergences in supervisory practices among competent authorities.

The co-ordination college may consider information concerning UCITS or AIFs only insofar as necessary for the performance of those tasks.

9. The following shall be members of the co-ordination college:

(a) the competent authority of each Member State responsible for supervising a management company or AIFM belonging to the group;

(b) ESMA; and

(c) the competent authority of each host Member State in which a management company or AIFM belonging to the group carries out material cross-border activities.

The co-ordination college shall be chaired by the competent authority responsible for supervising the management company or AIFM belonging to the group that manages the largest proportion of the aggregate value of assets referred to in paragraph 1, point (a).

The chair shall be responsible for preparing the agenda for each meeting and propose attendance list.

ESMA shall provide administrative and secretariat support, including coordinating the timely circulation of the agenda, meeting documents and invitations to members and participants.

Where two or more management companies or AIFMs manage the same largest proportion, the competent authorities concerned shall appoint the chair from among themselves. Where they do not agree within 20 working days, ESMA shall appoint the chair after consulting them.

ESMA shall support the chair in facilitating the effective operation of the co-ordination college, including through administrative, analytical and coordination assistance. For that purpose, ESMA may undertake analysis and assessments of matters within the co-ordination college's remit and prepare reports and observations to support the work of the co-ordination college.

10. ***The chair, subject to the prior approval by the members of the co-ordination college, may invite an authority or body to attend a meeting where its participation is materially relevant to the matters under consideration and proportionate to the effective and efficient functioning of the co-ordination college.***

An authority or body invited pursuant to the first subparagraph shall participate only in relation to the matter for which it has been invited. An authority of a third country may be invited only where an appropriate co-operation arrangement is in place and information disclosed to it is subject to guarantees of professional secrecy that are at least equivalent to those laid down in Union law. Information shall be disclosed only insofar as necessary for the matter in respect of which it has been invited.

11. The members of the co-ordination college shall agree written arrangements governing its operation. The arrangements shall specify the practical organisation of the co-ordination college, the information to be exchanged, the treatment of confidential information, engagement with the group and measures to avoid unnecessary duplication of reporting, information requests and supervisory activities. They shall be reviewed periodically and following any material change in the structure or activities of the group.

Where the written arrangements have not been agreed within three months of the establishment of the co-ordination college, the chair shall, after consulting the members and ESMA, adopt interim arrangements based on the model referred to in paragraph 15. The interim arrangements shall not alter the powers, responsibilities of any member or impose any additional obligation on a member.

12. The chair, subject to the prior approval by members of the co-ordination college, may invite representatives of the group to participate in all or part of a meeting where this would assist the performance of its tasks. Their participation shall be limited to the provision of factual information, clarification of matters under consideration, examples of barriers to the Single Market arising from divergences in supervisory practices among competent authorities, and the exchange of views relevant to the group's activities or cross-border operations.

Representatives of the group shall not participate in deliberations among members of the co-ordination college or receive confidential supervisory information concerning the assessments, intended actions or internal deliberations of a member.

13. The co-ordination college shall record observations, matters requiring further supervisory consideration, convergence, and any instances of supervisory divergence, duplication or gaps identified in the course of its work. Where such issues are identified, members shall use their best efforts, within their respective mandates and responsibilities, to consider and address them appropriately. Any observations of the co-ordination college shall be non-binding and shall not affect the powers, responsibilities or decision-making autonomy of its members

14. ESMA shall use the horizontal insight gained through its participation in co-ordination colleges to identify unnecessary duplication, regulatory gaps, inconsistencies and other barriers to the efficient and consistent functioning of the Union supervisory and regulatory framework. Where appropriate, ESMA may address those matters through the supervisory-convergence tools conferred on it under Regulation (EU) No 1095/2010.

15. ESMA shall, by [OP: insert date = 12 months from the date of entry into force of this Directive], issue guidelines in accordance with Article 16 of Regulation (EU) No 1095/2010 specifying:

(a) the practical arrangements necessary for the consistent establishment and operation of co-ordination colleges;

(b) a model for the written arrangements referred to in paragraph 11;

(c) criteria for determining material relevance for the purposes of paragraph 10;

(d) arrangements to avoid unnecessary duplication of reporting, information requests and supervisory activities;

(e) arrangements for engagement with groups; and

(f) the form in which material horizontal observations may be communicated to competent authorities that are not members of the relevant co-ordination college.

16. The establishment or operation of a co-ordination college shall not alter the tasks, powers or responsibilities conferred on ESMA or on competent authorities by this Directive, Directive 2011/61/EU, Regulation (EU) No 1095/2010 or national law.

Article 110c

Powers of ESMA to address cross-border issues

1. ESMA shall on an ongoing basis identify diverging, duplicative, redundant and deficient supervisory actions stemming from the home or host competent authorities and ***supervising authorities as relevant, and*** hindering the effective exercise of passporting rights by management companies in accordance with Chapter ***III***, Section 4 of this Directive and of depositaries carrying out their functions on a cross-border basis, pursuant to Article 23(1).

2. For the purpose of paragraph 1, ***the Executive Board*** shall engage with the competent authorities ***and supervising authorities, as relevant,*** concerned, and ▌ where applicable, collect additional information to identify existing or potential cross-border issues.

Where, pursuant to the first subparagraph, ***the Executive Board*** identifies existing or potential cross-border issues it shall propose corrective actions to the relevant competent authorities ***and supervising authorities, as relevant,*** for their removal. ***The corrective actions shall be non-binding and shall identify the issue concerned, the outcome sought and a reasonable period for addressing it.***

3. Where, despite ▌ the corrective actions referred to in paragraph 2 or because the relevant competent authorities ***and supervising authorities, as relevant,*** fail to implement those corrective actions, the issues identified pursuant to paragraph 2 persist, ***the Executive Board may submit to the Board of Supervisors a reasoned proposal for the*** exercise ***by ESMA of one or more*** of the powers conferred on it under ▌ Regulation (EU) No 1095/2010 in the following cases:

   (a) the competent authorities of the host Member State of the management company prevent or intend to prevent a management company from managing UCITS in their territory, or impose requirements on such management which are not compliant with this Directive;

(b) the competent authorities of the UCITS home Member State prevent or intend to prevent the appointment of a depositary established in another Member State as referred to in Article 23(1), or impose requirements on such appointment that are not compliant with this Directive ***without objective and duly substantiated grounds relating to the depositary's eligibility or capacity to perform its duties in respect of the UCITS concerned, or otherwise in a manner that is not compliant with this Directive or Regulation (EU) 2019/1156***;

(c) a management company or a depositary carries out or intends to carry out functions or provide services on a cross-border basis, while not being compliant with Union law.

This Article shall be without prejudice to ESMA's capacity to use any of the powers conferred on it under Regulation (EU) No 1095/2010 outside the procedure laid down in this Article.

▌

4. ESMA shall publish a report on its activity in accordance with paragraphs 1 to 4 at least annually.

Article 110d

Dispute settlement

In case competent authorities disagree on an assessment, action or omission of one competent authority in areas where this Directive requires cooperation or coordination between competent authorities from more than one Member State, one or more competent authorities may refer the matter to ESMA which shall act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No 1095/2010.;'

(48) in Article 117, the third subparagraph is deleted;

(49) in Article 118, paragraph 2 is deleted;

(50) Annex II is replaced by the text in Annex I of this Directive.

