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From:	Presidency
To:	Working Party on Financial Services and the Banking Union (AIFMD) Financial Services Attachés

Subject:	AIFMD: interim updated 4CT, 04.05.23
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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 (Text with EEA relevance)

2021/0376(COD)

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	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Formula				
1	2021/0376 (COD)	2021/0376 (COD)	2021/0376 (COD)	2021/0376 (COD) Text Origin: Commission Proposal
Proposal Title				
2	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 (Text with EEA relevance)	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 (Text with EEA relevance)	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 (Text with EEA relevance)	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 (Text with EEA relevance) Text Origin: Commission Proposal

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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.	
Citation 1				
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,	Having regard to the Treaty on the Functioning of the European Union, and in particular Article 53(1) thereof, Text Origin: Commission Proposal
Citation 2				
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,	Having regard to the proposal from the European Commission, Text Origin: Commission Proposal
Citation 3				
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,	After transmission of the draft legislative act to the national parliaments, Text Origin: Commission Proposal
Citation 4				

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7	Having regard to the opinion of the European Economic and Social Committee ¹ , 1. OJ C , , p. .	Having regard to the opinion of the European Economic and Social Committee ¹ , 1. OJ C , , p. .	Having regard to the opinion of the European Economic and Social Committee ¹ , 1. OJ C , , p. .	Having regard to the opinion of the European Economic and Social Committee ¹ , 1. OJ C , , p. . Text Origin: Commission Proposal
Citation 5				
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,	Acting in accordance with the ordinary legislative procedure, Text Origin: Commission Proposal
Formula				
9	Whereas:	Whereas:	Whereas:	Whereas: Text Origin: Commission Proposal
Recital 1				
10	(1) In accordance with Article 69 of Directive 2011/61/EU of the European Parliament and of the Council ¹ , 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	(1) In accordance with Article 69 of Directive 2011/61/EU of the European Parliament and of the Council ¹ , 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	(1) In accordance with Article 69 of Directive 2011/61/EU of the European Parliament and of the Council ¹ , 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	(1) In accordance with Article 69 of Directive 2011/61/EU of the European Parliament and of the Council ¹ , 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

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	(‘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’) 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. 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).	(‘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’) 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. 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).	(‘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’) 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. 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).	(‘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’) 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. 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). Text Origin: Commission Proposal
Recital 2				
11				

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	(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 transferable securities ('UCITS'). Therefore, it is appropriate to also amend Directive 2009/65/EC of the European Parliament and of the Council¹, which lays down rules regarding the authorisation and operation of UCITS, in the areas of delegation, asset safekeeping, supervisory reporting and liquidity risk management. 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).	(2) A robust delegation regime, an equal treatment of custodians, coherence of supervisory reporting <u>through the removal of duplications and redundant requirements</u> and a harmonised approach to the use of LMTs are equally necessary for the management of 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 Council¹, which lays down rules regarding the authorisation and operation of UCITS, in the areas of delegation, asset safekeeping, supervisory reporting and liquidity risk management. 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).	(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 transferable securities ('UCITS'). Therefore, it is appropriate to also amend Directive 2009/65/EC of the European Parliament and of the Council¹, which lays down rules regarding the authorisation and operation of UCITS, in the areas of delegation, asset safekeeping, supervisory reporting and liquidity risk management. 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).	
11a		<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</u>		

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		<u>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 the competitiveness of Europe's capital markets.</u>		
11b		<u>(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).</u>		
Recital 3				
12	(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	(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	(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 <u>the tasks carried out by an administrator in accordance</u>	

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	Parliament and of the Council¹ and credit servicing governed by Directive 2021/.../EU of the European Parliament and of the Council.² 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). 2. OJ C , , p. .	Parliament and of the Council¹ and credit servicing governed by Directive 2021/.../EU of the European Parliament and of the Council.² 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). 2. OJ C , , p. .	<u>with</u> Regulation (EU) 2016/1011 of the European Parliament and of the Council¹ (<u>'administration of benchmarks'</u>) and credit servicing governed by Directive 2021/.../EU <u>2021/2167</u> of the European Parliament and of the Council.² <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> 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). 2. <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> OJ C , , p. .	
12a		<u>(3a) In order to enhance legal certainty, it should be clarified that the management of AIFs also comprises the activities of</u>		

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		<u>originating loans on behalf of an AIF and servicing securitisation special purpose vehicles referred to in points 3 and 4 of Annex I 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>	
Recital 4				
13	(4) To ensure legal certainty it should be clarified that AIFMs providing ancillary services involving financial instruments are subject to the rules laid down in	(4) To ensure legal certainty it should be clarified that AIFMs providing ancillary services involving financial instruments are subject to the rules laid down in	(4) To ensure legal certainty <u>certainty</u> it should be clarified that AIFMs providing ancillary services involving financial instruments are subject to	(4) To ensure legal certainty <u>certainty</u> it should be clarified that AIFMs providing ancillary services involving financial instruments are subject to

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	Directive 2014/65/EU of the European Parliament and of the Council¹. With regard to other assets, which are not financial instruments, AIFMs should be required to comply with the requirements of Directive 2011/61/EU. 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).	Directive 2014/65/EU of the European Parliament and of the Council¹. With regard to other assets, which are not financial instruments, AIFMs should be required to comply with the requirements of Directive 2011/61/EU. 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).	the rules laid down in Directive 2014/65/EU of the European Parliament and of the Council¹. With regard to other assets, which are not financial instruments, AIFMs should be required to comply with the requirements of Directive 2011/61/EU. 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).	the rules laid down in Directive 2014/65/EU of the European Parliament and of the Council¹. With regard to other assets, which are not financial instruments, AIFMs should be required to comply with the requirements of Directive 2011/61/EU. 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). typo in "certainty" Text Origin: Council Mandate
Recital 5				
14	(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	(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	(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	

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	employed or conduct the business of the AIFM on a full-time basis and be resident in the Union.	employed or conduct the business of the AIFM on a full-time <u>or a full-time equivalent</u> basis and be resident in the Union. <u>To ensure that AIFMs comply with the 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>	employed or conduct the business of the AIFM 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 AIF.</u>	
Recital 6				
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 develop a reliable overview of delegation activities in the Union governed by Article 20 <u>enhance the uniform application</u> 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 <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</u>	

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			referred to in Article 6(4) of that Directive.	
Recital 7				
16	(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 Council¹ 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. ¹. Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European	deleted	(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 Council¹ 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. deleted ¹. Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European	

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	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).		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).	
16a		<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>	<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</u>	

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			<u><i>distribution agreement between the AIFM and the distributor.</i></u>	
Recital 8				
17	(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.	(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.	(8) To enhance the uniform application of Directive 2011/61/EU <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,</u> it should be clarified <u>specified</u> that the delegation rules laid down in	

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			Article 20 apply to all <u>data collected on the percentage of the assets of the managed AIFs that are subject to delegation arrangements concerning the portfolio management functions listed in Annex I to that Directive and to the ancillary services referred to in Article 6(4) of that</u> 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 to the competent authorities as part of the supervisory reporting governed by Article 24 of Directive <u>2011/61/EU</u>.	
17a			<u>(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</u>	

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			<u>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.</u>	
Recital 9				
18	(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').¹ 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. ¹ Communication from the Commission to the European Parliament, the Council, the	(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	(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').¹ 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</u>	

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	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).	and to facilitate the access to finance by EU companies, a key objective of the Capital Markets Union ('CMU').¹ 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. 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).	<u><i>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 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.</i></u> 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).	
18a			<u><i>(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</i></u>	

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			<u>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>	
Recital 10				
19	(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.	(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.	(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, <u>loan origination</u> should have effective policies, procedures and processes for the granting of loans. <u>They should also implement effective policies, procedures and processes for</u> assessing credit risk and administering and monitoring its <u>their</u> credit portfolio <u>where they engage in loan originating activities or purchase loans from third parties. These policies, procedures and processes,</u> which should be reviewed periodically.	
Recital 11				
20	(11) To contain the risk of interconnectedness among loan-originating AIFs and other financial	(11) To contain the risk of interconnectedness among loan-originating AIFs and other financial	(11) To contain the risk of interconnectedness among loan-originating AIFs and other financial	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	market participants, AIFMs of those AIFs should, where a borrower is a financial institution, be required to diversify their risk and subject their exposure to specific limits.	market participants, AIFMs of those AIFs should, where a borrower is a financial institution, be required to diversify their risk and subject their exposure to specific limits.	market participants, AIFMs of those AIFs should, where a borrower is a financial institution, be required to diversify their risk and subject their exposure to specific limits. <u><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></u>	
Recital 12				
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><i>and entities within the same group as the AIFM</i></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.	
Recital 13				
22				

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	(13) Directive 2011/61/EU should 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.	(13) Directive 2011/61/EU should 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. <u>AIFs should not follow an originate-to-distribute investment strategy, namely an investment strategy under-to-avoid situations in</u> which loans are originated with the sole purpose of selling them.	(13) Directive 2011/61/EU should 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>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.</u>	
Recital 14				
23	(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.	(14) Long-term, illiquid loans held by AIF may <u>might</u> create liquidity mismatches if the AIFs open-ended structure allows investors to redeem their fund units or shares on a frequent basis. It is <u>therefore</u> <u>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</u> necessary to mitigate risks related to maturity transformation by imposing a	(14) Long-term, illiquid loans held by AIF <u>AIFs</u> may create liquidity mismatches if the AIFs <u>authorised AIF's</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>However, a loan-</u>	

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		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>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^{1a} 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).</u>	<u>originating AIF may 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.</u>	
Recital 15				
24	(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	(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	(15) It should be clarified that where an AIFM is subject to the requirements laid down in Directive 2011/61/EU <u>a loan-originating AIFs or an AIFM</u>, in relation to its managed AIF's lending activities.	

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	in Regulations (EU) 345/2013¹, (EU) 346/2013² and (EU) 2015/760³ 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 Regulation (EU) 2015/760, should override more general rules set out in Directive 2011/61/EU. 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). 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). 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).	in Regulations (EU) 345/2013¹, (EU) 346/2013² and (EU) 2015/760³ 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 Regulation (EU) 2015/760, should override more general rules set out in Directive 2011/61/EU. 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). 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). 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).	<u>are subject to the requirements laid down in Directive 2011/61/EU</u> and to the requirements laid down in Regulations (EU) 345/2013¹, (EU) 346/2013² and (EU) 2015/760³ 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 Regulation (EU) 2015/760, should override more general rules set out in Directive 2011/61/EU. 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). 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). 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).	
24a			<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</u>	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			<u>regulatory requirements introduced during the life-cycle of the loan-originating AIFs they 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>	
Recital 16				
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 ¹ , Regulation (EU) 2019/834 of the European Parliament and of the Council ² , Regulation (EU) No 1011/2012 of the European Central Bank ³ and Regulation (EU) No 1073/2013 of the European Central Bank ⁴ , 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	(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 ¹ , Regulation (EU) 2019/834 of the European Parliament and of the Council ² , Regulation (EU) No 1011/2012 of the European Central Bank ³ and Regulation (EU) No 1073/2013 of the European Central Bank ⁴ , 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	(16) To support market monitoring by the supervisory authorities the information gathering and sharing through supervisory reporting could <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 ¹ , Regulation (EU) 2019/834 of the European Parliament and of the Council ² , Regulation (EU) No 1011/2012 of the European Central Bank ³ and Regulation (EU) No 1073/2013 of the European Central Bank ⁴ , 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	(16) To support market monitoring by the supervisory authorities the information gathering and sharing through supervisory reporting could <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 ¹ , Regulation (EU) 2019/834 of the European Parliament and of the Council ² , Regulation (EU) No 1011/2012 of the European Central Bank ³ and Regulation (EU) No 1073/2013 of the European Central Bank ⁴ , 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

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	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. 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). 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). 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). 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).	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><i>The reporting requirements on the obligation to report information on the assets and liabilities of investment funds to the national central bank should be aligned.</i></u> 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). 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). 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). 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).	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. 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). 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). 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). 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).	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><i>(16a) To reduce duplicative reporting and related reporting burdens for AIFMs and to ensure an efficient reuse of data by authorities, data reported by AIFMs to competent authorities should be made available to [and shared with] relevant authorities. In addition to making such data available to [and sharing it] with ESMA and the ESRB, data should be made available to [and shared with] the other ESAs when they need data on AIFs for the purposes of their mandates, as well as to and with the members of the ESCB for statistical purposes.</i></u> 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). 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

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			PUBLIC	repositories and the requirements for trade repositories (OJ L 141, 28.5.2019, p. 42). 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). 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). 2504: From COM email of 2404. COM to check need for 'sharing with' Text Origin: Council Mandate
Recital 17				
26	(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.	(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.	(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.	
Recital 18				

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27	(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 Council¹ 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 template laid down in the Commission Delegated Regulation (EU) 231/2013². Those regulatory and implementing technical standards should be adopted on the basis of a draft developed by ESMA. 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).	(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 Council¹ 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 template laid down in the Commission Delegated Regulation (EU) 231/2013². Those regulatory and implementing technical standards should be adopted on the basis of a draft developed by ESMA. 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).	(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 Council¹ 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 template laid down in the Commission Delegated Regulation (EU) 231/2013². Those regulatory and implementing technical standards should be adopted on the basis of a draft developed by ESMA. <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</u>	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	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).	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).	<u>defined in Directive 2011/61/EU, without adding any elements that are not foreseen by the text of that Directive.</u> 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). 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).	
Recital 19				
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.	(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.

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
				Text Origin: Commission Proposal
Recital 20				
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).¹ 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.	(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).¹ 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.	(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).¹ 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.	(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).¹ 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. Text Origin: Commission Proposal
Recital 21				
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	(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<u>two LMTs</u> from the harmonised list set out in the Annex, <u>with the exception of money market funds in accordance with Regulation (EU) 2017/1131 which can select only one liquidity management tool</u>	(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<u>determine an appropriate set of LMTs, including the selection of</u> at least one LMT<u>two LMTs</u> from the harmonised list set out in the Annex, in addition to the possibility to suspend redemptions <u>and activate side pockets, in</u>	

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	would allow supervisory authorities to better handle potential spill-overs of liquidity tensions into the wider market.	in addition to the possibility to suspend redemptions. When an AIFM takes a decision to activate or deactivate the LMT<u>certain LMTs in 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.	<u>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> When an AIFM 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> -This 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</u>	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			<u>where redemption in kind is activated.</u>	
Recital 22				
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. <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 or shareholders.</u>	Text Origin: Commission Proposal
Recital 23				
32	(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	(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	(23) In order to ensure consistent harmonisation in the area of liquidity risk management by the managers of open-ended funds, 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	

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	(TFEU) in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council¹ 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. 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).	(TFEU) in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council¹ to specify the process for choosing and using<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> 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).	(TFEU) in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council¹ 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. 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).	
Recital 24				
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 and to address<u>where there are financial stability risks, in exceptional circumstances and after consulting the manager concerned</u>, the competent authorities should be able to request	(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.<u>deleted</u>	

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		that a manager of an open-ended fund activate or deactivate the appropriate LMT.		
Recital 25				
34	(25) Depositaries 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 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.	(25) Depositaries 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 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.	(25) Depositaries 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 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.	(25) Depositaries 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 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. Text Origin: Commission Proposal
Recital 26				
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	(26) In order to improve supervisory cooperation and effectiveness, the host competent authorities should be able to address a reasoned request to the competent	(26) In order to improve supervisory cooperation and effectiveness, the host competent authorities should be able to address a reasoned request to the competent	(26) In order to improve supervisory cooperation and effectiveness, the host competent authorities should be able to address a reasoned request to the competent

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	authority of an AIFM to take supervisory action against a particular AIFM.	authority of an AIFM to take supervisory action against a particular AIFM.	authority of an AIFM to take supervisory action against a particular AIFM.	authority of an AIFM to take supervisory action against a particular AIFM. Text Origin: Commission Proposal
Recital 27				
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 preventing similar instances in the future and protect the integrity of the AIF market.	(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 the future and protect the integrity of the AIF market.	(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 the future and protect the integrity of the AIF market.	(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 the future and protect the integrity of the AIF market. Text Origin: Commission Proposal
Recital 28				
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	(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	(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	Text Origin: Commission Proposal

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	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.	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.	entities <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> 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 <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 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.	
37a				

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		<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 remuneration policies.</u>		
37b		<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</u>	<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</u>	

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		<u>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>	<u>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>	
Recital 29				
38	(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	(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 <u>Member States</u> should be able to permit <u>authorise, on a case-</u>	(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 <u>should be able</u> <u>Member States could authorise competent authorities</u> to	

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	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>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>	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</u> 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.	
Recital 30				
39	(30) Opening up the possibility to appoint a depositary in another Member State should be accompanied by increased	(30) Opening up the possibility to appoint a depositary in another Member State should be <u>accessible on a case-by-case basis</u>	(30) Opening up the possibility to appoint a depositary in another Member State should be accompanied by increased	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	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.	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.	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.	
Recital 31				
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 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.	(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 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.	(31) In order to better protect investors, the information flow from AIFMs to AIF investors should be increased. To allow an AIFs <u>AIF</u> 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 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.	(31) In order to better protect investors, the information flow from AIFMs to AIF investors should be increased. To allow an AIFs <u>AIF</u> investors to better track the investment fund <u>AIF</u> 's expenses, AIFMs should identify fees, charges and expenses that are that will be borne by the AIFM or its affiliates as well as periodically report on all fees and charges and that are directly or indirectly allocated to the AIF or to any of its investments and should periodically report on all such fees, charges and expenses. AIFMs should also be required to report to investors on the portfolio composition of originated loans. TM2604

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				Text Origin: Council Mandate
Recital 32				
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.	(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. Text Origin: Commission Proposal
Recital 33				
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 ¹ and Directive (EU) 2015/849 of the European Parliament and of the Council. ² 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	(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 <u>last updated version of the Council conclusions</u> on the revised EU list on non-cooperative jurisdictions for tax purposes ¹ and Directive (EU) 2015/849 of the European Parliament and of the Council. ² 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	(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 down in the Council conclusions of 2020 on the revised EU list on <u>common action undertaken by the EU Member States as regards</u> non-cooperative jurisdictions for tax purposes ⁴ and Directive (EU) 2015/849 of the	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	deemed un-cooperative in tax matters. 1. OJ C 64, 27.2.2020, p.8. 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).	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> 1. OJ C 64, 27.2.2020, p.8. 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).	European Parliament and of the Council.² 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>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> 1. OJ C 64, 27.2.2020, p.8. 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).	
Recital 34				
43				

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	(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.	(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. Text Origin: Commission Proposal
Recital 35				
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 managers should be employed or conduct the business of the management company on a full-time basis and be resident in the Union.	(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 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</u>	(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 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</u>	

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		<u>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>	<u>necessary depending on the size and complexity of the management company.</u>	
Recital 36				
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.	(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. Text Origin: Commission Proposal
Recital 37				
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 functions and provide objective reasons for the delegation.	(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 functions and provide objective reasons for the delegation.	(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 functions and provide objective reasons for the delegation.	(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 functions and provide objective reasons for the delegation.

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
				Text Origin: Commission Proposal
Recital 38				
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 policy decisions or supervisory actions, <u>supervisory actions,</u> <u>management companies should regularly provide to the</u> competent authorities should provide ESMA with <u>of the UCITS they manage information on the</u> delegation notifications where a UCITS management company delegates more <u>arrangements which involve the delegation of collective or discretionary</u> portfolio management or risk management functions. <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-delegation</u>	

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			<u>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>	
Recital 39				
48	(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	deleted	(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	

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	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 Council¹ 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. 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).		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 Council¹ 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. deleted 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).	
Recital 40				
49	(40) In order to further align the rules on delegation applicable to AIFMs and UCITS and to achieve a more uniform application of	(40) In order to further align the rules on delegation applicable to AIFMs and UCITS and to achieve a more uniform application of	(40) In order to further align the rules on delegation applicable to AIFMs and UCITS and to achieve a more uniform application of	(40) In order to further align the rules on delegation applicable to AIFMs and UCITS and to achieve a more uniform application of

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	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-Making¹. 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. ¹. OJ L 123, 12.5.2016, p. 1.	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-Making¹. 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. ¹. OJ L 123, 12.5.2016, p. 1.	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-Making¹. 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. ¹. OJ L 123, 12.5.2016, p. 1.	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-Making¹. 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. ¹. OJ L 123, 12.5.2016, p. 1.

