



Council of the  
European Union

Brussels, 28 March 2023  
(OR. en)

7879/23

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**Interinstitutional File:  
2021/0376 (COD)**

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EF 86  
ECOFIN 290  
CODEC 498

### INFORMATION NOTE

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From: General Secretariat of the Council

To: Delegations

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Subject: Proposal for a Directive of the European Parliament and of the Council amending Directives 2011/61/EU and 2009/65/EC as regards delegation arrangements, liquidity risk management, supervisory reporting, provision of depositary and custody services and loan origination by alternative investment funds

- Initial positions of the three Institutions prior to commencement of trilogues

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Delegations will find enclosed the opening position of the three institutions on the proposal mentioned above, prior to the commencement of the trilogue phase.

	Commission Proposal	EP Mandate	Council Mandate
1	2021/0376 (COD)	2021/0376 (COD)	2021/0376 (COD)
2	<p>Proposal for a</p> <p>DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL</p> <p>amending Directives 2011/61/EU and 2009/65/EC as regards delegation arrangements, liquidity risk management, supervisory reporting, provision of depositary and custody services and loan origination by alternative investment funds</p> <p>(Text with EEA relevance)</p>	<p>Proposal for a</p> <p>DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL</p> <p>amending Directives 2011/61/EU and 2009/65/EC as regards delegation arrangements, liquidity risk management, supervisory reporting, provision of depositary and custody services and loan origination by alternative investment funds</p> <p>(Text with EEA relevance)</p>	<p>Proposal for a</p> <p>DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL</p> <p>amending Directives 2011/61/EU and 2009/65/EC as regards delegation arrangements, liquidity risk management, supervisory reporting, provision of depositary and custody services and loan origination by alternative investment funds</p> <p>(Text with EEA relevance)</p>
3	THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION	THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION	THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION <sub>2</sub>

	<b>Commission Proposal</b>	<b>EP Mandate</b>	<b>Council Mandate</b>
4	Having regard to the Treaty on the Functioning of the European Union, and in particular Article 53(1) thereof,	Having regard to the Treaty on the Functioning of the European Union, and in particular Article 53(1) thereof,	Having regard to the Treaty on the Functioning of the European Union, and in particular Article 53(1) thereof,
5	Having regard to the proposal from the European Commission,	Having regard to the proposal from the European Commission,	Having regard to the proposal from the European Commission,
6	After transmission of the draft legislative act to the national parliaments,	After transmission of the draft legislative act to the national parliaments,	After transmission of the draft legislative act to the national parliaments,
7	Having regard to the opinion of the European Economic and Social Committee <sup>1</sup> ,  _____ 1. OJ C , , p . .	Having regard to the opinion of the European Economic and Social Committee <sup>1</sup> ,  _____ 1. OJ C , , p . .	Having regard to the opinion of the European Economic and Social Committee <sup>1</sup> ,  _____

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			1. OJ C , , p. .
8	Acting in accordance with the ordinary legislative procedure,	Acting in accordance with the ordinary legislative procedure,	Acting in accordance with the ordinary legislative procedure,
9	Whereas:	Whereas:	Whereas:
10	(1) In accordance with Article 69 of Directive 2011/61/EU of the European Parliament and of the Council <sup>1</sup> , the Commission has reviewed the application and the scope of that Directive and concluded that the objectives of integrating the Union market for alternative investment funds ('AIF'), ensuring a high level of investor protection and protecting financial stability have mostly been met. However, in that review the Commission also concluded that there is a need to harmonise rules for the managers of	(1) In accordance with Article 69 of Directive 2011/61/EU of the European Parliament and of the Council <sup>1</sup> , the Commission has reviewed the application and the scope of that Directive and concluded that the objectives of integrating the Union market for alternative investment funds ('AIF'), ensuring a high level of investor protection and protecting financial stability have mostly been met. However, in that review the Commission also concluded that there is a need to harmonise rules for the managers of alternative investment funds ('AIFMs')	(1) In accordance with Article 69 of Directive 2011/61/EU of the European Parliament and of the Council <sup>1</sup> , the Commission has reviewed the application and the scope of that Directive and concluded that the objectives of integrating the Union market for alternative investment funds ('AIF'), ensuring a high level of investor protection and protecting financial stability have mostly been met. However, in that review the Commission also concluded that there is a need to harmonise rules for

	Commission Proposal	EP Mandate	Council Mandate
	<p>alternative investment funds ('AIFMs') managing loan-originating AIFs, to clarify standards applicable to AIFMs that delegate their functions to third parties, to ensure equal treatment of custodians, to improve cross-border access to depositary services, to optimise supervisory data collection and to facilitate the use of liquidity management tools (LMTs) across the Union. Therefore, amendments are necessary to address those regulatory gaps to improve the functioning of Directive 2011/61/EU.</p> <p>_____</p> <p>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).</p>	<p>managing loan-originating AIFs, to clarify standards applicable to AIFMs that delegate their functions to third parties, to ensure equal treatment of custodians, to improve cross-border access to depositary services, to optimise supervisory data collection and to facilitate the use of liquidity management tools (LMTs) across the Union. Therefore, amendments are necessary to address those regulatory gaps to improve the functioning of Directive 2011/61/EU.</p> <p>_____</p> <p>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).</p>	<p>the managers of alternative investment funds ('AIFMs') managing loan-originating AIFs, to clarify standards applicable to AIFMs that delegate their functions to third parties, to ensure equal treatment of custodians, to improve cross-border access to depositary services, to optimise supervisory data collection and to facilitate the use of liquidity management tools (LMTs) across the Union. Therefore, amendments are necessary to address those regulatory gaps to improve the functioning of Directive 2011/61/EU.</p> <p>_____</p> <p>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).</p>
11	<p>(2) A robust delegation regime, an equal treatment of custodians, coherence of supervisory reporting and a harmonised approach to the use of LMTs are equally necessary for the management of undertakings for collective investment in</p>	<p>(2) A robust delegation regime, an equal treatment of custodians, coherence of supervisory reporting <b><i>through the removal of duplications and redundant requirements</i></b> and a harmonised approach to the use of LMTs are equally necessary for the management of</p>	<p>(2) A robust delegation regime, an equal treatment of custodians, coherence of supervisory reporting and a harmonised approach to the use of LMTs are equally necessary for the management of undertakings for collective investment in</p>

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	<p>transferable securities ('UCITS'). Therefore, it is appropriate to also amend Directive 2009/65/EC of the European Parliament and of the Council<sup>1</sup>, which lays down rules regarding the authorisation and operation of UCITS, in the areas of delegation, asset safekeeping, supervisory reporting and liquidity risk management.</p> <p>_____</p> <p>1. 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, p. 32).</p>	<p>undertakings for collective investment in transferable securities ('UCITS'). Therefore, it is appropriate to also amend Directive 2009/65/EC of the European Parliament and of the Council<sup>1</sup>, which lays down rules regarding the authorisation and operation of UCITS, in the areas of delegation, asset safekeeping, supervisory reporting and liquidity risk management.</p> <p>_____</p> <p>1. 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, p. 32).</p>	<p>transferable securities ('UCITS'). Therefore, it is appropriate to also amend Directive 2009/65/EC of the European Parliament and of the Council<sup>1</sup>, which lays down rules regarding the authorisation and operation of UCITS, in the areas of delegation, asset safekeeping, supervisory reporting and liquidity risk management.</p> <p>_____</p> <p>1. 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, p. 32).</p>
11a		<p><b><u>(2a) The alternative asset industry collectively invests over EUR 1,5 trillion in Europe. Union institutional investors invest over EUR 370 billion in alternative assets managers. The Union alternative asset industry provides over EUR 250 billion to European businesses in private credit and European investors are responsible for 30 % of global capital allocated to the whole industry but there is still room to grow by providing European institutional investors with greater choice and enhancing</u></b></p>	

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		<u><i>the competitiveness of Europe’s capital markets.</i></u>	
11b		<u><i>(2b) The size of EU AIFs has continued to expand, increasing by 8 % between 2019 and 2022, and AIFs accounted for one-third of the EEA30 fund industry at the end of 2020. Professional investors own most of the shares of AIFs, yet retail investor share is significant at 14 % of the net asset value (NAV).</i></u>	
12	<p>(3) To increase the efficiency of AIFM activities, the list of authorised ancillary services set out in Article 6(4) of Directive 2011/61/EU should be extended to include benchmark administration governed by Regulation (EU) 2016/1011 of the European Parliament and of the Council<sup>1</sup> and credit servicing governed by Directive 2021/.../EU of the European Parliament and of the Council.<sup>2</sup></p> <p>_____</p>	<p>(3) To increase the efficiency of AIFM activities, the list of authorised ancillary services set out in Article 6(4) of Directive 2011/61/EU should be extended to include benchmark administration governed by Regulation (EU) 2016/1011 of the European Parliament and of the Council<sup>1</sup> and credit servicing governed by Directive 2021/.../EU of the European Parliament and of the Council.<sup>2</sup></p> <p>_____</p> <p>1. Regulation (EU) 2016/1011 of the European Parliament</p>	<p>(3) To increase the efficiency of AIFM activities, the list of authorised ancillary services set out in Article 6(4) of Directive 2011/61/EU should be extended to include <u><i>benchmark administration governed by the tasks carried out by an administrator in accordance with</i></u> Regulation (EU) 2016/1011 of the European Parliament and of the Council<sup>1</sup> (<u><i>‘administration of benchmarks’</i></u>) and credit servicing governed by Directive <u><i>2021/.../EU2021/2167</i></u> of the European</p>

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	<p>1. Regulation (EU) 2016/1011 of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No 596/2014 (OJ L 171, 29.6.2016, p. 1–65).</p> <p>2. OJ C , , p. .</p>	<p>and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No 596/2014 (OJ L 171, 29.6.2016, p. 1–65).</p> <p>2. OJ C , , p. .</p>	<p>Parliament and of the Council.<sup>2</sup> <b><u>For the sake of completeness, it should also be clarified that, when undertaking the tasks carried out by an administrator of benchmarks or when providing credit services, the AIFM should be subject to the abovementioned acts.</u></b></p> <hr/> <p>1. Regulation (EU) 2016/1011 of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No 596/2014 (OJ L 171, 29.6.2016, p. 1–65).</p> <p>2. <b><u>Directive (EU) 2021/2167 of the European Parliament and of the Council of 24 November 2021 on credit servicers and credit purchasers and amending Directives 2008/48/EC and 2014/17/EU (OJ L 438, 8.12.2021, p. 1–37)</u></b> OJ C , , p. .</p>
12a		<p><b><u>(3a) In order to enhance legal certainty, it should be clarified that the management of AIFs also comprises the activities of originating loans on behalf of an AIF and servicing securitisation special purpose vehicles referred to in points 3 and 4 of Annex I</u></b></p>	



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		<u>of Directive 2011/61/EU.</u>	
12b			<u>(3a) In order to enhance legal certainty for AIFMs and UCITS managers regarding the services they can provide to third parties, it should be clarified that AIFMs and UCITS managers are allowed to perform for the benefit of third parties the same activities and services that they already provide in relation to the AIFs and UCITS they manage, provided this does not create unmanageable conflicts of interest. This possibility would also support the international competitiveness of European AIFMs and UCITS management companies by enabling economies of scale and help diversify revenue sources.</u>
13	(4) To ensure legal certainly it should be clarified that AIFMs providing ancillary services involving financial instruments are subject to the rules laid down in Directive	(4) To ensure legal certainly it should be clarified that AIFMs providing ancillary services involving financial instruments are subject to the rules laid down in Directive	(4) To ensure legal <del>certainly</del> <u>certainty</u> it should be clarified that AIFMs providing ancillary services involving financial instruments are subject to the rules laid

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	<p>2014/65/EU of the European Parliament and of the Council<sup>1</sup>. With regard to other assets, which are not financial instruments, AIFMs should be required to comply with the requirements of Directive 2011/61/EU.</p> <p>_____</p> <p>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 (OJ L 173, 12.6.2014, p. 349).</p>	<p>2014/65/EU of the European Parliament and of the Council<sup>1</sup>. With regard to other assets, which are not financial instruments, AIFMs should be required to comply with the requirements of Directive 2011/61/EU.</p> <p>_____</p> <p>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 (OJ L 173, 12.6.2014, p. 349).</p>	<p>down in Directive 2014/65/EU of the European Parliament and of the Council<sup>1</sup>. With regard to other assets, which are not financial instruments, AIFMs should be required to comply with the requirements of Directive 2011/61/EU.</p> <p>_____</p> <p>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 (OJ L 173, 12.6.2014, p. 349).</p>
14	<p>(5) To ensure the uniform application of the requirements laid down in Articles 7 and 8 of Directive 2011/61/EU for the necessary human resources of AIFMs, it should be clarified that at the time of application for an authorisation, AIFMs should provide the competent authorities with information about the human and technical resources that the AIFM will employ to carry out its functions and, where applicable, to supervise delegates. At least two senior managers should be employed or conduct the business of the AIFM on a full-time basis and be resident in the Union.</p>	<p>(5) To ensure the uniform application of the requirements laid down in Articles 7 and 8 of Directive 2011/61/EU for the necessary human resources of AIFMs, it should be clarified that at the time of application for an authorisation, AIFMs should provide the competent authorities with information about the human and technical resources that the AIFM will employ to carry out its functions and, where applicable, to supervise delegates. At least two senior managers should be employed or conduct the business of the AIFM on a full-time <b><i>or a full-time equivalent</i></b> basis and be resident in the Union. <b><i>To ensure that AIFMs comply with the</i></b></p>	<p>(5) To ensure the uniform application of the requirements laid down in Articles 7 and 8 of Directive 2011/61/EU for the necessary human resources of AIFMs, it should be clarified that at the time of application for an authorisation, AIFMs should provide the competent authorities with information about the human and technical resources that the AIFM will employ to carry out its functions and, where applicable, to supervise delegates. At least two senior managers should be employed or conduct the business of the AIFM on a full-time basis and be resident in the Union.</p>

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		<u>requirements regarding conflict of interest and acting in the best interest of the AIFs and their investors, AIFMs should ensure that at least one member of their governing body is a non-executive director.</u>	<u>Regardless of this statutory minimum, more resources may be necessary depending on the size and complexity of the AIF.</u>
15	(6) To develop a reliable overview of delegation activities in the Union governed by Article 20 of Directive 2011/61/EU and to inform future policy decisions or supervisory actions, competent authorities should provide the European Securities and Markets Authority ('ESMA') with delegation notifications where an AIFM delegates more portfolio management, or risk management functions of the AIF, than it manages itself to entities located in third countries.	<i>deleted</i>	(6) To <del>develop a reliable overview of delegation activities in the Union governed by Article 20</del> <u>enhance the uniform application</u> of Directive 2011/61/EU <del>and to inform future policy decisions or supervisory actions, competent authorities should provide the European Securities and Markets Authority ('ESMA') with delegation notifications where an AIFM delegates more portfolio management, or risk management functions of the AIF, than it manages itself to entities located in third countries</del> <u>it should be clarified that the delegation rules laid down in Article 20 apply to all functions listed in Annex I to that Directive and to the ancillary services referred to in Article 6(4) of that Directive.</u>
16			