Article 2

Amendments to Directive 2011/61/EU

Directive 2011/61/EU is amended as follows:

(1) Article 4(1) is amended as follows:

(a) point (aea) is deleted;

(b) the following points (av) and (aw) are added:

‘(av) ‘EU group of an AIFM and management company means, in relation to a given AIFM or management company, a group as defined in Article 2, point (11) of Directive 2013/34/EU of the European Parliament and ***of*** the Council[1] that consists of any of the following:

(a) management companies, as defined in Article 2(1), point (b) of Directive 2009/65/EC of the European Parliament and the Council[1] that are established in the Union, and which are authorised in accordance with that Directive;

(b) managers of alternative investment funds, as defined in Article 4(1), point (b) of this Directive that are established in the Union, and which are authorised in accordance with this Directive;

(c) investment firms, as defined in Article 4(1), point (1) of Directive 2014/65/EU of the European Parliament and the Council[1] that are established in the Union, and which are authorised in accordance with that Directive;

(d) credit institutions as defined in Article ***4(1)***, point ***1 of Regulation (EU) No 575/2013*** of the European Parliament and the Council[1] that are established in the Union, and which are authorised in accordance with that ***Regulation***;

(aw) 'UCITS management company' means a management company as defined in Article ***2(1)(b)*** of Directive 2009/65/EC.

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1 [32] Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19, ELI: http://data.europa.eu/eli/dir/2013/34/oj).

[1] [33] Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ L 302, 17.11.2009, pp. 32–96 1, ELI: https://eur-lex.europa.eu/eli/dir/2009/65/oj/eng).

[1] [34] Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (recast) Text with EEA relevance (OJ L 173, 12.6.2014, p. 349, ELI: http://data.europa.eu/eli/dir/2014/65/oj).

[1] ***Regulation (EU) No 575/2013*** of the European Parliament and of the Council of 26 June 2013 on ▌ prudential ***requirements for*** credit institutions and investment firms ***and*** amending ***Regulation (EU) No 648/2012*** (OJ L 176, 27.6.2013, pp. ***1–337)'***

(2) in Article 6(4), the introductory wording is replaced by the following:

'By way of derogation from paragraph 2, Member States shall ensure that an external AIFM may be authorised to provide, in addition to the management of AIFs, the following services:;'

(3) Article 7 is amended as follows:

(a) the following paragraph 2a is ***amended***:

‘2a. ▌

The application for authorisation of an AIFM that relies on the human and technical resources of one or more entities that belong to ***the same*** EU group to conduct its business shall, in addition to the information referred to in paragraph 2, point (c), specify those human and technical resources. The authorisation of an AIFM shall not be made conditional on the requirement that the AIFM refrains from utilising resources of one or more entities within that same EU group.;’

(b) the following paragraph 6 is ▌ inserted:

‘6. In order to ensure consistent harmonisation of this Article, ESMA shall develop draft regulatory technical standards ▌ specifying:

(a) ▌ the information to be provided to the competent authorities in the application for the authorisation of the AIFM, including the programme of activity;

(b) ***the conditions relevant for*** the procedures and timelines to be followed as part of the application for authorisation of the AIFM ***in accordance with this Article, including the criteria under which an application shall be considered complete for the purposes of those timelines***; ***and***

(c) the methods and arrangements for delivery of the information ***referred to in point (a).***

When developing the draft regulatory technical standards referred to in this paragraph, ESMA shall establish a temporary joint-project team composed of representatives of competent authorities possessing relevant supervisory expertise.

The provision of the information referred to in point (a) shall not prevent the competent authorities from requesting such additional information as they consider necessary for the assessment of an application on a case-by-case basis, having regard to the nature, complexity and particular circumstances of the case.

ESMA shall develop IT solutions, including ***standard*** templates, data standards, formats and instructions for providing the information referred to in point (a).

ESMA shall submit the draft regulatory technical standards referred to in the first subparagraph to the Commission by [Please insert date = 12 months after the entry into force of this Directive].

Power is conferred to the Commission to supplement this Directive by adopting the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.;'

(4) in Article 8, the introductory wording of paragraph 2 is replaced by the following:

‘Member States shall ensure that a competent authority that has granted authorisation to one of the following AIFMs informs the competent authorities of the other Member States involved of such authorisation:;’

(5) in Article 9, paragraph 6 is replaced by the following:

‘6. Member States shall ensure that competent authorities do not require AIFMs to provide up to 50 % of the additional amount of own funds referred to in paragraph 3 if they benefit from a guarantee of the same amount given by a credit institution or an insurance undertaking which has its registered office in a Member State, or in a third country where it is subject to prudential rules considered by the competent authorities as equivalent to those laid down in Union law.;’

(6) Article 12 is amended as follows:

(a) paragraph 1, first subparagraph, the introductory wording is replaced by the following:

‘1. Member States shall ensure that AIFMs authorised in that Member State comply at all times with rules of conduct. Those rules of conduct shall ensure that AIFMs:;’

(b) in paragraph 3 the following subparagraph is added:

'In order to ensure a uniform application of the rules of conduct referred to in paragraph 1 and to ensure a consistent implementation across Member States, ESMA may adopt guidelines, to specify the content of those rules.
When developing the draft guidelines referred to in this paragraph, ESMA shall establish a temporary joint-project team composed of representatives of competent authorities possessing relevant supervisory expertise.;'

(7) in Article 14, paragraph 2a is replaced by the following:

'2a. Where an AIFM manages or intends to manage an AIF at the initiative of a third party, including cases where that AIF uses the name of a third-party initiator or where an AIFM appoints a third-party initiator as a delegate pursuant to Article 20, the AIFM shall inform the competent authorities of its home Member State thereof at the time of authorisation and, taking account of any conflicts of interest, upon request demonstrate to the competent authorities of its home Member State that it complies with paragraphs 1 and 2 of this Article. In particular, the AIFM shall demonstrate the reasonable steps it has taken to prevent conflicts of interest arising from the relationship with the third party or, where those conflicts of interest cannot be prevented, how it identifies, manages, monitors and, where applicable, discloses those conflicts of interest in order to prevent them from adversely affecting the interests of the AIF and its investors.;'

(8) in Article 16, paragraph 2i is replaced by the following:

‘2i. ESMA shall submit the draft regulatory technical standards referred to in paragraph 2f of this Article to the Commission by [Please insert date = 12 months after entry into force of amending Directive].’

ESMA shall submit the draft regulatory technical standards referred to in paragraph 2g of this Article to the Commission by 16 April 2025.

Power is delegated to the Commission to supplement this Directive by adopting the regulatory technical standards referred to in paragraphs 2f and 2g in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.;’

(9) Article 18 is amended as follows:

(a) the ***first subparagraph*** of paragraph 1 is replaced by the following:

‘1. Member States shall ensure that AIFMs comply at all times with prudential rules.;’

(b) in paragraph 2 the following subparagraph is added:

‘In order to ensure a uniform application of the prudential rules for AIFMs and to ensure a consistent implementation across Member States, ESMA may adopt guidelines to specify the content of those rules.
When developing the draft guidelines referred to in this paragraph, ESMA shall establish a temporary joint-project team composed of representatives of competent authorities possessing relevant supervisory expertise.;’

(10) Article 20 is amended as follows:

(a) in paragraph 1 the following subparagraph is added:

‘Where the AIFM delegates to one or more entities that belong to the same EU group of a management company and AIFM for the performance of the functions referred to in Annex I or the services referred to in Article 6 paragraph 4, paragraph 1 points (a) and (f) shall not apply.’