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
				Text Origin: Commission Proposal
Recital 41				
50	(41) This Directive implements the ESRB¹ 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. 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.	(41) This Directive implements the ESRB¹ 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. 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.	(41) This Directive implements the ESRB¹ 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. 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.	
Recital 42				
51	(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	(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<u>two</u> LMT from the harmonised list set out in the Annex, <u>with the exception of money market funds in accordance with Regulation (EU) 2017/1131 which may select only one liquidity management tool</u> in addition to the possibility to suspend redemptions. When a management company takes a decision to activate or	(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<u>determine an appropriate set of LMTs, including the selection of</u> at least one<u>LMT</u><u>two LMTs</u> from the harmonised list set out in the Annex in addition to the possibility to suspend redemptions <u>and activate side pockets, in exceptional circumstances and in the interest of their unit-holders.</u> <u>By way of derogation, the</u>	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	liquidity tensions into the wider market.	deactivate the LMT <u>certain LMTs in 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.	<u>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>. This 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>	

Recital 43

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
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. <u><i>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.</i></u>	
Recital 44				
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 and to address <u><i>if there are</i></u> financial stability risks, <u><i>in exceptional circumstances and after consulting the management company concerned</i></u> , the competent authorities should be able to request that a UCITS management company activates or deactivates the appropriate LMT.	(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. <u><i>deleted</i></u>	
Recital 45				
54	(45) In order to ensure consistent harmonisation in the area of	(45) In order to ensure consistent harmonisation in the area of	(45) In order to ensure consistent harmonisation in the area of	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	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 Council¹ 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. 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).	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 Council¹ 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. <u>Those standards should recognise that the primary responsibility for liquidity risk management remains with the UCITS manager.</u> 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).	liquidity risk management by the managers of UCITS, power <u>ESMA</u> 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 Council¹ <u>issue guidelines</u> 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. 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).	
Recital 46				
55	(46) To support market monitoring by the supervisory authorities, the information gathering and sharing through supervisory reporting	(46) To support market monitoring by the supervisory authorities, the information gathering and sharing through supervisory reporting	(46) To support market monitoring by the supervisory authorities, the information gathering and sharing through supervisory reporting	(46)

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	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.	should be improved by subjecting UCITS to supervisory reporting obligations, <u>in particular as regards the delegation of functions</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.	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>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.</u>	<u>(46a) To reduce duplicative reporting and related reporting burdens for UCITS and to ensure an efficient reuse of data by authorities, data reported by UCITS to competent authorities should be made available to [and shared with] relevant authorities. In addition to making such data available to [and sharing it] with ESMA and the ESRB, data should be made available to [and shared with] the other ESAs when they need data on UCITS for the purposes of their mandates, as well as to and with the members of the ESCB for statistical purposes.</u> To support market monitoring by the 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

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
				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. TM2504 new recital 46a reflecting data sharing cf recital 16a UCITS. (Recital 46 still to do.)
Recital 47				
56	(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 Council¹ 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	(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 Council¹ 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	(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 Council¹ 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	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	basis of a draft developed by ESMA. 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).	basis of a draft developed by ESMA. 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).	ESMA. <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> 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).	
Recital 48				
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	(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	(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	(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

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	Article 291 TFEU and in accordance with Article 15 of Regulation (EU) No 1095/2010.	Article 291 TFEU and in accordance with Article 15 of Regulation (EU) No 1095/2010.	Article 291 TFEU and in accordance with Article 15 of Regulation (EU) No 1095/2010.	Article 291 TFEU and in accordance with Article 15 of Regulation (EU) No 1095/2010. Text Origin: Commission Proposal
Recital 49				
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 superfluous efforts, the depositaries should not perform ex-ante due diligence where they intend to delegate custody to CSDs.	(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 superfluous efforts, the depositaries should not perform ex-ante due diligence where they intend to delegate custody to CSDs.	(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 superfluous efforts, the depositaries should not perform ex-ante due diligence where they intend to delegate custody to CSDs.	(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 superfluous efforts, the depositaries should not perform ex-ante due diligence where they intend to delegate custody to CSDs. Text Origin: Commission Proposal
Recital 50				
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	(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	(50) To support supervisory convergence in the area of delegation, ESMA should conduct peer reviews <u>get a better understanding of the application of the provisions of this Directive, including in the area of appropriate oversight and control</u>	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	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.	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.	<u>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 practices particularly focusing on preventing creation of letter-box entities convergence powers before the next review of this Directive takes place.</u> ESMA's analysis of the peer reviews would feed into the review <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 measures adopted in this Directive and inform the European Parliament, the Council and the Commission what</u> <u>review, analysing market practices regarding delegation, substance rules, prevention of letter-box entities and compliance with related requirements of the Directive and informing of any additional measures that may be needed to support the effectiveness of the delegation regime regimes laid down in Directive 2009/65/EC 2009/65/EU.</u>	
Recital 51				
60	(51) In order to improve supervisory cooperation and	(51) In order to improve supervisory cooperation and	(51) In order to improve supervisory cooperation and	(51) In order to improve supervisory cooperation and

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	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.	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.	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.	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. Text Origin: Commission Proposal
Recital 52				
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 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.	(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 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.	(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 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.	(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 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. Text Origin: Commission Proposal
61a		<u>(52a) Member States should require UCITS management</u>		

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
		<u>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 criteria for the assessment of undue costs and actions national competent authorities should take in respect of inappropriate or undue costs.</u>		
61b		<u>(52b) In carrying out its functions under Directives 2009/65/EC and</u>		

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
		<u>2011/61/EU, ESMA should take a risk-based approach.</u>		
61c		<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>		
Formula				
62	HAVE ADOPTED THIS DIRECTIVE	HAVE ADOPTED THIS DIRECTIVE	HAVE ADOPTED THIS DIRECTIVE:	
Article 1				
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	Article 1 Amendments to Directive 2011/61/EU Text Origin: Commission Proposal
Article 1, first paragraph				
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:	Directive 2011/61/EU is amended as follows: Text Origin: Commission Proposal

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Article 1, first paragraph, point (1)				
65	(1) in Article 4(1), the following point (ap) is added:	(1) in Article 4(1), the following point (ap) is added <u>4, paragraph 1 is amended as follows:</u>	(1) in Article 4(1), the following point (ap) is added <u>is amended as follows:</u>	(1) in Article 4(1), the following point (ap) is added <u>is amended as follows:</u> Text Origin: Council Mandate
Article 1, first paragraph, point (1a)				
65a		<u>(-a) point (ag) is replaced by the following:</u>		<u>(-a) point (ag) is replaced by the following:</u> Text Origin: EP Mandate
Article 1, first paragraph, point (1b)				
65b		<u>'(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;'</u>		<u>'(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/EU;'</u> TM 13.04, Text discussed at TM. Update of reference from MIFID 1 to 2. COM to further explain possible issues with reference to MiFID II. Text Origin: EP Mandate
Article 1, first paragraph, point (1c)				

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
65c		<u>(a) the following point (ap) is added:</u>	<u>(a) the following points (ap) is added:</u>	<u>(a) the following point (ap) is added:</u> Text Origin: EP Mandate
Article 1, first paragraph, point (1), amending provision, first paragraph				
66	‘ (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*’	(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*	(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*	‘ (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*’ Text Origin: Commission Proposal
Article 1, first paragraph, point (1), amending provision, first paragraph, first paragraph				
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)’;	* 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)’; Text Origin: Commission Proposal
Article 1, first paragraph, point (1b)				

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
67a			<u>(b) the following point (ca) is added:</u> <u>(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>	<u>(b) the following point (ca) is added:</u> <u>‘(ca) ‘capital of the AIF’ means aggregate capital contributions and uncalled capital committed to the AIF, calculated on the basis of amounts investible after deduction of all fees, charges and expenses that are directly or indirectly borne by investors;’</u> TM 13.04, CNL warns that this definition should only apply to "capital of the AIF" Text Origin: Council Mandate
Article 1, first paragraph, point (1b)				
67b				
Article 1, first paragraph, point (1b)				
67c		<u>(1b) (c) the following points are inserted:</u>	<u>(1c) the following points (va), (vb) and (vc) are added:</u>	<u>(c) the following points are inserted:</u> Text Origin: EP Mandate
Article 1, first paragraph, point (1b)				
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>	<u>(apa) ‘loan origination’ means the granting of loans by an AIF as the original lender;</u>

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
				TM 13.04 EP Text considered more grammatical. Text Origin: EP Mandate
Article 1, first paragraph, point (1b)				
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>	<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, and which cannot be sold to third-parties independently of the capital instruments held by the AIF in the same undertaking;</u> TM 13.04. CONS to reflect. Linked to lines 106/106a Text Origin: EP Mandate
67f		<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>		
Article 1, first paragraph, point (1b)				
67g			<u>(1h)</u>	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
		<i>(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;</i>	Council text in 67b	TM 13.04 , definition placed in 67b, this line remains empty.
Article 1, first paragraph, point (1b)				
67h		<i>(ape) ‘leveraged AIF’ means an AIF 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.</i>	<i>(li) (vc) ‘leveraged AIF’ means an AIF 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.</i>	<i>(ape) ‘leveraged AIF’ means an AIF whose exposures are increased by the AIFM that manages it, whether through borrowing of cash or securities, or leverage embedded in derivative positions or by any other means.</i> TM 13.04 Text reworked at the TM. Text Origin: EP Mandate
67i				
67j				
Article 1, first paragraph, point (2)				
68	(2) Article 6 is amended as follows:	(2) Article 6 is amended as follows:	(2) Article 6 is amended as follows:	(2) Article 6 is amended as follows: Text Origin: Commission Proposal

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
68a			<u>(a) in paragraph 4, point (b), the following points (iv) is added:</u>	
Article 1, first paragraph, point (2)(a)(iv)				
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>	Political issue COM email of 2404 is relevant. Notion of "continuation" may be confusing / unhelpful. Issue is provision to other clients of services already provided to AIFs managed. Conflict of interest dealt with in Art 14 and DAs: recital could encourage those DAs to be reviewed / revised.
Article 1, first paragraph, point (2)(b)				
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, the following points (c) and (d) are added:	(a) in paragraph 4, the following points (c) and (d) are added: Text Origin: EP Mandate
Article 1, first paragraph, point (2)(a), amending provision, first paragraph				
70	(c) benchmark administration in accordance with Regulation (EU) 2016/1011;	(c) benchmark administration in accordance with Regulation (EU) 2016/1011;	(c) benchmark administration <u>administration of benchmarks</u> in accordance with Regulation (EU) 2016/1011;	(c) benchmark administration <u>administration of benchmarks</u> in accordance with Regulation (EU) 2016/1011;

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
				TM13.04 Text Origin: Council Mandate
Article 1, first paragraph, point (2)(a), amending provision, second paragraph				
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 2021/... <u>2021/2167</u> of the European Parliament and of the Council; <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 territory;</u>	Political issue
Article 1, first paragraph, point (2)(c)				
71a			<u>(c) paragraph 5 is amended as follows:</u>	
Article 1, first paragraph, point (2)(c)(i)				
71b			<u>(i) point (b) is deleted;</u>	<u>(i) point (b) is deleted;</u> TM1304 COM to explain further in writing. TM2504 COM email of 2404. See also 253f on UCITS

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
				Text Origin: Council Mandate
Article 1, first paragraph, point (2)(c)(i)				
71c			<u>(ii) point (c) is replaced by the following:</u>	<u>(ii) point (c) is replaced by the following:</u> Text Origin: Council Mandate
Article 1, first paragraph, point (2)(a)(-1a), first indent				
71d			<u>- 'only the activities referred to in points 2, 3 or 4 of Annex I; or'</u>	<u>- 'only the activities referred to in point 2, 3 or 4 of Annex I;'</u> TM1304 Text Origin: Council Mandate
Article 1, first paragraph, point (2)(a)(-1a), second indent				
71e			<u>(iii) the following point (e) is added:</u>	<u>(iii) the following point is added:</u> Text Origin: Council Mandate
Article 1, first paragraph, point (2)(a)(-1a), third indent				
71f			<u>- '(e) administration of benchmarks which are used in their managed AIFs.'</u>	<u>- '(e) administration of benchmarks which are used in the AIFs that they manage.'</u> TM1304 Text Origin: Council Mandate
Article 1, first paragraph, point (2)(d)				

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
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:	(b) paragraph 6 is replaced by the following: Text Origin: Commission Proposal
Article 1, first paragraph, point (2)(b), amending provision, numbered paragraph (6)				
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. Articles 2(2), Article 15, Article 9(2) of Directive 2019/2034/EU, Articles 15, 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), 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), <u>of this Article fall within the scope of Directive 2014/65/EU and</u> are provided by AIFMs.;
Article 1, first paragraph, point (3)				
74	(3) Article 7 is amended as follows:	(3) Article 7 is amended as follows:	(3) Article 7 is amended as follows:	(3) Article 7 is amended as follows:

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
				Text Origin: Commission Proposal
Article 1, first paragraph, point (3)(a)				
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:	(a) paragraph 2 is replaced by the following: Text Origin: Commission Proposal
Article 1, first paragraph, point (3)(a), amending provision, numbered paragraph (2)				
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:	‘ 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: Text Origin: Commission Proposal
Article 1, first paragraph, point (3)(a), amending provision, numbered paragraph (2), point (a)				
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:	(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: Text Origin: Commission Proposal
Article 1, first paragraph, point (3)(a), amending provision, numbered paragraph (2), point (a)(i)				

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78	(i) a detailed description of their role, title and level of seniority;	(i) a detailed description of their role, title and level of seniority;	(i) a detailed description of their role, title and level of seniority;	(i) a detailed description of their role, title and level of seniority; TM1304 CONS to check Text Origin: EP Mandate
Article 1, first paragraph, point (3)(a), amending provision, numbered paragraph (2), point (a)(ii)				
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;	(ii) a description of their reporting lines and responsibilities in the AIFM and outside the AIFM; Text Origin: Commission Proposal
Article 1, first paragraph, point (3)(a), amending provision, numbered paragraph (2), point (a)(iii)				
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;	(iii) an overview of their time allocated to each responsibility; Text Origin: Commission Proposal
Article 1, first paragraph, point (3)(a), amending provision, numbered paragraph (2), point (a)(iv)				
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;	(iv) a description of the technical and human resources that support their activities; Text Origin: Council Mandate
Article 1, first paragraph, point (3)(a), amending provision, numbered paragraph (2), point (aa)				
81a				

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
				<u>(aa) the legal name and relevant identifier of the AIFM;</u> TM1304 moved up from 85a. Relevant to the political issue concerning inclusion of delegation information in Article 7, which is not handled at technical level
Article 1, first paragraph, point (3)(a), amending provision, numbered paragraph (2), point (b)				
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;	(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; Text Origin: Council Mandate
Article 1, first paragraph, point (3)(a), amending provision, numbered paragraph (2), point (c)				
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 <u>of this Directive, and with its obligations under Regulation (EU) 2019/2088</u> 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	Draft Agreement
Article 1, first paragraph, point (3)(a), amending provision, numbered paragraph (2), point (d)				
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;	(d) information on the remuneration policies and practices pursuant to Article 13; Text Origin: Commission Proposal
Article 1, first paragraph, point (3)(a), amending provision, numbered paragraph (2), point (e)				
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 and a detailed description of the human and technical resources to be used by the AIFM for monitoring and controlling the delegate.; <u>comprising:</u>	(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.;	
Article 1, first paragraph, point (3)(a), amending provision, numbered paragraph (2), point (ea)				
85a		<u>(i) the legal name and relevant legal identifier of the AIFM;</u>		<u>(i)</u> TM1304 moved up to 81a Text Origin: EP Mandate
Article 1, first paragraph, point (3)(a), amending provision, numbered paragraph (2), point (eb)				
85b				

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
		<u>(ii) the legal name and relevant legal identifier of the AIF and its investment strategy;</u>		Text Origin: EP Mandate
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 whether each such delegation amounts to a partial or full delegation;</u>		
85f				

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
		<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		<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				

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
		<u>(viii) - employed by or committed to the AIFM for monitoring and controlling the delegate;</u>		
Article 1, first paragraph, point (3)(a), amending provision, numbered paragraph (2), point (ec)				
85l			<u>2a. Member States shall require authorised AIFMs to keep the information provided to its competent authorities updated.'</u>	TM1304 Question of need given existing 10(1)
85m		<u>(aa) the following paragraph is inserted:</u>		
Article 1, first paragraph, point (3)(a), amending provision, numbered paragraph (2), point (ed)				
85n		<u>'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.'</u>		TM1304 Question of need given existing 10(1)
Article 1, first paragraph, point (3)(b)				

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
86	(b) paragraph 5 is replaced by the following:	(b) paragraph 5 is replaced by the following:	(b) paragraph 5 is replaced by the following: <u>deleted</u>	(b) paragraph 5 is replaced by the following: TM 1304 NB, the current version of Article 7 of AIFMD has paragraphs 5 as in the Commission proposal in lines 87 and 88, CNL's position is to not change paragraph 5 (and therefore leave the two subparagraphs (reflected in EC's lines 87 and 88) as they are in the current AIFMD Text Origin: Commission Proposal
Article 1, first paragraph, point (3)(b), amending provision, numbered paragraph (5)				
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. The competent authorities shall, on a quarterly basis, inform ESMA of authorisations granted or withdrawn in accordance with this Chapter. <u>deleted</u>	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 list of AIFs managed and/or marketed in the Union by authorised AIFMs.</u> TM1304 to align with requirements on ESAM in register in line 88. EP and CONS to reflect Text Origin: Commission Proposal
Article 1, first paragraph, point (3)(b), amending provision, numbered paragraph (5), first paragraph				

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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.	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>	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. Text Origin: Commission Proposal
Article 1, first paragraph, point (3)(b), amending provision, numbered paragraph (5), second paragraph				
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>	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'). <u>deleted</u>	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'). <u>deleted</u> Text Origin: Council Mandate
Article 1, first paragraph, point (3)(b), amending provision, numbered paragraph (5), third paragraph				
90	The delegation notifications shall include the following:	<i>deleted</i>	The delegation notifications shall include the following: <u>deleted</u>	The delegation notifications shall include the following: <u>deleted</u> Text Origin: Council Mandate
Article 1, first paragraph, point (3)(b), amending provision, numbered paragraph (5), third paragraph, point (a)				

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91	(a) information on the AIFM and the AIF concerned;	<i>deleted</i>	(a) information on the AIFM and the AIF concerned; <u>deleted</u>	(a) information on the AIFM and the AIF concerned; <u>deleted</u> Text Origin: Council Mandate
Article 1, first paragraph, point (3)(b), amending provision, numbered paragraph (5), third paragraph, point (b)				
92	(b) information on the delegate, specifying the delegate's domicile and whether it is a regulated entity or not;	<i>deleted</i>	(b) information on the delegate, specifying the delegate's domicile and whether it is a regulated entity or not; <u>deleted</u>	(b) information on the delegate, specifying the delegate's domicile and whether it is a regulated entity or not; <u>deleted</u> Text Origin: Council Mandate
Article 1, first paragraph, point (3)(b), amending provision, numbered paragraph (5), third paragraph, point (c)				
93	(c) a description of the delegated portfolio management and risk management functions;	<i>deleted</i>	(c) a description of the delegated portfolio management and risk management functions; <u>deleted</u>	(c) a description of the delegated portfolio management and risk management functions; <u>deleted</u> Text Origin: Council Mandate
Article 1, first paragraph, point (3)(b), amending provision, numbered paragraph (5), third paragraph, point (d)				
94	(d) a description of the retained portfolio management and risk management functions;	<i>deleted</i>	(d) a description of the retained portfolio management and risk management functions; <u>deleted</u>	(d) a description of the retained portfolio management and risk management functions; <u>deleted</u> Text Origin: Council Mandate
Article 1, first paragraph, point (3)(b), amending provision, numbered paragraph (5), third paragraph, point (e)				
95				

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	(e) any other information necessary to analyse the delegation arrangements;	<i>deleted</i>	(e) any other information necessary to analyse the delegation arrangements; <u>deleted</u>	(e) any other information necessary to analyse the delegation arrangements; <u>deleted</u> Text Origin: Council Mandate
Article 1, first paragraph, point (3)(b), amending provision, numbered paragraph (5), third paragraph, point (f)				
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) a description of the competent authorities' supervisory activities, including desk-based reviews and on-site inspections and the results of such activities; <u>deleted</u>	(f) a description of the competent authorities' supervisory activities, including desk-based reviews and on-site inspections and the results of such activities; <u>deleted</u> Text Origin: Council Mandate
Article 1, first paragraph, point (3)(b), amending provision, numbered paragraph (5), third paragraph, point (g)				
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) any details on the cooperation between the competent authority of the AIFM and the supervisory authority of the delegate. <u>deleted</u>	(g) any details on the cooperation between the competent authority of the AIFM and the supervisory authority of the delegate. <u>deleted</u> Text Origin: Council Mandate
Article 1, first paragraph, point (3)(b), amending provision, numbered paragraph (5), third paragraph, point (gb)				
97a		<u>(bb) paragraph 7 is replaced by the following:</u>		NB: Novelty in EP amendment is " ESMA may design such forms, templates and procedures with the objective of obtaining information which is comparable between AIFMs

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				and between jurisdictions. ESMA may also take into account the information requirements for the provision of the report referred to in paragraph 9." the rest is as in current paragraph 7 AIFMD.
97b		" <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>		
97c		<u>Power is conferred on the Commission to adopt the implementing technical standards</u>		