	Commission Proposal	EP Mandate	Council Mandate
	<p>(7) In order to ensure consistent harmonisation of the notification process in the area of delegation, power should be delegated to the Commission to adopt regulatory technical standards by means of delegated acts pursuant to Article 290 of the Treaty on the Functioning of the European Union (TFEU) in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council<sup>1</sup> to specify the contents, forms and procedures to standardise the notification process of the AIFMs' delegation arrangements. The notification form should contain data fields indicating the activities making up the risk and portfolio management functions in order to determine whether an AIFM has delegated more of such functions than it has retained. Those regulatory technical standards should be adopted on the basis of a draft developed by ESMA.</p> <p>_____</p> <p>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).</p>	<p><i>deleted</i></p>	<p><i>(7) In order to ensure consistent harmonisation of the notification process in the area of delegation, power should be delegated to the Commission to adopt regulatory technical standards by means of delegated acts pursuant to Article 290 of the Treaty on the Functioning of the European Union (TFEU) in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council<sup>1</sup> to specify the contents, forms and procedures to standardise the notification process of the AIFMs' delegation arrangements. The notification form should contain data fields indicating the activities making up the risk and portfolio management functions in order to determine whether an AIFM has delegated more of such functions than it has retained. Those regulatory technical standards should be adopted on the basis of a draft developed by ESMA. <del>deleted</del></i></p> <p>_____</p> <p><i>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).</i></p>

	Commission Proposal	EP Mandate	Council Mandate
16a		<p><i><u>(7a) The marketing of AIFs is not always conducted by the AIFM directly but by one or several distributors either on behalf of the AIFM or on their own behalf. There could also be cases where an independent financial advisor markets a fund without the AIFM’s knowledge. Most fund distributors are subject to regulatory requirements pursuant to Directives 2014/65/EU or 2016/97/EU, which define the scope and extent of their responsibilities towards their own clients. Directive 2011/61/EU should therefore acknowledge the diversity of distribution arrangements and distinguish between arrangements whereby a distributor operates on behalf of the AIFM, which should be considered to be a delegation arrangement, and arrangements whereby a distributor acts on its own behalf, in which case the provisions of that Directive regarding delegation should not apply.</u></i></p>	<p><i><u>(7a) Marketing of funds is not always conducted by the AIFM directly but by one or several distributors either on behalf of the AIFM or on their own behalf. There may also be cases where an independent financial advisor markets a fund without the AIFM’s knowledge. Most fund distributors are subject to regulatory requirements pursuant to Directive 2014/65/EU or Directive 2016/97/EU, which define the scope and extent of their responsibilities towards their own clients. This Directive should therefore acknowledge the diversity of distribution arrangements and recognise the existing safeguards for the arrangements whereby a distributor acts on its own behalf when it markets the AIF under Directive 2014/65/EU or through life-insurance based investment products in accordance with Directive 2016/97/EU, in which case the provisions of this Directive regarding delegation should not apply irrespective of any distribution agreement between the AIFM and the distributor.</u></i></p>

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17	<p>(8) To enhance the uniform application of Directive 2011/61/EU it should be clarified that the delegation rules laid down in Article 20 apply to all functions listed in Annex I to that Directive and to the ancillary services referred to in Article 6(4) of that Directive.</p>	<p>(8) To enhance the uniform application of Directive 2011/61/EU it should be clarified that the delegation rules laid down in Article 20 apply to all functions listed in Annex I to that Directive and to the ancillary services referred to in Article 6(4) of that Directive.</p>	<p>(8) To <del>enhance the uniform application of Directive 2011/61/EU</del> <b><u>develop a reliable overview of delegation activities in the Union and to inform future supervisory actions, AIFMs should regularly provide competent authorities with information on delegation arrangements which involve the delegation of collective or discretionary portfolio management or risk management functions. AIFMs should therefore report information on the delegates, the list and description of the delegated activities, the amount and percentage of the assets of the managed AIFs that are subject to delegation arrangements concerning the portfolio management function, a description of how the AIFM oversees, monitors and controls the delegate, information on the sub-delegation arrangements and the date of commencement and expiry of the delegation and sub-delegation arrangements. For the sake of clarity, it should be <del>clarified</del> specified that the delegation rules laid down in Article 20 apply to all data collected on the percentage of the assets of the managed AIFs that are subject to delegation arrangements concerning the portfolio management</u></b> functions <i>listed in Annex I to</i></p>

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			<p><i>that Directive and to the ancillary services referred to in Article 6(4) of that is <b>for the purposes of providing a greater overview of the operation of delegation, and is not on its own an evidential indicator for determining the adequacy of substance or risk management, or the effectiveness of oversight or control arrangements at the level of the manager. Such information should be communicated to the competent authorities as part of the supervisory reporting governed by Article 24 of Directive 2011/61/EU.</b></i></p>
17a			<p><i><b>(8a) Given that it is possible for an AIFM to employ leverage and, under certain conditions, to contribute to the build-up of systemic risk or disorderly markets, special requirements should be imposed on AIFMs employing leverage on a substantial basis. In order to achieve a uniform application of such requirements, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of specifying when leverage is to be considered to be employed on a substantial basis.</b></i></p>

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18	<p>(9) Common rules should also be laid down to establish an efficient internal market for loan-originating AIFs, to ensure a uniform level of investor protection in the Union, to make it possible for AIFs to develop their activities by originating loans in all Member States of the Union and to facilitate the access to finance by EU companies, a key objective of the Capital Markets Union ('CMU').<sup>1</sup> However, given the fast-growing private credit market, it is necessary to address the potential micro risks and macro prudential risks that loan originating AIFs could pose and spread to the broader financial system. The rules applicable to AIFMs managing loan-originating funds should be harmonised in order to improve risk management across the financial market and increase transparency for investors.</p> <p>_____</p> <p>1. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, A Capital Markets Union for people and businesses-new action plan (COM/2020/590 final).</p>	<p>(9) <u>Investment funds providing loans can be a source of alternative financing for the real economy. Indeed, such funds can provide critical funding for Union small and medium-sized enterprises for which traditional lending sources are more difficult to access. Moreover, it should be recognised that the existence of sources of private credit promotes investor confidence in the Union market. However, diverging national regulatory approaches hinder the establishment of an efficient internal market for loan-originating AIFs by promoting regulatory arbitrage and varying levels of investor protection.</u> Common rules should also be laid down to establish an efficient internal market for loan-originating AIFs, to ensure a uniform level of investor protection in the Union, to make it possible for AIFs to develop their activities by originating loans in all Member States of the Union and to facilitate the access to finance by EU companies, a key objective of the Capital Markets Union ('CMU').<sup>1</sup> However, given the fast-growing private credit market, it is necessary to address the potential micro risks and macro prudential risks that loan originating AIFs could pose and spread to the broader financial system. The rules applicable to AIFMs managing loan-originating</p>	<p>(9) Common rules should also be laid down to establish an efficient internal market for loan-originating AIFs, to ensure a uniform level of investor protection in the Union, to make it possible for AIFs to develop their activities by originating loans in all Member States of the Union and to facilitate the access to finance by EU companies, a key objective of the Capital Markets Union ('CMU').<sup>1</sup> However, given the fast-growing private credit market, it is necessary to address the potential micro risks and macro prudential risks that loan originating AIFs could pose and spread to the broader financial system. The rules applicable to AIFMs managing loan-originating funds should be harmonised in order to improve risk management across the financial market and increase transparency for investors. <u>For the sake of clarity, it should be specified that the provisions laid down in this Directive that are applicable to AIFMs that manage loan-originating AIFs should not prevent Member states from setting forth national product frameworks that define certain categories of AIFs with more restrictive rules. These national rules should apply to</u></p>



	Commission Proposal	EP Mandate	Council Mandate
		<p>funds should be harmonised in order to improve risk management across the financial market and increase transparency for investors.</p> <p>_____</p> <p>1. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, A Capital Markets Union for people and businesses-new action plan (COM/2020/590 final).</p>	<p><b><u>the AIF established in the Member State that has decided to exercise the discretion to the extent that these rules are more restrictive than the general provisions laid down in this Directive.</u></b></p> <p>_____</p> <p>1. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, A Capital Markets Union for people and businesses-new action plan (COM/2020/590 final).</p>
18a			<p><b><u>(9a) AIFs granting loans to consumers are subject to the requirements of other instruments of Union law applicable to consumer lending, including Directive 2021/2167/EU on credit servicing and credit purchasing and Directive 2008/48/EC on credit agreements for consumers. These instruments of Union law lay down the basic protections of borrowers at the EU level. However, and based on overriding reasons of public interest, Member States should be able to prohibit loan-origination by AIFs to consumers.</u></b></p>

	Commission Proposal	EP Mandate	Council Mandate
19	<p>(10) To support the professional management of AIFs and to mitigate risks to the financial stability, AIFMs that manage AIFs that engage in lending activities, including purchasing loans on the secondary market, should have effective policies, procedures and processes for the granting of loans, assessing credit risk and administering and monitoring its credit portfolio, which should be reviewed periodically.</p>	<p>(10) To support the professional management of AIFs and to mitigate risks to the financial stability, AIFMs that manage AIFs that engage in lending activities, including purchasing loans on the secondary market, should have effective policies, procedures and processes for the granting of loans, assessing credit risk and administering and monitoring its credit portfolio, which should be reviewed periodically.</p>	<p>(10) To support the professional management of AIFs and to mitigate risks to the financial stability, AIFMs that manage AIFs that engage in <i>lending activities, including purchasing loans on the secondary market, <b>loan origination</b></i> should have effective policies, procedures and processes for the granting of loans. <b><i>They should also implement effective policies, procedures and processes for</i></b> assessing credit risk and administering and monitoring <del>its</del><i>their</i> credit portfolio <b><i>where they engage in loan originating activities or purchase loans from third parties. These policies, procedures and processes,</i></b> <del>which</del> should be reviewed periodically.</p>
20	<p>(11) To contain the risk of interconnectedness among loan-originating AIFs and other financial market participants, AIFMs of those AIFs should, where a borrower is a financial institution, be required to diversify their risk and subject their</p>	<p>(11) To contain the risk of interconnectedness among loan-originating AIFs and other financial market participants, AIFMs of those AIFs should, where a borrower is a financial institution, be required to diversify their risk and</p>	<p>(11) To contain the risk of interconnectedness among loan-originating AIFs and other financial market participants, AIFMs of those AIFs should, where a borrower is a financial institution, be required to diversify their risk and</p>

	Commission Proposal	EP Mandate	Council Mandate
	exposure to specific limits.	subject their exposure to specific limits.	subject their exposure to specific limits. <u><b><i>In addition, they should be subject to a leverage limit to ensure the stability and integrity of the financial system. In line with this objective, the leverage limit should be the same for all loan-originating AIFs, be they marketed to retail investors or only to professional investors. This should not prevent Member States from imposing a stricter leverage limit at national level to AIFs marketed to retail investors.</i></b></u>
21	(12) In order to limit conflicts of interest, AIFMs and their staff should not receive loans from loan-originating AIFs that they manage. Similarly, the AIF's depositary and its staff or the AIFM's delegate and its staff should be prohibited from receiving loans from the associated AIFs.	(12) In order to limit conflicts of interest, AIFMs and their staff should not receive loans from loan-originating AIFs that they manage. Similarly, the AIF's depositary and its staff or the AIFM's delegate and its staff <u><b><i>and entities within the same group as the AIFM</i></b></u> should be prohibited from receiving loans from the associated AIFs.	(12) In order to limit conflicts of interest, AIFMs and their staff should not receive loans from loan-originating AIFs that they manage. Similarly, the AIF's depositary and its staff or the AIFM's delegate and its staff should be prohibited from receiving loans from the associated AIFs.
22	(13) Directive 2011/61/EU should recognise	(13) Directive 2011/61/EU should recognise the	(13) Directive 2011/61/EU should

	Commission Proposal	EP Mandate	Council Mandate
	<p>the right of AIFs to originate loans and trade those loans on the secondary market. To avert moral hazard and maintain the general credit quality of loans originated by AIF's, such loans should be subject to risk retention requirements to avoid situations in which loans are originated with the sole purpose of selling them.</p>	<p>right of AIFs to originate loans and trade those loans on the secondary market. To avert moral hazard and maintain the general credit quality of loans originated by AIF's, such loans should be subject to risk retention requirements. <u><i>AIFs should not follow an originate-to-distribute investment strategy, namely an investment strategy under to avoid situations in</i></u> which loans are originated with the sole purpose of selling them.</p>	<p>recognise the right of AIFs to originate loans and trade those loans on the secondary market. To avert moral hazard and maintain the general credit quality of loans originated by AIF's, such loans should be subject to risk retention requirements to avoid situations in which loans are originated with the sole purpose of selling them. <u><i>Nevertheless, originate-to-distribute-loans should not be an investment strategy pursued by AIFs and AIFMs should therefore ensure that they only manage loan-originating AIFs whose investment strategy is not to originate loans with the objective to sell them.</i></u></p>
23	<p>(14) Long-term, illiquid loans held by AIF may create liquidity mismatches if the AIFs open-ended structure allows investors to redeem their fund units or shares on a frequent basis. It is therefore necessary to mitigate risks related to maturity transformation by imposing a closed-ended structure for AIFs originating loans because close-ended funds would not be vulnerable to redemption demands and could hold originated loans to maturity.</p>	<p>(14) Long-term, illiquid loans held by AIF <del>may</del><u><i>might</i></u> create liquidity mismatches if the AIFs open-ended structure allows investors to redeem their fund units or shares on a frequent basis. <del><i>It is therefore</i></del><u><i>Therefore, where an AIFM is not able to demonstrate to the competent authorities of its home Member State that the AIF has a sound liquidity risk management system, it is</i></u> necessary to mitigate risks related to maturity transformation by imposing a closed-ended structure for AIFs originating loans because close-ended funds would not be</p>	<p>(14) Long-term, illiquid loans held by <del>AIF</del><u><i>AIFs</i></u> may create liquidity mismatches if the <del>AIFs</del><u><i>authorised AIF's</i></u> open-ended structure allows investors to redeem their fund units or shares on a frequent basis. It is therefore necessary to mitigate risks related to maturity transformation by imposing a closed-ended structure for AIFs originating loans because close-ended funds would not be vulnerable to redemption demands and could hold originated loans to maturity. <u><i>However, a loan-originating AIF may</i></u></p>