(b) paragraph 3 is replaced by the following:

‘3. The AIFM's liability ***or that of the depositary*** towards its clients, the AIF and its investors shall not be affected by the fact that the AIFM has delegated functions or services to a third party, or by any further sub-delegation, or has ***delegated to*** one or more entities within ***the same*** EU group to carry out its functions ***or services***. The AIFM shall not delegate the functions or services ▌ to the extent that, in essence, it can no longer be considered to be the manager of the AIF or the provider of the services referred to in Article 6(4) and to the extent that it becomes a letter-box entity.;’

(c) in paragraph 4 the following subparagraphs are added:

‘Where the sub-delegate belongs to the same EU group as the AIFM and the delegate paragraph 1 points (a), (b) and (f) shall not apply.

Where a function referred to in Annex I or service referred to in Article 6 paragraph 4 is further sub-delegated, the preceding subparagraphs shall apply at each successive level only where every entity in the relevant delegation chain belongs to the same EU group as the AIFM.
Where a function or service is delegated or sub-delegated to an entity that does not belong to that same EU group, the first subparagraph of paragraph 1 shall apply in full to that delegation or sub-delegation and to any subsequent sub-delegation by that entity.’

▌

(11) Article 21 is amended as follows:

(a) paragraph 3 is amended as follows:

(a) in the first subparagraph, points (a) and (b) are replaced by the following:

‘(a) a credit institution having its registered office in the Union and authorised in accordance with Directive 2013/36/EU;

(b) an investment firm having its registered office in the Union, which is authorised in accordance with Directive 2014/65/EU to provide the ancillary service of safe-keeping and administration of financial instruments for the account of clients in accordance with Section B, point (1) of Annex I to Directive 2014/65/EU; or;’

(b) the third subparagraph is replaced by the following:

‘In addition, competent authorities shall allow that in relation to AIFs which have no redemption rights exercisable during the period of 5 years from the date of the initial investments and which, in accordance with their core investment policy, generally do not invest in assets that must be held in custody in accordance with point (a) of paragraph 8 or generally invest in issuers or non-listed companies in order to potentially acquire control over such companies in accordance with Article 26, the depositary may be an entity which carries out depositary functions as part of its professional or business activities in respect of which such entity is subject to mandatory professional registration recognised by law or to legal or regulatory provisions or rules of professional conduct and which can provide sufficient financial and professional guarantees to enable it to perform effectively the relevant depositary functions and meet the commitments inherent in those functions.;’

(b) in paragraph 5 the following ***subparagraphs are*** added:

‘By way of derogation from the first subparagraph, point (a), ***a Member State may allow*** an AIFM ***that*** manages ***AIFs established in that Member State to appoint*** a depositary that has its registered office or is established in ***another*** Member State ▌, provided that the depositary falls into one of the categories referred to in paragraph 3, points (a) and (b) and ***is*** duly authorised to provide services in other Member States pursuant to Directive 2013/36/EU or Article 6(3) of Directive 2014/65/EU, respectively***, and is supervised as a depositary in the depositary’s home Member State***.▌

Member States exercising the option in the second subparagraph shall inform ESMA and the Commission thereof. ESMA shall compile and maintain a list of such Member States and provide it to national competent authorities and publish the list on ESMA's website.

Without prejudice to the following subparagraph, the depositary referred to in the second subparagraph shall not be subject to any additional regulatory or supervisory requirements on the basis of its appointment to AIFs authorised in another Member State.

Where a depositary is appointed pursuant to the second subparagraph, it shall, in the performance of its duties in respect of the AIF, comply with the laws, regulations and administrative provisions applicable to that AIF in its home Member State and with any lawful direction issued by the competent authorities of the AIF home Member State concerning that AIF. The depositary shall make the arrangements necessary to ensure such compliance. This shall be without prejudice to the laws, regulations and administrative provisions of the depositary's home Member State.'

(c) paragraph 5a is deleted;

(ca) paragraph 16 is amended as follows:

'The depositary shall, upon request, make available to the authority or authorities responsible for its supervision, and to the competent authorities of the AIF and the AIFM, all information obtained in the performance of its duties that may be necessary for the exercise of their respective responsibilities under this Directive.

Where the authority or authorities responsible for the supervision of the depositary, the competent authorities of the AIF and the competent authorities of the AIFM are different, they shall exchange without delay any information received pursuant to this Article or otherwise obtained in the exercise of their supervisory functions, insofar as that information is necessary for the performance of their respective responsibilities under this Directive. '

(cb) in paragraph 16 the following subparagraphs are added:

'The depositary shall without delay notify the competent authorities of the AIF home Member State and the AIFM of any material breach of the laws, regulations or administrative provisions applicable to the AIF, of any requirement imposed by the competent authorities of the AIF home Member State, or of any provision of the AIF's rules, instruments of incorporation, prospectus or offering documents.'

(12) in Article 22(2), the introductory wording is replaced by the following:

‘The annual report shall contain the following:;’

(13) in Article 29(2), the introductory wording is replaced by the following:

‘The additional information to be included in the annual report of the non-listed company or the AIF, in accordance with paragraph 1, shall include a fair review of the development of the non-listed company's business representing the situation at the end of the period covered by the annual report. The report shall also give an indication of:;’

(14) in Chapter VI, the title is replaced by the following:

‘RIGHTS OF EU AIFMs TO MANAGE EU AIFs IN THE UNION;’

(15) Articles 30a, 31, 32 and 32a are deleted;

(16) in Article 33(4), the first subparagraph is replaced by the following:

‘The competent authorities of the home Member State of the AIFM shall, within 15 ***working*** days of receiving the complete documentation in accordance with paragraph 2 or within 1 month of receiving the complete documentation in accordance with paragraph 3, transmit the complete documentation to the competent authorities of the host Member State of the AIFM. Such transmission shall occur only if the AIFM's management of the AIF complies, and will continue to comply, with this Directive and the AIFM otherwise complies with this Directive.;’

(17) in Article 35, paragraph 1 is replaced by the following:

‘1. Member States shall ensure that an authorised EU AIFM may market to professional investors in the Union units or shares of non-EU AIFs it manages and of EU feeder AIFs, where the master AIF is not an EU AIF which is managed by an authorised EU AIFM, as soon as the conditions laid down in paragraphs 2 to 10 are met.;’

(18) In Article 36 (1), the introductory wording is replaced by the following:

‘1. Without prejudice to Article 35, Member States may allow an authorised EU AIFM to market to professional investors, in their territory only, units or shares of non-EU AIFs it manages and of EU feeder AIFs, where the master AIF is not an EU AIF which is managed by an authorised EU AIFM, provided that:;’

(19) In Article 43a, paragraph 2 is replaced by the following:

‘2. Host Member States shall not require an AIFM to have a physical presence in their territory or to appoint a third party in that host Member State for the purposes of paragraph 1 or for any other purposes relating to the activities of the AIFM in that host Member State.;’

(20) Article 45 is amended as follows:

(a) paragraphs 1 and 2 are replaced by the following:

‘1. The prudential supervision of an AIFM shall be the responsibility of the competent authorities of the home Member State of the AIFM, whether the AIFM manages or markets AIFs in another Member State or not, without prejudice to those provisions of this Directive or Regulation (EU) 2019/1156 which confer the responsibility for supervision of the AIFM on the competent authorities of the host Member State of the AIFM.