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		<u>referred to in the first subparagraph of this paragraph in accordance with Article 15 of Regulation (EU) No 1095/2010.'</u> "		
Article 1, first paragraph, point (3)(b), amending provision, numbered paragraph (5), third paragraph, point (ga)				
97d		<u>(ba) paragraph 6 is replaced by the following:</u>		NB: The EP Amendments add to the existing situation of the current AIFMD, Article 7, paragraph 6, the following sentence to the first subparagraph (line 97b): "and to specify situations where the name of the AIFs it intends to manage could be materially deceptive or misleading to the investor." (political point re greenwashing and other concerns)
97e		" <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</u>		

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		<u>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>		
97f		<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>		
Article 1, first paragraph, point (3)(c)				
98	(c) the following paragraphs 8 and 9 are added:	(c) the following paragraphs 8 and 9 are <u>paragraph 9 is</u> added:	(c) <u>(b)</u> the following paragraphs 8 and 9 are <u>paragraph 8 is</u> added:	
Article 1, first paragraph, point (3)(c), amending provision, numbered paragraph (8)				
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	deleted	deleted <u>Moved to line 101</u>	

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	finance. The standard forms and templates shall include information fields covering all information referred to in paragraph 5, fourth subparagraph.			
Article 1, first paragraph, point (3)(c), amending provision, numbered paragraph (8), first paragraph				
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.	deleted	deleted	
Article 1, first paragraph, point (3)(c), amending provision, numbered paragraph (9)				
101	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.;	9. <u>By ... /24 months after the date of application of this amending directive],</u> ESMA shall provide the European Parliament, the Council and the Commission with regular reports, at least every two years <u>a report</u> , analysing market practices regarding delegation to entities located in third countries and compliance with Articles 7 and 20.;	9. deleted <u>'8. Before the start of the review referred to in Article 69b,</u> 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 <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</u>	9. <u>By ... /60 months after the date of application of this amending directive]</u> 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 <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 Article 24(2),</u>

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			<u>point (d) of Article 24(2) and on the exercise of its supervisory convergence powers.</u> ;	<u>point (d) and on the exercise of its supervisory convergence powers.</u> ;
				TM1304 Date aligned with line 237 (start of review under 69b) Text Origin: Council Mandate
Article 1, first paragraph, point (4)				
102	(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:	(4) in Article 8(1), point (c) is replaced by the following: Text Origin: Commission Proposal
Article 1, first paragraph, point (4), amending provision, first paragraph				
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	(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	(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	(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

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	who are committed full-time to conduct the business of that AIFM and who are resident in the Union meeting such conditions;;	who are committed full-time <u>or on a full-time equivalent basis</u> to conduct the business of that AIFM and who are resident in the Union meeting such conditions;÷	<u>executive member or members of the governing body of the AIFM</u> who are committed full-time to conduct the business of that AIFM and who are resident in the Union, meeting such conditions;÷.	<u>executive member or members of the governing body of the AIFM</u> who are committed full-time to conduct the business of that AIFM and who are resident <u>domiciled</u> in the Union, meeting such conditions;÷. TM1304 CONS to check reinsertion of 'resident'. COM and CONS resistant to "FTE basis" in EP text 2504 'domiciled' added at COM recommendation, also cf line 256 UCITS Text Origin: Council Mandate
103a		<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</u>		

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
		<u>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>		
103b		<u>(4a) in Article 12, the following paragraph is inserted:</u>		
103c		<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>		
103d				

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
		<u>(1) assessing the costs charged by AIFMs to investors in AIFs, and the reasons for cost levels and for differences between them;</u>		
103e		<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 in other jurisdictions worldwide;</u>		
103f		<u>(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.</u>		
103g		<u>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 Council¹.</u> <u>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</u>		

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
		<u>relating to undertakings for collective investment in transferable securities (UCITS) (recast) (OJ L 302, 17.11.2009, p. 32).</u>		
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> "		
Article 1, first paragraph, point (4a)				
103j		<u>(4b) Article 14 is amended as follows:</u>		<u>(4b) Article 14 is amended as follows:</u> Text Origin: EP Mandate
Article 1, first paragraph, point (4)(-a)				
103k				

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
		<u>(a) (a) the following paragraph is inserted:</u>		<u>(a) the following paragraph is inserted:</u> Text Origin: EP Mandate
Article 1, first paragraph, point (4), amending provision, first paragraph a				
1031		" <u>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</u>		<u>2a. Where an AIFM manages or intends to manage an AIF at the initiative of a third-party, including but not limited to AIFs using the name of the initiator and/or appointing the initiator as a delegate pursuant to Article 20, 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.</u>

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
		<u>and comprehensively disclosed to investors.</u>	"	Discussed TM 15.03. COM to provide info on cases and issues to be addressed in these lines TM1304: inserted language suggested by COM for consideration by EP and CONS TM2504 CONS confirms still resistance to text on white label products
Article 1, first paragraph, point (4)(-b)				
103m		<u>(b) the following paragraph is added:</u>		<u>(b) In paragraph 4, the following points are added:</u> TM1304: inserted language suggested by COM for consideration by EP and CONS
Article 1, first paragraph, point (4)(-b), amending provision, first paragraph				
103n		" <u>"4a. In order to ensure uniform conditions of application of this Article, ESMA shall develop draft regulatory technical standards to specify:</u>		" <u>deleted</u>
Article 1, first paragraph, point (4)(-b), amending provision, second paragraph				
103o		<u>(a) the types of relationship between the AIFM and a third-party when the AIFM manages an</u>		<u>c) the types of relationships between the AIFM and a third-party initiator that increase the</u>

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
		<u>AIF on behalf of the third-party and of conflicts of interest as referred to in paragraph 2a;</u>		<u>potential risk of conflicts of interest referred to in paragraph 2a;</u> TM1304: inserted language suggested by COM for consideration by EP and CONS
Article 1, first paragraph, point (4)(-b), amending provision, third paragraph				
103p		<u>(b) the criteria to be used by the relevant competent authorities to assess whether AIFMs comply with their obligations under paragraph 2a.</u>		<u>(d) the criteria to be used by the relevant competent authorities to assess whether AIFMs comply with their obligations under paragraph 2a.</u> TM1304: inserted language suggested by COM for consideration by EP and CONS
Article 1, first paragraph, point (4)(-b), amending provision, fourth paragraph				
103q		<u>Power is conferred on the Commission to adopt the regulatory technical standards referred to in this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.</u> "		<u>deleted</u> "
Article 1, first paragraph, point (5)				
104	(5) Article 15 is amended as follows:	(5) Article 15 is amended as follows:	(5) Article 15 is amended as follows:	(5) Article 15 is amended as follows:

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
				Text Origin: Commission Proposal
Article 1, first paragraph, point (5)(a)				
105	(a) in paragraph 3, the following point (d) is added:	(a) in paragraph 3, the following point (d) is added:	(a) in paragraph 3, the following point (d) is added:	(a) in paragraph 3, the following point (d) is added: Text Origin: Commission Proposal
Article 1, first paragraph, point (5)(a), amending provision, first paragraph				
106	(d) for loan granting activities, implement effective policies, procedures and processes for the granting of credit, for assessing the credit risk and for administering and monitoring their credit portfolio, keep those policies, procedures and processes up to date and effective and review them regularly and at least once a year.;	(d) for loan granting <u>originating</u> activities, <u>other than in respect of shareholder loans where such loans do not exceed in aggregate 150 % of the capital of the AIF,</u> implement effective policies, procedures and processes for the granting of credit, for assessing the credit risk and for administering and monitoring their credit portfolio, keep those policies, procedures and processes up to date and effective and review them regularly and at least once a year.;	(d) for loan granting <u>originating</u> activities, implement effective policies, procedures and processes for the granting of credit. <u>Where they engage in loan originating activities or in purchasing loans from third parties, they shall also implement effective policies, procedures and processes</u> for assessing the credit risk and for administering and monitoring their credit portfolio, keep those policies, procedures and processes up to date and effective and review them regularly and at least once a year.;	
106a			<u>Member States may determine that the requirement set out in the first subparagraph of point (d) of</u>	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			<u>paragraph 3 shall not apply to origination of shareholder loans, provided that these shareholder loans:</u>	
106b			<u>(i) do not exceed in aggregate 100 % of the AIF's capital; or</u>	
106c			<u>(ii) are granted to portfolio undertakings which acquire and manage real estate or participations in real estate companies, and in which the AIF directly or indirectly holds 100 % of the capital or voting rights. This requirement shall apply on a look-through basis to underlying assets controlled directly or indirectly by the AIF or the AIFM acting on behalf of the AIF.'</u>	
Article 1, first paragraph, point (5)(b)				
107	(b) the following paragraphs 4a to 4e are inserted between the paragraphs 4 and 5:	(b) the following paragraphs 4a to 4e <u>4ea</u> are inserted between the paragraphs 4 and 5:	(b) the following paragraphs 4a to 4e <u>4f</u> are inserted between the paragraphs 4 and 5:	
Article 1, first paragraph, point (5)(b), amending provision, first paragraph				

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
108	4a. An AIFM shall ensure that a loan originated to any single borrower by the AIF it manages does not exceed 20 % of the AIF's capital where the borrower is one of the following:	4a. An AIFM shall ensure that a loan originated to any single borrower by the AIF it manages does not exceed 20 % of the AIF's capital where the borrower is one of the following:	4a. An AIFM shall ensure that a loan <u>loans</u> originated to any single borrower by the AIF it manages does <u>do</u> not exceed 20 % of the AIF's capital where the borrower is one of the following:	4a. An AIFM shall ensure that a loan <u>loans</u> originated to any single borrower by the AIF it manages does <u>do</u> not exceed 20 % of the AIF's capital where the borrower is one of the following: Text Origin: Council Mandate
Article 1, first paragraph, point (5)(b), amending provision, first paragraph, point (a)				
109	(a) a financial undertaking within the meaning of Article 13(25) of Directive 2009/138/EC;	(a) a financial undertaking within the meaning of Article 13(25) of Directive 2009/138/EC;	(a) a financial undertaking within the meaning of Article 13(25) of Directive 2009/138/EC;	(a) a financial undertaking within the meaning of Article 13(25) of Directive 2009/138/EC; Text Origin: EP Mandate
Article 1, first paragraph, point (5)(b), amending provision, first paragraph, point (b)				
110	(b) a collective investment undertaking within the meaning of Article 4(1), point (a), of this Directive or within the meaning of Article 1(2) of Directive 2009/65/EC.'	(b) a collective investment undertaking within the meaning of Article 4(1), point (a), of this Directive or within the meaning of Article 1(2) of Directive 2009/65/EC.'	(b) a collective investment undertaking <u>an AIF</u> within the meaning of Article 4(1), point (a), of this Directive; or within the meaning of Article 1(2) of Directive 2009/65/EC.'	(b) a collective investment undertaking within the meaning of Article 4(1), point (a), of this Directive or within the meaning of Article 1(2) of Directive 2009/65/EC.' <u>an AIF; or</u> Text Origin: Council Mandate
Article 1, first paragraph, point (5)(b), amending provision, first paragraph, point (ba)				
110a			<u>(c) a UCITS within the meaning of Article 1(2) of Directive 2009/65/EC.'</u>	<u>(c) a UCITS.</u> Text Origin: Council Mandate

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Article 1, first paragraph, point (5)(b), amending provision, first paragraph, point (bb)				
110b			<u>For the purposes of determining the compliance with the restriction set out in the first subparagraph, the AIFM shall combine the loans originated by the AIF it manages and that AIF's loan exposures gained through a special purpose vehicle which originates loans for or on behalf of the AIF or AIFM in respect of the AIF.</u>	<u>For the purposes of the restriction set out in the first subparagraph, the loans originated by the AIF shall be combined with that AIF's loan exposures gained through a special purpose vehicle which originates loans for or on behalf of the AIF or AIFM in respect of the AIF.</u> Text Origin: Council Mandate
Article 1, first paragraph, point (5)(b), amending provision, first paragraph, first paragraph				
111	The restriction set out in the first subparagraph shall be without prejudice to the thresholds, restrictions and conditions set out in Regulations (EU) 2015/760¹, (EU) 345/2013² and (EU) 346/2013³. 1. 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). 2. 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). 3. 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).	The restriction set out in the first subparagraph shall be without prejudice to the thresholds, restrictions and conditions set out in Regulations (EU) 2015/760¹, (EU) 345/2013² and (EU) 346/2013³. 1. 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). 2. 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). 3. 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).	The restriction set out in the first subparagraph shall be without prejudice to the thresholds, restrictions and conditions set out in Regulations (EU) 2015/760¹, (EU) 345/2013² and (EU) 346/2013³. 1. 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). 2. 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). 3. 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).	The restriction set out in the first subparagraph shall be without prejudice to the thresholds, restrictions and conditions set out in Regulations (EU) 2015/760¹, (EU) 345/2013² and (EU) 346/2013³. 1. 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). 2. 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). 3. 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).

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
				Text Origin: Commission Proposal
111a			<u>4aa. An AIFM shall ensure that the leverage of a loan-originating AIF it manages represents no more than 150 % of the net asset value of the AIF.</u> cf EP 106	
111b			<u>The leverage shall be expressed as the ratio between the exposure of an AIF, calculated according to the commitment method as defined by means of the delegated acts referred to in Article 4(3), and its net asset value.</u>	
111c			<u>Borrowing arrangements which are temporary in nature and are fully covered by contractual capital commitments from investors in the AIF shall not be considered to constitute leverage for the purposes of this paragraph.</u>	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
111d			<u>The requirements set out in the first subparagraph shall apply to AIFs that gain exposure to a loan through a special purpose vehicle which originates a loan for or on behalf of the AIF or AIFM in respect of the AIF.</u>	
111e			<u>Member States may determine that the requirement set out in the first subparagraph shall not apply to AIFs the lending activities of which solely consists in originating shareholder loans, provided that these shareholder loans:</u>	
Article 1, first paragraph, point (5)(b), amending provision, first paragraph e(i)				
111f			<u>(i) do not exceed in aggregate 100 % of the AIF's capital; or</u>	
Article 1, first paragraph, point (5)(b), amending provision, first paragraph e(ii)				
111g			<u>(ii) are granted to portfolio undertakings which acquire and manage real estate or participations in real estate companies, and in which the AIF directly or indirectly holds 100 % of the capital or voting rights. This</u>	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			<u>requirement shall apply on a look-through basis to underlying assets controlled directly or indirectly by the AIF or the AIFM acting on behalf of the AIF.</u>	
Article 1, first paragraph, point (5)(b), amending provision, second paragraph				
112	4b. The investment limit of 20 % laid down in paragraph 4a shall:	4b. The investment limit of 20 % laid down in paragraph 4a shall:	4b. The investment limit of 20 % laid down in paragraph 4a shall:	4b. The investment limit of 20 % laid down in paragraph 4a shall: Text Origin: EP Mandate
Article 1, first paragraph, point (5)(b), amending provision, second paragraph, point (a)				
113	(a) apply by the date specified in the rules or instruments of incorporation of the AIF;	(a) apply by the date specified in the rules or instruments of incorporation of the AIF;	(a) apply by the date specified in the rules or instruments of incorporation <u>or prospectus</u> of the AIF; <u>This date shall not exceed 24 months from the date the AIF first offers shares for subscription.</u>	(a) apply by the date specified in the <u>AIF</u> rules or , instruments of incorporation <u>or prospectus, which shall not be later than 24 months from the date of the first subscription for units or shares</u> of the AIF; TM2803 date of offer changed because of difficulty to know / establish this date by NCA Text Origin: Council Mandate
Article 1, first paragraph, point (5)(b), amending provision, second paragraph, point (b)				
114	(b) cease to apply once the AIF starts to sell assets in order to redeem investors' units or shares after the end of the life of the AIF;	(b) cease to apply once the AIF starts to sell assets in order to redeem investors' units or shares after the end of the life of the AIF;	(b) cease to apply once the AIF <u>AIFM</u> starts to sell assets in order to redeem investors' units or	(b) cease to apply once the AIF <u>AIFM</u> starts to sell assets <u>of the AIF</u> in order to redeem investors'

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			shares after the end <u>as part</u> of the lifewind-down of the AIF;	units or shares after the end <u>as part</u> of the life <u>liquidation</u> of the AIF; Text Origin: Council Mandate
Article 1, first paragraph, point (5)(b), amending provision, second paragraph, point (c)				
115	(c) be temporarily suspended for up to 12 months where the AIF raises additional capital or reduces its existing capital.	(c) be temporarily suspended for up to 12 months where the AIF raises additional capital or reduces its existing capital.	(c) be temporarily suspended for up to 12 months where the AIF <u>AIFM</u> raises additional capital or reduces its existing capital.	(c) be temporarily suspended for up to 12 months where <u>where the capital of the AIF is increased or reduced.</u> <u>The suspension referred to in point (c) of the first subparagraph shall be limited in time to the period that is strictly necessary taking due account of the interests of the investors in the AIF</u> raises additional capital or reduces its existing capital <u>and, in any case, shall last no longer than 12 months.</u> TM2803: COM suggests additional wording for limitation of suspension to necessary of ELTIF TM 13.04 Updated to align with definition of "capital of the AIF" that has been included in line 67b. Limitation in ELTIF added to ensure no abuse in case of regular subscriptions / redemptions. Aligned to ELTIF wording following to EC suggestion.

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
				Text Origin: Council Mandate
Article 1, first paragraph, point (5)(b), amending provision, third paragraph				
116	4c. The application date referred to in paragraph 4b, point (a), shall take account of the particular features and characteristics of the assets to be invested by the AIF, and shall be no later than half the life of the AIF as indicated in the AIF's constitutive documents. In exceptional circumstances, the competent authority of the AIFM, upon submission of a duly justified investment plan, may approve an extension of this time limit by no more than one additional year.	4c. The application date referred to in paragraph 4b, point (a), shall take account of the particular features and characteristics of the assets to be invested by the AIF, and shall be no later than half the life of the AIF as indicated in the AIF's constitutive documents. In exceptional circumstances, the competent authority of the AIFM, upon submission of a duly justified investment plan, may approve an extension of this time limit by no more than one additional year.	4c. The application date referred to in paragraph 4b, point (a), shall take account of the particular features and characteristics of the assets to be invested by the AIF, and shall be no later than half the life of the AIF as indicated in the AIF's constitutive documents. In exceptional circumstances, the competent authority of the AIFM, upon submission of a duly justified investment plan, may approve an extension of this time limit by no more than one additional year.	4c. The application date referred to in paragraph 4b, point (a), shall take account of the particular features and characteristics of the assets to be invested by the AIF, and shall be no later than half the life of the AIF as indicated in the AIF's constitutive documents. In exceptional circumstances, the competent authority <u>authorities</u> of the AIFM, upon submission of a duly justified investment plan, may approve an extension of this time limit by no more than one additional year. Text Origin: Council Mandate
Article 1, first paragraph, point (5)(b), amending provision, fourth paragraph				
117	4d. The AIF shall not grant loans to the following entities:	4d. The AIF shall not grant loans to the following entities:	4d. The AIF <u>AIFM</u> shall <u>ensure that an AIF does</u> not grant loans to the following entities:	4d. The AIF <u>AIFM</u> shall <u>ensure that an AIF does</u> not grant loans to the following entities: TM2504 Text Origin: Council Mandate
Article 1, first paragraph, point (5)(b), amending provision, fourth paragraph, point (a)				
118				

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	(a) its AIFM or the staff of its AIFM;	(a) its AIFM or the staff of its AIFM;	(a) its AIFM or the staff of its AIFM;	(a) its^{the} AIFM or the staff of that^{that} AIFM; TM2504 Consider recital or revision to clarify that 'staff' is broad and includes senior management and board members COM to consider Text Origin: Commission Proposal
Article 1, first paragraph, point (5)(b), amending provision, fourth paragraph, point (aa)				
118a		<u>(aa) an entity within the same group as the AIFM as defined in Article 2(11) of Directive 2013/34/EU of the European Parliament and the Council¹, except where that entity is a financial undertaking that exclusively finances borrowers that are not mentioned in points (a), (b) and (c) of this paragraph;</u> <u>1. Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).</u>		<u>(aa) deleted (dealt in 120a)</u>

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
		cf Council 120a		
Article 1, first paragraph, point (5)(b), amending provision, fourth paragraph, point (b)				
119	(b) its depositary;	(b) <u>its depositary and delegates of its depositary</u> ;	(b) its depositary <u>and delegates of it depositary</u> ;	(b) its depositary <u>and entities to which the depositary has delegated functions in respect of the AIF, in accordance with Article 21</u> ; TM2504 Text Origin: EP Mandate
Article 1, first paragraph, point (5)(b), amending provision, fourth paragraph, point (c)				
120	(c) the entity to which its AIFM has delegated functions in accordance with Article 20.	(c) the entity to which its AIFM has delegated functions in accordance with Article 20.	(c) the entity to which its AIFM has delegated functions in accordance with Article 20 <u>and the staff of this entity</u> .	(c) the entity to which its AIFM has delegated functions in accordance with Article 20 <u>and the staff of this entity</u> . TM2504 Text Origin: Council Mandate
Article 1, first paragraph, point (5)(b), amending provision, fourth paragraph(d)				
120a			<u>(d) an entity within the same group as defined in Article 2(11) of Directive 2013/34/EU of the European Parliament and the Council, except where that entity is a financial undertaking that exclusively finances borrowers that are not mentioned in points (a) to (d) of this paragraph.</u>	<u>(ca) an entity within the same group, as defined in Article 2(11) of Directive 2013/34/EU of the European Parliament and the Council¹, as the AIFM, except where that entity is a financial undertaking that exclusively finances borrowers that are not</u>