	Commission Proposal	EP Mandate	Council Mandate
		<p>vulnerable to redemption demands and could hold originated loans to maturity. <u><i>In order to ensure consistent criteria for the determination by competent authorities of whether a loan-originating AIF can maintain an open-ended structure, power should be delegated to the Commission to adopt regulatory technical standards by means of delegated acts pursuant to Article 290 of the Treaty on the Functioning of the European Union (TFEU) in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council<sup>1a</sup> to establish those criteria. Those regulatory technical standards should be adopted on the basis of a draft developed by the European Securities and Markets Authority (ESMA).</i></u></p>	<p><u><i>offer redemption possibilities given its investment strategy and based on a liquidity management system that minimises liquidity mismatches and ensures investors fair treatment. It should therefore be possible for AIFMs to manage such AIFs provided that certain requirements are fulfilled, to be specified by regulatory technical standards. The regulatory technical standards should take into account the nature of the loan origination by the AIFM, especially if the AIFM provides only shareholder loans which can be regarded as equity-like and pose a lesser risk than loans to third parties.</i></u></p>
24	<p>(15) It should be clarified that where an AIFM is subject to the requirements laid down in Directive 2011/61/EU in relation to its managed AIF's lending activities and to the requirements laid down in Regulations (EU) 345/2013<sup>1</sup>, (EU) 346/2013<sup>2</sup> and (EU) 2015/760<sup>3</sup> of the European Parliament and of the Council, the specific product rules laid down in Article 3 of Regulations (EU) 345/2013 and Article 3 of Regulation (EU)</p>	<p>(15) It should be clarified that where an AIFM is subject to the requirements laid down in Directive 2011/61/EU in relation to its managed AIF's lending activities and to the requirements laid down in Regulations (EU) 345/2013<sup>1</sup>, (EU) 346/2013<sup>2</sup> and (EU) 2015/760<sup>3</sup> of the European Parliament and of the Council, the specific product rules laid down in Article 3 of Regulations (EU) 345/2013 and Article 3 of Regulation (EU) 346/2013, Chapter II of</p>	<p>(15) It should be clarified that where <del>an</del> <i>AIFM is subject to the requirements laid down in Directive 2011/61/EU</i> <u><i>a loan-originating AIFs or an AIFM</i></u>, in relation to its managed AIF's lending activities, <u><i>are subject to the requirements laid down in Directive 2011/61/EU</i></u> and to the requirements laid down in Regulations (EU) 345/2013<sup>1</sup>, (EU) 346/2013<sup>2</sup> and (EU) 2015/760<sup>3</sup> of the European Parliament and</p>

	Commission Proposal	EP Mandate	Council Mandate
	<p>346/2013, Chapter II of Regulation (EU) 2015/760, should override more general rules set out in Directive 2011/61/EU.</p> <hr/> <p>1. Regulation (EU) No 345/2013 of the European Parliament and of the Council of 17 April 2013 on European venture capital funds (OJ L 115, 25.4.2013, p. 1–17).</p> <p>2. Regulation (EU) No 346/2013 of the European Parliament and of the Council of 17 April 2013 on European social entrepreneurship funds (OJ L 115, 25.4.2013, p. 18–38).</p> <p>3. Regulation (EU) 2015/760 of the European Parliament and of the Council of 29 April 2015 on European long-term investment funds (OJ L 123, 19.5.2015, p. 98–121).</p>	<p>Regulation (EU) 2015/760, should override more general rules set out in Directive 2011/61/EU.</p> <hr/> <p>1. Regulation (EU) No 345/2013 of the European Parliament and of the Council of 17 April 2013 on European venture capital funds (OJ L 115, 25.4.2013, p. 1–17).</p> <p>2. Regulation (EU) No 346/2013 of the European Parliament and of the Council of 17 April 2013 on European social entrepreneurship funds (OJ L 115, 25.4.2013, p. 18–38).</p> <p>3. Regulation (EU) 2015/760 of the European Parliament and of the Council of 29 April 2015 on European long-term investment funds (OJ L 123, 19.5.2015, p. 98–121).</p>	<p>of the Council, the specific product rules laid down in Article 3 of Regulations (EU) 345/2013 and Article 3 of Regulation (EU) 346/2013, Chapter II of Regulation (EU) 2015/760, should override more general rules set out in Directive 2011/61/EU.</p> <hr/> <p>1. Regulation (EU) No 345/2013 of the European Parliament and of the Council of 17 April 2013 on European venture capital funds (OJ L 115, 25.4.2013, p. 1–17).</p> <p>2. Regulation (EU) No 346/2013 of the European Parliament and of the Council of 17 April 2013 on European social entrepreneurship funds (OJ L 115, 25.4.2013, p. 18–38).</p> <p>3. Regulation (EU) 2015/760 of the European Parliament and of the Council of 29 April 2015 on European long-term investment funds (OJ L 123, 19.5.2015, p. 98–121).</p>
24a			<p><b><u>(15a) Due to the potentially illiquid and long-term nature of the assets of loan-originating AIFs, AIFMs experience inherent difficulty in complying with changes to the fund rules and regulatory requirements introduced during the life-cycle of the loan-originating AIFs they</u></b></p>

	Commission Proposal	EP Mandate	Council Mandate
			<i><u>manage without affecting the trust and confidence of their investors. It is therefore necessary to provide for transitional rules for loan-originating AIFs that have been constituted before the adoption of this Directive.</u></i>
25	(16) To support market monitoring by the supervisory authorities the information gathering and sharing through supervisory reporting could be improved. Duplicative reporting requirements that exist under Union and national legislation, in particular Regulation (EU) No 600/2014 of the European Parliament and of the Council <sup>1</sup> , Regulation (EU) 2019/834 of the European Parliament and of the Council <sup>2</sup> , Regulation (EU) No 1011/2012 of the European Central Bank <sup>3</sup> and Regulation (EU) No 1073/2013 of the European Central Bank <sup>4</sup> , could be eliminated to improve efficiency and reduce administrative burdens for AIFMs. The European supervisory authorities ('ESAs') and the European Central Bank (ECB), with the support of national competent authorities, where necessary, should assess the data needs of the different supervisory authorities so that the changes to the supervisory reporting	(16) To support market monitoring by the supervisory authorities the information gathering and sharing through supervisory reporting could be improved. Duplicative reporting requirements that exist under Union and national legislation, in particular Regulation (EU) No 600/2014 of the European Parliament and of the Council <sup>1</sup> , Regulation (EU) 2019/834 of the European Parliament and of the Council <sup>2</sup> , Regulation (EU) No 1011/2012 of the European Central Bank <sup>3</sup> and Regulation (EU) No 1073/2013 of the European Central Bank <sup>4</sup> , could be eliminated to improve efficiency and reduce administrative burdens for AIFMs. The European supervisory authorities ('ESAs') and the European Central Bank (ECB), with the support of national competent authorities, where necessary, should assess the data needs of the different supervisory authorities so that the changes to the supervisory reporting template for AIFMs are effective. <u>The reporting</u>	(16) To support market monitoring by the supervisory authorities the information gathering and sharing through supervisory reporting <del>could</del> <u>should</u> be improved. Duplicative reporting requirements that exist under Union and national legislation, in particular Regulation (EU) No 600/2014 of the European Parliament and of the Council <sup>1</sup> , Regulation (EU) 2019/834 of the European Parliament and of the Council <sup>2</sup> , Regulation (EU) No 1011/2012 of the European Central Bank <sup>3</sup> and Regulation (EU) No 1073/2013 of the European Central Bank <sup>4</sup> , could be eliminated to improve efficiency and reduce administrative burdens for AIFMs. The European supervisory authorities ('ESAs') and the European Central Bank (ECB), with the support of national competent authorities, where necessary, should assess the data needs of the different supervisory

	Commission Proposal	EP Mandate	Council Mandate
	<p>template for AIFMs are effective.</p> <p>_____</p> <p>1. Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 Text with EEA relevance (OJ L 173, 12.6.2014, p. 84).</p> <p>2. Regulation (EU) 2019/834 of the European Parliament and of the Council of 20 May 2019 amending Regulation (EU) No 648/2012 as regards the clearing obligation, the suspension of the clearing obligation, the reporting requirements, the risk-mitigation techniques for OTC derivative contracts not cleared by a central counterparty, the registration and supervision of trade repositories and the requirements for trade repositories (OJ L 141, 28.5.2019, p. 42).</p> <p>3. Regulation (EU) No 1011/2012 of the European Central Bank of 17 October 2012 concerning statistics on holdings of securities (OJ L 305, 1.11.2012, p. 6).</p> <p>4. Regulation (EU) No 1073/2013 of the European Central Bank of 18 October 2013 concerning statistics on the assets and liabilities of investment funds (OJ L 297, 7.11.2013, p. 73).</p>	<p><b><u>requirements on the obligation to report information on the assets and liabilities of investment funds to the national central bank should be aligned.</u></b></p> <p>_____</p> <p>1. Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 Text with EEA relevance (OJ L 173, 12.6.2014, p. 84).</p> <p>2. Regulation (EU) 2019/834 of the European Parliament and of the Council of 20 May 2019 amending Regulation (EU) No 648/2012 as regards the clearing obligation, the suspension of the clearing obligation, the reporting requirements, the risk-mitigation techniques for OTC derivative contracts not cleared by a central counterparty, the registration and supervision of trade repositories and the requirements for trade repositories (OJ L 141, 28.5.2019, p. 42).</p> <p>3. Regulation (EU) No 1011/2012 of the European Central Bank of 17 October 2012 concerning statistics on holdings of securities (OJ L 305, 1.11.2012, p. 6).</p> <p>4. Regulation (EU) No 1073/2013 of the European Central Bank of 18 October 2013 concerning statistics on the assets and liabilities of investment funds (OJ L 297, 7.11.2013, p. 73).</p>	<p>authorities so that the changes to the supervisory reporting template for AIFMs are effective.</p> <p>_____</p> <p>1. Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 Text with EEA relevance (OJ L 173, 12.6.2014, p. 84).</p> <p>2. Regulation (EU) 2019/834 of the European Parliament and of the Council of 20 May 2019 amending Regulation (EU) No 648/2012 as regards the clearing obligation, the suspension of the clearing obligation, the reporting requirements, the risk-mitigation techniques for OTC derivative contracts not cleared by a central counterparty, the registration and supervision of trade repositories and the requirements for trade repositories (OJ L 141, 28.5.2019, p. 42).</p> <p>3. Regulation (EU) No 1011/2012 of the European Central Bank of 17 October 2012 concerning statistics on holdings of securities (OJ L 305, 1.11.2012, p. 6).</p> <p>4. Regulation (EU) No 1073/2013 of the European Central Bank of 18 October 2013 concerning statistics on the assets and liabilities of investment funds (OJ L 297, 7.11.2013, p. 73).</p>
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	<p>(17) In preparation for the future changes to the supervisory reporting obligations the scope of the data that can be required from AIFMs should be widened by removing the limitations, which focus on major trades and exposures or counterparties. If ESMA determines that a full portfolio disclosure to supervisors on a periodic basis is warranted, the provisions of Directive 2011/61/EU should accommodate the necessary broadening of the reporting scope.</p>	<p>(17) In preparation for the future changes to the supervisory reporting obligations the scope of the data that can be required from AIFMs should be widened by removing the limitations, which focus on major trades and exposures or counterparties, <u>and by adding other categories of data to be supplied to competent authorities</u>. If ESMA determines that a full portfolio disclosure to supervisors on a periodic basis is warranted, the provisions of Directive 2011/61/EU should accommodate the necessary broadening of the reporting scope.</p>	<p>(17) In preparation for the future changes to the supervisory reporting obligations the scope of the data that can be required from AIFMs should be widened by removing the limitations, which focus on major trades and exposures or counterparties. If ESMA determines that a full portfolio disclosure to supervisors on a periodic basis is warranted, the provisions of Directive 2011/61/EU should accommodate the necessary broadening of the reporting scope.</p>
27	<p>(18) In order to ensure consistent harmonisation of the supervisory reporting obligations, power should be delegated to the Commission to adopt regulatory technical standards by means of delegated acts pursuant to Article 290 of the Treaty on the Functioning of the European Union (TFEU) in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council<sup>1</sup> to set out the contents, forms and procedures to standardise the supervisory reporting process by AIFMs. The regulatory technical standards should set out the contents, forms and procedures to standardise the supervisory</p>	<p>(18) In order to ensure consistent harmonisation of the supervisory reporting obligations, power should be delegated to the Commission to adopt regulatory technical standards by means of delegated acts pursuant to Article 290 of the Treaty on the Functioning of the European Union (TFEU) in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council<sup>1</sup> to set out the contents, forms and procedures to standardise the supervisory reporting process by AIFMs. The regulatory technical standards should set out the contents, forms and procedures to standardise the supervisory reporting process, thus replacing the reporting</p>	<p>(18) In order to ensure consistent harmonisation of the supervisory reporting obligations, power should be delegated to the Commission to adopt regulatory technical standards by means of delegated acts pursuant to Article 290 of the Treaty on the Functioning of the European Union (TFEU) in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council<sup>1</sup> to set out the contents, forms and procedures to standardise the supervisory reporting process by AIFMs. The regulatory technical standards should set out the contents, forms and procedures to standardise the</p>

	Commission Proposal	EP Mandate	Council Mandate
	<p>reporting process, thus replacing the reporting template laid down in the Commission Delegated Regulation (EU) 231/2013<sup>2</sup>. Those regulatory and implementing technical standards should be adopted on the basis of a draft developed by ESMA.</p> <hr/> <p>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).</p> <p>2. Commission Delegated Regulation (EU) No 231/2013 of 19 December 2012 supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to exemptions, general operating conditions, depositaries, leverage, transparency and supervision (OJ L 83, 22.3.2013, p. 1–95).</p>	<p>template laid down in the Commission Delegated Regulation (EU) 231/2013<sup>2</sup>. Those regulatory and implementing technical standards should be adopted on the basis of a draft developed by ESMA.</p> <hr/> <p>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).</p> <p>2. Commission Delegated Regulation (EU) No 231/2013 of 19 December 2012 supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to exemptions, general operating conditions, depositaries, leverage, transparency and supervision (OJ L 83, 22.3.2013, p. 1–95).</p>	<p>supervisory reporting process, thus replacing the reporting template laid down in the Commission Delegated Regulation (EU) 231/2013<sup>2</sup>. Those regulatory and implementing technical standards should be adopted on the basis of a draft developed by ESMA. <b><u>The information to be reported on delegation arrangements should be clearly set out in the text of Directive 2011/61/EU. Regarding that information, the regulatory technical standard should remain limited to setting out the appropriate level of standardisation of the information to be reported as defined in Directive 2011/61/EU, without adding any elements that are not foreseen by the text of that Directive.</u></b></p> <hr/> <p>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).</p> <p>2. Commission Delegated Regulation (EU) No 231/2013 of 19 December 2012 supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to exemptions, general operating conditions, depositaries, leverage, transparency and supervision (OJ L 83, 22.3.2013, p. 1–95).</p>

	Commission Proposal	EP Mandate	Council Mandate
28	(19) To standardise the supervisory reporting process the Commission should also be empowered to adopt implementing technical standards developed by ESMA as regards the forms and data standards, reporting frequency and timing to reporting by AIFMs. The Commission should adopt those implementing technical standards by means of implementing acts pursuant to Article 291 TFEU and in accordance with Article 15 of Regulation (EU) No 1095/2010.	(19) To standardise the supervisory reporting process the Commission should also be empowered to adopt implementing technical standards developed by ESMA as regards the forms and data standards, reporting frequency and timing to reporting by AIFMs. The Commission should adopt those implementing technical standards by means of implementing acts pursuant to Article 291 TFEU and in accordance with Article 15 of Regulation (EU) No 1095/2010.	(19) To standardise the supervisory reporting process the Commission should also be empowered to adopt implementing technical standards developed by ESMA as regards the forms and data standards, reporting frequency and timing to reporting by AIFMs. The Commission should adopt those implementing technical standards by means of implementing acts pursuant to Article 291 TFEU and in accordance with Article 15 of Regulation (EU) No 1095/2010.
29	(20) In order to ensure a more effective response to liquidity pressures in times of market stress and to protect investors better, rules should be laid down in Directive 2011/61/EU to implement the recommendations of the European Systemic Risk Board (ESRB). <sup>1</sup>  _____	(20) In order to ensure a more effective response to liquidity pressures in times of market stress and to protect investors better, rules should be laid down in Directive 2011/61/EU to implement the recommendations of the European Systemic Risk Board (ESRB). <sup>1</sup>  _____  1. Recommendation of the European Systemic Risk Board	(20) In order to ensure a more effective response to liquidity pressures in times of market stress and to protect investors better, rules should be laid down in Directive 2011/61/EU to implement the recommendations of the European Systemic Risk Board (ESRB). <sup>1</sup>  _____