2. The supervision of an AIFM's compliance with Articles 12 and 14 shall be the responsibility of the competent authorities of the host Member State of the AIFM where the AIFM manages AIFs through a branch in that Member State.;’

(b) in paragraph 3, the first subparagraph of is replaced by the following:

‘The competent authorities of the host Member State of the AIFM may require an AIFM managing AIFs in its territory, whether or not through a branch, to provide the information necessary for the supervision of the AIFM's compliance with the applicable rules for which those competent authorities are responsible.;’

(c) paragraph 4 is replaced by the following:

‘4. Competent authorities of the host Member State of the AIFM that ascertain that an AIFM managing AIFs in its territory, whether or not through a branch, is breaching one of the rules in relation to which they have responsibility for supervising compliance shall require the AIFM concerned to put an end to that breach and inform the competent authorities of the home Member State thereof.;’

(d) paragraphs 7 and 8 are replaced by the following:

‘7. Competent authorities of the host Member State of the AIFM that have clear and demonstrable grounds for believing that the AIFM managing AIFs in its territory, whether or not through a branch, is in breach of the obligations arising from rules in relation to which they have no responsibility for supervising compliance shall refer those findings to the competent authorities of the home Member State of the AIFM which shall take appropriate measures, including, where necessary, requesting additional information from the relevant supervisory authorities in third countries.

8. If despite the measures taken by the competent authorities of the home Member State of the AIFM in accordance with paragraph 7, or because such measures prove to be inadequate, or because the home Member State of the AIFM fails to act within a reasonable timeframe, the AIFM persists in acting in a manner that is clearly prejudicial to the interests of the investors of the relevant AIF, the financial stability or the integrity of the market in the host Member State of the AIFM, the competent authorities of the host Member State of the AIFM referred to in paragraph 7 may, after having informed the competent authorities of the home Member State of the AIFM, take all appropriate measures needed to protect the investors of the AIF concerned, the financial stability and integrity of the market in the host Member State.;'

(21) the following Articles 47a to ***47b*** are inserted:

'Article 47a

Co-ordination colleges for large ***cross-border*** EU groups of ▌ management companies ***and AIFMs***

1. By [***OP:*** insert date = ***18*** months from ***the date of*** entry into force ***of this Directive***], ESMA shall identify ***groups of EU*** management companies ***and AIFMs that meet both*** of the following conditions:

(a) the aggregate ▌ net asset ***value of assets managed in the Union by EU*** management companies ***and AIFMs belonging to*** the group ***is equal to or exceeds*** EUR 300 billion***, calculated as a rolling average over the preceding 24 months***; ***and***

(b) ▌ management companies ***or AIFMs belonging to*** the group are established in more than one Member ***State, or the group carries out material asset-management activities*** in more than one Member State ***through the management or marketing of UCITS or AIFs.***

▌

2. ***ESMA shall publish and maintain a list of the groups identified pursuant to*** paragraph 1***. It*** shall ***review that list every two years***.

2a. In conducting the review, ESMA shall have regard to developments in the scale and structure of the Union asset-management sector and to the need to ensure that this Article remains limited to groups whose size, complexity and cross-border activities warrant enhanced supervisory co-ordination for the purpose of any advice provided pursuant to paragraph 5.

3. ***A group included on the list*** shall ***remain subject to this Article until completion*** of the ***next biennial review. During that period, the*** relevant ***co-ordination college shall consider the*** group***'s activities and cross-border operations in accordance with*** paragraph ***8***.

Following completion of the ***biennial*** review, ESMA shall ***remove the group from the list where it no longer meets the conditions laid down in paragraph 1***.

ESMA shall specify the date on which removal takes effect, allowing sufficient time for the orderly conclusion of the ongoing work of the co-ordination college established under this Article.

4. ***For the purposes of this Article,*** ‘group’ ***means a parent undertaking and its subsidiary undertakings within the meaning of Article 2, point (11), of Directive 2013/34/EU, where at least two management companies or AIFMs belonging to that group are established in the Union.***

▌

5. ***The Commission shall be empowered to adopt delegated acts in accordance with Article 56 to amend the threshold*** referred to in paragraph ***1, point (a), having regard to developments in the scale and structure of the Union asset-management sector and to the need to ensure that this Article remains limited to groups whose size, complexity and cross-border activities warrant enhanced supervisory co-ordination.***

Before providing advice to the Commission concerning an amendment to the threshold, ESMA shall consult the competent authorities and shall support its advice with appropriate market, supervisory and statistical evidence.

▌

6. ▌ ESMA shall ***develop draft regulatory technical standards specifying:***

(a) the methodology for calculating the net asset value of assets referred to in paragraph 1, point (a), including the treatment of intra-group management arrangements and the avoidance of double counting;

(b) the reference dates, data sources and procedures to be used for identifying groups that meet the conditions laid down in paragraph 1;

(c) the methodology for identifying the management company or AIFM that manages the largest proportion of the aggregate value of assets for the purposes of paragraph 9;

(d) the procedures for establishing, maintaining and updating the list referred to in paragraph 2; and

(e) the criteria to be applied in determining whether a host Member State is materially affected by the cross-border activities of a management company or AIFM for the purposes of paragraph 9(c).

ESMA shall ***submit those draft regulatory technical standards*** to the ***Commission by [OP: insert date]***.

Power is delegated to the Commission to supplement this Directive by adopting the regulatory technical standards referred to in this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

7. ***Within 30 calendar days of the publication or updating of the list*** referred to in paragraph ***2, ESMA*** shall ***notify*** the competent authorities ***referred to in paragraph 9. A single co-ordination college shall be established for each group included on the list. The co-ordination college shall be deemed established on the date of that notification***.

▌

8. ***The co-ordination college shall facilitate convergence, co-operation, consultation, co-ordination and the exchange of information among its members in relation to the*** management companies ***and AIFMs belonging to the*** group***. It*** shall ***not exercise supervisory or decision-making*** powers conferred on ***ESMA or on a competent authority***. ▌

The co-ordination college shall, in particular:

(a) facilitate the exchange of relevant supervisory information, assessments and views;

(b) promote a common understanding of the group's activities, governance, risk-management arrangements and cross-border operations;

(c) identify material divergences in supervisory approaches and practices;

(d) identify gaps, duplication or inconsistencies in supervisory activities; and

(e) facilitate co-ordinated responses to material developments affecting more than one Member State.

(f) consider submissions from the group identifying concrete and evidenced examples of barriers to the functioning of the Single Market arising from divergences in supervisory practices among competent authorities.

The co-ordination college may consider information concerning UCITS or AIFs only insofar as necessary for the performance of those tasks.

9. The following shall be members of the co-ordination college:

(a) the competent authority of each Member State responsible for supervising a management company or AIFM belonging to the group;

(b) ESMA; and

(c) the competent authority of each host Member State in which a management company or AIFM belonging to the group carries out material cross-border activities.

The co-ordination college shall be chaired by the competent authority responsible for supervising the management company or AIFM belonging to the group that manages the largest proportion of the aggregate value of assets referred to in paragraph 1, point (a).

The chair shall be responsible for preparing the agenda for each meeting and propose attendance list.

ESMA shall provide administrative and secretariat support, including coordinating the timely circulation of the agenda, meeting documents and invitations to members and participants.

Where two or more management companies or AIFMs manage the same largest proportion, the competent authorities concerned shall appoint the chair from among themselves. Where they do not agree within 20 working days, ESMA shall appoint the chair after consulting them.

ESMA shall support the chair in facilitating the effective operation of the co-ordination college, including through administrative, analytical and coordination assistance. For that purpose, ESMA may undertake analysis and assessments of matters within the co-ordination college's remit and prepare reports and observations to support the work of the co-ordination college.

10. The chair, subject to the prior approval by the members of the co-ordination college, may invite an authority or body to attend a meeting where its participation is materially relevant to the matters under consideration and proportionate to the effective and efficient functioning of the co-ordination college.