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
				<u>mentioned in points (a), (b) and (c) of this paragraph;</u> <u>1. Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).</u> TM2504: EP text in 118a (inc 'as the AIFM'), revised
Article 1, first paragraph, point (5)(b), amending provision, fourth paragraph, point (cb)				
120b		<u>(4da) The proceeds of the loan, minus the fees for the administration of the loan, shall be attributed to the fund in full. All costs and expenses linked to the administration of the loan shall be clearly disclosed in accordance with Article 23 of this Directive.</u>		TM2803 COM to circulate ESMA guidelines / Better Finance report which gave rise to this text TM2504 rediscussed (guidelines were circulated, not BF report).
Article 1, first paragraph, point (5)(b), amending provision, fourth paragraph(d)				
120c			<u>4da. Without prejudice to other instruments of Union law, Member State may prohibit AIFs granting loans to consumers within the meaning of Article 3(a) of Directive 2008/48/EC in their territory. This shall not affect</u>	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			<u>marketing of AIFs engaged in consumer lending in the Union.</u>	
Article 1, first paragraph, point (5)(b), amending provision, fourth paragraph, point (cc)				
120d			<u>4db. An AIFM shall not manage an AIF whose investment strategy, as specified in the relevant AIF's rules, instrument of incorporation and prospectus, is to originate loans, or gain exposure to loans through a special purpose vehicle which originates a loan for or on behalf of the AIF or AIFM in respect of the AIF, with the sole purpose of transferring those loans or exposures to third parties ('originate-to-distribute').</u> cf EP 122d	<u>4db. An AIFM shall not manage an AIF whose investment strategy, as specified in the relevant AIF's rules, instruments of incorporation or prospectus, is to originate loans, or gain exposure to loans through a special purpose vehicle which originates a loan for or on behalf of the AIF or AIFM in respect of the AIF, with the purpose of transferring those loans or exposures to third parties (the 'originate-to-distribute strategy').</u> Text Origin: Council Mandate
Article 1, first paragraph, point (5)(b), amending provision, fifth paragraph				
121	4e. An AIFM shall ensure that the AIF it manages retains, on an ongoing basis, 5% of the notional value of the loans it has originated and subsequently sold on the secondary market.	4e. An AIFM shall ensure that the AIF it manages retains, on an ongoing basis <u>and until maturity</u> , 5% of the notional value of the loans it has originated and subsequently sold on the secondary market.	4e. An AIFM shall ensure that the AIF it manages retains, on an ongoing basis <u>for the period of two years from the signing date or until maturity whichever is shorter</u> , 5% of the notional value of the loans it has originated, <u>or purchased from a special purpose vehicle which originates a loan for or on behalf of the AIF or AIFM in respect of the AIF, and subsequently sold to</u>	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			third parties and subsequently sold on the secondary market. In the Council's GA, paragraph 4f.	
Article 1, first paragraph, point (5)(b), amending provision, fifth paragraph, first paragraph				
122	The requirement set out in the first subparagraph does not apply to the loans that the AIF has purchased on the secondary market.';	The requirement set out in the first subparagraph does not apply to the loans that the AIF has purchased on the secondary market.'; <u>or where one of the following applies:</u>	<u>By way of derogation, the requirement set out in the first subparagraph does not apply where:</u> the requirement set out in the first subparagraph does not apply to the loans that the AIF has purchased on the secondary market.'	<u>By way of derogation, the requirement set out in the first subparagraph does not apply where:</u> the requirement set out in the first subparagraph does not apply to the loans that the AIF has purchased on the secondary market.' TM2803 purchased loans are not 'originatd' therefore not caught be first subpara Text Origin: Council Mandate
Article 1, first paragraph, point (5)(ba)				
122a		<u>a) the sale of the loan is necessary for the AIF not to be in breach of its mandate or of one of its investment or diversification rules and such potential breach is unintentional on the part of the manager, for instance as a result of the exercise of subscription or redemption rights;</u>	<u>(a) The AIF starts selling assets in order to redeem investors' units or shares as part of the wind-down of the AIF;</u>	<u>(a) the AIFM starts to sell assets of the AIF in order to redeem units or shares as part of the liquidation of the AIF;</u>

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
		This point is almost identical with Council's point (c).		
Article 1, first paragraph, point (5)(bb)				
122b		<u><i>b) the disposal is necessary as a result of the Union sanctions;</i></u>	<u><i>(b) The borrower or any of its shareholders are subject to EU sanctions; or</i></u>	<u><i>(b) the disposal is necessary for the purposes of compliance with Union sanctions;</i></u> TM2803: explanation of word 'sanctions' needed in recital Text Origin: EP Mandate
Article 1, first paragraph, point (5)(bc)				
122c		<u><i>(bc) c) the AIF needs to dispose of the loans in order to redeem investors' units or shares as part of the wind down of the AIF.</i></u> Again, this point is similar to Council's (a).	<u><i>(c) The sale of the loan is necessary for the AIF not to be in breach of one of its investment or diversification rules and where this possible breach would materialise for reasons beyond the control of the AIF and of the AIFM that manages it, or as a result of the exercise of subscription or redemption rights.'</i></u>	<u><i>(c) the sale of the loan is necessary for the AIF not to be in breach of one of its investment or diversification rules and where such potential breach would materialise either for reasons beyond the control of the AIFM that manages the AIF, or as a result of the exercise of subscription or redemption rights.'</i></u> TM1803: COM resistant to reference to mandate. Text Origin: Council Mandate
Article 1, first paragraph, point (5)(bd)				
122d				

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
		<u>4ea. Member States shall prohibit AIFMs from managing AIFs whose investment strategy is to originate loans with the sole purpose of transferring those loans to third parties ("originate-to-distribute").';</u>		Dealt in122b
Article 1, first paragraph, point (6)				
123	(6) in Article 16, the following paragraphs 2a to 2h are inserted:	(6) in Article 16, the following paragraphs 2a to 2h are inserted:	(6) In Article 16, the following paragraphs 2a to 2h are inserted:	(6) in Article 16, the following paragraphs 2a to 2h are inserted: Text Origin: Commission Proposal
Article 1, first paragraph, point (6), amending provision, first paragraph				
124	2a. An AIFM shall ensure that the AIF it manages is closed-ended if the notional value of its originated loans exceeds 60 % of its net asset value.	2a. An AIFM shall ensure that the <u>loan originating</u> AIF it manages is closed-ended if the notional value <u>when the AIFM is not able to demonstrate to the competent authorities of its originated loans exceeds 60 %</u> <u>home Member State that the AIF has a sound liquidity risk management system that ensures the compatibility of its net asset value. liquidity management system with its redemption policy.</u>	2a. An AIFM shall ensure that the <u>loan originating</u> AIF it manages is closed-ended if the notional value of its originated loans exceeds 60 % of its net asset value.	
Article 1, first paragraph, point (6), amending provision, first paragraph, first paragraph				
125				

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	The requirement set out in the first subparagraph shall be without prejudice to the thresholds, restrictions or conditions set out in Regulations (EU) 345/2013, (EU) 346/2013, and (EU) 2015/760.	The requirement set out in the first subparagraph shall be without prejudice to the thresholds, restrictions or conditions set out in Regulations (EU) 345/2013, (EU) 346/2013, and (EU) 2015/760.	The requirement <u>requirements</u> set out in the first subparagraph shall be without prejudice to the thresholds, restrictions or conditions set out in Regulations (EU) 345/2013, (EU) 346/2013, and (EU) 2015/760 <u>apply to AIFs that gain exposure to a loan through a special purpose vehicle which originates a loan for or on behalf of the AIF or AIFM in respect of the AIF.</u>	
125a		<u>2aa. ESMA shall develop regulatory technical standards as regards the assessment by competent authorities whether a loan-originating AIF has a sound liquidity management system and may maintain an open-ended structure, having regard to the underlying loan exposure, average repayment time of the loans and overall granularity and composition of AIF portfolios. In drawing up those regulatory technical standards, ESMA shall consider whether that assessment should include specific liquidity management tools including those set out in points 1 and 2 of the list set out in Annex V and also whether such AIFs should be subject to any additional disclosure as regards the specificities of loan-</u>		

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
		<u>originating funds and their use of liquidity management tools in addition to the requirements set out in paragraph 2b.</u>		
125b			<u>2aa. By way of derogation from paragraph 2a, a loan originating AIF may be open-ended provided that its liquidity risk management system is compatible with its investment strategy and redemption policy.</u>	
Article 1, first paragraph, point (6), amending provision, second paragraph				
126	2b. After assessing the suitability in relation to the pursued investment strategy, the liquidity profile and the redemption policy, an AIFM that manages an open-ended AIF shall select at least one appropriate liquidity management tool from the list set out in Annex V, points 2 to 4, for possible use in the interest of the AIF's investors. The AIFM shall implement detailed policies and procedures for the activation and deactivation of any selected liquidity management tool and the operational and administrative arrangements for the use of such tool.	2b. After assessing the suitability in relation to the pursued investment strategy, the liquidity profile and the redemption policy, an AIFM that manages an open-ended AIF shall select at least one <u>two</u> appropriate liquidity management tool <u>tools</u> from the list set out in Annex V, points 2 to 4 <u>7</u> , for possible use in the interest of the AIF's investors. <u>That selection shall not prevent an AIFM from using other tools referred to in Annex V, points 2 to 8.</u> The AIFM shall implement detailed policies and procedures for the activation and deactivation of any selected liquidity management tool and the operational and	2b. After assessing the suitability in relation to the pursued investment strategy, the liquidity profile and the redemption policy, an AIFM that manages an open-ended AIF shall select at least one <u>two</u> appropriate liquidity management tool <u>tools</u> from the list set out in Annex V, points 2 to 4 <u>7</u> , for possible use in the interest of the AIF's investors. <u>By way of derogation,</u> the AIFM shall implement detailed policies and procedures for the activation and deactivation of any selected liquidity management tool and the operational and administrative arrangements for the use of such tool <u>may select only one liquidity</u>	2b. After assessing the suitability in relation to the pursued investment strategy, the liquidity profile and the redemption policy, an AIFM that manages an open-ended AIF shall select at least one <u>two</u> appropriate liquidity management tool <u>tools</u> from the list set out in Annex V, points 2 to 4 <u>7</u> , for possible use in the interest of the AIF's investors. The AIFM It shall implement detailed policies and procedures for the activation and deactivation of any selected liquidity management tool and the operational and administrative arrangements for the use of such tool <u>not be possible for</u>

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
		administrative arrangements for the use of such tool tools.	<u>management tool from Annex V, points 2 to 7, for an AIF it manages, if that AIF is authorised as money market fund in accordance with Regulation (EU) 2017/1131.</u>	<u>that selection to include only the tools set out in points 5a and 5b of that list.</u> TM 28.3 Suggestion for corresponding recital language (for EP added sentence) and 'for the purposes of that selection', meaning that 5a and 5b only count as one selection. Clarification; there should be procedures in place for every selected or used procedure
Article 1, first paragraph, point (6), amending provision, second paragraph a				
126a		<u>By way of derogation from the first subparagraph, an AIFM may select only one liquidity management tool from Annex V, points 2 to 7, for an AIF it manages, if that AIF is authorised as a money market fund in accordance with Regulation (EU) 2017/1131.</u>		<u>By way of derogation from the first subparagraph, an AIFM may select only one liquidity management tool from Annex V, points 2 to 7, for an AIF it manages, if that AIF is authorised as a money market fund in accordance with Regulation (EU) 2017/1131.</u> Text Origin: EP Mandate
Article 1, first paragraph, point (6), amending provision, second paragraph b				
126b			<u>The AIFM shall implement detailed policies and procedures for the activation and deactivation of any selected liquidity management tool and the operational and administrative</u>	<u>The AIFM shall implement detailed policies and procedures for the activation and deactivation of any selected liquidity management tool and the operational and administrative</u>

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			<u>arrangements for the use of such tool. This decision and relevant explanations shall be communicated to the competent authorities of the home Member State of the AIF.</u>	<u>arrangements for the use of such tool. The selection referred to in the first subparagraph and the detailed policies and procedures for the activation and deactivation shall be communicated to the competent authorities of the home Member State of the AIFM.</u> TM 28.3 . The structure of this paragraph shall be reviewed by LL for coherence. Precision added: the communication is to be made to the home MS of the AIFManager. Text Origin: Council Mandate
126c			<u>Redemption in kind as referred to in Annex V, point 7, can only be activated to meet redemptions requested by professional investors and if the redemption in kind corresponds to a pro rata share of the assets held by the AIF.</u>	
126d			<u>By way of derogation from subparagraph 3, the redemption in kind may not correspond to a pro rata share of the assets held by the</u>	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			<u>AIF if that AIF is solely marketed to professional investors or where the aim of that AIF's investment policy is to replicate the composition of a certain stock or debt securities index, and additionally if that AIF is an Exchange Traded Fund as defined in article 2(26) of MiFIR.</u>	
Article 1, first paragraph, point (6), amending provision, third paragraph				
127	2c. An AIFM that manages an open-ended AIF may, in the interest of AIF investors, temporarily suspend the repurchase or redemption of the AIF units or activate other liquidity management tools selected from the list set out in Annex V, points 2 to 4, and included in the fund rules or the instruments of incorporation of the AIFM.	2c. An AIFM that manages an open-ended AIF may, in the interest of AIF investors, temporarily suspend the repurchase or redemption of the AIF units or activate other liquidity management tools selected from the list set out in Annex V, points 2 to 4, and <u>8, where those tools are</u> included in the fund rules or the instruments of incorporation of the AIFM.	2c. An AIFM that manages an open-ended AIF may, in the interest of AIF investors, temporarily suspend the repurchase or redemption of the AIF units or <u>shares, or</u> activate <u>or deactivate</u> other liquidity management tools selected from the list set out in Annex V, points 2 to 4, 7 and included in the fund rules or the instruments of incorporation of the <u>AIF. In the interest of AIF investors, to ensure subscriptions and redemptions are processed at a fair price, the AIFM may also activate side pockets as referred to in point 8 of Annex V, in situations where the AIFM cannot ensure the fair and accurate valuation of some assets or where some assets have become non-tradable</u> AIFM.	2c. An AIFM that manages an open-ended AIF may, in the interest of AIF investors, temporarily suspend the repurchase or redemption of the AIF units or activate other liquidity management tools selected from <u>shares as referred to in point 1 of</u> the list set out in Annex V <u>or, where those tools are,</u> points 2 to 4, and included in the fund rules or the instruments of incorporation of the <u>AIF, activate or deactivate other liquidity management tools selected from points 2 to 7 of that list in accordance with paragraph 2b of this Article. The AIFM may also, in the interest of AIF investors, activate side pockets as referred to in point 8 of that list.</u> AIFM. TM2504: recital to clarify that circumstances of use can include valuation issues or non-tradability.

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
				Text Origin: Council Mandate
Article 1, first paragraph, point (6), amending provision, third paragraph, first paragraph				
128	The temporary suspension referred to in the first subparagraph may only be provided for in exceptional cases where circumstances so require and where suspension is justified having regard to the interests of the AIF investors.	The temporary suspension referred to in the first subparagraph may only be provided for in exceptional cases where circumstances so require and where suspension is justified having regard to the interests of the AIF investors.	The temporary suspension <u>and activation of side pockets</u> referred to in the first subparagraph may only be provided for in exceptional cases where circumstances so require and where suspension is justified having regard to the interests of the AIF investors.	The temporary suspension <u>An AIFM may only use suspensions or side pockets as</u> referred to in the first subparagraph may only be provided for in exceptional cases where circumstances so require and where suspension is justified having regard to the interests of the AIF investors. TM2504 Text Origin: Council Mandate
Article 1, first paragraph, point (6), amending provision, fourth paragraph				
129	2d. An AIFM shall, without delay, notify the competent authorities of its home Member State when activating or deactivating a liquidity management tool mentioned in 2b.	2d. An AIFM shall, without delay, notify the competent authorities of its home Member State when activating or deactivating a liquidity management tool mentioned in 2b. <u>in any of the following circumstances:</u>	2d. An AIFM shall, without delay, notify the competent authorities of its home Member State when activating or deactivating a liquidity management tool mentioned in 2b. <u>suspension of redemptions and redemption gates referred to in points 1 and 2 of Annex V.</u>	TM2504 Option discussed of limiting reporting of all cases to tools 1 and 8 (including possibly prior notification of side-pockets), leaving tools 2 to 7 to more limited reporting (non-ordinary or MS discretion). Possibility of level 2 measure also mentioned. Text Origin: Council Mandate
129a		<u>(a) - when, in situations of liquidity stress, an AIFM activates</u>		

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
		<i>or deactivates one of the liquidity management tools listed in Annex V, points 1 and 2 ;</i>		
129b		<i>(b) - <u>when activating or deactivating side pockets as referred to in point 8 of that Annex;</u></i>	<i>. <u>An AIFM shall notify the same competent authorities when activating or deactivating side pockets as referred to in point 8 of that Annex, in a reasonable timeframe prior to the activation or deactivation of this liquidity management tool.</u></i>	
129c		<i>(c) - <u>when activating or deactivating any other liquidity management tool in a manner that is not in the ordinary course of business as envisaged in the fund documentation.</u></i>	<i>. <u>Member States may require notifications from the AIFM to the competent authorities of the home Member State of the AIFM when the AIFM decides to activate redemption in kind, to extend the notice period or to increase the liquidity fee, the cap of the swing factor of the swing pricing or of the anti-dilution levy fee set out in the fund prospectus or increase the bid-ask spread in dual pricing for liquidity management purposes.</u></i>	
Article 1, first paragraph, point (6), amending provision, fourth paragraph, first paragraph				
130				

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	The competent authorities of the home Member State of the AIFM shall notify, without delay, the competent authorities of a host Member State of the AIFM, ESMA and ESRB of any notifications received in accordance with this paragraph.	The competent authorities of the home Member State of the AIFM shall notify, without delay, the competent authorities of a host Member State of the AIFM, ESMA and ESRB of any notifications <u>and ESMA of any notifications received in accordance with this paragraph. The competent authorities of the home Member State of the AIFM shall notify the ESRB if there is any potential risk to the stability and integrity of the financial system. ESMA shall have the power to share the information</u> received in accordance with this paragraph <u>with competent authorities</u> .	The competent authorities of the home Member State of the AIFM shall notify, without delay, the competent authorities of a host Member State of the AIFM, ESMA and, ESMA-ESRB of any notifications received in accordance with this paragraph <u>and, if there are potential risks to the stability and integrity of the financial system, the ESRB thereof</u> .	The competent authorities of the home Member State of the AIFM shall notify, without delay, the competent authorities of a host Member State of the AIFM <u>and, ESMA of any notifications received in accordance with this paragraph and, if there are potential risks to the stability and integrity of the financial system, the ESRB thereof. ESMA shall have the power to share the information, ESMA and ESRB of any notifications</u> received in accordance with this paragraph <u>with competent authorities</u> . TM2504 last sentence confirmed as still needed even after changes in Art 25(2) (data sharing, line 181a) Text Origin: Council Mandate
130a		It is impossible to delete this line.		
Article 1, first paragraph, point (6), amending provision, fifth paragraph				
131	2e. Member States shall ensure that at least the liquidity management tools set out in Annex V are available to AIFMs managing open-ended AIFs.	2e. Member States shall ensure that at least the liquidity management tools set out in Annex V are available to AIFMs managing open-ended AIFs.	2e. Member States shall ensure that at least the liquidity management tools set out in Annex V are available to AIFMs managing open-ended AIFs.	2e. Member States shall ensure that at least the liquidity management tools set out in Annex V are available to AIFMs managing open-ended AIFs.