	Commission Proposal	EP Mandate	Council Mandate
	1. Recommendation of the European Systemic Risk Board of 7 December 2017 on liquidity and leverage risks in investment funds ESRB/2017/6, 2018/C 151/01.	of 7 December 2017 on liquidity and leverage risks in investment funds ESRB/2017/6, 2018/C 151/01.	1. Recommendation of the European Systemic Risk Board of 7 December 2017 on liquidity and leverage risks in investment funds ESRB/2017/6, 2018/C 151/01.
30	(21) To enable managers of open-ended AIFs based in any Member State to deal with redemption pressures under stressed market conditions, they should be required to choose at least one LMT from the harmonised list set out in the Annex, in addition to the possibility to suspend redemptions. When an AIFM takes a decision to activate or deactivate the LMT, it should notify the supervisory authorities. This would allow supervisory authorities to better handle potential spill-overs of liquidity tensions into the wider market.	(21) To enable managers of open-ended AIFs based in any Member State to deal with redemption pressures under stressed market conditions, they should be required to choose at least <del>one LMT</del> <b>two LMTs</b> from the harmonised list set out in the Annex, <b><u>with the exception of money market funds in accordance with Regulation (EU) 2017/1131 which can select only one liquidity management tool</u></b> in addition to the possibility to suspend redemptions. When an AIFM takes a decision to activate or deactivate <del>the LMT</del> <b>certain LMTs in situations of liquidity stress or in other defined circumstances</b> , it should notify the supervisory authorities. This would allow supervisory authorities to better handle potential spill-overs of liquidity tensions into the wider market.	(21) To enable managers of open-ended AIFs based in any Member State to deal with redemption pressures under stressed market conditions, they should be required to <del>choose</del> <b>determine an appropriate set of LMTs, including the selection of</b> at least <del>one LMT</del> <b>two LMTs</b> from the harmonised list set out in the Annex, in addition to the possibility to suspend redemptions <b><u>and activate side pockets, in exceptional circumstances and in the interest of their share or unit-holders. By way of derogation, the manager of an open-ended AIF should be able to select only one LMT from Annex V where that AIF is authorised as a money market fund.</u></b> When an AIFM takes a decision to activate or deactivate the LMT, it should notify the supervisory authorities <b><u>in parallel with the activation. When side pockets are activated the supervisory authorities should be notified, in a reasonable timeframe prior to this activation. While not giving</u></b>

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			<p><b><u>competent authorities the power to approve the use of a liquidity management tool before it is activated, this notification requirement</u></b> –<i>This</i> would allow supervisory authorities to better handle potential spill-overs of liquidity tensions into the wider market. <b><u>This requirement should only apply to suspension of redemptions, redemption gates and side pockets since other LMTs have the potential for a frequent use during normal market conditions. However, competent authorities should remain able to request the notifications for these other LMTs, if they deem it appropriate, for example where the key parameters of these tools are modified or where redemption in kind is activated.</u></b></p>
31	(22) To be able to make an investment decision in line with their risk appetite and liquidity needs, investors should be informed of the conditions for the use of LMTs.	(22) To be able to make an investment decision in line with their risk appetite and liquidity needs, investors should be informed of the conditions for the use of LMTs.	(22) To be able to make an investment decision in line with their risk appetite and liquidity needs, investors should be informed of the conditions for the use of LMTs. <b><u>In particular, and to strengthen investor protection, it should be specified that the use of redemption in kind is not suitable for retail investors and should therefore only be activated to meet</u></b>

	Commission Proposal	EP Mandate	Council Mandate
			<u><i>redemption requests of professional investors, while addressing risks of inequality of treatment between redeeming investors and other unitholders or shareholders.</i></u>
32	<p>(23) In order to ensure consistent harmonisation in the area of liquidity risk management by the managers of open-ended funds, power should be delegated to the Commission to adopt regulatory technical standards by means of delegated acts pursuant to Article 290 of the Treaty on the Functioning of the European Union (TFEU) in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council<sup>1</sup> to specify the process for choosing and using LMTs to facilitate market and supervisory convergence. Those regulatory technical standards should be adopted on the basis of a draft developed by ESMA.</p> <p>_____</p> <p>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</p>	<p>(23) In order to ensure consistent harmonisation in the area of liquidity risk management by the managers of open-ended funds, power should be delegated to the Commission to adopt regulatory technical standards by means of delegated acts pursuant to Article 290 of the Treaty on the Functioning of the European Union (TFEU) in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council<sup>1</sup> to specify the <del>process for choosing and using</del><u>rules on disclosure to competent authorities and investors of information related to the selection and calibration of</u> LMTs to facilitate market and supervisory convergence. Those regulatory technical standards should be adopted on the basis of a draft developed by ESMA. <u>Those standards should recognise that the primary responsibility for liquidity risk management remains with the AIFM.</u></p> <p>_____</p>	<p>(23) In order to ensure consistent harmonisation in the area of liquidity risk management by the managers of open-ended funds, <del>power ESMA should be delegated to the Commission to adopt regulatory technical standards by means of delegated acts pursuant to Article 290 of the Treaty on the Functioning of the European Union (TFEU) in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council<sup>1</sup></del><u>issue guidelines</u> to specify the process for choosing and using LMTs to facilitate market and supervisory convergence. <del>Those regulatory technical standards should be adopted on the basis of a draft developed by ESMA.</del></p> <p>_____</p> <p><del>1. Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority</del></p>

	Commission Proposal	EP Mandate	Council Mandate
	Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).	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).	<i>(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).</i>
33	(24) To ensure investor protection and to address financial stability risks, the competent authorities should be able to request that a manager of an open-ended fund activate or deactivate the appropriate LMT.	(24) To ensure investor protection <del>and to address</del> <u>where there are</u> financial stability risks, <u>in exceptional circumstances and after consulting the manager concerned</u> , the competent authorities should be able to request that a manager of an open-ended fund activate or deactivate the appropriate LMT.	(24) <del>To ensure investor protection and to address financial stability risks, the competent authorities should be able to request that a manager of an open-ended fund activate or deactivate the appropriate</del> <u>LMT.</u> <del>deleted</del>
34	(25) Depositories play an important role for safeguarding the interests of investors and should be able to perform their duties regardless of the type of the custodian that safe keeps the funds' assets. Therefore, it is necessary to include central securities depositories (CSDs) in the custody chain when they provide custody services to AIFs in order to ensure that, in all cases, there is a	(25) Depositories play an important role for safeguarding the interests of investors and should be able to perform their duties regardless of the type of the custodian that safe keeps the funds' assets. Therefore, it is necessary to include central securities depositories (CSDs) in the custody chain when they provide custody services to AIFs in order to ensure that, in all cases, there is a stable information flow between	(25) Depositories play an important role for safeguarding the interests of investors and should be able to perform their duties regardless of the type of the custodian that safe keeps the funds' assets. Therefore, it is necessary to include central securities depositories (CSDs) in the custody chain when they provide custody services to AIFs in order to ensure that, in all cases, there is

	<b>Commission Proposal</b>	<b>EP Mandate</b>	<b>Council Mandate</b>
	stable information flow between the custodian of an AIF's asset and the depositary. To avoid superfluous efforts, the depositaries should not perform ex-ante due diligence where they intend to delegate custody to CSDs.	the custodian of an AIF's asset and the depositary. To avoid superfluous efforts, the depositaries should not perform ex-ante due diligence where they intend to delegate custody to CSDs.	a stable information flow between the custodian of an AIF's asset and the depositary. To avoid superfluous efforts, the depositaries should not perform ex-ante due diligence where they intend to delegate custody to CSDs.
35	(26) In order to improve supervisory cooperation and effectiveness, the host competent authorities should be able to address a reasoned request to the competent authority of an AIFM to take supervisory action against a particular AIFM.	(26) In order to improve supervisory cooperation and effectiveness, the host competent authorities should be able to address a reasoned request to the competent authority of an AIFM to take supervisory action against a particular AIFM.	(26) In order to improve supervisory cooperation and effectiveness, the host competent authorities should be able to address a reasoned request to the competent authority of an AIFM to take supervisory action against a particular AIFM.
36	(27) Furthermore, to improve supervisory cooperation, ESMA should be able to request that a competent authority presents a case before ESMA, where that case has cross-border implications and may affect investor protection or financial stability. ESMA analyses of such cases will give other competent authorities a better understanding of the discussed issues and will contribute to	(27) Furthermore, to improve supervisory cooperation, ESMA should be able to request that a competent authority presents a case before ESMA, where that case has cross-border implications and may affect investor protection or financial stability. ESMA analyses of such cases will give other competent authorities a better understanding of the discussed issues and will contribute to preventing similar instances in	(27) Furthermore, to improve supervisory cooperation, ESMA should be able to request that a competent authority presents a case before ESMA, where that case has cross-border implications and may affect investor protection or financial stability. ESMA analyses of such cases will give other competent authorities a better understanding of the discussed issues and



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	preventing similar instances in the future and protect the integrity of the AIF market.	the future and protect the integrity of the AIF market.	will contribute to preventing similar instances in the future and protect the integrity of the AIF market.
37	(28) To support supervisory convergence in the area of delegation ESMA should conduct peer review on the supervisory practices with a particular focus on preventing the creation of letter-box entities. ESMA's analysis of the peer reviews will feed into the review of the measures adopted in this Directive and inform the European Parliament, the Council and the Commission of any additional measures that may be needed to support the effectiveness of the delegation regimes laid down in Directive 2011/61/EU.	(28) To support supervisory convergence in the area of delegation ESMA should conduct peer review on the supervisory practices with a particular focus on preventing the creation of letter-box entities. ESMA's analysis of the peer reviews will feed into the review of the measures adopted in this Directive and inform the European Parliament, the Council and the Commission of any additional measures that may be needed to support the effectiveness of the delegation regimes laid down in Directive 2011/61/EU.	(28) To support supervisory convergence in the area of delegation, ESMA should <i>conduct peer review on the supervisory practices with a particular focus on preventing the creation of letter-box entities</i> <b><u>get a better understanding of the application of the provisions of this Directive, including in the area of appropriate oversight and control of the delegation arrangements, in all the Member States. To that end, it should draw on reporting obligations to competent authorities, and on the exercise in the area of delegation of its supervisory convergence powers, before the next review of this Directive takes place.</u></b> ESMA's analysis of the <i>peer reviews will feed into the review of the measures adopted in this Directive and inform the European Parliament, the Council and the Commission</i> <b><u>data collected and of the results of the exercise of its supervisory convergence powers will feed in a report, to be provided before the start of the</u></b>

	Commission Proposal	EP Mandate	Council Mandate
			<p><u>review, analysing market practices regarding delegation, substance rules, prevention of letter-box entities and compliance with related requirements of the Directive and informing</u> of any additional measures that may be needed to support the effectiveness of the delegation regimes laid down in Directive 2011/61/EU.</p>
37a		<p><u>(28a) AIFs can make an important contribution to the development of the CMU. The growth of the market for AIFs also needs to be consistent with other Union objectives and that market should therefore be encouraged to be smart, sustainable and inclusive. AIFMs are required to comply with Regulation (EU) 2019/2088 and should also ensure that their remuneration policies are consistent with long-term risks, including environmental, social and governance risks (ESG risks) and sustainability goals. This is even more important where AIFMs make claims as to the sustainable investment policies of the AIFs that they manage. ESMA should update its guidelines on sound remuneration policies under Directive 2011/61/EU as regards aligning incentives with ESG risks in</u></p>	

	Commission Proposal	EP Mandate	Council Mandate
		<u>remuneration policies.</u>	
37b		<p><u>(28b) The marketing of UCITS is not always conducted by the management company directly but by one or several distributors either on behalf of the management company or on their own behalf. There could also be cases where an independent financial advisor markets a fund without the management company’s knowledge. Most fund distributors are subject to regulatory requirements pursuant to Directive 2014/65/EU or 2016/97/EU, which define the scope and extent of their responsibilities towards their own clients. Directive 2009/65/EC should therefore acknowledge the diversity of distribution arrangements and distinguish between arrangements whereby a distributor operates on behalf of the management company, which should be considered to be a delegation arrangement, and arrangements whereby a distributor acts on its own behalf, in which case the provisions of that Directive regarding delegation should not apply.</u></p>	<p><u>(28a) Marketing of funds is not always conducted by the AIFM directly but by one or several distributors either on behalf of the AIFM or on their own behalf. There may also be cases where an independent financial advisor markets a fund without the AIFM’s knowledge. Most fund distributors are subject to regulatory requirements pursuant to Directive 2014/65/EU or Directive 2016/97/EU, which define the scope and extent of their responsibilities towards their own clients. This Directive should therefore acknowledge the diversity of distribution arrangements and recognise the existing safeguards for the arrangements whereby a distributor acts on its own behalf when it markets the UCITS under Directive 2014/65/EU or through life-insurance based investment products in accordance with Directive 2016/97/EU, in which case the provisions of this Directive regarding delegation should not apply irrespective of any distribution agreement between the management company and the distributor.</u></p>

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38	<p>(29) Some concentrated markets lack a competitive supply of depositary services. To address this shortage of service providers that can lead to increased costs for AIFMs and a less efficient AIF market, competent authorities should be able to permit AIFMs or AIFs to procure depositary services located in other Member States while the Commission assesses, in the context of its review of Directive 2011/61/EU, whether it would be appropriate to propose measures to achieve a more integrated market.</p>	<p>(29) Some concentrated markets lack a competitive supply of depositary services. To address this shortage of service providers that can lead to increased costs for AIFMs and a less efficient AIF market, <del>competent authorities</del> <u>Member States</u> should be able to <del>permit</del> <u>authorise, on a case-by-case basis,</u> AIFMs or AIFs to procure depositary services located in other Member States while the Commission assesses, in the context of its review of Directive 2011/61/EU, whether it would be appropriate to propose measures to achieve a more integrated market. <u>As part of that review, the Commission should carry out a comprehensive study on the potential benefits and risks of introducing a Union depositary passport, in particular in terms of reducing costs, allowing the choice of more competitive depositary services from other Member States and extending the choices available to managers.</u></p>	<p>(29) Some concentrated markets lack a competitive supply of depositary services. To address this shortage of service providers that can lead to increased costs for AIFMs and a less efficient AIF market, <del>competent authorities should be able</del> <u>Member States could authorise competent authorities</u> to permit AIFMs or AIFs to procure depositary services located in other Member States. <u>To ensure that this possibility of authorising the appointment of a depositary in another Member State does not replicate a depositary passport, it should only be utilised when conditions defined in this directive are fulfilled and with prior approval of the competent authorities of the AIF. Since the authorisation to procure depositary services located in other Member States should not be automatically granted, even when the abovementioned conditions are fulfilled, the competent authorities should grant their prior approval based on a case-by-case assessment on the lack of relevant depositary services in the jurisdiction of the AIF, given the investment strategy of that AIF while the Commission assesses, in the context of its review of Directive</u></p>