An authority or body invited pursuant to the first subparagraph shall participate only in relation to the matter for which it has been invited. An authority of a third country may be invited only where an appropriate co-operation arrangement is in place and information disclosed to it is subject to guarantees of professional secrecy that are at least equivalent to those laid down in Union law. Information shall be disclosed only insofar as necessary for the matter in respect of which it has been invited.

11. The members of the co-ordination college shall agree written arrangements governing its operation. The arrangements shall specify the practical organisation of the co-ordination college, the information to be exchanged, the treatment of confidential information, engagement with the group and measures to avoid unnecessary duplication of reporting, information requests and supervisory activities. They shall be reviewed periodically and following any material change in the structure or activities of the group.

Where the written arrangements have not been agreed within three months of the establishment of the co-ordination college, the chair shall, after consulting the members and ESMA, adopt interim arrangements based on the model referred to in paragraph 15. The interim arrangements shall not alter the powers, responsibilities of any member or impose any additional obligation on a member.

12. The chair, subject to the prior approval by members of the co-ordination college, may invite representatives of the group to participate in all or part of a meeting where this would assist the performance of its tasks. Their participation shall be limited to the provision of factual information, clarification of matters under consideration, examples of barriers to the Single Market arising from divergences in supervisory practices among competent authorities, and the exchange of views relevant to the group's activities or cross-border operations.

Representatives of the group shall not participate in deliberations among members of the co-ordination college or receive confidential supervisory information concerning the assessments, intended actions or internal deliberations of a member.

13. The co-ordination college shall record observations, matters requiring further supervisory consideration, convergence, and any instances of supervisory divergence, duplication or gaps identified in the course of its work. Where such issues are identified, members shall use their best efforts, within their respective mandates and responsibilities, to consider and address them appropriately. Any observations of the co-ordination college shall be non-binding and shall not affect the powers, responsibilities or decision-making autonomy of its members.

14. ESMA shall use the horizontal insight gained through its participation in co-ordination colleges to identify unnecessary duplication, regulatory gaps, inconsistencies and other barriers to the efficient and consistent functioning of the Union supervisory and regulatory framework. Where appropriate, ESMA may address those matters through the supervisory-convergence tools conferred on it under Regulation (EU) No 1095/2010.

15. ESMA shall, by [OP: insert date = 12 months from the date of entry into force of this Directive], issue guidelines in accordance with Article 16 of Regulation (EU) No 1095/2010 specifying:

(a) the practical arrangements necessary for the consistent establishment and operation of co-ordination colleges;

(b) a model for the written arrangements referred to in paragraph 11;

(c) criteria for determining material relevance for the purposes of paragraph 10;

(d) arrangements to avoid unnecessary duplication of reporting, information requests and supervisory activities;

(e) arrangements for engagement with groups; and

(f) the form in which material horizontal observations may be communicated to competent authorities that are not members of the relevant co-ordination college.

16. The establishment or operation of a co-ordination college shall not alter the tasks, powers or responsibilities conferred on ESMA or on competent authorities by this Directive, Directive 2009/65/EC, Regulation (EU) No 1095/2010 or national law.

Article 47b

Powers of ESMA to address cross-border issues

1. ESMA ▌ shall on an ongoing basis identify diverging, duplicative, redundant and deficient supervisory actions stemming from the home or host competent authorities ***or supervising authorities as relevant*** and hindering the effective exercise of passporting rights by AIFMs in accordance with Article 33 of this Directive and of depositaries carrying out their functions on a cross-border basis, pursuant to Article 21(5).

2. For the purpose of paragraph 1, ***the Executive Board*** shall engage with the competent authorities ***and supervising authorities as relevant*** concerned, and, where applicable, collect additional information to identify existing or potential cross-border issues.

Where, pursuant to the first subparagraph, ***the Executive Board*** identifies existing or potential cross-border issues it shall propose corrective actions to the relevant competent authorities ***and supervising authorities as relevant*** for their removal. ***The corrective actions shall be non-binding and shall identify the issue concerned, the outcome sought and a reasonable period for addressing it.***

3. Where, despite of the corrective actions referred to in paragraph 2 or because the relevant competent authorities ***and supervising authorities as relevant*** fail to implement them, the issues identified pursuant to paragraph 2 persist, ***the Executive Board may submit to the Board of Supervisors a reasoned proposal for the*** exercise ***by ESMA of one or more*** of the powers conferred on it under ▌ Regulation (EU) No 1095/2010 ▌ in the following cases:

   (a) the competent authorities of the host Member State of the AIFM prevent or intend to prevent an AIFM from managing AIFs in their territory, or impose requirements on such management which are not compliant with this Directive;

   (b) the competent authorities of the home Member State of the AIFM or those of the home Member State of the AIF prevent or intend to prevent the appointment of a depositary established in another Member State as referred to in Article 21(5), or impose requirements on such appointment that are not compliant with this Directive ***without objective and duly substantiated grounds relating to the depositary's eligibility or capacity to perform its duties in respect of the AIF concerned, or otherwise in a manner that is not compliant with this Directive or Regulation (EU) 2019/1156.***

(c) an AIFM or a depositary carries out or intends to carry out functions or provide services on a cross-border basis, while not being compliant with Union law.

This Article shall be without prejudice to ESMA's capacity to use any of the powers conferred on it under Regulation (EU) No 1095/2010 outside the procedure laid down in this Article.

▌

4. ESMA shall publish a report on its activity in accordance with paragraphs 1 to ***3*** at least annually.;'

(22) Article 50 is amended as follows:

(a) paragraph 5g is replaced by the following:

'5g. Where ***the home Member State of*** an AIF ***allows the AIFM of that AIF to appoint*** a depositary ***having its registered office or be*** established in a Member State other than the ***home*** Member State of the AIF, in accordance with the second subparagraph of Article 21(5), and where the competent authorities of the home Member State of an AIF or, where the AIF is not regulated, the competent authorities of the home Member State of the AIFM that manages the AIF ▌ have reasonable grounds to ***believe*** a depositary not subject to the supervision of those competent authorities ***is carrying out or has carried out acts contrary to this Directive***, those competent authorities shall without delay notify ESMA and the ***authority or*** authorities ***responsible for the supervision*** of the depositary concerned thereof in as specific a manner as possible. The ***authority or*** authorities ***responsible for the supervision of the depositary*** shall take appropriate action and shall inform ESMA and the notifying competent authorities of the outcome of that action. ▌

This paragraph shall be without prejudice to the competences of the notifying competent authorities.

If, despite the measures taken by the authority or authorities responsible for its supervision of the depositary or because such measures prove inadequate, or because the authorities fail to act within a reasonable timeframe, the depositary continues to act in a manner that may be prejudicial to the interests of investors of the AIF or otherwise breaches this Directive, the competent authority of the home Member State of the AIF or, where the AIF is not regulated, the competent authorities of the home Member State of the AIFM that manages the AIF, may:

(a) after informing the authority or authorities responsible for the supervision of the depositary, take all appropriate measures necessary in order to protect the investors of the AIF, including temporarily prevent the depositary from accepting new appointments in respect of AIFs established in that Member State. The competent authorities of the home Member State of the AIF or, where the AIF is not regulated, the competent authorities of the home Member State of the AIFM that manages the AIF shall inform ESMA and the authority or authorities responsible for the supervision of the depositary of such measures without undue delay; or

(b) refer the matter to ESMA, which may act in accordance with the powers conferred on it under Regulation (EU) No 1095/2010.'