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
				Text Origin: EP Mandate
Article 1, first paragraph, point (6), amending provision, fifth paragraph a				
131a			<u>2ea. ESMA shall develop draft regulatory technical standards to determine the requirements with which a loan-originating AIF must comply to maintain an open-ended structure. Such requirement should include elements on the selection and use of liquidity management tools, the availability of liquid assets and stress testing, as well as an appropriate redemption policy given the liquidity profile of the AIF, and shall take into account the risk profile and the nature of the loans.</u> cf EP 125a	TM2504 COM to work on text drawing on CONS 131a and EP 125b
Article 1, first paragraph, point (6), amending provision, sixth paragraph				
132	2f. ESMA shall develop draft regulatory technical standards to specify the characteristics of the liquidity management tools set out in Annex V.	2f. ESMA shall develop draft regulatory technical standards to specify <u>guidelines to specify best practice as regards</u> the characteristics of the liquidity management tools set out in Annex V <u>taking account of the diversity of investment strategies and underlying assets.</u>	2f. ESMA shall develop draft regulatory technical standards to specify the characteristics of the liquidity management tools set out in Annex V.	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
132a			<u>Power is delegated to the Commission to supplement this directive by adopting the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.'</u>	
Article 1, first paragraph, point (6), amending provision, seventh paragraph				
133	2g. ESMA shall develop draft regulatory technical standards on criteria for the selection and use of suitable liquidity management tools by the AIFMs for liquidity risk management, including appropriate disclosures to investors, taking into account the capability of such tools to reduce undue advantages for investors that redeem their investments first, and to mitigate financial stability risks.	2g. <u>By ... /12 months after entry into force of this amending Directive/</u> ESMA shall develop draft regulatory technical standards on criteria for <u>the disclosure to competent authorities and to investors of information related to</u> the selection and use of suitable <u>calibration of</u> liquidity management tools by the AIFMs for liquidity risk management, including appropriate disclosures to investors, taking into account the capability of such tools to reduce undue advantages for investors that redeem their investments first, and to mitigate financial stability risks <u>and for mitigating financial stability risks. Those standards shall recognise that the primary responsibility for liquidity risk management remains with the AIFM. They shall allow</u>	2g. ESMA shall develop draft regulatory technical standards <u>on guidelines determining</u> criteria for the selection and use of suitable <u>appropriate</u> liquidity management tools by the AIFMs for liquidity risk management, including appropriate disclosures to investors, taking into account the capability of such tools to reduce undue advantages for investors that redeem their investments first, and to mitigate financial stability risks. <u>These guidelines shall include indications on the circumstances in which side pockets can be activated.</u>	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
		<u>adequate time for adaptation before they apply, in particular for existing AIFs.</u>		
Article 1, first paragraph, point (6), amending provision, eighth paragraph				
134	2h. Power is delegated to the Commission to adopt the regulatory technical standards referred to in paragraphs 2f and 2g of this Article in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.;	2h. Power is delegated to the Commission to adopt the regulatory technical standards referred to in paragraphs 2f <u>2aa</u> and 2g of this Article in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.;	2h. Power is delegated to the Commission to adopt <u>supplement this Directive by adopting</u> the regulatory technical standards referred to in paragraphs 2f and 2g <u>2ea and 2f</u> of this Article in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.;	
134a				
Article 1, first paragraph, point (7)				
135	(7) Article 20 is amended as follows:	(7) Article 20 is amended as follows:	(7) Article 20 is amended as follows:	(7) Article 20 is amended as follows: Text Origin: Commission Proposal
Article 1, first paragraph, point (7)(a)				
136	(a) paragraph 1 is amended as follows:	(a) paragraph 1 is amended as follows:	(a) paragraph 1 is amended as follows:	(a) paragraph 1 is amended as follows: Text Origin: Commission Proposal

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Article 1, first paragraph, point (7)(a)(a)				
137	(a) the introductory phrase is replaced by the following:	(a) the introductory phrase is replaced by the following:	(a) the introductory phrase is replaced by the following:	(a) the introductory phrase is replaced by the following: Text Origin: Commission Proposal
Article 1, first paragraph, point (7)(a)(a), amending provision, numbered paragraph (1)				
138	1. AIFMs, which intend to delegate to third parties the task of carrying out, on their behalf, one or more of the functions listed in Annex I or of the services referred to in Article 6(4), shall notify the competent authorities of their home Member State before the delegation arrangements become effective. The following conditions shall be met:;	1. AIFMs, which intend to delegate to third parties the task of carrying out, on their behalf, one or more of the functions listed in Annex I or of the services referred to in Article 6(4), shall notify the competent authorities of their home Member State before the delegation arrangements become effective. The following conditions shall be met:;	1. AIFMs, which intend to delegate to third parties the task of carrying out, on their behalf, one or more of the functions listed in Annex I or of the services referred to in Article 6(4), shall notify the competent authorities of their home Member State before the delegation arrangements become effective. The following conditions shall be met:;	1. AIFMs, which intend to delegate to third parties the task of carrying out, on their behalf, one or more of the functions listed in Annex I or of the services referred to in Article 6(4), shall notify the competent authorities of their home Member State before the delegation arrangements become effective. The following conditions shall be met:;; Text Origin: Commission Proposal
Article 1, first paragraph, point (7)(a)(b)				
139	(b) point (f) is replaced by the following:	(b) point (f) is replaced by the following:	(b) point (f) is replaced by the following:	(b) point (f) is replaced by the following: Text Origin: Commission Proposal

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Article 1, first paragraph, point (7)(a)(b), amending provision, first paragraph				
140	‘ (f) the AIFM must be able to demonstrate that the delegate is qualified and capable of undertaking the functions and providing the services in question, that it was selected with all due care and that the AIFM is in a position to monitor effectively at any time the delegated activity, to give at any time further instructions to the delegate and to withdraw the delegation with immediate effect when this is in the interest of investors.; ’	‘ (f) the AIFM must be able to demonstrate that the delegate is qualified and capable of undertaking the functions and providing the services in question, that it was selected with all due care and that the AIFM is in a position to monitor effectively at any time the delegated activity, to give at any time further instructions to the delegate and to withdraw the delegation with immediate effect when this is in the interest of investors.; ’	‘ (f) the AIFM must be able to demonstrate that the delegate is qualified and capable of undertaking the functions and providing the services in question, that it was selected with all due care and that the AIFM is in a position to monitor effectively at any time the delegated activity, to give at any time further instructions to the delegate and to withdraw the delegation with immediate effect when this is in the interest of investors.; ’ TM2504: note that addition relative to current text is 'providing the services' Text Origin: Commission Proposal	‘ (f) the AIFM must be able to demonstrate that the delegate is qualified and capable of undertaking the functions and providing the services in question, that it was selected with all due care and that the AIFM is in a position to monitor effectively at any time the delegated activity, to give at any time further instructions to the delegate and to withdraw the delegation with immediate effect when this is in the interest of investors.; ’ TM2504: note that addition relative to current text is 'providing the services' Text Origin: Commission Proposal
Article 1, first paragraph, point (7)(b)				
141	(b) paragraph 3 is replaced by the following:	(b) paragraph 3 is replaced by the following:	(b) paragraph 3 is replaced by the following:	(b) paragraph 3 is replaced by the following: Text Origin: Commission Proposal
Article 1, first paragraph, point (7)(b), amending provision, numbered paragraph (3)				
142	‘	‘	‘	‘

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	3. The AIFM's liability towards its clients, the AIF and its investors shall not be affected by the fact that the AIFM has delegated functions to a third party, or by any further sub-delegation, nor shall the AIFM delegate its functions to the extent that, in essence, it can no longer be considered to be the manager of the AIF or the provider of the services and to the extent that it becomes a letter-box entity.;	3. The AIFM's liability towards its clients, the AIF and its investors shall not be affected by the fact that the AIFM has delegated functions to a third party, or by any further sub-delegation, <u>irrespective of the regulatory status or location of any delegate or subdelegate</u>, nor shall the AIFM delegate its functions to the extent that, in essence, it can no longer be considered to be the manager of the AIF or the provider of the services and to the extent that it becomes a letter-box entity.;	3. The AIFM's liability towards its clients, the AIF and its investors shall not be affected by the fact that the AIFM has delegated functions to a third party, or by any further sub-delegation, nor shall the AIFM delegate its functions to the extent that, in essence, it can no longer be considered to be the manager of the AIF or the provider of the services and to the extent that it becomes a letter-box entity.;	3. The AIFM's liability towards its clients, the AIF and its investors shall not be affected by the fact that the AIFM has delegated functions <u>or services</u> to a third party, or by any further sub-delegation, <u>irrespective of the regulatory status or location of any delegate or subdelegate,</u> nor shall the AIFM delegate the functions <u>or services</u> to the extent that, in essence, it can no longer be considered to be the manager of the AIF or the provider of the services <u>referred to in Article 6(4)</u> and to the extent that it becomes a letter-box entity.; TM2604: CONS to consider the 'irrespective' language. Need for alignment with 142a. On 'provider of services' (to bring non-core services into same liability regime) situation of delegation under MIFID for MIFID firms providing these services is regulated by Article 31(1)(b) of Regulation 2017/565. Addition of these words aligns liability regime for provision by AIFMs of those services. Consideration of need to add references to services also in paragraphs 6 and 7 (new lines needed) Text Origin: Commission Proposal
Article 1, first paragraph, point (7)(b), amending provision, numbered paragraph (3a)				

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
142a		<u>3a. The AIFM shall ensure that the management of funds for which it is the AIFM complies with the requirements set out in this Directive. That obligation shall apply irrespective of the regulatory status or location of any delegate or subdelegate.'</u>		<u>3a. The AIFM shall ensure that performance of the functions in Annex I and the provision of the services referred to in Article 6(4) comply with the requirements set out in this Directive. That obligation shall apply irrespective of the regulatory status or location of any delegate or subdelegate.'</u> TM2604 Council to check. Some regard this as already clear in the Directive. Text Origin: EP Mandate
Article 1, first paragraph, point (7)(c)				
143	(c) in paragraph 4, the introductory phrase is replaced by the following:	(c) in paragraph 4, the introductory phrase is replaced by the following:	(c) in paragraph 4, the introductory phrase is replaced by the following:	(c) in paragraph 4, the introductory phrase is replaced by the following: Text Origin: Commission Proposal
Article 1, first paragraph, point (7)(c), amending provision, numbered paragraph (4)				
144	4. The third party may sub-delegate any of the functions and provision of services delegated to it provided that the following conditions are met;;	4. The third party may sub-delegate any of the functions and provision of services delegated to it provided that the following conditions are met;;	4. The third party may sub-delegate any of the functions and provision of services delegated to it provided that the following conditions are met:;	4. The third party may sub-delegate any of the functions and provision or services delegated to it provided that the following conditions are met;; Text Origin: Commission Proposal

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	Article 1, first paragraph, point (7)(c), amending provision, numbered paragraph (4a)			
144a				<u>(ca) paragraph 6 is replaced by the following:</u>
	Article 1, first paragraph, point (7)(c), amending provision, numbered paragraph (4b)			
144b				<u>6. Where the sub-delegate further delegates any of the functions or services delegated to it, the conditions set out in paragraph 4 shall apply mutatis mutandis.</u> TM2504 to align with para 3 etc
	Article 1, first paragraph, point (7)(ca)			
144c		<u>(ca) the following paragraph is inserted:</u>	<u>(d) the following paragraph 6a is added:</u>	<u>(ca) the following paragraph 6a is added:</u> Text Origin: Council Mandate
	Article 1, first paragraph, point (7)(c)(-1)			
144d		<u>(i) '6a. By way of derogation from paragraphs 1 to 6 of this Article, where the marketing function as referred to in Annex I, paragraph 2, point (b) is performed by one or several distributors which are acting on their own</u>	<u>'6a. By way of derogation from the paragraphs 1 to 6 of this Article, where the marketing function as referred in Annex I, paragraph 2(b), is performed by one or several distributors, which are acting on their own behalf and</u>	<u>'6a. By way of derogation from paragraphs 1 to 6 of this Article, where the marketing function as referred to in Annex I, point 2(b), is performed by one or several distributors which are acting on their own behalf and which market</u>

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
		<u>behalf and which market the AIF under Directive 2014/65/EU or through insurance-based investment products in accordance with Directive 2016/97/EU, such function shall not be considered to be a delegation subject to the requirements set out in paragraphs 1 to 6 of this Article irrespective of any distribution agreement between the AIFM and the distributor.';</u>	<u>which market the AIF under Directive 2014/65/EU or through insurance-based investment products in accordance with Directive 2016/97/EU, such function shall not be considered a delegation subject to the requirements laid down in the abovementioned paragraphs irrespective of any distribution agreement between the AIFM and the distributor'</u>	<u>the AIF under Directive 2014/65/EU or through insurance-based investment products in accordance with Directive (EU) 2016/97, such function shall not be considered to be a delegation subject to the requirements set out in paragraphs 1 to 6 of this Article irrespective of any distribution agreement between the AIFM and the distributor.';</u> TM2504 Text Origin: EP Mandate
Article 1, first paragraph, point (7a)				
144e				<u>(cb) in paragraph 7, point (b) is replaced by the following:</u>
Article 1, first paragraph, point (7b)				
144f				<u>'(b) the conditions under which the AIFM shall be deemed to have delegated its functions or services to the extent that it becomes a letter-box entity and can no longer be considered to be the manager of the AIF or the provider of the services referred to in Article 6(4), as set out in paragraph 3.'</u> TM2504 to align with para 3 etc

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Article 1, first paragraph, point (7c)				
144g				
Article 1, first paragraph, point (7d)				
144h				
Article 1, first paragraph, point (8)				
145	(8) Article 21 is amended as follows:	(8) Article 21 is amended as follows:	(8) Article 21 is amended as follows:	(8) Article 21 is amended as follows: Text Origin: Commission Proposal
Article 1, first paragraph, point (8a)				
145a		<u>(-a) the following paragraph is inserted:</u>	<u>(-a) In paragraph 5 point (c) is inserted:</u>	<u>(8a) the following paragraph is inserted:</u> Text Origin: EP Mandate
Article 1, first paragraph, point (8a), amending provision, first paragraph				
145b		" <u>'5a. The home Member State of an AIF may entitle its national competent authorities to allow, following a case-by-case assessment, institutions referred to in Article 21(3), point (a) and established in another Member State to be appointed as a depositary, provided that the following conditions are fulfilled:</u>	" <u>(c) The home Member State of an AIF may entitle its national competent authorities to allow, following a case-by-case assessment, institutions referred to in point (a) of Article 21(3) and established in another Member State to be appointed as a depositary, provided that the following conditions are fulfilled:</u>	" <u>'5a. By way of derogation from paragraph 5, point (a), the home Member State of an EU AIF may entitle its competent authorities to allow, following a case-by-case assessment, institutions referred to in paragraph 3, first subparagraph, point (a), and established in another Member State to be appointed as a depositary, provided</u>

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
				<u>that the following conditions are fulfilled:</u> TM2604. NB "By way of derogation" language is relevant also to line 145i TM 0305 specified 'EU AIF' Text Origin: EP Mandate
Article 1, first paragraph, point (8a), amending provision, second paragraph				
145c		<u>(i) the competent authorities have received a motivated request by the AIFM for the appointment of a depositary in another Member State; that request shall demonstrate the lack of the relevant depositary services able to meet the needs of the AIF having regard to its operational strategy; and</u>	<u>(i) the competent authorities have received a motivated request by the AIFM which shall demonstrate the lack of the relevant depositary services, given the investment strategy of the AIF, for the appointment of a depositary in another Member State; and</u>	<u>(a) the competent authorities have received a motivated request by the AIFM to allow the appointment of a depositary in another Member State; that request shall demonstrate the lack of the relevant depositary services in the home Member State of the AIF that are able to effectively meet the needs of the AIF having regard to its investment strategy; and</u> TM2604 Text Origin: EP Mandate
Article 1, first paragraph, point (8a), amending provision, third paragraph				
145d		<u>(ii) the national depositary market of the home Member State of the AIF fulfils at least one of the following conditions:</u>	<u>(ii) the national depositary market of the home Member State of the AIF fulfils at least one of the following conditions:</u>	<u>(b) the national depositary market of the home Member State of the AIF fulfils at least one of the following conditions:</u>

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
				TM0305 'EU AIF' NOT specified as home MS of the AIF> is defined term Text Origin: EP Mandate
Article 1, first paragraph, point (8a), amending provision, third paragraph, point (a)				
145e		<u>(a) - that market consists of fewer than seven depositaries providing depositary services to EU AIFs, authorised or registered under the applicable national law in accordance with Article 4, point (k), point (i) of this Directive, and managed by an EU AIFMs authorised in accordance with Article 7(1) of this Directive, and none of those depositaries has assets safekept within the meaning of Article 21(8), points (a) and (b) exceeding EUR 1 billion or the equivalent in any other currency. Assets held by a depositary acting under Article 36(1a) of this Directive and the own assets of a depositary shall be excluded from the determination whether this condition is met;</u>	<u>(a) such market consists of fewer than 7 depositaries providing depositary services to EU AIFs (authorised under Article 4 (k) (i) of this Directive) and managed by an EU AIFMs (authorised under Article 7(1)) and where no depositary has AIF assets under custody which exceed EUR 1 billion or the equivalent in any other currency. This threshold excludes depositaries acting under Article 36(1a) of this Directive and the own assets of the depositary;</u>	<u>(i) that market consists of fewer than seven depositaries providing depositary services to EU AIFs that are authorised or registered under the applicable national law as referred to in Article 4(1), point (k)(i), of this Directive and managed by an authorised EU AIFM,</u> <u>[....]</u> TM2604 question whether to extend the list of EU AIFs that count beyond authorised or registered EU AIFs to include either non-registered and non-authorised under national law or eg ELTIFs, MMFs Main distinction EP/ CONS is between 'assets under custody' and 'assets safekept' (which is broader). TM 0405: COM still reviewing and may propose changes to thresholds LINE NOT CONCLUDED
Article 1, first paragraph, point (8a), amending provision, third paragraph, point (b)				

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
145f		<u>(b) - the aggregate amount in that market of assets safekept, in the meaning of Article 21(8), points (a) and (b), on behalf of EU AIFs, authorised or registered under the applicable national law in accordance with Article 4, point (k), point (i) of this Directive, and managed by an EU AIFM, authorised in accordance with Article 7(1) of this Directive, does not exceed the amount of EUR 60 billion or the equivalent in any other currency. Assets safekept by depositaries acting under Article 36(1a) of this Directive and the own assets of depositaries shall be excluded from the determination whether this condition is met.';</u>	<u>(b) the aggregate amount in such market of assets under custody on behalf of EU AIFs (authorised under Article 4 (k) (i) of this Directive) and managed by an EU AIFMs (authorised under Article 7(1) of this Directive) does not exceed the amount of EUR 30 billion or the equivalent in any other currency. This threshold excludes depositaries acting under Article 36 (1a) of this Directive and the own assets of the depositary.</u>	TM2604 Depends on previous line for custody / safekept. 30 vs 60 is political but NB EP and CONS versions count different things TM 0405: COM still reviewing and may propose changes to thresholds
Article 1, first paragraph, point (8a), amending provision, third paragraph, point (c)				
145g			<u>. Even if the conditions laid down in points (i) and (ii) are fulfilled, the authorisation to allow the appointment of a depositary in another Member State shall be granted on a case-by-case assessment on the lack of relevant depositary services in the jurisdiction of the AIF, given the investment strategy of the AIF.</u>	TM2604 EP and COM suggest CONS wording is not needed and repeats line 145b / 145c. Consider recital? Note that (i) and (ii) are now (a) and (b)
Article 1, first paragraph, point (8a), amending provision, third paragraph, point (d)				

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
145h			<u>When allowing the appointment of a depositary in another Member States, the competent authorities shall notify ESMA.</u>	<u>When allowing the appointment of a depositary in another Member State, the competent authorities shall notify ESMA.</u> TM2604 Text Origin: Council Mandate
Article 1, first paragraph, point (8a), amending provision, third paragraph, point (e)				
145i			<u>This provision shall be without prejudice to the full application of Article 21, with the exception of point (a) of paragraph 5 of that Article on the place where the depositary is to be established.</u>	<u>This paragraph shall be without prejudice to the full application of the other paragraphs of this Article, with the exception of paragraph 5, point (a).'</u> " TM2604 COM and EP reservations on necessity of this subparagraph, in particular given 'By way of derogation' language added to 145b Text Origin: Council Mandate
Article 1, first paragraph, point (8)(a)				
146	(a) in paragraph 6, points (c) and (d) are replaced by the following:	(a) in paragraph 6, points (c) and (d) are replaced by the following:	(a) in paragraph 6, points (c) and (d) are replaced by the following:	(a) in paragraph 6, points (c) and (d) are replaced by the following: Text Origin: Commission Proposal
Article 1, first paragraph, point (8)(a), amending provision, first paragraph				