	Commission Proposal	EP Mandate	Council Mandate
			<i>2011/61/EU, whether it would be appropriate to propose measures to achieve a more integrated market.</i>
39	(30) Opening up the possibility to appoint a depositary in another Member State should be accompanied by increased supervisory reach. Therefore, the depositary should be required to cooperate not only with its competent authorities but also with the competent authorities of the AIF that has appointed it and to the competent authorities of the AIFM that manages the AIF, if those competent authorities are located in a different Member State than that of the depositary.	(30) Opening up the possibility to appoint a depositary in another Member State should be <u>accessible on a case-by-case basis</u> accompanied by increased supervisory reach. Therefore, the depositary should be required to cooperate not only with its competent authorities but also with the competent authorities of the AIF that has appointed it and to the competent authorities of the AIFM that manages the AIF, if those competent authorities are located in a different Member State than that of the depositary.	(30) Opening up the possibility to appoint a depositary in another Member State should be accompanied by increased supervisory reach. Therefore, the depositary should be required to cooperate not only with its competent authorities but also with the competent authorities of the AIF that has appointed it and to the competent authorities of the AIFM that manages the AIF, if those competent authorities are located in a different Member State than that of the depositary.
40	(31) In order to better protect investors, the information flow from AIFMs to AIF investors should be increased. To allow an AIFs investors to better track the investment fund's expenses, AIFMs should identify fees that will be borne by the AIFM or its affiliates	(31) In order to better protect investors, the information flow from AIFMs to AIF investors should be increased. To allow an AIFs investors to better track the investment fund's expenses, AIFMs should identify fees that will be borne by the AIFM or its affiliates as well as periodically	(31) In order to better protect investors, the information flow from AIFMs to AIF investors should be increased. To allow <del>an</del> <u>AIFs/AIF</u> investors to better track the investment fund's expenses, AIFMs should identify fees that will be borne by the

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	as well as periodically report on all fees and charges that are directly or indirectly allocated to the AIF or to any of its investments. AIFMs should also be required to report to investors on the portfolio composition of originated loans.	report on all fees and charges that are directly or indirectly allocated to the AIF or to any of its investments. AIFMs should also be required to report to investors on the portfolio composition of originated loans.	AIFM or its affiliates as well as periodically report on all fees and charges that are directly or indirectly allocated to the AIF or to any of its investments. AIFMs should also be required to report to investors on the portfolio composition of originated loans.
41	(32) To increase market transparency and effectively employ available AIF market data, ESMA should be permitted to disclose the market data at its disposal in an aggregate or summary form and therefore the confidentiality standard should be relaxed to permit such data use.	(32) To increase market transparency and effectively employ available AIF market data, ESMA should be permitted to disclose the market data at its disposal in an aggregate or summary form and therefore the confidentiality standard should be relaxed to permit such data use.	(32) To increase market transparency and effectively employ available AIF market data, ESMA should be permitted to disclose the market data at its disposal in an aggregate or summary form and therefore the confidentiality standard should be relaxed to permit such data use.
42	(33) The requirements for third-country entities with access to the internal market should be aligned to the standards laid down in the Council conclusions of 2020 on the revised EU list on non-cooperative jurisdictions for tax purposes <sup>1</sup> and Directive (EU) 2015/849 of the European Parliament and of the Council. <sup>2</sup> In addition, non-EU AIFs	(33) The requirements for third-country entities with access to the internal market should be aligned to the standards laid down in the <del>Council conclusions of 2020</del> <u>last updated version of the Council conclusions</u> on the revised EU list on non-cooperative jurisdictions for tax purposes <sup>1</sup> and Directive (EU) 2015/849 of the European Parliament and of the Council. <sup>2</sup>	(33) <u>Access to the internal market should be established in such way as to ensure a level playing field for all market participants, which requires putting in place requirements harmonizing such access.</u> The requirements for third-country entities with access to the internal market should be aligned to the standards laid

	Commission Proposal	EP Mandate	Council Mandate
	<p>or non-EU AIFMs that are subject to national rules and that are active in individual Member States should satisfy the requirement that they are not located in a third country that is deemed un-cooperative in tax matters.</p> <hr/> <p>1. OJ C 64, 27.2.2020, p.8.</p> <p>2. Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73).</p>	<p>In addition, non-EU AIFs or non-EU AIFMs that are subject to national rules and that are active in individual Member States should satisfy the requirement that they are not located in a third country that is deemed un-cooperative in tax matters <u>at the time of the notification to competent authorities of the AIFM's home Member State. A third country that has been continuously mentioned in the Annex II to those Council conclusions for a period of over three years should be considered to be mentioned in the Annex I to those conclusions.</u></p> <hr/> <p>1. OJ C 64, 27.2.2020, p.8.</p> <p>2. Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73).</p>	<p>down in the <i>Council conclusions of 2020 on the revised EU list on common action undertaken by the EU Member States as regards</i> non-cooperative jurisdictions for tax purposes<sup>1</sup> and Directive (EU) 2015/849 of the European Parliament and of the Council.<sup>2</sup> <i>In addition, non-EU AIFs or non-EU AIFMs that are subject to national rules and that are active in individual Member States should satisfy the requirement that they are not located in a third country that is deemed un-cooperative in tax matters</i></p> <p><b><u>The requirements should also ensure appropriate and effective exchange of information in tax matters in line with international standards such as those laid down in Article 26 of the OECD Model Tax Convention on Income and on Capital, to ensure an efficient exchange of information that allows competent authorities of the relevant Member States to carry out their duties in accordance with this Directive.</u></b></p> <hr/> <p>1. OJ C 64, 27.2.2020, p.8.</p> <p>2. Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and</p>

	Commission Proposal	EP Mandate	Council Mandate
			<i>repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73).</i>
43	(34) Directive 2009/65/EC should ensure for the management companies of UCITS comparable conditions where there is no reason for maintaining regulatory differences for UCITS and AIFMs. This concerns delegation regime, regulatory treatment of custodians, supervisory reporting requirements and the availability and use of LMTs.	(34) Directive 2009/65/EC should ensure for the management companies of UCITS comparable conditions where there is no reason for maintaining regulatory differences for UCITS and AIFMs. This concerns delegation regime, regulatory treatment of custodians, supervisory reporting requirements and the availability and use of LMTs.	(34) Directive 2009/65/EC should ensure for the management companies of UCITS comparable conditions where there is no reason for maintaining regulatory differences for UCITS and AIFMs. This concerns delegation regime, regulatory treatment of custodians, supervisory reporting requirements and the availability and use of LMTs.
44	(35) To ensure the uniform application of the substance requirements for management companies of UCITS, it should be clarified that at the time of application for the authorisation, management companies should provide the competent authorities with information about the human and technical resources that they will employ to carry out their functions and, where applicable, supervise delegates. At least two senior	(35) To ensure the uniform application of the substance requirements for management companies of UCITS, it should be clarified that at the time of application for the authorisation, management companies should provide the competent authorities with information about the human and technical resources that they will employ to carry out their functions and, where applicable, supervise delegates. At least two senior managers should be employed or conduct	(35) To ensure the uniform application of the substance requirements for management companies of UCITS, it should be clarified that at the time of application for the authorisation, management companies should provide the competent authorities with information about the human and technical resources that they will employ to carry out their functions and, where applicable, supervise delegates. At least two



	Commission Proposal	EP Mandate	Council Mandate
	managers should be employed or conduct the business of the management company on a full-time basis and be resident in the Union.	the business of the management company on a full-time basis and be resident in the Union. <u>To ensure that management companies comply with the requirements regarding conflict of interest and acting in the best interest of the UCITs and their investors, management companies should ensure that at least one member of its governing body is a non-executive director.</u>	senior managers should be employed or conduct the business of the management company on a full-time basis and be resident in the Union. <u>Regardless of this statutory minimum, more resources may be necessary depending on the size and complexity of the management company.</u>
45	(36) To ensure a uniform application of Directive 2009/65/EC it should be clarified that the delegation rules laid down in Article 13 of that Directive apply to all functions listed in Annex II of that Directive and to the ancillary services referred to in Article 6(3) of that Directive.	(36) To ensure a uniform application of Directive 2009/65/EC it should be clarified that the delegation rules laid down in Article 13 of that Directive apply to all functions listed in Annex II of that Directive and to the ancillary services referred to in Article 6(3) of that Directive.	(36) To ensure a uniform application of Directive 2009/65/EC it should be clarified that the delegation rules laid down in Article 13 of that Directive apply to all functions listed in Annex II of that Directive and to the ancillary services referred to in Article 6(3) of that Directive.
46	(37) To align the legal frameworks of Directives 2011/61/EU and 2009/65/EC with regard to delegation, it should be required that UCITS management companies justify to the competent authorities the delegation of their	(37) To align the legal frameworks of Directives 2011/61/EU and 2009/65/EC with regard to delegation, it should be required that UCITS management companies justify to the competent authorities the delegation of their	(37) To align the legal frameworks of Directives 2011/61/EU and 2009/65/EC with regard to delegation, it should be required that UCITS management companies justify to the competent

	Commission Proposal	EP Mandate	Council Mandate
	functions and provide objective reasons for the delegation.	functions and provide objective reasons for the delegation.	authorities the delegation of their functions and provide objective reasons for the delegation.
47	(38) To develop a reliable overview of delegation activities in the Union governed by Article 13 of Directive 2009/65/EC and to inform future policy decisions or supervisory actions, competent authorities should provide ESMA with delegation notifications where a UCITS management company delegates more portfolio management or risk management functions, than it manages itself, to entities located in third countries.	<i>deleted</i>	(38) To develop a reliable overview of delegation activities in the Union governed by Article 13 of Directive 2009/65/EC and to inform future <del>policy decisions or supervisory actions,</del> <b><u>supervisory actions, management companies should regularly provide to the</u></b> competent authorities <del>should provide ESMA with</del> <b><u>of the UCITS they manage information on the</u></b> delegation notifications where a UCITS management company delegates more <b><u>arrangements which involve the delegation of collective or discretionary</u></b> portfolio management or risk management functions, <b><u>Management companies should therefore report information on the delegates, the list and description of the delegated activities, the amount and percentage of the assets of the managed UCITS that are subject to delegation arrangements concerning the portfolio management function, a description of how the management company oversees, monitors and controls the delegate, information on the sub-</u></b>

	Commission Proposal	EP Mandate	Council Mandate
			<p><i><u>delegation arrangements and the date of commencement and expiry of the delegation and sub-delegation arrangements. For the sake of clarity, it should be specified that the data collected on the percentage of the assets of the managed UCITS that are subject to delegation arrangements concerning the portfolio management functions is for the purposes of providing a greater overview of the operation of delegation, and is not on its own an evidential indicator for determining the adequacy of substance or risk management, or the effectiveness of oversight or control arrangements at the level of the manager. Such information should be communicated as part of the regular reportings to be provided by management companies to their competent authorities, than it manages itself, to entities located in third countries.</u></i></p>
48	<p>(39) In order to ensure consistent harmonisation of the notification process in the area of delegation, power should be delegated to the Commission to adopt regulatory technical standards by means of delegated acts pursuant to Article 290 of the</p>	<p><i>deleted</i></p>	<p>(39) <i>In order to ensure consistent harmonisation of the notification process in the area of delegation, power should be delegated to the Commission to adopt regulatory technical standards by means of delegated acts pursuant to Article 290 of</i></p>

	Commission Proposal	EP Mandate	Council Mandate
	<p>Treaty on the Functioning of the European Union (TFEU) in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council<sup>1</sup> to specify the contents, forms and procedures to standardise the notification process of UCITS delegation arrangements. The notification form should contain data fields indicating the activities making up the risk and portfolio management functions in order to determine whether a UCITS management company has delegated more of such functions than it has retained. Those regulatory technical standards should be adopted based on a draft developed by ESMA.</p> <p>_____</p> <p>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).</p>		<p><i>the Treaty on the Functioning of the European Union (TFEU) in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council<sup>1</sup> to specify the contents, forms and procedures to standardise the notification process of UCITS delegation arrangements. The notification form should contain data fields indicating the activities making up the risk and portfolio management functions in order to determine whether a UCITS management company has delegated more of such functions than it has retained. Those regulatory technical standards should be adopted based on a draft developed by ESMA. <del>deleted</del></i></p> <p>_____</p> <p><i>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).</i></p>
49	(40) In order to further align the rules on delegation applicable to AIFMs and UCITS	(40) In order to further align the rules on delegation applicable to AIFMs and UCITS and	(40) In order to further align the rules on delegation applicable to AIFMs and UCITS

	Commission Proposal	EP Mandate	Council Mandate
	<p>and to achieve a more uniform application of Directives 2011/61/EU and 2009/65/EC, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of specifying the conditions for delegation from a UCITS management company to a third party and the conditions under which a UCITS management company can be deemed a letter-box entity and therefore can no longer be considered to be the manager of the UCITS. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Inter-institutional Agreement of 13 April 2016 on Better Law-Making<sup>1</sup>. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.</p> <p>_____</p> <p>1. OJ L 123, 12.5.2016, p. 1.</p>	<p>to achieve a more uniform application of Directives 2011/61/EU and 2009/65/EC, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of specifying the conditions for delegation from a UCITS management company to a third party and the conditions under which a UCITS management company can be deemed a letter-box entity and therefore can no longer be considered to be the manager of the UCITS. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Inter-institutional Agreement of 13 April 2016 on Better Law-Making<sup>1</sup>. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.</p> <p>_____</p> <p>1. OJ L 123, 12.5.2016, p. 1.</p>	<p>and to achieve a more uniform application of Directives 2011/61/EU and 2009/65/EC, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of specifying the conditions for delegation from a UCITS management company to a third party and the conditions under which a UCITS management company can be deemed a letter-box entity and therefore can no longer be considered to be the manager of the UCITS. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Inter-institutional Agreement of 13 April 2016 on Better Law-Making<sup>1</sup>. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.</p> <p>_____</p> <p>1. OJ L 123, 12.5.2016, p. 1.</p>