(b) the following paragraph 5i is inserted:

‘5i. By way of derogation from paragraphs 5b to 5f, where the competent authorities of the host Member State of an AIFM, as defined in Article 4(1)(r), point (ii), intend to request the competent authorities of the home Member State of the AIFM to exercise powers pursuant to Article 46(2), they shall do so in accordance with the procedure laid down in Article 14b of Regulation (EU) 2019/1156.;’

(c) paragraph 7 is replaced by the following:

‘7. ESMA may develop guidelines providing indications to guide the competent authorities in their exercise of the powers set out in Article 46(2), point (j), and indications as to the situations that might lead to the requests referred to in paragraphs 5b and 5f being put forward. When developing those guidelines, ESMA shall consider the potential implications of such supervisory intervention for investor protection and financial stability in another Member State or in the Union. Those guidelines shall recognise that the primary responsibility for liquidity risk management remains with AIFMs.;’

(23) in Article 54, paragraph 4 is deleted;

(24) Article 55 is replaced by the following:

‘Article 55

Dispute settlement

In case competent authorities disagree on an assessment, action or omission of one competent authority in areas where this Directive requires cooperation or coordination between competent authorities from more than one Member State, one or more competent authorities may refer the matter to the ESMA which may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No 1095/2010.;’

(25) Article 60 is replaced by the following:

‘Where a Member State makes use of a derogation or option provided by Article 15(4g) or Article 22, 28 or 43, it shall inform the Commission thereof as well as of any subsequent changes. The Commission shall make the information public on a web-site or by other easily accessible means.;’

(26) in Article 61, paragraph 2 is deleted;

(27) in Article 69-a (1), point (d) is deleted.

Article 3

Amendments to Directive 2014/65/EU

Directive 2014/65/EU is amended as follows:

(1) in Article 1, paragraphs 2 and 3 are replaced by the following:

‘2. This Directive establishes requirements in relation to the following:

(a) the authorisation of, and operating conditions for, investment firms;

(b) the provision of investment services or activities by third-country firms through the establishment of a branch;

(c) the supervision of investment firms, the enforcement of the applicable rules by competent authorities, and the cooperation between competent authorities for such supervision and enforcement.

3. The following provisions shall also apply to credit institutions authorised under Article 8 of Directive 2013/36/EU, when they provide one or more investment services or perform investment activities:

(a) Article 2(2), Article 9(3), Article 14, and Articles 16 to 17;

(b) Chapter II of Title II excluding Article 29(2), second subparagraph;

(c) Chapter III of Title II excluding Article 34(2) and (3) and Article 35(2) to (6) and (9);

(d) Articles 67 to 75 and Articles 80, 85 and 86.;'

(2) in Article 4, paragraph 1 is amended as follows:

(a) points 12 and 13 are replaced by the following:

'(12) 'SME growth market' means a MTF as defined in Article 2(1), point (8a), of Regulation (EU) No 600/2014;

(13) 'small and medium-sized enterprises' means companies as defined in Article 2(1), point (8b), of Regulation (EU) No 600/2014;;'

(b) point 18 is replaced by the following:

'(18) ▌ 'market operator' means a market operator as defined in Article 2(1), point (10), of Regulation (EU) No 600/2014;;'

(c) the following point (18a) is inserted:

'(18a) ▌ 'pan-European market operator', or 'PEMO' means a pan-European market operator as defined in Article 2, point (10a), of Regulation (EU) No 600/2014;;'

(d) points 21 to 24 are replaced by the following:

‘(21) ‘regulated market’ means a regulated market as defined in Article 2(1), point (13), of Regulation (EU) No 600/2014;

(22) ‘multilateral trading facility’ or ‘MTF’ means a multilateral trading facility as defined in Article 2(1), point (14), of Regulation (EU) No 600/2014;

(23) ‘organised trading facility’ or ‘OTF’ means an organised trading facility as defined in Article 2(1), point (15), of Regulation (EU) No 600/2014;

(24) ‘trading venue’ means a trading venue as defined in Article 2(1), point (16), of Regulation (EU) No 600/2014;;’

(e) point 30 is replaced by the following:

‘(30) ‘branch’ means a branch as defined in Article 2(1), point (20), of Regulation (EU) No 600/2014;;’

(f) point 38 is replaced by the following:

‘(38) ‘matched principal trading’ means a transaction as defined in Article 2(1), point (52), of Regulation (EU) No 600/2014;;’

(g) points 55 and 56 are replaced by the following:

‘(55) ‘home Member State’ means:

(a) where the investment firm is a natural person, the Member State in which its head office is situated;

(b) where the investment firm is a legal person, the Member State in which its registered office is situated;

(c) where the investment firm has, under its national law, no registered office, the Member State in which its head office is situated;

(56) 'host Member State' means the Member State, other than the home Member State, in which an investment firm has a branch or provides investment services or activities;;'

(3) in Article 5, paragraph 2 is deleted;

(4) Article 8 is replaced by the following:

'Article 8

Withdrawal of authorisations

The competent authority may withdraw the authorisation issued to an investment firm that:

(a) has not used the authorisation within 12 months after issuance, expressly renounces the authorisation or has provided no investment services or performed no investment activity for the preceding six months, unless the Member State concerned has provided for authorisation to lapse in such cases;

(b) has obtained the authorisation by making false statements or by any other irregular means;

(c) no longer meets the conditions under which authorisation was granted, including non-compliance with the conditions set out in Regulation (EU) 2019/2033 of the European Parliament and of the Council*;

(d) has seriously and systematically infringed the provisions adopted pursuant to this Directive or Regulation (EU) No 600/2014 governing the operating conditions for investment firms;

(e) falls within any of the cases where national law, in respect of matters outside the scope of this Directive, provides for withdrawal.

Competent authorities shall inform ESMA of every withdrawal of an authorisation.

▌

[*] Regulation (EU) 2019/2033 of the European Parliament and of the Council of 27 November 2019 on the prudential requirements of investment firms and amending Regulations (EU) No 1093/2010, (EU) No 575/2013, (EU) No 600/2014 and (EU) No 806/2014 (OJ L 314, 5.12.2019, pp. 1–63. ELI: http://data.europa.eu/eli/reg/2019/2033/oj).;'

(5) in Article 16(5), the following subparagraph is added:

'This paragraph shall not apply to MTFs or OTFs that are operated by an investment firm.;'

(6) in Article 17, paragraph 4 is replaced by the following:

'4. For the purposes of this Article and Article 2g of Regulation (EU) No 600/2014, an investment firm that engages in algorithmic trading shall be considered to be pursuing a market making strategy when, as a member or participant of one or more trading venues, its strategy, when dealing on own account, involves posting firm, simultaneous two-way quotes of comparable size and at competitive prices relating to one or more financial instruments on a single trading venue or across different trading venues, with the result of providing liquidity on a regular and frequent basis to the overall market.;'

(7) Articles 18 to 20 are deleted;

(8) in Article 22, the first subparagraph is replaced by the following:

‘Member States shall ensure that the competent authorities, where ESMA is not in charge of authorisation and supervision of the activities of investment firms pursuant to Article 38fa of Regulation (EU) No 600/2014, monitor those activities so as to assess compliance with the operating conditions provided for in this Directive. Member States shall ensure that the appropriate measures are in place to enable the competent authorities to obtain the information needed to assess the compliance of investment firms with those obligations.;’

(9) in Chapter II of Title II, Sections 3 and 4 are deleted;

(10) Article 34 is amended as follows:

(a) in paragraph 1, the following subparagraph is added:

‘This Article shall not apply to the provision of investment services or activities as referred to in Section A points (8) and (9), of Annex I.;’

(b) paragraphs 6 and 7 are deleted;

(c) paragraph 8 is replaced by the following:

‘8. ESMA may develop draft regulatory technical standards to specify the information to be notified in accordance with paragraphs 2, 4 and 5.