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
147	(c) the third country where the depositary is established is not identified as a high-risk third country pursuant to Article 9(2) of Directive (EU) 2015/849;’;	(c) the third country where the depositary is established is not identified as a high-risk third country pursuant to Article 9(2) of Directive (EU) 2015/849 <u>at the time of the AIFM’s application for authorisation in accordance with Article 7(1)</u> ;’;	(c) the third country where the depositary is established is not identified as a high-risk third country pursuant to Article 9(2) of Directive (EU) 2015/849;’;	(c) the third country where the depositary is established is not identified as a high-risk third country pursuant to Article 9(2) of Directive (EU) 2015/849;’; TM2604. Relevant time should be appointment of depositary, not authorisation of AIFM. But chapeau of para 6 regulates exactly the appointment but says 'at all times' (hence derogation in 148b) Text Origin: EP Mandate
Article 1, first paragraph, point (8)(a), amending provision, second paragraph				
148	(d) the Member States in which the units or shares of the non-EU AIF are intended to be marketed, and, in so far as different, the home Member State of the AIFM, have signed an agreement with the third country where the depositary is established which fully complies with the standards laid down in Article 26 of the OECD Model Tax Convention on Income and on Capital and ensures an effective exchange of information in tax matters including any multilateral tax agreements and the third country is not mentioned in Annex I to the Council conclusions of 2020 on the	(d) the Member States in which the units or shares of the non-EU AIF are intended to be marketed, and, in so far as different, the home Member State of the AIFM, have signed an agreement with the third country where the depositary is established which fully complies with the standards laid down in Article 26 of the OECD Model Tax Convention on Income and on Capital and ensures an effective exchange of information in tax matters including any multilateral tax agreements and the third country is not mentioned in Annex I to the <i>Council conclusions of</i>	(d) the Member States in which the units or shares of the non-EU AIF are intended to be marketed, and, in so far as different, the home Member State of the AIFM, have signed an agreement with the third country where the depositary is established which fully complies with the standards laid down in Article 26 of the OECD Model Tax Convention on Income and on Capital and ensures an effective exchange of information in tax matters including any multilateral tax agreements and the third country is not mentioned in Annex I to the Council conclusions <i>of 2020</i> on the	(d) the Member States in which the units or shares of the non-EU AIF are intended to be marketed, and, in so far as different, the home Member State of the AIFM, have signed an agreement with the third country where the depositary is established which fully complies with the standards laid down in Article 26 of the OECD Model Tax Convention on Income and on Capital and ensures an effective exchange of information in tax matters including any multilateral tax agreements and the third country is not mentioned in Annex I to the <i>Council conclusions of</i>

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	revised EU list on non-cooperative jurisdictions for tax purposes¹;’; 1. OJ C 64, 27.2.2020, p. 8.	2020<u>relevant last updated version of the Council conclusions</u> on the revised EU list on non-cooperative jurisdictions for tax purposes¹;’; <u>If a third country where the non-EU AIF is established is added to that annex after the time of the AIFM’s application for authorisation in accordance with Article 7(1), closed-ended funds shall continue to be considered to meet the criteria of this paragraph for a period of two years.</u> 1. OJ C 64, 27.2.2020, p. 8.	revised EU list on non-cooperative jurisdictions for tax purposes¹;’;’; 1. OJ C 64, 27.2.2020, p. 8.	2020<u>relevant last updated version of the Council conclusions</u> on the revised EU list on non-cooperative jurisdictions for tax purposes¹;’; 1. OJ C 64, 27.2.2020, p. 8. TM0305. Added text in EP version see 148b below Text Origin: EP Mandate
Article 1, first paragraph, point (8)(a), amending provision, second paragraph a				
148a		<u>For the purposes of this paragraph, a third country that has been continuously mentioned in Annex II to the Council conclusions on the revised EU list of non-cooperative jurisdictions for tax purposes for a period of over three years shall be considered to be mentioned in Annex I to those conclusions.’;</u>		Political line
Article 1, first paragraph, point (8)(aa)				
148b				<u>By way of derogation from the introductory part of the first subparagraph, the conditions in</u>

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			PUBLIC	<u>points (c) and (d) of that subparagraph shall apply at the time of the depositary's appointment. If a third country where a depositary is established is identified as a high-risk third country pursuant to Article 9(2) of Directive (EU) 2015/849, as referred to in the first subparagraph, point (c), or is added to Annex I to the last updated version of the Council conclusions on the revised EU list on non-cooperative jurisdictions for tax purposes, as referred to in the first subparagraph, point (d), after the time of the appointment of the depositary, a new depositary shall be appointed within an appropriate period of time, taking due account of the interests of investors. That period shall be no longer than two years.</u> TM0305 new subparagraph to para 6, referring to points (c) and (d). Inspired by Amendment to Art 14 ELTIF in Reg 2023/606 (ELTIF revision) Taken from EP text in line 148. CONS to check
Article 1, first paragraph, point (8)(b)				
149	(b) paragraph 11 is amended as follows:	(b) paragraph 11 is amended as follows:	(b) (c) paragraph 11 is amended as follows:	(b) paragraph 11 is amended as follows:

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
				Text Origin: Commission Proposal
Article 1, first paragraph, point (8)(b)(i)				
150	(i) in the second subparagraph, point (c) is replaced by the following:	(i) in the second subparagraph, point (c) is replaced by the following:	(i) in the second subparagraph, point (c) is replaced by the following:	(i) in the second subparagraph, point (c) is replaced by the following: Text Origin: Commission Proposal
Article 1, first paragraph, point (8)(b)(i), amending provision, first paragraph				
151	(c) the depositary has exercised all due skill, care and diligence in the selection and the appointment of any third party to whom it wants to delegate parts of its tasks, except where that third party is a central securities depository acting in the capacity of an issuer CSD as defined in Article 1, point (e), of Commission Delegated Regulation (EU) 2017/392*, and keeps exercising all due skill, care and diligence in the periodic review and ongoing monitoring of any third party to whom it has delegated parts of its tasks and of the arrangements of the third party in respect of the matters delegated to it;	(c) the depositary has exercised all due skill, care and diligence in the selection and the appointment of any third party to whom it wants to delegate parts of its tasks, except where that third party is a central securities depository acting in the capacity of an issuer CSD as defined in Article 1, point (e), of Commission Delegated <u>the delegated act adopted on the basis of Articles 29(3) and 48(10) of Regulation (EU) 2017/392* No. 909/2014</u> , and keeps exercising all due skill, care and diligence in the periodic review and ongoing monitoring of any third party to whom it has delegated parts of its tasks and of the arrangements of the	(c) the depositary has exercised all due skill, care and diligence in the selection and the appointment of any third party to whom it wants to delegate parts of its tasks, except where that third party is a central securities depository acting in the capacity of an issuer <u>investor</u> CSD as defined in Article 1, point (e) <u>(f)</u> , of Commission Delegated Regulation (EU) 2017/392*, and keeps exercising all due skill, care and diligence in the periodic review and ongoing monitoring of any third party to whom it has delegated parts of its tasks and of the arrangements of the third party in respect of the matters delegated to it;	TM2604 COM to check issuer / investor reference. Relevant also to 154 NB CSDs not abbreviated elsewhere in AIFMD

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
		third party in respect of the matters delegated to it;		
Article 1, first paragraph, point (8)(b)(i), amending provision, first paragraph, first paragraph				
152	* Commission Delegated Regulation (EU) 2017/392 of 11 November 2016 supplementing Regulation (EU) No 909/2014 of the European Parliament and of the Council with regard to regulatory technical standards on authorisation, supervisory and operational requirements for central securities depositories (OJ L 65, 10.3.2017, p. 48);	<i>deleted</i>	* Commission Delegated Regulation (EU) 2017/392 of 11 November 2016 supplementing Regulation (EU) No 909/2014 of the European Parliament and of the Council with regard to regulatory technical standards on authorisation, supervisory and operational requirements for central securities depositories (OJ L 65, 10.3.2017, p. 48);	
Article 1, first paragraph, point (8)(b)(ii)				
153	(ii) the fifth subparagraph is replaced by the following:	(ii) the fifth subparagraph is replaced by the following:	(ii) the fifth subparagraph is replaced by the following:	(ii) the fifth subparagraph is replaced by the following: Text Origin: Commission Proposal
Article 1, first paragraph, point (8)(b)(ii), amending provision, first paragraph				
154	For the purposes of this paragraph, the provision of services by a central securities depository acting in the capacity of an issuer CSD as	For the purposes of this paragraph, the provision of services by a central securities depository acting in the capacity of an issuer CSD as	For the purposes of this paragraph, the provision of services by a central securities depository acting in the capacity of	TM0305 awaiting COM input

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	defined in Article 1, point (e) of Commission Delegated Regulation (EU) 2017/392 shall not be considered a delegation of the depositary's custody functions. ;	defined in Article 1, point (e) of Commission Delegated <u>the delegated act adopted on the basis of Articles 29(3) and 48(10) of Regulation (EU) 2017/392</u> No 909/2014 shall not be considered a delegation of the depositary's custody functions. <u>The provision of services by a central securities depository acting in the capacity of an investor CSD as defined in that delegated act shall be considered a delegation of the depositary's custody functions.</u> ;	an issuer CSD as defined in Article 1, point (e) of Commission Delegated Regulation (EU) 2017/392 shall not be considered a delegation of the depositary's custody functions. <u>For the purposes of this paragraph, the provision of services by a central securities depository acting in the capacity of an investor CSD as defined in Article 1, point (f) of Commission Delegated Regulation (EU) 2017/392 shall be considered a delegation of the depositary's custody functions.</u> ;	
Article 1, first paragraph, point (8)(c)				
155	(c) paragraph 16 is replaced by the following:	(c) paragraph 16 is replaced by the following:	(c) <u>(d)</u> paragraph 16 is replaced by the following:	(c) paragraph 16 is replaced by the following: Text Origin: Commission Proposal
Article 1, first paragraph, point (8)(c), amending provision, numbered paragraph (16)				
156	16. The depositary shall make available to its competent authorities, to the competent authorities of the AIF that has appointed it as a depositary and to the competent authorities of the AIFM that manages that AIF, on	16. The depositary shall make available to its competent authorities, to the competent authorities of the AIF that has appointed it as a depositary and to the competent authorities of the AIFM that manages that AIF, on	16. The depositary shall make available to its competent authorities, to the competent authorities of the AIF that has appointed it as a depositary and to the competent authorities of the AIFM that manages that AIF, on	16. The depositary shall make available to its competent authorities, to the competent authorities of the AIF that has appointed it as a depositary and to the competent authorities of the AIFM that manages that AIF , on

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	request, all information that it has obtained while performing its duties and that may be necessary for the competent authorities of the AIF or the AIFM. If the competent authorities of the AIF or the AIFM are different from those of the depositary, the competent authorities of the depositary shall share the information received without delay with the competent authorities of the AIF and the AIFM.;	request, all information that it has obtained while performing its duties and that may be necessary for the competent authorities of the AIF or the AIFM. If the competent authorities of the AIF or the AIFM are different from those of the depositary, the competent authorities of the depositary shall share the information received without delay with the competent authorities of the AIF and the AIFM, <u>and the competent authorities of the AIF or the AIFM shall share without delay with the competent authorities of the depositary any information relevant for the exercise of those authorities' supervisory powers.</u>;	request, all information that it has obtained while performing its duties and that may be necessary for the competent authorities of the AIF or the AIFM. If the competent authorities of the AIF or the AIFM are different from those of the depositary, <u>i) the competent authorities of the depositary shall share the information received without delay with the competent authorities of the AIF and the AIFM, ii) the competent authorities of the AIF or the AIFM shall share without delay any information relevant for the exercise of the supervisory powers by the competent authorities of the depositary.</u>	request, all <u>any</u> information that it has obtained while performing its duties. <u>Where the competent authorities of the AIF or the AIFM are different from those of the depositary:</u> (a) and that may be necessary for the competent authorities of the AIF or the AIFM. If <u>depositary shall share without delay with the competent authorities of the AIF or and the AIFM are different from those of the depositary; any information relevant for the exercise of those authorities' supervisory powers; and</u> (b) the competent authorities of the depositary shall share the information received <u>AIF or the AIFM shall share without delay with the competent authorities of the depositary any information relevant for the exercise of the supervisory powers by the competent authorities of the depositary with the competent authorities of the AIF and the AIFM.</u> TM2604 framing of the information to be submitted / shared. Text Origin: Council Mandate

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Article 1, first paragraph, point (8)(ca)				
156a			<u>(e) In paragraph 17, point (c) is amended as follows:</u>	<u>(e) In paragraph 17, point (c)(ii) is replaced by the following:</u> Text Origin: Council Mandate
Article 1, first paragraph, point (8)(ca)(i)				
156b			<u>Point (ii) is replaced by the following:</u>	<u>deleted</u>
Article 1, first paragraph, point (8)(ca)(ii)				
156c			<u>'(ii) the conditions subject to which the depositary is able to exercise its custody duties over financial instruments registered with a central securities depository; and'</u>	<u>'(ii) the conditions subject to which the depositary is able to exercise its custody duties over financial instruments registered with a central securities depository; and'</u> TM2604 Text Origin: Council Mandate
Article 1, first paragraph, point (9)				
157	(9) Article 23 is amended as follows:	(9) Article 23 is amended as follows:	(9) Article 23 is amended as follows:	(9) Article 23 is amended as follows: Text Origin: Commission Proposal

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Article 1, first paragraph, point (9)(a)				
158	(a) paragraph 1 is amended as follows:	(a) paragraph 1 is amended as follows:	(a) paragraph 1 is amended as follows:	(a) paragraph 1 is amended as follows: Text Origin: Commission Proposal
Article 1, first paragraph, point (9)(a)(i)				
159	(i) point (h) is replaced by the following:	(i) point (h) is replaced by the following:	(i) point (h) is replaced by the following:	(i) point (h) is replaced by the following: Text Origin: Commission Proposal
Article 1, first paragraph, point (9)(a)(i), amending provision, first paragraph				
160	(h) a description of the AIF's liquidity risk management, including the redemption rights both in normal and in exceptional circumstances, disclosing the possibility and conditions for using liquidity management tools selected in accordance with Article 16(2b), and the existing redemption arrangements with investors.;	(h) a description of the AIF's liquidity risk management, including the redemption rights both in normal and in exceptional circumstances, disclosing the possibility and conditions for using liquidity management tools selected in accordance with Article 16(2b), and the existing redemption arrangements with investors.;	(h) a description of the AIF's liquidity risk management, including the redemption rights both in normal and in exceptional circumstances, <u>disclosing the existing redemption arrangements with investors and a disclosure of</u> the possibility and conditions for using liquidity management tools selected in accordance with Article 16(2b); and the existing redemption arrangements with investors.;	(h) a description of the AIF's liquidity risk management, including the redemption rights, both in normal and in exceptional circumstances, <u>disclosing of the existing redemption arrangements with investors, and of</u> the possibility and conditions for using liquidity management tools selected in accordance with Article 16(2b); and the existing redemption arrangements with investors.; TM 29.3, text reworked at the technical meeting.

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
				Text Origin: Council Mandate
Article 1, first paragraph, point (9)(a)(ii)				
161	(ii) point (ia) is inserted:	(ii) point (ia) is inserted:	(ii) point (ia) is inserted:	(ii) point (ia) is inserted: Text Origin: Commission Proposal
Article 1, first paragraph, point (9)(a)(ii), amending provision, first paragraph				
162	(ia) a list of fees and charges that will be applied in connection with the operation of the AIF and that will be borne by the AIFM or its affiliates.;	(ia) a list of fees and charges that will be applied in connection with the operation of the AIF and that will be borne by the AIFM or its affiliates. ;	(ia) a list of fees and charges that will be applied in connection with the operation of the AIF and that will be borne by the <u>AIF in respect of the</u> AIFM or its affiliates.;	(ia) a list of fees and <u>of the fees,</u> charges that will be applied in connection with the operation of the AIF and that will be <u>and expenses referred to in point (i), those fees, charges and expenses that are borne by the AIFM or its affiliates and subsequently directly or indirectly allocated to the AIF or any of its investments;</u> TM2604. Attempt to rework in line with recital 31 line 40. EP and CONS to review Text Origin: Commission Proposal
Article 1, first paragraph, point (9)(b)				
163				

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	(b) in paragraph 4, the following points (d), (e) and (f) are added:	(b) in paragraph 4, the following points (d), (e) and (f) are added:	(b) in paragraph 4, the following points (d), (e) and (f) are added:	(b) in paragraph 4, the following points (d), (e) and (f) are added: Text Origin: Commission Proposal
Article 1, first paragraph, point (9)(b), amending provision, first paragraph				
164	(d) originated loan portfolio;	(d) originated loan portfolio <u>portfolio composition of originated loans</u> ;	(d) originated loan portfolio;	(d) <u>the composition of the</u> originated loan portfolio; TM2604 Text Origin: Commission Proposal
Article 1, first paragraph, point (9)(b), amending provision, second paragraph				
165	(e) on a quarterly basis, all direct and indirect fees and charges that were directly or indirectly charged or allocated to the AIF or to any of its investments;	(e) on a quarterly <u>an annual</u> basis, all direct and indirect fees and charges that were directly or indirectly charged or allocated to the AIF <u>or to any of its investments</u> ;	(e) on a quarterly <u>an annual</u> basis, all direct and indirect fees and charges that were directly or indirectly charged or allocated to the AIF or to any of its investments;	(e) on a quarterly <u>an annual</u> basis, all direct and indirect fees, <u>charges and expenses</u> and charges that were directly or indirectly charged or allocated to the AIF or to any of its investments <u>borne by investors</u> ; TM2604. Aligned with point (i) of paragraph 1 for comparison purposes. EP and CONS to check / consider. Text Origin: EP Mandate
Article 1, first paragraph, point (9)(b), amending provision, third paragraph				
166				

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	(f) on a quarterly basis, any parent company, subsidiary or special purpose entity established in relation to the AIF's investments by the AIFM, the staff of the AIFM or the AIFM's direct or indirect affiliates.;	(f) on a quarterly <u>an annual</u> basis, any parent company, subsidiary or special purpose entity established in relation to the AIF's investments by the AIFM, the staff of the AIFM or the AIFM's direct or indirect affiliates. ;	(f) on a quarterly <u>an annual</u> basis, any parent company, subsidiary or special purpose entity established in relation to the AIF's investments by the AIFM, the staff of the AIFM or the AIFM's direct or indirect affiliates.;	TM2604 COM to consider new drafting, possibly to capture not so much 'establishment in relation' as investment by the AIF
Article 1, first paragraph, point (10)				
167	(10) Article 24 is amended as follows:	(10) Article 24 is amended as follows:	(10) Article 24 is amended as follows:	(10) Article 24 is amended as follows: Text Origin: Commission Proposal
Article 1, first paragraph, point (10)(a)				
168	(a) paragraph 1 is replaced by the following:	(a) paragraph 1 is replaced by the following:	(a) paragraph 1 is replaced by the following:	(a) paragraph 1 is replaced by the following: Text Origin: Commission Proposal
Article 1, first paragraph, point (10)(a), amending provision, numbered paragraph (1)				
169	1. An AIFM shall regularly report to the competent authorities of its home Member State on the markets and instruments in which it trades on behalf of the AIFs it manages.	1. An AIFM shall regularly report to the competent authorities of its home Member State on the markets and instruments in which it trades on behalf of the AIFs it manages. <u>and on other relevant economic</u>	1. An AIFM shall regularly report to the competent authorities of its home Member State on the markets and instruments in which it trades on behalf of the AIFs it manages.	TM 1503 parked

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
		<u>and accounting information set out in paragraph 2.</u>		
Article 1, first paragraph, point (10)(a), amending provision, numbered paragraph (1), first paragraph				
170	It shall provide information on the instruments in which it is trading, on markets of which it is a member or where it actively trades, and on the exposures of each of the AIFs it manages.;	It shall provide information on the instruments in which it is trading, on markets of which it is a member or where it actively trades, and on the exposures of each of the AIFs it manages.;	It shall, <u>in respect of each AIF it manages</u> , provide information on the instruments in which it is trading, on markets of which it is a member or where it actively trades, and on the exposures <u>and holdings</u> of each of the AIFs it manages <u>AIF. It shall include the relevant identifiers to connect the data provided on assets, AIFs and AIFM to other supervisory or publicly available data sources.</u>	It shall, <u>in respect of each AIF it manages</u>, provide information on the instruments in which it is trading, on markets of which it is a member or where it actively trades, and on the exposures <u>and assets</u> of each of the AIFs it manages <u>AIF. It shall include the identifiers that are necessary to connect the data provided on assets, AIFs and AIFM to other supervisory or publicly available data sources.</u> TM 28.3 "holdings" replaced with "assets" at the suggestion of EC. The formulation of 302g (replace "relevant" with "necessary to connect") applies to 171j 170, and 302a too. text of 302g to be aligned to final sentence here. Text Origin: Council Mandate
Article 1, first paragraph, point (10)(b)				
171				

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	(b) in paragraph 2, point (d) is deleted;	(b) in paragraph 2, <u>(i)</u> point (d) is deleted;	(b) sub-paragraph (c) of paragraph 2, point (d) is deleted; <u>is replaced by the following:</u>	(b) point (c) of paragraph 2, point (d) is deleted; <u>is replaced by the following:</u> Text Origin: Council Mandate
Article 1, first paragraph, point (10)(b)(i)				
171a			<u>'(c) the current risk profile of the AIF'</u>	<u>'(c) the current risk profile of the AIF, including the market risk, liquidity risk, counterparty risk, [other risks including] operational risk and the total amount of leverage employed by the AIF;'</u> This deletes qualitative information / description from this point (c). Council believes that should be in Art 7 (authorisation). Linked therefore to Art 7 / 24 split and requirement to update info provided at authorisation. Pending therefore work on those lines. Description of risks retrieved from current point (c). Council to reflect on words in [] Text Origin: Council Mandate
Article 1, first paragraph, point (10)(b)(ii)				
171b		<u>(ii) the following points are added:</u>	<u>(ba) in paragraph 2, point (d) is replaced by the following :</u>	<u>(ba) in paragraph 2, point (d) is replaced by the following :</u> Text Origin: Council Mandate
Article 1, first paragraph, point (10)(b)(iii)				