	Commission Proposal	EP Mandate	Council Mandate
50	<p>(41) This Directive implements the ESRB<sup>1</sup> recommendations to harmonise LMTs and their use by the managers of open-ended funds, which includes UCITS, to enable a more effective response to liquidity pressures in times of market stress and better protection of investors.</p> <p>_____</p> <p>1. Recommendation of the European Systemic Risk Board of 7 December 2017 on liquidity and leverage risks in investment funds ESRB/2017/6, 2018/C 151/01.</p>	<p>(41) This Directive implements the ESRB<sup>1</sup> recommendations to harmonise LMTs and their use by the managers of open-ended funds, which includes UCITS, to enable a more effective response to liquidity pressures in times of market stress and better protection of investors.</p> <p>_____</p> <p>1. Recommendation of the European Systemic Risk Board of 7 December 2017 on liquidity and leverage risks in investment funds ESRB/2017/6, 2018/C 151/01.</p>	<p>(41) This Directive implements the ESRB<sup>±</sup> recommendations to harmonise LMTs and their use by the managers of open-ended funds, which includes UCITS, to enable a more effective response to liquidity pressures in times of market stress and better protection of investors.</p> <p>_____</p> <p><i>1. Recommendation of the European Systemic Risk Board of 7 December 2017 on liquidity and leverage risks in investment funds ESRB/2017/6, 2018/C 151/01.</i></p>
51	<p>(42) To enable UCITS management companies based in any Member State to deal with redemption pressures under stressed market conditions, they should be required to choose at least one LMT from the harmonised list set out in the Annex in addition to the possibility to suspend redemptions. When a management company takes a decision to activate or deactivate the LMT, it should notify the supervisory authorities. This would allow supervisory authorities to better handle potential spill-overs of liquidity tensions into</p>	<p>(42) To enable UCITS management companies based in any Member State to deal with redemption pressures under stressed market conditions, they should be required to choose at least <del>one</del><b>two</b> LMT from the harmonised list set out in the Annex, <b><u>with the exception of money market funds in accordance with Regulation (EU) 2017/1131 which may select only one liquidity management tool</u></b> in addition to the possibility to suspend redemptions. When a management company takes a decision to activate or deactivate <del>the LMT</del><b> certain LMTs in</b></p>	<p>(42) To enable UCITS management companies based in any Member State to deal with redemption pressures under stressed market conditions, they should be required to <del>choose</del><b>determine an appropriate set of LMTs, including the selection of</b> at least <del>one</del><b>LMT</b><del>two</del> <b>LMTs</b> from the harmonised list set out in the Annex in addition to the possibility to suspend redemptions <b><u>and activate side pockets, in exceptional circumstances and in the interest of their unit-holders. By</u></b></p>

	Commission Proposal	EP Mandate	Council Mandate
	<p>the wider market.</p>	<p><u>situations of liquidity stress or in other defined circumstances</u>, it should notify the supervisory authorities. This would allow supervisory authorities to better handle potential spill-overs of liquidity tensions into the wider market.</p>	<p><u>way of derogation, the management company should be able to select only one LMT from Annex IIA where the UCITS is authorised as a money market fund</u>. When a management company takes a decision to activate or deactivate the LMT, it should notify the supervisory authorities <u>in parallel with the activation. When side pockets are activated the supervisory authorities should be notified in a reasonable timeframe prior to this activation. While not giving competent authorities the power to approve the use of a liquidity management tool before it is activated, this notification requirement</u> - <del>This</del> would allow supervisory authorities to better handle potential spill-overs of liquidity tensions into the wider market. <u>This requirement should only apply to suspension of redemptions, redemption gates and side pockets since other LMTs have the potential for a frequent use during normal market conditions. However, competent authorities should remain able to request the notifications for these other LMTs, if they deem it appropriate, for example where the key parameters of these tools are modified or where redemption in kind is activated.</u></p>

	Commission Proposal	EP Mandate	Council Mandate
52	(43) To be able to make an investment decision in line with their risk appetite and liquidity needs, UCITS investors should be informed of the conditions for use of LMTs.	(43) To be able to make an investment decision in line with their risk appetite and liquidity needs, UCITS investors should be informed of the conditions for use of LMTs.	(43) To be able to make an investment decision in line with their risk appetite and liquidity needs, UCITS investors should be informed of the conditions for use of LMTs. <b><u>In particular, and to strengthen investor protection, it should be specified that the use of redemption in kind is not suitable for retail investors and should therefore only be activated to meet redemption requests of professional investors, while addressing risks of inequality of treatment between redeeming investors and other unitholders.</u></b>
53	(44) To ensure investor protection and to address financial stability risks, the competent authorities should be able to request that a UCITS management company activates or deactivates the appropriate LMT.	(44) To ensure investor protection <del>and to address</del> <b><u>if there are</u></b> financial stability risks, <b><u>in exceptional circumstances and after consulting the management company concerned</u></b> , the competent authorities should be able to request that a UCITS management company activates or deactivates the appropriate LMT.	(44) <del>To ensure investor protection and to address financial stability risks, the competent authorities should be able to request that a UCITS management company activates or deactivates the</del> <b><u>appropriate LMT.</u></b> <del>deleted</del>
54			



	Commission Proposal	EP Mandate	Council Mandate
	<p>(45) In order to ensure consistent harmonisation in the area of liquidity risk management by the managers of UCITS, power should be delegated to the Commission to adopt regulatory technical standards by means of delegated acts pursuant to Article 290 of the Treaty on the Functioning of the European Union (TFEU) in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council<sup>1</sup> to specify the process for choosing and using LMTs to facilitate market and supervisory convergence. Those regulatory technical standards should be adopted on the basis of a draft developed by ESMA.</p> <p>_____</p> <p>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).</p>	<p>(45) In order to ensure consistent harmonisation in the area of liquidity risk management by the managers of UCITS, power should be delegated to the Commission to adopt regulatory technical standards by means of delegated acts pursuant to Article 290 of the Treaty on the Functioning of the European Union (TFEU) in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council<sup>1</sup> to specify the process for choosing and using LMTs to facilitate market and supervisory convergence. Those regulatory technical standards should be adopted on the basis of a draft developed by ESMA. <b><u>Those standards should recognise that the primary responsibility for liquidity risk management remains with the UCITS manager.</u></b></p> <p>_____</p> <p>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).</p>	<p>(45) In order to ensure consistent harmonisation in the area of liquidity risk management by the managers of UCITS, <del>power</del><b>ESMA</b> should <del>be delegated to the Commission to adopt regulatory technical standards by means of delegated acts pursuant to Article 290 of the Treaty on the Functioning of the European Union (TFEU) in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council</del><sup>#</sup> <b>issue guidelines</b> to specify the process for choosing and using LMTs to facilitate market and supervisory convergence. <del>Those regulatory technical standards should be adopted on the basis of a draft developed by ESMA.</del></p> <p>_____</p> <p>1. <del>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).</del></p>
55	(46) To support market monitoring by the	(46) To support market monitoring by the	(46) To support market monitoring by the

	Commission Proposal	EP Mandate	Council Mandate
	<p>supervisory authorities, the information gathering and sharing through supervisory reporting should be improved by subjecting UCITS to supervisory reporting obligations. The ESAs and the ECB should be requested, with the support of national competent authorities where necessary, to assess the data needs of the different supervisory authorities considering the existing reporting requirements under other Union and national legislation, in particular Regulation (EU) No 600/2014, Regulation (EU) No 2019/834, Regulation (EU) No 1011/2012 and Regulation (EU) No 1073/2013. The outcome of this preparatory work would permit an informed policy decision as to what extent and in which form UCITS should be reporting to the competent authorities on their trades.</p>	<p>supervisory authorities, the information gathering and sharing through supervisory reporting should be improved by subjecting UCITS to supervisory reporting obligations, <u><i>in particular as regards the delegation of functions</i></u>. The ESAs and the ECB should be requested, with the support of national competent authorities where necessary, to assess the data needs of the different supervisory authorities considering the existing reporting requirements under other Union and national legislation, in particular Regulation (EU) No 600/2014, Regulation (EU) No 2019/834, Regulation (EU) No 1011/2012 and Regulation (EU) No 1073/2013. The outcome of this preparatory work would permit an informed policy decision as to what extent and in which form UCITS should be reporting to the competent authorities on their trades.</p>	<p>supervisory authorities, the information gathering and sharing through supervisory reporting should be improved by subjecting UCITS to supervisory reporting obligations. The ESAs and the ECB should be requested, with the support of national competent authorities where necessary, to assess the data needs of the different supervisory authorities considering the existing reporting requirements under other Union and national legislation, in particular Regulation (EU) No 600/2014, Regulation (EU) No 2019/834, Regulation (EU) No 1011/2012 and Regulation (EU) No 1073/2013. The outcome of this preparatory work would permit an informed policy decision as to what extent and in which form UCITS should be reporting to the competent authorities on their trades, <u><i>the liquidity of their assets, the selection and activation of liquidity management tools and their risk profile. If ESMA determines that granular information on these topics is warranted, the provisions of Directive 2009/65/EC should accommodate the necessary broadening of the reporting scope.</i></u></p>
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	Commission Proposal	EP Mandate	Council Mandate
	<p>(47) In order to ensure consistent harmonisation of the supervisory reporting obligations, power should be delegated to the Commission to adopt regulatory technical standards by means of delegated acts pursuant to Article 290 of the Treaty on the Functioning of the European Union (TFEU) in accordance with Articles 10 to 14 and Article 15 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council<sup>1</sup> to set out the contents, forms and procedures to standardise the supervisory reporting process by UCITS. Those regulatory technical standards should be adopted on the basis of a draft developed by ESMA.</p> <hr/> <p>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).</p>	<p>(47) In order to ensure consistent harmonisation of the supervisory reporting obligations, power should be delegated to the Commission to adopt regulatory technical standards by means of delegated acts pursuant to Article 290 of the Treaty on the Functioning of the European Union (TFEU) in accordance with Articles 10 to 14 and Article 15 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council<sup>1</sup> to set out the contents, forms and procedures to standardise the supervisory reporting process by UCITS. Those regulatory technical standards should be adopted on the basis of a draft developed by ESMA.</p> <hr/> <p>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).</p>	<p>(47) In order to ensure consistent harmonisation of the supervisory reporting obligations, power should be delegated to the Commission to adopt regulatory technical standards by means of delegated acts pursuant to Article 290 of the Treaty on the Functioning of the European Union (TFEU) in accordance with Articles 10 to 14 and Article 15 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council<sup>1</sup> to set out the contents, forms and procedures to standardise the supervisory reporting process by UCITS. Those regulatory technical standards should be adopted on the basis of a draft developed by ESMA. <b><u>The information to be reported on delegation arrangements should be clearly set out in the text of Directive 2009/65/EC. Regarding that information, the regulatory technical standard should remain limited to setting out the appropriate level of standardisation of the information to be reported as defined in Directive 2009/65/EC, without adding any elements that are not foreseen by the text of that Directive.</u></b></p> <hr/> <p>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),</p>

	Commission Proposal	EP Mandate	Council Mandate
			amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).
57	(48) To standardise the supervisory reporting process the Commission should also be empowered to adopt implementing technical standards developed by ESMA as regards the forms and data standards, reporting frequency and timing to reporting by UCITS. The Commission should adopt those implementing technical standards by means of implementing acts pursuant to Article 291 TFEU and in accordance with Article 15 of Regulation (EU) No 1095/2010.	(48) To standardise the supervisory reporting process the Commission should also be empowered to adopt implementing technical standards developed by ESMA as regards the forms and data standards, reporting frequency and timing to reporting by UCITS. The Commission should adopt those implementing technical standards by means of implementing acts pursuant to Article 291 TFEU and in accordance with Article 15 of Regulation (EU) No 1095/2010.	(48) To standardise the supervisory reporting process the Commission should also be empowered to adopt implementing technical standards developed by ESMA as regards the forms and data standards, reporting frequency and timing to reporting by UCITS. The Commission should adopt those implementing technical standards by means of implementing acts pursuant to Article 291 TFEU and in accordance with Article 15 of Regulation (EU) No 1095/2010.
58	(49) To ensure investor protection, and in particular to ensure that in all cases there is a stable information flow between the custodian of the UCITS' asset and the depositary, the depositary regime should be extended to include CSDs in the custody chain when they provide custody services to UCITS. To avoid	(49) To ensure investor protection, and in particular to ensure that in all cases there is a stable information flow between the custodian of the UCITS' asset and the depositary, the depositary regime should be extended to include CSDs in the custody chain when they provide custody services to UCITS. To avoid	(49) To ensure investor protection, and in particular to ensure that in all cases there is a stable information flow between the custodian of the UCITS' asset and the depositary, the depositary regime should be extended to include CSDs in the custody chain when they provide custody services

	Commission Proposal	EP Mandate	Council Mandate
	superfluous efforts, the depositaries should not perform ex-ante due diligence where they intend to delegate custody to CSDs.	superfluous efforts, the depositaries should not perform ex-ante due diligence where they intend to delegate custody to CSDs.	to UCITS. To avoid superfluous efforts, the depositaries should not perform ex-ante due diligence where they intend to delegate custody to CSDs.
59	(50) To support supervisory convergence in the area of delegation ESMA should conduct peer reviews on the supervisory practices particularly focusing on preventing creation of letter-box entities. ESMA's analysis of the peer reviews would feed into the review of the measures adopted in this Directive and inform the European Parliament, the Council and the Commission what additional measures may be needed to support effectiveness of the delegation regime laid down in Directive 2009/65/EC.	(50) To support supervisory convergence in the area of delegation ESMA should conduct peer reviews on the supervisory practices particularly focusing on preventing creation of letter-box entities. ESMA's analysis of the peer reviews would feed into the review of the measures adopted in this Directive and inform the European Parliament, the Council and the Commission what additional measures may be needed to support effectiveness of the delegation regime laid down in Directive 2009/65/EC.	(50) To support supervisory convergence in the area of delegation, ESMA should <del>conduct peer reviews</del> <b><u>get a better understanding of the application of the provisions of this Directive, including in the area of appropriate oversight and control of the delegation arrangements, in all the Member States. To that end, it should draw on reporting obligations to competent authorities and on the exercise in the area of delegation of its</u></b> <del>supervisory practices particularly focusing on preventing creation of letter box entities</del> <b><u>convergence powers before the next review of this Directive takes place.</u></b> ESMA's analysis of the <del>peer reviews would feed into the review</del> <b><u>data collected and of the results of the exercise of its supervisory convergence powers will feed in a report, to be provided before the start</u></b> of the <del>measures adopted in this Directive and inform the European Parliament, the Council and the Commission what</del> <b><u>review,</u></b>

	Commission Proposal	EP Mandate	Council Mandate
			<u><i>analysing market practices regarding delegation, substance rules, prevention of letter-box entities and compliance with related requirements of the Directive and informing of any</i></u> additional measures <i>that</i> may be needed to support <i>the</i> effectiveness of the delegation <del>regime</del> <i>regimes</i> laid down in Directive <del>2009/65/EC</del> <u>2009/65/EU</u> .
60	(51) In order to improve supervisory cooperation and effectiveness, the competent authorities of the host Member State should be able to address a reasoned request to the competent authority of the UCITS home Member State to take supervisory action against a particular UCITS.	(51) In order to improve supervisory cooperation and effectiveness, the competent authorities of the host Member State should be able to address a reasoned request to the competent authority of the UCITS home Member State to take supervisory action against a particular UCITS.	(51) In order to improve supervisory cooperation and effectiveness, the competent authorities of the host Member State should be able to address a reasoned request to the competent authority of the UCITS home Member State to take supervisory action against a particular UCITS.
61	(52) Furthermore, to improve supervisory cooperation, ESMA should be able to request that a competent authority presents a case before the ESMA, where that case has cross-border implications and may affect investor	(52) Furthermore, to improve supervisory cooperation, ESMA should be able to request that a competent authority presents a case before the ESMA, where that case has cross-border implications and may affect investor protection	(52) Furthermore, to improve supervisory cooperation, ESMA should be able to request that a competent authority presents a case before the ESMA, where that case has cross-border implications and may