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;’

(d) paragraph 9 is replaced by the following:

‘9. ESMA may develop draft implementing technical standards to establish standard forms, templates and procedures for the transmission of information in accordance with paragraphs 2, 3, 4 and 5.

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.;’

(11) in Article 35(1), the following subparagraph is added:

‘This Article shall not apply to the provision of investment services or activities as referred to in Section A points (8) and (9), of Annex I.;’

(12) Articles 36 to 38 are deleted;

(13) in Article 41(2), the first subparagraph is replaced by the following:

‘The branch of the third-country firm authorised in accordance with paragraph 1 shall comply with the obligations laid down in Articles 16, 17, 23, 24, 25 and 27, Article 28(1), and Articles 30, 31 and 32 of this Directive and in Articles 2u, 2x, 2z, 3 to 26 of Regulation (EU) No 600/2014 and the measures adopted pursuant thereto and shall be subject to the supervision of the competent authority in the Member State where the authorisation was granted.;’

(14) Title III is deleted;

(15) the title of Title IV is replaced by the following:

‘TITLE IV POSITION LIMITS IN COMMODITY DERIVATIVES AND REPORTING;’

(16) Article 57 is amended as follows:

(a) the title of Article 57 is replaced by the following:

‘Position limits in commodity derivatives;’

(b) paragraph 8 is deleted;

(c) paragraphs 9 and 10 are replaced by the following:

‘9. The position limits shall be transparent and non-discriminatory, specifying how they apply to persons and taking account of the nature and composition of market participants and of the use they make of the contracts submitted to trading.

10. The competent authority shall communicate the details of the position limits it has established to ESMA, which shall publish and maintain on its website a database with summaries of the position limits.;’

(d) the following paragraph 15 is added:

‘15. For the purpose of this Article and of Article 58, any reference to OTC contracts shall be understood as contracts traded outside of an EU trading venue.

For the purpose of this Article and of Article 58, any reference to competent authorities shall be understood, where ESMA is the competent authority pursuant to Regulation (EU) No 600/2014, as the relevant national surveillance authority as defined in Article 2(1), point (18a), of that Regulation.;’

(17) Article 58 is amended as follows:

(a) the title of Article 58 is replaced by the following:

‘Position reporting by market participants;’

(b) paragraph 1 is deleted;

(c) paragraph 4 is replaced by the following:

‘4. The breakdowns referred to in paragraph 2 shall differentiate between:

(a) positions identified as positions which in an objectively measurable way reduce risks directly relating to commercial activities;

(b) other positions.;’

(d) paragraph 5 is replaced by the following:

‘5. ESMA may develop draft implementing technical standards to determine the format of the breakdowns referred to in paragraph 2.

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.

In the case of derivatives of emission allowances, the reporting shall not prejudice the compliance obligations under Directive 2003/87/EC.;’

(e) paragraphs 6 and 7 are deleted;

(18) in Article 69, paragraph 2, the following point (la) is inserted:

‘(la) ▌ require an investment firm and market operator operating a trading venue to amend the rules of a regulated market, MTF or OTF in accordance with Regulation (EU) No 600/2014;;’

(19) in Article 70, paragraphs 3 and 4 are replaced by the following:

‘3. Member States shall ensure that a violation of at least one of the following provisions of this Directive or of Regulation (EU) No 600/2014 shall be regarded as an infringement of this Directive or of Regulation (EU) No 600/2014:

(a) with regard to this Directive:

(i) Article 8, point (b);

(ii) Article 9(1) to (6);

(iii) Article 11(1) and (3);

(iv) Article 16(1) to (11);

(v) Article 17(1) to (6);

(vi) Article 21(1);

(vii) Article 23(1), (2) and (3);

(viii) Article 24(1) to (5) and (7) to (10) and Article 24(11), first and second subparagraphs;

(ix) Article 25(1) to (6);

(x) Article 26(1), second sentence, and Article 26(2) and (3);

(xi) Article 27(1) to (8);

(xii) Article 28(1) and (2);

(xiii) Article 29(2), first subparagraph, Article 29(2), third subparagraph, Article 29(3), first sentence, Article 29(4), first subparagraph, and Article 29(5);

(xiv) Article 30(1), second subparagraph, Article 30(3), the second subparagraph, first sentence;

(xv) Article 34(2), Article 34(4), first sentence, Article 34(5), first sentence;

(xvi) Article 35(2), Article 35(7), first subparagraph, Article 35(10), first sentence;

(xvii) Article 57(1) and (2);

(xviii) Article 58(2) to (4);

(b) with regard to Regulation (EU) No 600/2014:

(i) Article 2a(1), (3) and (4);

(ii) Article 2d(1) to (6) and (8);

(iii) Article 2e(1) and(2);

(iv) Article 2f(1), (1a) and (2);

(v) Article 2g(1) to (8), Article 2g(9), first subparagraph, Article 2g(10), first subparagraph, first and second sentence, and the second subparagraph;

(vi) Article 2h(1);

(vii) Article 2i(1), the first and second subparagraph, Article 2i(2) to (4), and Article 2i(5), the second sentence;

(viii) Article 2j(1) and (4);

(ix) Article 2k(1), Article 2k(2), first subparagraph, second subparagraph and fourth subparagraph;

(x) Article 2l(1), (2), (3), (3a), (5) and (6);

(xi) Article 2m;

(xii) Article 2n(1), Article 2n(2), first subparagraph, and Article 2n(3), first subparagraph;

(xiii) Article 2o(2), first subparagraph, first sentence, and Article 2o(3), first sentence;

(xiv) Article 2q(5);

(xv) Article 2r(1);

(xvi) Article 2s(1);

(xvii) Article 2u(1) to (5), (7) and (8);

(xviii) Article 2v;

(xix) Article 2w;

(xx) Article 2x(1) to (3), Article 2x(3a), first and second subparagraphs, and Article 2x(5);

(xxi) Article 2y(3), (3a) and (7);

(xxii) Article 2z(1) to (4), Article 2z(6), first and second subparagraphs, and Article 2z(7), the first and second sentences;

(xxiii) Articles 3(1) and (3);

(xxiv) Article 4(3), first subparagraph;

(xxv) Article 5;

(xxvi) Article 6;

(xxvii) Article 7(1), the third subparagraph, the first sentence;

(xxviii) Article 8(1);

(xxix) Article 8a(1) and (2);

(xxx) Article 8b;

(xxxi) Article 10;

(xxxii) Article 11(1), second subparagraph, the first sentence, Article 11(1a), second subparagraph, Article 11(1b) and Article 11(3), fourth subparagraph;

(xxxiii) Article 11a(1), second subparagraph, first sentence, and Article 11a(1), fourth subparagraph;

(xxxiv) Article 12(1);

(xxxv) Article 13(1) and (2);

(xxxvi) Article 14(1), (2) and (3);

(xxxvii) Article 15(1), first subparagraph, second subparagraph, the first and third sentences, and fourth subparagraph, Article 15(2) and Article 15(4), second sentence;

(xxxviii) Article 17(1), second sentence;

(xxxix) Article 17a(1);

(xl) Article 20(1) and (1a) and Article 20(2), first sentence;

(xli) Article 21(1), (2), and (3);

(xlii) Article 22(2);

(xliii) Article 22a(1) and (5) to (8);

(xliv) Article 22b(1);

(xlv) Article 22c(1);

(xlvi) Article 23(1) and (2);

(xlvii) Article 25(1) and (2);

(xlviii) Article 26(1), first subparagraph, Article 26(2) to (5), Article 26(6), first subparagraph, Article 26(7), the first to fifth and eighth subparagraphs;

(xlix) Article 27(1);

(l) Article 27f(1), (2) and (3), Article 27g(1) to (5) and Article 27i(1) to (4), where an APA or ARM has a derogation in accordance with Article 2(3);

(li) Article 28(1);

(lii) Article 29(1) and (2);

(liii) Article 30(1);

(liv) Article 31(3);

(lv) Article 34a(1) and Article 34a(3), first sentence;

(lvi) Article 34b(1) and (2);

(lvii) Article 34c;

(lviii) Article 35(1), (2) and (3);

(lix) Article 36(1), (2) and (3);

(lx) Article 37(1) and (3);

(lxi) Article 39a;

(lxii) Articles 40, 41 and 42.