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
171c		" <u>'(ea) the total amount of leverage of the net asset value employed by the AIF;</u>		TM1503 moved to 171a
Article 1, first paragraph, point (10)(b)(ii), amending provision, first paragraph				
171d		<u>(eb) with respect to each AIF managed or marketed in the Union by an authorised AIFM, information regarding delegation arrangements concerning portfolio management or risk management functions and in particular:</u>	" <u>'(d) information on delegation arrangements which involve the delegation of collective or discretionary portfolio management or risk management functions as follows:</u>	" <u>(d) information regarding delegation arrangements concerning portfolio management or risk management functions as follows:</u> 1603 CONS to check deletion of collective or discretionary. EP to check change 'in particular' to 'as follows' (more exhaustive). EP 'With respect to' is covered in chapeau of para 2 Text Origin: EP Mandate
Article 1, first paragraph, point (10)(ba)				
171e		<u>(ia) for each of the following, a description of the human and technical resources:</u>		<u>(ia) for each of the following, the number of full-time equivalent human resources employed by:</u> 1603. recital to clarify no employee relationship is implied. Technical resources for consideration in Art 7 / 20. Text Origin: EP Mandate

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Article 1, first paragraph, point (10)(ba)(i)				
171f		- <u>employed by or committed to the AIFM for performing day-to-day portfolio or risk management tasks within the AIFM;</u>		- <u>the AIFM for performing day-to-day portfolio or risk management tasks within the AIFM;</u> Text Origin: EP Mandate
Article 1, first paragraph, point (10)(ba)(ii)				
171g		- <u>employed by or committed to the delegate for performing those services on a delegated basis; and</u>		1603: no agreement. Council will consider. Commission refers to Art 20(1)(b).
Article 1, first paragraph, point (10)(ba)(iii)				
171h		- <u>employed by or committed to the AIFM for monitoring and controlling the delegate;</u>		- <u>the AIFM for monitoring the delegated activity;</u> 1603: Taken from Council 171l. 'delegated activity' from existing Art 20(1)(f) TM 28.3 To be revised in order to make clear the inclusion of monitoring within the chain of delegations and subdelegations. Text Origin: EP Mandate
Article 1, first paragraph, point (10)(ba)(iv)				

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
171i		.	<u>(iii) where the portfolio management function is delegated, the amount and percentage of the AIF's assets which are subject [BSI] to delegation arrangements concerning the portfolio management function;</u>	<u>list and description of the activities concerning risk management and portfolio management functions which are delegated;;</u> Text Origin: Council Mandate
Article 1, first paragraph, point (10)(ba)(v)				
171j			<u>(iv) number of full-time equivalent human resources employed by the AIFM to monitor the delegation arrangements;</u> cf EP 171i	deleted in 171i
Article 1, first paragraph, point (10)(ba)(vi)				
171k			<u>(v) description of periodic due diligence measures carried out by the AIFM to maintain oversight on, monitor and control the delegate, including the date of performance of these measures, the issues identified and, where relevant, the measures and timeline adopted to address these issues;</u>	<u>(v) the number and dates of periodic due diligence reviews carried out by the AIFM to monitor the delegated activity, a list of issues identified and, where relevant, the measures adopted to address those issues and the date by which those measures are to be implemented.</u> TM 28.3 Under consideration by the Parliament. Note: for easier understanding, term changed to "implemented" measures in the last sentence. Related to line

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
				302o and others within UCITS (review full text for coherence).
Article 1, first paragraph, point (10)(ba)(vii)				
171l		<u>(iii) where sub-delegation arrangements are in place, the same information in respect of the sub-delegates and the functions sub-delegated;</u>	<u>(vi) where sub-delegation arrangements are in place, information required in points (i) to (iii) on the sub-delegates and the activities related to the portfolio and risk management functions that are sub-delegated;</u>	<u>(vi) where sub-delegation arrangements are in place, information required in points (i) to (iii) on the sub-delegates and the activities related to the portfolio and risk management functions that are sub-delegated;</u> Text Origin: Council Mandate
Article 1, first paragraph, point (10)(ba)(ix)				
171m		<u>(iv) the date of conclusion and expiration of the delegation and sub-delegation arrangements;</u>	<u>(vii) the commencement and expiry dates of the delegation and sub-delegation arrangements.'</u>	<u>(vii) the commencement and expiry dates of the delegation and sub-delegation arrangements.'</u> Text Origin: Council Mandate
Article 1, first paragraph, point (10)(ba)(x)				
171n		<u>(v) confirmation that the AIFM has implemented periodic due diligence measures to oversee, monitor and control the delegate, and kept records of issues identified and, where relevant, the measures adopted to address those issues.'</u>	deleted	16.03 dealt with above
Article 1, first paragraph, point (10)(ba)(xi)				

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
171o			<u>(ca) in paragraph 2, the following point (f) is added</u>	<u>(bb) in paragraph 2, the following point (f) is added</u> Text Origin: Council Mandate
Article 1, first paragraph, point (10)(ba)(xii)				
171p			<u>(f) the list of Member States in which the units or shares of the AIF are actually marketed by the AIFM or by a distributor which is acting on behalf of that AIFM.'</u>	<u>(f) the list of Member States in which the units or shares of the AIF are actually marketed by the AIFM or by a distributor which is acting on behalf of that AIFM.'</u> 16.03 EP to check Text Origin: Council Mandate
Article 1, first paragraph, point (10)(ba)(xiii)				
171q		<u>(ba) in paragraph 5, second subparagraph is replaced by the following</u>	:	<u>(bc) in paragraph 5, the second subparagraph is replaced by the following:</u> Text Origin: EP Mandate
Article 1, first paragraph, point (10)(ba)(xiv)				
171r		<u>: 'In exceptional circumstances and where required in order to ensure the stability and integrity of the financial system, or to promote long-term sustainable growth, ESMA after consulting the ESRB may request the competent</u>	:	<u>: 'In exceptional circumstances and where required in order to ensure the stability and integrity of the financial system, or to promote long-term sustainable growth, ESMA after consulting the ESRB may request the competent</u>

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
		<u>authorities of the home Member State to impose additional reporting requirements.</u> ’;		<u>authorities of the home Member State to impose additional reporting requirements.</u> ’; Text Origin: EP Mandate
Article 1, first paragraph, point (10)(b)(iv)				
171s		<u>(i) information on the entities to which such functions have been delegated, namely the name and relevant legal identifier of each delegate, its jurisdiction of establishment and, where relevant, its supervisory authority;</u>	<u>(i) information on the delegates, specifying the delegates’ name and domicile, whether they have any close links with the AIFM and whether they are authorised or regulated entities for the purpose of asset management. The information shall include the relevant identifiers of the delegates to connect the information provided to other supervisory or publicly available data sources;</u>	<u>(i) information on the delegates, specifying the delegates’ name and domicile, whether they have any close links with the AIFM, whether they are authorised or regulated entities for the purpose of asset management and where relevant, their supervisory authority, including the identifiers of the delegates that are necessary to connect the information provided to other supervisory or publicly available data sources;</u> TM 28.3 The formulation of 302g (replace "relevant" with "necessary to connect") applies to 171j 170, and 302a too. Text Origin: Council Mandate
171t		.	.	
Article 1, first paragraph, point (10)(ba)(viii)				

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
171u		<u>(ii) information on the function delegated, the type of delegation (full or partial), and the date of the delegation agreement or contract;</u>	<u>(ii) list and description of the activities concerning risk management and portfolio management functions which are delegated;</u>	Moved up to be point (ii)
Article 1, first paragraph, point (10)(b)(v)				
171v				<u>(iii) where the portfolio management function is delegated, the amount and percentage of the AIF's assets which are subject to delegation arrangements concerning the portfolio management function;</u>
Article 1, first paragraph, point (10)(c)				
172	(c) paragraph 6 is replaced by the following:	(c) paragraph 6 is replaced by the following:	(c) <u>(d)</u> paragraph 6 is replaced by the following:	(c) paragraph 6 is replaced by the following: Text Origin: Commission Proposal
Article 1, first paragraph, point (10)(c), amending provision, numbered paragraph (6)				
173	6. ESMA shall develop draft regulatory technical standards specifying the details to be reported according to paragraphs 1 and 2. ESMA shall take into account other reporting requirements to which the	6. ESMA shall develop draft regulatory technical standards specifying the details to be reported according to paragraphs 1 and <u>points (a) to (ea) of paragraph 2. Those draft regulatory technical</u>	6. ESMA shall develop draft regulatory technical standards specifying the details to be reported according to paragraphs 1 and 2. ESMA shall take into account other reporting requirements to which the	6. ESMA shall develop draft regulatory technical standards specifying: <u>(a) the details of the information to be reported according to paragraph</u>

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	AIFMs are subject and the report issued in accordance with paragraph 2 of Article 69b.	standards ² . ESMA shall take into account other reporting requirements to which the AIFMs are subject and the report issued in accordance with paragraph 2 of Article 69b. also set out the appropriate level of standardisation of the information to be reported according to paragraph 2, point (eb). In order to reduce duplication and inconsistencies between reporting frameworks in the asset management sector and other sectors of the financial industry, ESMA shall take into account:	AIFMs are subject and the report issued in accordance with paragraph 2 of Article 69b.	<u>1 and paragraph 2, points (a) to (c) and (e) to (f).</u> <u>(aa) the appropriate level of standardisation of the information to be reported according to paragraph 2, point (d),</u> <u>(b) the reporting frequency and timing.</u> the details to be reported according to paragraphs 1 and 2. ESMA shall take into account other reporting requirements to which the AIFMs are subject and the report issued in accordance with paragraph 2 of Article 69b. Text Origin: Council Mandate
173a		<u>(i) other reporting requirements to which the AIFMs are subject;</u>		
173b		<u>(ii) international developments and standards agreed at Union or global level; and</u>		
173c				

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
		<u>(iii) the report issued in accordance with paragraph 2 of Article 69b.</u>		
Article 1, first paragraph, point (10)(c), amending provision, numbered paragraph (6), first paragraph -a				
173d			<u>(a) the details of the information to be reported according to paragraphs 1 and 2, letters a) to c) and e) to f). These draft regulatory technical standards shall also set out the appropriate level of standardisation of the information to be reported according to paragraph 2, letter d), without introducing additional reporting obligations. ESMA shall take into account other reporting requirements to which the AIFMs are subject and the findings of the report issued in accordance with paragraph 2 of Article 69b; and</u> cf EP text in line 173	<u>When drafting the regulatory technical standards referred to in point (aa), ESMA shall not introduce reporting obligations additional to those set out in paragraph 2, point (d).</u> <u>When drafting the regulatory technical standards referred to in points (a) and (aa), ESMA shall take into consideration other reporting requirements to which the AIFMs are subject, international developments and standards, and the findings of the report issued in accordance with Article 69b(2).</u>
Article 1, first paragraph, point (10)(c), amending provision, numbered paragraph (6), first paragraph -b				
173e			<u>(b) the reporting frequency and timing.</u>	16.03 moved above
Article 1, first paragraph, point (10)(c), amending provision, numbered paragraph (6), first paragraph				
174	ESMA shall submit those draft regulatory technical standards to the	ESMA shall submit those draft regulatory technical standards to the	ESMA shall submit those draft regulatory technical standards to the	ESMA shall submit those draft regulatory technical standards to the

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	Commission by [Please insert date = 36 months after the entry into force of this Directive].	Commission by [Please insert date = 36 months after the entry into force of this Directive].	Commission by [Please insert date = 36 months after the entry into force of this Directive].	Commission by [Please insert date = 36 months after the entry into force of this Directive]. TM1304 possible shortening of deadline Text Origin: Commission Proposal
Article 1, first paragraph, point (10)(c), amending provision, numbered paragraph (6), second paragraph				
175	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.;	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.;	Power is delegated to the Commission to adopt ^{supplement} <u>this directive by adopting</u> the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.;	Power is delegated to the Commission to adopt ^{supplement} <u>this directive by adopting</u> the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.;
Article 1, first paragraph, point (10)(d)				
176	(d) the following paragraph 7 is added:	(d) the following paragraph 7 is added:	(d) ^(e) the following paragraph 7 is added:	
Article 1, first paragraph, point (10)(d), amending provision, numbered paragraph (7)				
177	‘ 7. ESMA shall develop draft implementing technical standards specifying:	‘ 7. ESMA shall develop draft implementing technical standards specifying:	‘ 7. ESMA shall develop draft implementing technical standards specifying:	‘ 7. ESMA shall develop draft implementing technical standards specifying:

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
				Text Origin: Commission Proposal
Article 1, first paragraph, point (10)(d), amending provision, numbered paragraph (7), point (a)				
178	(a) the format and data standards for the reports referred to in paragraphs 1 and 2;	(a) the format and data standards for the reports referred to in paragraphs 1 and 2, <u>which shall include in particular relevant legal identifiers and international securities identification numbers (ISINs)</u> ;	(a) the format and data standards for the reports referred to in paragraphs 1 and 2;	(a) the format and data standards for the reports referred to in paragraphs 1 and 2; <u>(aa) the legal identifiers that are necessary to connect the data in those reports on assets, AIFs and AIFMs to other supervisory or publicly available data sources;</u> TM 16.03: COM to provide drafting TM1304: cc from drafting at 307
Article 1, first paragraph, point (10)(d), amending provision, numbered paragraph (7), point (b)				
179	(b) the reporting frequency and timing.	(b) the reporting frequency and timing.	(b) the reporting frequency and timing. f 173e) and insertion of new (ba) in line 179a	
Article 1, first paragraph, point (10)(d), amending provision, numbered paragraph (7), point (ba)				
179a		<u>(ba) methods and arrangements for submitting the reports referred to in paragraphs 1 and 2, including methods and arrangements to improve data standardisation and efficient sharing and use of data</u>	<u>(b) methods and arrangements for submitting the reports referred to in paragraphs 1 and 2, including methods and arrangements to improve data standardisation and efficient sharing and use of data</u>	<u>(ba) methods and arrangements for submitting the reports referred to in paragraphs 1 and 2, including methods and arrangements to improve data standardisation and efficient sharing and use of data</u>

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
		<u>already reported in any Union reporting framework by any relevant competent authority, at Union or national level, taking into account the findings of the report issued in accordance with paragraph 2 of Article 69b;</u>	<u>already reported within any Union reporting framework by any relevant competent authority, at Union or national level.</u>	<u>already reported in any Union reporting framework by any relevant competent authority, at Union or national level, taking into account the findings of the report issued in accordance with Article 69b(2);</u> Text Origin: EP Mandate
Article 1, first paragraph, point (10)(d), amending provision, numbered paragraph (7), point (bb)				
179b		<u>(bb) the reporting template that includes a minimum set of indicators that would be relevant for AIFs to provide in exceptional circumstances referred to in paragraph 5.</u>		16.03 Deleted in the interest of leaving para 5 possibility as flexible as possible
Article 1, first paragraph, point (10)(d), amending provision, numbered paragraph (7), point (bc)				
179c		<u>When developing those draft implementing technical standards, ESMA shall take into account international developments and standards agreed at Union or global level and the findings of the report issued in accordance with Article 69b(2).</u>		16.03 Deleted given requirements in 179a, in RTS and given that frequency and timing is now in RTS
Article 1, first paragraph, point (10)(d), amending provision, numbered paragraph (7), first paragraph				
180	ESMA shall submit those draft implementing technical standards to	ESMA shall submit those draft implementing technical standards to	ESMA shall submit those draft implementing technical standards to	ESMA shall submit those draft implementing technical standards to

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	the Commission by [Please insert date = 36 months after the entry into force of this Directive].	the Commission by [Please insert date = 36 months after the entry into force of this Directive].	the Commission by [Please insert date = 36 months after the entry into force of this Directive].	the Commission by [Please insert date = 36 months after the entry into force of this Directive]. Text Origin: Commission Proposal
Article 1, first paragraph, point (10)(d), amending provision, numbered paragraph (7), second paragraph				
181	Power is delegated to the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.;	Power is delegated to the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.;	Power is delegated to the Commission to adopt <u>supplement this directive by adopting</u> the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.;	Power is delegated to <u>conferred on</u> the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.;; Text Origin: Commission Proposal
Article 1, first paragraph, point (10)(d), amending provision, numbered paragraph (7), second paragraph a				
181a				,
Article 1, first paragraph, point (10)(da)				
181b			<u>(f) the following paragraph 8 is added:</u>	Text Origin: Council Mandate
Article 1, first paragraph, point (10)(db)				
181c			<u>8. The Commission shall adopt delegated acts in accordance with Article 56 and subject to the</u>	Text Origin: Council Mandate

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			<u>conditions of Articles 57 and 58 to supplement this Directive by specifying when leverage is to be considered to be employed on a substantial basis for the purposes of paragraph 4.</u>	
Article 1, first paragraph, point (10)(dc)				
181d		<u>(10a) in Article 25, the following paragraph is inserted:</u>		<u>(dc) In Article 25(2), the first sentence is replaced by the following:</u> TM 1304 COM drafting (worked on in TM) in compliance with data strategy. EP and CONS to consider TM2504 text confirmed by COM email of 2404, also change in Art 50(6) line 228b TM0305 Moved down from 181a
Article 1, first paragraph, point (10)(dc), amending provision, first paragraph				
181e		" <u>'3a Limits to the level of leverage referred to in paragraph 3 shall be based on the leverage measures specified in accordance with Article 4(3) of this Directive.'</u> ; "		" <u>The competent authorities of the home Member State of the AIFM shall ensure that all information gathered under Article 24 in respect of all AIFMs that they supervise and the information gathered under Article 7 is made available to competent authorities of other relevant Member States,</u>

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			PUBLIC	<u>the ESAs, the ESRB and, for statistical purposes, the ESCB, by means of the procedures set out in Article 50 on supervisory cooperation.</u> " TM 1304 COM drafting (worked on in TM) in compliance with data strategy. EP and CONS to consider TM2504 text confirmed by COM email of 2404, also change in Art 50(6) line 228b TM0305 Moved down from 181a EP to check dropping of text (para 3a) in EP 181e after COM explanation
181f		<u>(10b) in Article 31, the following paragraph is added:</u>		
Article 1, first paragraph, point (10)(d), amending provision, numbered paragraph (7), second paragraph b				
181g		" <u>'6a. The provisions of this article shall not apply to AIFs constituted exclusively for the purpose of purchasing company shares and proposed to employees of these companies within the framework of employee savings schemes.'</u>		Discussed TM 15.03. COM may circulate revised wording

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
		"		
Article 1, first paragraph, point (11)				
182	(11) in Article 35(2), points (b) and (c) are replaced by the following:	(11) in Article 35(2), points (b) and (c) are replaced by the following:	(11) in Article 35(2), points (b) and (c) are replaced by the following:	(11) in Article 35(2), points (b) and (c) are replaced by the following: Text Origin: Commission Proposal
Article 1, first paragraph, point (11), amending provision, first paragraph				
183	(b) the third country where the non-EU AIF is established is not identified as a high-risk third country pursuant to Article 9(2) of Directive (EU) 2015/849;	(b) the third country where the non-EU AIF is established is not identified as a high-risk third country pursuant to Article 9(2) of Directive (EU) 2015/849 <u>at the time of the AIFM's application for authorisation in accordance with Article 7(1)</u> ;	(b) the third country where the non-EU AIF is established is not identified as a high-risk third country pursuant to Article 9(2) of Directive (EU) 2015/849;	TM0305 CONS believes this condition should be met at all times and marketing should cease if the country of the AIF is identified
Article 1, first paragraph, point (11), amending provision, second paragraph				
184	(c) the third country where the non-EU AIF is established has signed an agreement with the home Member State of the authorised AIFM and with each other Member State in which the units or shares of the non-EU AIF are intended to be marketed, which fully complies with the standards laid down in Article 26 of the OECD Model Tax	(c) the third country where the non-EU AIF is established has signed an agreement with the home Member State of the authorised AIFM and with each other Member State in which the units or shares of the non-EU AIF are intended to be marketed, which fully complies with the standards laid down in Article 26 of the OECD Model Tax	(c) the third country where the non-EU AIF is established has signed an agreement with the home Member State of the authorised AIFM and with each other Member State in which the units or shares of the non-EU AIF are intended to be marketed, which fully complies with the standards laid down in Article 26 of the OECD Model Tax	TM0305 CONS believes this condition should be met at all times and marketing should cease if the country of the AIF is listed