	Commission Proposal	EP Mandate	Council Mandate
	protection or financial stability. ESMA analyses of such cases will give other competent authorities a better understanding of the discussed issues and will contribute to preventing similar instances in the future and protect the integrity of the UCITS markets.	or financial stability. ESMA analyses of such cases will give other competent authorities a better understanding of the discussed issues and will contribute to preventing similar instances in the future and protect the integrity of the UCITS markets.	affect investor protection or financial stability. ESMA analyses of such cases will give other competent authorities a better understanding of the discussed issues and will contribute to preventing similar instances in the future and protect the integrity of the UCITS markets.
61a		<b><u>(52a) Member States should require UCITS management companies and AIFMs to act honestly and fairly as regards the fees and costs charged to investors. At present, divergent market and supervisory practices exist as to what industry and supervisors might consider as ‘due’ or ‘undue’ costs and evidence has shown a disparity in the costs charged in different Member States and in the costs charged to retail investors compared to professional investors. To ensure that UCITS management companies and AIFMs do not charge undue costs to retail investors, ESMA should be required to study the reasons for high costs being charged and possible actions needed to address them. In the case of UCITS, ESMA should be able, in the light of that study, and without prejudice to other legislative or regulatory options, to develop draft regulatory technical standards stipulating</u></b>	

	Commission Proposal	EP Mandate	Council Mandate
		<i><u>criteria for the assessment of undue costs and actions national competent authorities should take in respect of inappropriate or undue costs.</u></i>	
61b		<i><u>(52b) In carrying out its functions under Directives 2009/65/EC and 2011/61/EU, ESMA should take a risk-based approach.</u></i>	
61c		<i><u>(52c) In order to give managers or management companies sufficient time to adapt to the new requirements, managers or management companies of existing AIFs or UCITS should be subject to a grandfathering clause.</u></i>	
62	HAVE ADOPTED THIS DIRECTIVE	HAVE ADOPTED THIS DIRECTIVE	HAVE ADOPTED THIS DIRECTIVE;



	Commission Proposal	EP Mandate	Council Mandate
63	Article 1 Amendments to Directive 2011/61/EU	Article 1 Amendments to Directive 2011/61/EU	Article 1 Amendments to Directive 2011/61/EU
64	Directive 2011/61/EU is amended as follows:	Directive 2011/61/EU is amended as follows:	Directive 2011/61/EU is amended as follows:
65	(1) in Article 4(1), the following point (ap) is added:	(1) in Article <del>4(1)</del> , <del>the following point (ap) is added</del> <b>4, paragraph 1 is amended as follows:</b>	(1) <del>in</del> Article 4(1), <del>the following point (ap) is added</del> <b>is amended as follows:</b>
65a		<b>(-a) point (ag) is replaced by the following:</b>	

	Commission Proposal	EP Mandate	Council Mandate
65b		<u><i>'(ag) 'professional investor' means an investor which is considered to be a professional client or may, on request, be treated as a professional client within the meaning of Annex II to Directive 2014/65/EC;'</i></u>	
65c		<u><i>(a) the following point (ap) is added:</i></u>	<u><i>(a) the following points (ap) is added:</i></u>
66	<p>‘</p> <p>(ap) ‘central securities depository’ means a central securities depository as defined in Article 2(1), point (1), of Regulation (EU) No 909/2014 of the European Parliament and of the Council*</p>	<p>(ap) ‘central securities depository’ means a central securities depository as defined in Article 2(1), point (1), of Regulation (EU) No 909/2014 of the European Parliament and of the Council*</p>	<p>(ap) ‘central securities depository’ means a central securities depository as defined in Article 2(1), point (1), of Regulation (EU) No 909/2014 of the European Parliament and of the Council*</p>

	Commission Proposal	EP Mandate	Council Mandate
67	* Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012 (OJ L 257, 28.8.2014, p. 1)';	* Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012 (OJ L 257, 28.8.2014, p. 1)';	* Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012 (OJ L 257, 28.8.2014, p. 1)';
67a			<b><u>(b) the following point (ca) is added:</u></b>
67b			<b><u>(1b) '(ca) 'capital' means aggregate capital contributions and uncalled committed capital, calculated on the basis of amounts investible after deduction of all fees, charges and expenses that are directly or indirectly borne by investors;'</u></b>

	Commission Proposal	EP Mandate	Council Mandate
67c		<u>(1b) (c) the following points are inserted:</u>	<u>(1c) the following points (va), (vb) and (vc) are added:</u>
67d		<u>(apa) ‘loan origination’ means the granting of loans by an AIF as the original lender;</u>	<u>(1d) ‘(va) ‘loan origination’ means granting loan by an AIF as the original lender;</u>
67e		<u>(apb) ‘shareholder loan’ means a loan which is granted by an AIF to an undertaking in which it holds directly or indirectly at least 5 % of the capital or voting rights, where the loan cannot be sold to third-parties independently of the capital instruments held by the AIF in the same undertaking;</u>	<u>(1e) (vb) ‘shareholder loan’ means an advance on current account granted by an AIFs to an undertaking in which it holds directly or indirectly at least 5 % of the capital or voting rights and which cannot be sold to third-parties independently of the capital instruments held by the AIF in the same undertaking;</u>
67f			

	Commission Proposal	EP Mandate	Council Mandate
		<p><u>(apc) ‘loan-originating AIF’ means an AIF whose principal activity is to originate loans and for which the notional value of its originated loans exceeds 60 % of its net asset value;</u></p>	
67g			
67h			
67i		<p><u>(apd) ‘capital’ means aggregate capital contributions and uncalled committed capital, calculated on the basis of amounts investible after deduction of all fees, charges and expenses that are directly or indirectly borne by investors;</u></p>	<p><u>(1h)</u> Council text in 67b</p>
67j		<p><u>(ape) ‘leveraged AIF’ means an AIF whose</u></p>	<p><u>(1i) (vc) ‘leveraged AIF’ means an AIF</u></p>

	Commission Proposal	EP Mandate	Council Mandate
		<u>exposures are increased by the managing AIFM, whether through borrowing of cash or securities, or leverage embedded in derivative positions or by any other means.</u>	<u>whose exposures are increased by the managing AIFM, whether through borrowing of cash or securities, or leverage embedded in derivative positions or by any other means.</u>
68	(2) Article 6 is amended as follows:	(2) Article 6 is amended as follows:	(2) Article 6 is amended as follows:
68a			<u>(a) in paragraph 4, point (b), the following points (iv) is added:</u>
68b			<u>(iv) 'any other ancillary service where the ancillary service represents a continuation of the services already undertaken by the AIFM in accordance with Annex I, and does not create conflicts of interest that could not be managed by additional rules;'</u>

	Commission Proposal	EP Mandate	Council Mandate
69	(a) in paragraph 4, the following points (c) and (d) are added:	(a) in paragraph 4, the following points (c) and (d) are added:	(a) in paragraph 4, <del>the following</del> points (c) and (d) are added:
70	(c) benchmark administration in accordance with Regulation (EU) 2016/1011;	(c) benchmark administration in accordance with Regulation (EU) 2016/1011;	(c) <del>benchmark administration</del> <b><u>administration of benchmarks</u></b> in accordance with Regulation (EU) 2016/1011;
71	(d) credit servicing in accordance with of Directive 2021/... of the European Parliament and of the Council;;	(d) credit servicing in accordance with of Directive 2021/... of the European Parliament and of the Council;;	(d) credit servicing in accordance with of Directive <del>2021/...</del> <b><u>2021/2167</u></b> of the European Parliament and of the Council;; <b><u>Without prejudice to other instruments of Union law, Member States may prohibit AIFs servicing credits granted to consumers within the meaning of Article 3(a) of Directive 2008/48/EC in their</u></b>

	Commission Proposal	EP Mandate	Council Mandate
			<i><u>territory;</u></i>
71a			<i><u>(c) paragraph 5 is amended as follows:</u></i>
71b			<i><u>(i) point (b) is deleted;</u></i>
71c			<i><u>(ii) point (c) is replaced by the following:</u></i>
71d			<i><u>- 'only the activities referred to in points 2, 3 or 4 of Annex I; or'</u></i>



	Commission Proposal	EP Mandate	Council Mandate
71e			<b><u>(iii) the following point (e) is added:</u></b>
71f			<b><u>- '(e) administration of benchmarks which are used in their managed AIFs.'</u></b>
72	(b) paragraph 6 is replaced by the following:	(b) paragraph 6 is replaced by the following:	(b) paragraph 6 is replaced by the following:
73	6. Articles 2(2), Article 15, Article 16 except for the first subparagraph of paragraph (5), and Articles 23, 24 and 25 of Directive 2014/65/EU shall apply where the services referred to in paragraph 4, points (a) and (b), are provided by AIFMs.;	6. Articles 2(2), Article 15, Article 16 except for the first subparagraph of paragraph (5), and Articles 23, 24 and 25 of Directive 2014/65/EU shall apply where the services referred to in paragraph 4, points (a) and (b), are provided by AIFMs.;	6. <del>Articles 2(2), Article 15, Article</del> <b><u>Article 9(2) of Directive 2019/2034/EU, Articles 15,</u></b> 16 except for the first subparagraph of paragraph (5), and Articles 23, 24 and 25 of Directive 2014/65/EU shall apply where the services referred to in paragraph 4, points

	Commission Proposal	EP Mandate	Council Mandate
			(a) and (b), are provided by AIFMs.
74	(3) Article 7 is amended as follows:	(3) Article 7 is amended as follows:	(3) Article 7 is amended as follows:
75	(a) paragraph 2 is replaced by the following:	(a) paragraph 2 is replaced by the following:	(a) paragraph 2 is replaced by the following:
76	2. Member States shall require that an AIFM applying for an authorisation provides the following information relating to the AIFM to the competent authorities of its home Member State:	2. Member States shall require that an AIFM applying for an authorisation provides the following information relating to the AIFM to the competent authorities of its home Member State:	2. Member States shall require that an AIFM applying for an authorisation provides the following information relating to the AIFM to the competent authorities of its home Member State:

	Commission Proposal	EP Mandate	Council Mandate
77	(a) information about the persons effectively conducting the business of the AIFM, in particular with regard to the functions referred to in Annex I, including:	(a) information about the persons effectively conducting the business of the AIFM, in particular with regard to the functions referred to in Annex I, including:	(a) information about the persons effectively conducting the business of the AIFM, in particular with regard to the functions referred to in Annex I, including:
78	(i) a detailed description of their role, title and level of seniority;	(i) a <del>detailed</del> description of their role, title and level of seniority;	(i) a detailed description of their role, title and level of seniority;
79	(ii) a description of their reporting lines and responsibilities in the AIFM and outside the AIFM;	(ii) a description of their reporting lines and responsibilities in the AIFM and outside the AIFM;	(ii) a description of their reporting lines and responsibilities in the AIFM and outside the AIFM;
80	(iii) an overview of their time allocated to each responsibility;	(iii) an overview of their time allocated to each responsibility;	(iii) an overview of their time allocated to each responsibility;

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81	(iv) a description of the technical and human resources that support their activities;	(iv) a description of the technical and human resources that support their activities;	(iv) a description of the technical and human resources that support their activities;
82	(b) information on the identities of the AIFM's shareholders or members, whether direct or indirect, natural or legal persons, that have qualifying holdings and on the amounts of those holdings;	(b) information on the identities of the AIFM's shareholders or members, whether direct or indirect, natural or legal persons, that have qualifying holdings and on the amounts of those holdings;	(b) information on the identities of the AIFM's shareholders or members, whether direct or indirect, natural or legal persons, that have qualifying holdings and on the amounts of those holdings;
83	(c) a programme of activity setting out the organisational structure of the AIFM, including information on how the AIFM intends to comply with its obligations under Chapters II, III, IV, and, where applicable, Chapters V, VI, VII and VIII and a detailed description of the appropriate human and technical resources that will be used by the AIFM to this effect;	(c) a programme of activity setting out the organisational structure of the AIFM, including information on how the AIFM intends to comply with its obligations under Chapters II, III, IV, and, where applicable, Chapters V, VI, VII and VIII <b><i>of this Directive, and with its obligations under Regulation (EU) 2019/2088</i></b> and a detailed description of the appropriate human and technical resources that will be used by the AIFM to this effect;	(c) a programme of activity setting out the organisational structure of the AIFM, including information on how the AIFM intends to comply with its obligations under Chapters II, III, IV, and, where applicable, Chapters V, VI, VII and VIII and a detailed description of the appropriate human and technical resources that will be used by the AIFM to this effect;

	Commission Proposal	EP Mandate	Council Mandate
84	(d) information on the remuneration policies and practices pursuant to Article 13;	(d) information on the remuneration policies and practices pursuant to Article 13;	(d) information on the remuneration policies and practices pursuant to Article 13;
85	(e) information on arrangements made for the delegation and sub-delegation to third parties of functions as referred to in Article 20 and a detailed description of the human and technical resources to be used by the AIFM for monitoring and controlling the delegate.;	(e) information on arrangements made for the delegation and sub-delegation to third parties of functions as referred to in Article 20 <del>and a detailed description of the human and technical resources to be used by the AIFM for monitoring and controlling the delegate.</del> <b><u>comprising:</u></b>	(e) information on arrangements made for the delegation and sub-delegation to third parties of functions as referred to in Article 20 and a detailed description of the human and technical resources to be used by the AIFM for monitoring and controlling the delegate.;
85a		<b><u>(i) the legal name and relevant legal identifier of the management company;</u></b>	

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85b		<u>(ii) the legal name and relevant legal identifier of the UCITS and its investment strategy;</u>	
85c		<u>(iii) the legal name and relevant legal identifier of each delegate, its jurisdiction of establishment and, where relevant, its supervisory authority;</u>	
85d		<u>(iv) a brief description of the delegated risk management functions, including whether each such delegation amounts to a partial or full delegation;</u>	
85e		<u>(v) a brief description of the delegated portfolio management functions, by investment strategy and relevant geographies, including</u>	

	Commission Proposal	EP Mandate	Council Mandate
		<u>whether each such delegation amounts to a partial or full delegation;</u>	
85f		<u>(vi) a brief description of other functions listed in Annex I which the AIFM additionally performs;</u>	
85g		<u>(vii) for each of the following, a detailed description of the human and technical resources:</u>	
85h		<u>- employed by or committed to the AIFM for performing day-to-day portfolio or risk management tasks within the AIFM;</u>	
85i			

	Commission Proposal	EP Mandate	Council Mandate
		<u>- employed by or committed to the delegate for performing those services on a delegated basis; and</u>	
85j		<u>- employed by or committed to the management company for monitoring and controlling the delegate;</u>	
85k		<u>(viii) - employed by or committed to the AIFM for monitoring and controlling the delegate;</u>	
85l			<u>2a. Member States shall require authorised AIFMs to keep the information provided to its competent authorities updated.'</u>