4. Providing investment services or performing investment activities without the required authorisation or approval in accordance with the following provisions of this Directive or of Regulation (EU) No 600/2014 shall also be considered to be an infringement of this Directive or of Regulation (EU) No 600/2014:

(a) Article 5 or Article 6(2) or Article 34, 35 or 39 of this Directive;

(b) Article 2a, Article 7(1), third sentence, of Regulation (EU) No 600/2014 or Article 11(1) of that Regulation, and, where an APA or ARM has a derogation in accordance with Article 2(3) of that Regulation, Article 27b of that Regulation.;'

(20) Article 79 is amended as follows:

(a) paragraph 2 is deleted;

(b) paragraph 8 is deleted;

(21) Article 86 is amended as follows:

(a) paragraph 3 is deleted;

(b) paragraph 4 is replaced by the following:

'4. Any measure adopted pursuant to paragraphs 1 or 2 involving sanctions or restrictions on the activities of an investment firm shall be properly justified and communicated to the investment firm concerned;'

(22) in Article 87a, paragraphs 1 to 5 are replaced by the following:

‘1. From 10 January 2030, Member States shall ensure that, when making public any information referred to in Article 27(3), investment firms or issuers submit that information at the same time to the relevant collection body referred to in paragraph 3 of this Article for making that information accessible on the European single access point (ESAP) established under Regulation (EU) 2023/2859 of the European Parliament and of the Council*.

Member States shall ensure that the information complies with the following requirements:

(a) be submitted in a data extractable format as defined in Article 2, point (3), of Regulation (EU) 2023/2859 or, where required by Union law, in a machine-readable format, as defined in Article 2, point (4), of that Regulation;

(b) be accompanied by the following metadata:

(i) all the names of the investment firm or issuer to which the information relates;

(ii) the legal entity identifier of the investment firm or issuer, as specified pursuant to Article 7(4), point (b), of Regulation (EU) 2023/2859;

(iii) the size of the investment firm or issuer by category, as specified pursuant to Article 7(4), point (d), of that Regulation;

(iv) the type of information, as classified pursuant to Article 7(4), point (c), of that Regulation;

(v) an indication of whether the information contains personal data.

2. For the purposes of paragraph 1, point (b)(ii), Member States shall ensure that investment firms and issuers obtain a legal entity identifier.

3. By 9 January 2030, for the purpose of making the information referred to in Article 27(3) of this Directive accessible on ESAP, Member States shall designate at least one collection body as defined in Article 2, point (2), of Regulation (EU) 2023/2859 and notify ESMA thereof.

4. From 10 January 2030, Member States shall ensure that the information referred to in 71(1) and (2) of this Directive is made accessible on ESAP. For that purpose, the collection body as defined in Article 2, point (2), of Regulation (EU) 2023/2859 shall be the competent authority.

Member States shall ensure that the information complies with the following requirements:

(a) be submitted in a data extractable format, as defined in Article 2, point (3), of Regulation (EU) 2023/2859;

(b) be accompanied by the following metadata:

(i) all the names of the investment firm to which the information relates;

(ii) where available, the legal entity identifier of the investment firm, as specified pursuant to Article 7(4), point (b), of Regulation (EU) 2023/2859;

(iii) the type of information, as classified pursuant to Article 7(4), point (c), of that Regulation;

(iv) an indication of whether the information contains personal data.

5. From 10 January 2030, the information referred to in Article 5(3) shall be made accessible on ESAP. For that purpose, the collection body as defined in Article 2, point (2), of Regulation (EU) 2023/2859 shall be ESMA.

That information shall comply with the following requirements:

(a) be submitted in a data extractable format as defined in Article 2, point (3), of Regulation (EU) 2023/2859;

(b) be accompanied by the following metadata:

(i) all the names of the investment firm to which the information relates;

(ii) where available, the legal entity identifier of the investment firm, as specified pursuant to Article 7(4), point (b), of Regulation (EU) 2023/2859;

(iii) the type of information, as classified pursuant to Article 7(4), point (c), of that Regulation;

(iv) an indication of whether the information contains personal data.

▌

* Regulation (EU) 2023/2859 of the European Parliament and of the Council of 13 December 2023 establishing a European single access point providing centralised access to publicly available information of relevance to financial services, capital markets and sustainability (OJ L, 2023/2859, 20.12.2023, ELI: http://data.europa.eu/eli/reg/2023/2859/oj).;’

(23) Article 89 is amended as follows:

(a) paragraphs 2 and 3 are replaced by the following:

‘2. The delegation of power referred to in Article 2(3), Article 2(4), Article 4(1)(2), second subparagraph, Article 4(2), Article 13(1), Article 16(12), Article 23(4), Article 24(13), Article 25(8), Article 27(9), Article 28(3), Article 30(5), Article 64(7), Article 65(7) and Article 79(8) shall be conferred on the Commission for an indeterminate period of time from 2 July 2014.

3. The delegation of power referred to in Article 2(3), Article 2(4), Article 4(1)(2), second subparagraph, Article 4(2), Article 13(1), Article 16(12), Article 23(4), Article 24(13), Article 25(8), Article 27(9), Article 28(3), Article 30(5), Article 64(7), Article 65(7) and Article 79(8) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.;’

(b) paragraph 5 is replaced by the following:

‘5. A delegated act adopted pursuant to Article 2(3), Article 2(4), Article 4(1)(2), second subparagraph, Article 4(2), Article 13(1), Article 16(12), Article 23(4), Article 24(13), Article 25(8), Article 27(9), Article 28(3), Article 30(5), Article 64(7), Article 65(7) or Article 79(8) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of three months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by three months at the initiative of the European Parliament or of the Council..’

Article 4

Transposition

1. Member States shall adopt and publish by [OP please insert the date = 18 months after the date of entry into force of this Directive] the laws, regulations and administrative provisions necessary to comply with this Directive. They shall immediately inform the Commission thereof.

They shall apply those provisions from [OP please insert the date = 18 months after the date of entry into force of this Directive].

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 5

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

Article 6

Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament	*For the Council*
The President	*The President*

ANNEX

Annex II of Directive 2009/65/EC is replaced by the following:

(1) ‘Investment management functions which a management company shall at least perform when managing a UCITS:

(1) portfolio management;

(2) risk management.

(2) Other functions that a management company may additionally perform in the course of the collective management of a UCITS:

(1) Administration:

(a) legal and fund management accounting services;

(b) customer inquiries;

(c) valuation and pricing (including tax returns);

(d) regulatory compliance monitoring;

(e) maintenance of unit-holder register;

(f) distribution of income;

(g) unit issues and redemptions;

(h) contract settlements (including certificate dispatch);

(i) record keeping.

(2) Marketing.’.