	Commission Proposal	EP Mandate	Council Mandate
85m		<u><i>(aa) the following paragraph is inserted:</i></u>	
85n		<p>"</p> <p><u><i>'4a. An AIFM shall report to the competent authority any material changes that may affect the scope of the authorisation by that authority and in particular any modification on the arrangements of the delegation and sub-delegation to third parties provided at the time of authorisation.'</i></u></p> <p>"</p>	
86	(b) paragraph 5 is replaced by the following:	(b) paragraph 5 is replaced by the following:	(b) <del>paragraph 5 is replaced by the following:</del> <u><del></del></u>

	Commission Proposal	EP Mandate	Council Mandate
87	5. The competent authorities shall, on a quarterly basis, inform ESMA of authorisations granted or withdrawn in accordance with this Chapter.	5. The competent authorities shall, on a quarterly basis, inform ESMA of authorisations granted or withdrawn in accordance with this Chapter. <u>and of any changes in the scope of authorisations by those authorities, and in particular of material changes to the information provided in accordance with paragraphs 2 and 3 of this Article.</u>	5. <del>The competent authorities shall, on a quarterly basis, inform ESMA of authorisations granted or withdrawn in accordance with this Chapter. <u>deleted</u></del>
88	ESMA shall keep a central public register identifying each AIFM authorised under this Directive, a list of the AIFs managed and/or marketed in the Union by such AIFMs and the competent authority for each such AIFM. The register shall be made available in electronic format.	ESMA shall keep a central public register identifying each AIFM authorised under this Directive, a list of the AIFs managed and/or marketed in the Union by such AIFMs and the competent authority for each such AIFM. The register shall be made available in electronic format.	<del>ESMA shall keep a central public register identifying each AIFM authorised under this Directive, a list of the AIFs managed and/or marketed in the Union by such AIFMs and the competent authority for each such AIFM. The register shall be made available in electronic format. <u>deleted</u></del>

	Commission Proposal	EP Mandate	Council Mandate
89	Where an AIFM delegates more portfolio management or risk management functions to entities located in third countries than it retains, the competent authorities shall, on an annual basis, notify ESMA of all such delegations ('delegation notifications').	<i>deleted</i>	<i>Where an AIFM delegates more portfolio management or risk management functions to entities located in third countries than it retains, the competent authorities shall, on an annual basis, notify ESMA of all such delegations ('delegation notifications').</i> <del><i>deleted</i></del>
90	The delegation notifications shall include the following:	<i>deleted</i>	<i>The delegation notifications shall include the following:</i> <del><i>deleted</i></del>
91	(a) information on the AIFM and the AIF concerned;	<i>deleted</i>	(a) <i>information on the AIFM and the AIF concerned;</i> <del><i>deleted</i></del>
92	(b) information on the delegate, specifying		(b) <i>information on the delegate, specifying</i>

	Commission Proposal	EP Mandate	Council Mandate
	the delegate's domicile and whether it is a regulated entity or not;	<i>deleted</i>	<del>the delegate's domicile and whether it is a regulated entity or not;</del> <u>deleted</u>
93	(c) a description of the delegated portfolio management and risk management functions;	<i>deleted</i>	<del>(c) a description of the delegated portfolio management and risk management functions;</del> <u>deleted</u>
94	(d) a description of the retained portfolio management and risk management functions;	<i>deleted</i>	<del>(d) a description of the retained portfolio management and risk management functions;</del> <u>deleted</u>
95	(e) any other information necessary to analyse the delegation arrangements;	<i>deleted</i>	<del>(e) any other information necessary to analyse the delegation arrangements;</del> <u>deleted</u>

	Commission Proposal	EP Mandate	Council Mandate
96	(f) a description of the competent authorities' supervisory activities, including desk-based reviews and on-site inspections and the results of such activities;	<i>deleted</i>	(f) <del>a description of the competent authorities' supervisory activities, including desk-based reviews and on-site inspections and the results of such activities;</del> <u>deleted</u>
97	(g) any details on the cooperation between the competent authority of the AIFM and the supervisory authority of the delegate.	<i>deleted</i>	(g) <del>any details on the cooperation between the competent authority of the AIFM and the supervisory authority of the delegate.</del> <u>deleted</u>
97a		<b><u>(ba) paragraph 6 is replaced by the following:</u></b>	
97b		"	

	Commission Proposal	EP Mandate	Council Mandate
		<p><b><u>‘6. In order to ensure consistent harmonisation of this Article, ESMA may develop draft regulatory technical standards to specify the information to be provided to the competent authorities in the application for the authorisation of the AIFM, including the programme of activity, and to specify situations where the name of the AIFs it intends to manage could be materially deceptive or misleading to the investor.</u></b></p>	
97c		<p><b><u>Power is delegated to the Commission to adopt 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.’;</u></b></p> <p style="text-align: right;">”</p>	
97d		<p><b><u>(bb) paragraph 7 is replaced by the following:</u></b></p>	

	Commission Proposal	EP Mandate	Council Mandate
97e		<p>"</p> <p><i><u>'7. In order to ensure uniform conditions for the application of this Article, ESMA may develop draft implementing technical standards to determine standard forms, templates and procedures for the provision of information provided for in the first subparagraph of paragraph 6. ESMA may design such forms, templates and procedures with the objective of obtaining information which is comparable between AIFMs and between jurisdictions. ESMA may also take into account the information requirements for the provision of the report referred to in paragraph 9.</u></i></p>	
97f		<p><i><u>Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph of this paragraph in accordance with Article 15 of Regulation (EU) No 1095/2010.'</u></i></p> <p>"</p>	

	Commission Proposal	EP Mandate	Council Mandate
98	(c) the following paragraphs 8 and 9 are added:	(c) the following <del>paragraphs 8 and 9</del> <del>paragraph 9</del> is added:	<del>(c)(b)</del> the following <del>paragraphs 8 and 9</del> <del>paragraph 8</del> is added:
99	8. ESMA shall develop draft regulatory technical standards to determine the content of the delegation notifications and the standard forms, templates and procedures for the transmission of the delegation notifications in a language customary to the sphere of finance. The standard forms and templates shall include information fields covering all information referred to in paragraph 5, fourth subparagraph.	<i>deleted</i>	<i>deleted</i>  <b>Moved to line 101</b>
100	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.	<i>deleted</i>	<i>deleted</i>



	Commission Proposal	EP Mandate	Council Mandate
101	<p>9. ESMA shall provide the European Parliament, the Council and the Commission with regular reports, at least every two years, analysing market practices regarding delegation to entities located in third countries and compliance with Articles 7 and 20.;</p>	<p>9. <b><u>By ... [24 months after the date of application of this amending directive],</u></b> ESMA shall provide the European Parliament, the Council and the Commission with <del>regular reports, at least every two years</del> <b><u>a report,</u></b> analysing market practices regarding delegation <del>to entities located in third countries</del> and compliance with Articles 7 and 20.;</p>	<p>9. <del>deleted</del></p> <p><b><u>'8. Before the start of the review referred to in Article 69b,</u></b> ESMA shall provide the European Parliament, the Council and the Commission with <del>regular reports, at least every two years, analysing market practices regarding delegation to entities located in third countries and compliance with Articles 7 and 20</del> <b><u>a report analysing market practices regarding delegation and compliance with Articles 7 and 20, based, inter alia, on the data reported to competent authorities in accordance with point (d) of Article 24(2) and on the exercise of its supervisory convergence powers.</u></b>;</p>
102			

	Commission Proposal	EP Mandate	Council Mandate
	(4) in Article 8(1), point (c) is replaced by the following:	(4) in Article 8(1), point (c) is replaced by the following:	(4) in Article 8(1), point (c) is replaced by the following:
103	(c) the persons who effectively conduct the business of the AIFM are of sufficiently good repute and are sufficiently experienced also in relation to the investment strategies pursued by the AIF managed by the AIFM, the names of those persons and of every person succeeding them in the office being communicated forthwith to the competent authorities of the home Member States of the AIFM and the conduct of the business of the AIFM being decided by at least two natural persons who are either employed full-time by that AIFM or who are committed full-time to conduct the business of that AIFM and who are resident in the Union meeting such conditions;	(c) the persons who effectively conduct the business of the AIFM are of sufficiently good repute and are sufficiently experienced also in relation to the investment strategies pursued by the AIF managed by the AIFM, the names of those persons and of every person succeeding them in the office being communicated forthwith to the competent authorities of the home Member States of the AIFM and the conduct of the business of the AIFM being decided by at least two natural persons who are either employed full-time by that AIFM or who are committed full-time <b><i>or on a full-time equivalent basis</i></b> to conduct the business of that AIFM and who are resident in the Union meeting such conditions;	(c) the persons who effectively conduct the business of the AIFM are of sufficiently good repute and are sufficiently experienced also in relation to the investment strategies pursued by the AIF managed by the AIFM, the names of those persons and of every person succeeding them in the office being communicated forthwith to the competent authorities of the home Member States of the AIFM and the conduct of the business of the AIFM being decided by at least two natural persons who are either employed full-time by that AIFM or <b><i>executive member or members of the governing body of the AIFM</i></b> who are committed full-time to conduct the business of that AIFM and who are <del>resident</del> in the Union, meeting such conditions;

	Commission Proposal	EP Mandate	Council Mandate
103a		<p><i><u>(ca) where an AIFM manages an Alternative Investment Fund that is marketed to retail investors, the AIFM ensures that at least one member of its governing body is a non-executive director. The AIFM, in appointing a non-executive director of its governing body, shall determine whether such a member is independent in character and judgement and whether there are relationships or circumstances, which are likely to affect that member's judgement. The AIFM shall take reasonable steps to ensure that any non-executive directors appointed to its governing body have sufficient expertise and experience to be able to make judgements on whether the AIFM is managing AIFs in the best interest of investors. Non-executive directors shall contribute to ensuring that the AIFM complies with the requirements regarding conflicts of interests and acting in the best interests of the AIFs and their investors, as specified in this Directive;</u></i></p>	
103b		<p><i><u>(4a) in Article 12, the following paragraph is</u></i></p>	

	Commission Proposal	EP Mandate	Council Mandate
		<i><u>inserted:</u></i>	
103c		" <i><u>'3a. For the purposes of point (f) of the first subparagraph of paragraph 1, ESMA shall ... [by 18 months from entry into force of this amending Directive] submit a report to the European Parliament, the Council and the Commission:</u></i>	
103d		<i><u>(1) assessing the costs charged by AIFMs to investors in AIFs, and the reasons for cost levels and for differences between them;</u></i>	
103e		<i><u>(2) proposing criteria for assessing whether the level of such costs is or is not appropriate, in particular when compared to the level of costs</u></i>	

	Commission Proposal	EP Mandate	Council Mandate
		<u><i>in other jurisdictions worldwide;</i></u>	
103f		<u><i>(3) proposing, if necessary, options for action by competent authorities or by legislators in respect of inappropriate or undue levels of such costs. The report shall assess the potential impact of each such option.</i></u>	
103g		<p><u><i>That report may be combined with the report required pursuant Article 14(2a) of Directive 2009/65/EC of the European Parliament and of the Council<sup>1</sup>.</i></u></p> <hr/> <p><u><i>1. 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).</i></u></p>	

	Commission Proposal	EP Mandate	Council Mandate
103h		<u>Competent Authorities shall have the power to require, on a one-time basis, information on costs from AIFMs insofar as that is needed for the purpose of that report. The competent authorities shall avoid duplication with existing reporting obligations.</u>	
103i		<u>Competent authorities shall provide data to ESMA to contribute to that report ... [by X months before the date specified in the first subparagraph].'</u> "	
103j		<u>(4b) Article 14 is amended as follows:</u>	
103k			

	Commission Proposal	EP Mandate	Council Mandate
		<p><u><i>(a) (a) the following paragraph is inserted:</i></u></p>	
1031		<p>"</p> <p><u><i>2a. Where an AIFM intends to manage an AIF on behalf of a third-party, including but not limited to under a mandate in accordance with Article 6(4)(a) or under a delegation in accordance with Article 20, and where the third-party is to have significant control over the AIF's design, distribution and management, the AIFM shall employ heightened scrutiny of the potential for conflicts of interest. AIFMs engaging in such a relationship shall submit detailed explanations and evidence on their compliance with paragraphs 1 and 2 of this Article to the competent authorities of their home Member State. In particular, they shall specify how they prevent systematic conflicts of interest or any other material conflicts of interest arising from the relationship, how any existing or potential conflicts are effectively managed in the best interest of investors and how this is clearly and comprehensively disclosed to investors.</i></u></p> <p>"</p>	

	Commission Proposal	EP Mandate	Council Mandate
103m		<b><u>(b) the following paragraph is added:</u></b>	
103n		" <b><u>"4a. In order to ensure uniform conditions of application of this Article, ESMA shall develop draft regulatory technical standards to specify:</u></b>	
395b			<b><u>5b. Dual pricing refers to the calculation of two prices at each valuation point: the offer price, at which an investor can buy units in a fund, and the bid price, at which investors can sell their units in a fund. These prices are calculated based on the net asset value per unit, added or reduced by a pre-determined amount covering the liquidity costs of each subscription or redemption.</u></b>



	Commission Proposal	EP Mandate	Council Mandate
396	(6) Anti-dilution levy: an anti-dilution levy is a charge applied to individual transacting investors, payable to the fund, to protect remaining investors from bearing the costs associated with purchases or sales of assets because of large inflows or outflows. An anti-dilution levy does not involve any adjustment to the value of the fund's shares.	(6) Anti-dilution levy: an anti-dilution levy is a charge applied to individual transacting investors, payable to the fund, to protect remaining investors from bearing the costs associated with purchases or sales of assets because of large inflows or outflows. An anti-dilution levy does not involve any adjustment to the value of the fund's <del>shares</del> <u>units</u> .	(6) Anti-dilution levy: an anti-dilution levy is a charge applied to individual transacting investors, payable to the fund, to protect remaining investors from bearing the costs associated with purchases or sales of assets because of large inflows or outflows. An anti-dilution levy does not involve any adjustment to the <del>value</del> <u>price</u> of the fund's <del>shares</del> <u>units</u> . <b><u>The levy is calculated taking into consideration ongoing liquidity costs and market conditions.</u></b>
397	(7) Redemptions in kind: redemptions-in-kind allow the fund manager to meet a redemption request by transferring securities held by the fund, instead of cash, to the redeeming shareholders.	(7) Redemptions in kind: redemptions-in-kind allow the fund manager to meet a redemption request by transferring securities held by the fund, instead of cash, to the redeeming <del>shareholders</del> <u>unitholders</u> .	(7) Redemptions in kind: redemptions-in-kind allow the fund manager to meet a redemption request by transferring <del>securities</del> <u>assets</u> held by the fund, instead of cash, to the redeeming <del>shareholders</del> <u>unitholders</u> .
398			

	Commission Proposal	EP Mandate	Council Mandate
	(8) Side pockets: side pockets allow illiquid investments to be separated from remaining liquid investments of the investment fund.	(8) Side pockets: side pockets allow illiquid investments to be separated from remaining liquid investments of the investment fund.	(8) Side pockets: side pockets allow <del>illiquid investments to be separated from remaining liquid</del> <u>the fund to segregate, in exceptional circumstances, certain investments whose economic or legal features have changed significantly or become uncertain from other</u> investments of the investment fund. <u>The segregation cannot lead a UCITS to transform itself into a non-UCITS, pursuant to article 1(5) of the UCITS Directive.</u>
	End	End	End