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	Convention on Income and on Capital and ensures an effective exchange of information in tax matters, including any multilateral tax agreements, and the third country is not mentioned in Annex I to the Council conclusions of 2020 on the revised EU list on non-cooperative jurisdictions for tax purposes¹; ¹. OJ C 64, 27.2.2020, p. 8.	Convention on Income and on Capital and ensures an effective exchange of information in tax matters, including any multilateral tax agreements, and the third country is not mentioned in Annex I to the Council conclusions of 2020 on the revised EU list on non-cooperative jurisdictions for tax purposes <u>applicable at the time of the AIFM's application for authorisation in accordance with Article 7(1)</u>¹. ¹. OJ C 64, 27.2.2020, p. 8.	Convention on Income and on Capital and ensures an effective exchange of information in tax matters, including any multilateral tax agreements, and the third country is not mentioned in Annex I to the Council conclusions of 2020 on the revised EU list on non-cooperative jurisdictions for tax purposes¹; ¹. OJ C 64, 27.2.2020, p. 8.	
Article 1, first paragraph, point (11), amending provision, second paragraph a				
184a		<u>If a third country where the non-EU AIF is established is added to Annex I to the relevant last updated version of the Council conclusions on the revised EU list on non-cooperative jurisdictions for tax purposes after the AIFM's application for authorisation in accordance with Article 7(1), closed-ended funds shall continue to be considered to meet that criterion for a period of two years.</u>		TM0305 CONS believes this condition should be met at all times and marketing should cease if the country of the AIF is identified / listed. (Same argument for Articles 36, 37 etc)
184b		<u>For the purposes of this paragraph, a third country that has</u>		

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
		<i><u>been continuously mentioned in Annex II to the Council conclusions on the revised EU list of non-cooperative jurisdictions for tax purposes for a period of over three years shall be considered to be mentioned in Annex I to those conclusions.’;</u></i>		
Article 1, first paragraph, point (12)				
185	(12) Article 36(1) is amended as follows:	(12) Article 36(1) is amended as follows:	(12) Article 36(1) is amended as follows:	(12) Article 36(1) is amended as follows: Text Origin: Commission Proposal
Article 1, first paragraph, point (12)(a)				
186	(a) point (c) is replaced by the following:	(a) point (c) is replaced by the following:	(a) point (c) is replaced by the following:	(a) point (c) is replaced by the following: Text Origin: Commission Proposal
Article 1, first paragraph, point (12)(a), amending provision, first paragraph				
187	(c) the third country where the non-EU AIF is established is not identified as a high-risk third country pursuant to Article 9(2) of Directive (EU) 2015/849.;	(c) the third country where the non-EU AIF is established is not identified as a high-risk third country pursuant to Article 9(2) of Directive (EU) 2015/849 <u>at the time of the AIFM’s application for</u>	(c) the third country where the non-EU AIF is established is not identified as a high-risk third country pursuant to Article 9(2) of Directive (EU) 2015/849.;	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
		<u>authorisation in accordance with Article 7(1).</u> ;		
Article 1, first paragraph, point (12)(b)				
188	(b) the following point (d) is added:	(b) the following point (d) is added:	(b) the following point (d) is added:	(b) the following point (d) is added: Text Origin: Commission Proposal
Article 1, first paragraph, point (12)(b), amending provision, first paragraph				
189	(d) the third country where the non-EU AIF is established has signed an agreement with the home Member State of the authorised AIFM and with each other Member State in which the units or shares of the non-EU AIF are intended to be marketed, which fully complies with the standards laid down in Article 26 of the OECD Model Tax Convention on Income and on Capital and ensures an effective exchange of information in tax matters, including any multilateral tax agreements, and that third country is not mentioned in Annex I to the Council conclusions of 2020 on the revised EU list on non-cooperative jurisdictions for tax purposes.;	(d) the third country where the non-EU AIF is established has signed an agreement with the home Member State of the authorised AIFM and with each other Member State in which the units or shares of the non-EU AIF are intended to be marketed, which fully complies with the standards laid down in Article 26 of the OECD Model Tax Convention on Income and on Capital and ensures an effective exchange of information in tax matters, including any multilateral tax agreements, and that third country is not mentioned in Annex I to the Council conclusions of 2020 <u>relevant last updated version of the Council conclusions</u> on the revised EU list on non-cooperative jurisdictions for tax purposes	(d) the third country where the non-EU AIF is established has signed an agreement with the home Member State of the authorised AIFM and with each other Member State in which the units or shares of the non-EU AIF are intended to be marketed, which fully complies with the standards laid down in Article 26 of the OECD Model Tax Convention on Income and on Capital and ensures an effective exchange of information in tax matters, including any multilateral tax agreements, and that third country is not mentioned in Annex I to the Council conclusions of 2020 on the revised EU list on non-cooperative jurisdictions for tax purposes.	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
		<u>applicable at the time of the AIFM's application for authorisation in accordance with Article 7(1).</u>		
189a		<u>If the third country where the non-EU AIF is established is added to Annex I to the relevant last updated version of the Council conclusions on the revised EU list on non-cooperative jurisdictions for tax purposes after the time of the AIFM's application for authorisation in accordance with Article 7(1), closed-ended funds shall continue to be considered to meet that criterion for a period of two years.</u>		
189b		<u>For the purposes of this paragraph, a third country that has been continuously mentioned in Annex II to the Council conclusions on the revised EU list of non-cooperative jurisdictions for tax purposes for a period of over three years shall be considered to be mentioned in Annex I to those conclusions.</u>		

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Article 1, first paragraph, point (13)				
190	(13) in Article 37(7), points (e) and (f) are replaced by the following:	(13) in Article 37(7), points (e) and (f) are replaced by the following:	(13) in Article 37(7), points (e) and (f) are replaced by the following:	(13) in Article 37(7), points (e) and (f) are replaced by the following: Text Origin: Commission Proposal
Article 1, first paragraph, point (13), amending provision, first paragraph				
191	(e) the third country where the non-EU AIFM is established is not identified as a high-risk third country pursuant to Article 9(2) of Directive (EU) 2015/849;	(e) the third country where the non-EU AIFM is established is not identified as a high-risk third country pursuant to Article 9(2) of Directive (EU) 2015/849 <u>at the time of the AIFM's application for authorisation in accordance with paragraph 1 of this Article;</u>	(e) the third country where the non-EU AIFM is established is not identified as a high-risk third country pursuant to Article 9(2) of Directive (EU) 2015/849;	
Article 1, first paragraph, point (13), amending provision, second paragraph				
192	(f) the third country where the non-EU AIFM is established has signed an agreement with the Member State of reference, which fully complies with the standards laid down in Article 26 of the OECD Model Tax Convention on Income and on Capital and ensures an effective exchange of information in tax matters, including any multilateral tax agreements and the third country is not mentioned in Annex I to the Council conclusions	(f) the third country where the non-EU AIFM is established has signed an agreement with the Member State of reference, which fully complies with the standards laid down in Article 26 of the OECD Model Tax Convention on Income and on Capital and ensures an effective exchange of information in tax matters, including any multilateral tax agreements and the third country is not mentioned in Annex I to the Council conclusions	(f) the third country where the non-EU AIFM is established has signed an agreement with the Member State of reference, which fully complies with the standards laid down in Article 26 of the OECD Model Tax Convention on Income and on Capital and ensures an effective exchange of information in tax matters, including any multilateral tax agreements and the third country is not mentioned in Annex I to the Council conclusions	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	of 2020 on the revised EU list on non-cooperative jurisdictions for tax purposes.;	of 2020 on the revised EU list on non-cooperative jurisdictions for tax purposes <u>applicable at the time of the AIFM's application for authorisation in accordance with paragraph 1 of this Article.</u>	of 2020 on the revised EU list on non-cooperative jurisdictions for tax purposes.;	
192a		<u>If the third country where the non-EU AIF is established is added to Annex I to the relevant last updated version of the Council conclusions on the revised EU list on non-cooperative jurisdictions for tax purposes after the time of the AIFM's application for authorisation in accordance with paragraph 1 of this Article, closed-ended funds shall continue to be considered to meet that criterion for a period of two years.;</u>		
192b		<u>For the purposes of this paragraph, a third country that has been continuously mentioned in Annex II to the Council conclusions on the revised EU list of non-cooperative jurisdictions for tax purposes for a period of over three years shall be considered to be mentioned in Annex I to those conclusions';</u>		

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Article 1, first paragraph, point (14)				
193	(14) the following Article 38a is inserted:	(14) the following Article 38a is inserted:	(14) the following Article 38a is inserted: <u>deleted</u>	
Article 1, first paragraph, point (14), amending provision, first paragraph				
194	Article 38a	Article 38a	Article 38a <u>deleted</u>	
Article 1, first paragraph, point (14), amending provision, second paragraph				
195	Peer review of application of the delegation regime	Peer review of application of the delegation regime	Peer review of application of the delegation regime <u>deleted</u>	
Article 1, first paragraph, point (14), amending provision, numbered paragraph (1)				
196	1. ESMA shall, on a regular basis and at least every two years, conduct a peer review analysis of the supervisory activities of the competent authorities in relation to the application of Article 20. That peer review analysis shall focus on the measures taken to prevent that AIFMs, which delegate performance of portfolio management or risk management to third parties located in third countries, become letter-box entities.	1. ESMA shall, on a regular basis and at least every two years, By ... <u>[12 months before the date of the review referred to in Article 69b].</u> ESMA shall conduct a <u>one-off comprehensive</u> peer review analysis of the supervisory activities of the competent authorities in relation to the application of Article 20. That peer review analysis shall focus on the measures taken to prevent that AIFMs, which delegate performance of portfolio management or risk management to	1. ESMA shall, on a regular basis and at least every two years, conduct a peer review analysis of the supervisory activities of the competent authorities in relation to the application of Article 20. That peer review analysis shall focus on the measures taken to prevent that AIFMs, which delegate performance of portfolio management or risk management to third parties located in third countries, become letter-box entities. <u>deleted</u>	TM 16.03 Council to reflect

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
		third parties located in third countries, become letter-box entities.		
Article 1, first paragraph, point (14), amending provision, numbered paragraph (2)				
197	2. When conducting the peer review analysis, ESMA shall use transparent methods to ensure an objective assessment and comparison between the competent authorities reviewed.;	2. When conducting the peer review analysis, ESMA shall use transparent methods to ensure an objective assessment and comparison between the competent authorities reviewed.;	2. When conducting the peer review analysis, ESMA shall use transparent methods to ensure an objective assessment and comparison between the competent authorities reviewed.; <u>deleted</u>	
Article 1, first paragraph, point (15)				
198	(15) in Article 40(2), points (b) and (c) are replaced by the following:	(15) in Article 40(2), points (b) and (c) are replaced by the following:	(15) in Article 40(2), points (b) and (c) are replaced by the following:	(15) in Article 40(2), points (b) and (c) are replaced by the following: TM0305 same comment as ref Art 35 Text Origin: Commission Proposal
Article 1, first paragraph, point (15), amending provision, first paragraph				
199	(b) the third country where the non-EU AIF is established is not identified as a high-risk third country pursuant to Article 9(2) of Directive (EU) 2015/849;	(b) the third country where the non-EU AIF is established is not identified as a high-risk third country pursuant to Article 9(2) of Directive (EU) 2015/849 <u>at the time of the AIFM's application for</u>	(b) the third country where the non-EU AIF is established is not identified as a high-risk third country pursuant to Article 9(2) of Directive (EU) 2015/849;	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
		<u>authorisation in accordance with Article 39(1);</u>		
Article 1, first paragraph, point (15), amending provision, second paragraph				
200	(c) the third country where the non-EU AIF is established has signed an agreement with the Member State of reference and with each other Member State in which the units or shares of the non-EU AIF are intended to be marketed which fully complies with the standards laid down in Article 26 of the OECD Model Tax Convention on Income and on Capital and ensures an effective exchange of information in tax matters including any multilateral tax agreements, and the third country is not mentioned in Annex I to the Council conclusions of 2020 on the revised EU list on non-cooperative jurisdictions for tax purposes.;	(c) the third country where the non-EU AIF is established has signed an agreement with the Member State of reference and with each other Member State in which the units or shares of the non-EU AIF are intended to be marketed which fully complies with the standards laid down in Article 26 of the OECD Model Tax Convention on Income and on Capital and ensures an effective exchange of information in tax matters including any multilateral tax agreements, and the third country is not mentioned in Annex I to the Council conclusions of 2020 <u>the relevant last updated version of the Council conclusions</u> on the revised EU list on non-cooperative jurisdictions for tax purposes <u>applicable at the time of the AIFM's application for authorisation in accordance with Article 39(1).</u>	(c) the third country where the non-EU AIF is established has signed an agreement with the Member State of reference and with each other Member State in which the units or shares of the non-EU AIF are intended to be marketed which fully complies with the standards laid down in Article 26 of the OECD Model Tax Convention on Income and on Capital and ensures an effective exchange of information in tax matters including any multilateral tax agreements, and the third country is not mentioned in Annex I to the Council conclusions of 2020 <u>on the revised EU list on non-cooperative jurisdictions for tax purposes.</u>	
200a		<u>If the third-country where the non-EU AIF is established is added to Annex I to the relevant last</u>		

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
		<u>updated version of the Council conclusions on the revised EU list on non-cooperative jurisdictions for tax purposes after the time of the AIFM's application for authorisation in accordance with Article 39(1), closed-ended funds shall continue to be considered to meet that criterion for a period of two years.</u>		
200b		<u>For the purposes of this paragraph, a third country that has been continuously mentioned in Annex II to the Council conclusions on the revised EU list of non-cooperative jurisdictions for tax purposes for a period of over three years shall be considered to be mentioned in Annex I to those conclusions.';</u>		
Article 1, first paragraph, point (16)				
201	(16) Article 42(1) is amended as follows:	(16) Article 42(1) is amended as follows:	(16) Article 42(1) is amended as follows:	(16) Article 42(1) is amended as follows: Text Origin: Commission Proposal
Article 1, first paragraph, point (16)(a)				

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
202	(a) point (c) is replaced by the following:	(a) point (c) is replaced by the following:	(a) point (c) is replaced by the following:	(a) point (c) is replaced by the following: Text Origin: Commission Proposal
Article 1, first paragraph, point (16)(a), amending provision, first paragraph				
203	‘ (c) the third country where the non-EU AIFM or the non-EU AIF is established is not identified as a high-risk third country pursuant to Article 9(2) of Directive (EU) 2015/849.; ’	‘ (c) the third country where the non-EU AIFM or the non-EU AIF is established is not identified as a high-risk third country pursuant to Article 9(2) of Directive (EU) 2015/849 <u>at the time the Member State allows the non-EU AIF to be marketed to professional investors in its territory.</u> ’; ’	‘ (c) the third country where the non-EU AIFM or the non-EU AIF is established is not identified as a high-risk third country pursuant to Article 9(2) of Directive (EU) 2015/849.; ’	
Article 1, first paragraph, point (16)(b)				
204	(b) the following point (d) is added:	(b) the following point (d) is added:	(b) the following point (d) is added:	(b) the following point (d) is added: Text Origin: Commission Proposal
Article 1, first paragraph, point (16)(b), amending provision, first paragraph				
205	‘ (d) the third country where the non-EU AIF or non-EU AIFM is established has signed an agreement with the Member State in which the	‘ (d) the third country where the non-EU AIF or non-EU AIFM is established has signed an agreement with the Member State in which the	‘ (d) the third country where the non-EU AIF or non-EU AIFM is established has signed an agreement with the Member State in which the	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	units or shares of the non-EU AIF are intended to be marketed, which fully complies with the standards laid down in Article 26 of the OECD Model Tax Convention on Income and on Capital and ensures an effective exchange of information in tax matters, including any multilateral tax agreements, and that third country is not mentioned in Annex I to the Council conclusions of 2020 on the revised EU list on non-cooperative jurisdictions for tax purposes.;	units or shares of the non-EU AIF are intended to be marketed, which fully complies with the standards laid down in Article 26 of the OECD Model Tax Convention on Income and on Capital and ensures an effective exchange of information in tax matters, including any multilateral tax agreements, and that third country is not mentioned in Annex I to the Council conclusions of 2020 <u>relevant last updated version of the Council conclusions</u> on the revised EU list on non-cooperative jurisdictions for tax purposes <u>applicable at the time the Member State allows the non-EU AIF to be marketed to professional investors in its territory.</u>	units or shares of the non-EU AIF are intended to be marketed, which fully complies with the standards laid down in Article 26 of the OECD Model Tax Convention on Income and on Capital and ensures an effective exchange of information in tax matters, including any multilateral tax agreements, and that third country is not mentioned in Annex I to the Council conclusions of 2020 on the revised EU list on non-cooperative jurisdictions for tax purposes.;	
205a		<u>If the third-country where the non-EU AIF is established is added to Annex I to the relevant last updated version of the Council conclusions on the revised EU list on non-cooperative jurisdictions for tax purposes after the time the Member State allows the non-EU AIF to be marketed to professional investors in its territory, closed-ended funds shall continue to be considered to meet that criterion for a period of two years.</u>		

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
205b		<u>For the purposes of this paragraph, a third country that has been continuously mentioned in Annex II to the Council conclusions on the revised EU list of non-cooperative jurisdictions for tax purposes for a period of over three years shall be considered to be mentioned in Annex I to those conclusions.’;</u>		
205c		<u>(16a) in Article 43, the following paragraph (3a) is added:</u>		
Article 1, first paragraph, point (16)(b), amending provision, first paragraph a				
205d		“ <u>‘3a. This Article shall not apply to AIFs constituted exclusively for the purpose of purchasing company shares and proposed to employees of these companies within the framework of employee savings schemes.’;</u> ”		Discussed TM 15.03. COM may circulate revised wording
Article 1, first paragraph, point (17)				

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
206	(17) in Article 46(2), point (j) is replaced by the following:	(17) in Article 46(2), point (j) is replaced by the following:	(17) in Article 46(2), point (j) is replaced by the following: <u>deleted</u>	(17) in Article 46(2), point (j) is replaced by the following: Text Origin: Commission Proposal
Article 1, first paragraph, point (17), amending provision, first paragraph				
207	(j) in the interest of investors or of the public, require AIFMs to activate or deactivate a liquidity management tool referred to in point 1 or 2 of Annex V or selected by the AIFM in accordance with Article 16(2b), whichever is more suitable considering the type of open-ended AIF or group of open-ended AIFs concerned and investor protection or financial stability risks that necessitate this requirement.;	(j) in the interest of investors, <u>in exceptional circumstances and after consulting the AIFM, and if there are reasonable and balanced investor protection or financial stability risks that necessitate this requirement</u> or of the public , require AIFMs to activate or deactivate a liquidity management tool referred to in point 1 or 2 of Annex V or selected by the AIFM in accordance with Article 16(2b) , whichever is more suitable considering the type of open-ended AIF or group of open-ended AIFs concerned and investor protection or financial stability risks that necessitate this requirement. ;	(j) in the interest of investors or of the public, require AIFMs to activate or deactivate a liquidity management tool referred to in point 1 or 2 of Annex V or selected by the AIFM in accordance with Article 16(2b), whichever is more suitable considering the type of open-ended AIF or group of open-ended AIFs concerned and investor protection or financial stability risks that necessitate this requirement. <u>deleted</u>	(j) in the interest of investors or of the public, require AIFMs to activate or deactivate a liquidity management tool referred to in point 1 or 2 of Annex V or selected by , <u>in exceptional circumstances, where there are reasonable and balanced investor protection or financial stability risks that necessitate this requirement, and after consulting</u> the AIFM in accordance with Article 16(2b), whichever is more suitable considering the type of open-ended AIF or group of open-ended AIFs concerned and investor protection or financial stability risks that necessitate this requirement. <u>require AIFMs to activate or deactivate the liquidity management tool referred to in point 1 of the list set out in Annex V.</u> ;

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
				TM0305. Return to redemption suspension only in line with CONS text (current point (j)) but with EP framing. Question whether it could be clarified that non-EU AIFMs are in scope of this provision to solve issue with line 216 Text Origin: EP Mandate
Article 1, first paragraph, point (18)				
208	(18) Article 47 is amended as follows:	(18) Article 47 is amended as follows:	(18) <u>In</u> Article 47, <u>paragraph 3 is replaced by the following</u> is amended as follows :	
Article 1, first paragraph, point (18)(a)				
209	(a) paragraph 3 is replaced by the following:	(a) paragraph 3 is replaced by the following:	(a) paragraph 3 is replaced by the following : <u>deleted</u>	
Article 1, first paragraph, point (18)(a), amending provision, numbered paragraph (3)				
210	3. All the information exchanged under this Directive between ESMA, the competent authorities, EBA, the European Supervisory Authority (European Insurance and Occupational Pensions Authority) established by Regulation (EU) No 1094/2010 of the European Parliament and of the Council* and	3. All the information exchanged under this Directive between ESMA, the competent authorities, EBA, the European Supervisory Authority (European Insurance and Occupational Pensions Authority) established by Regulation (EU) No 1094/2010 of the European Parliament and of the Council* and	3. All the information exchanged under this Directive between ESMA, the competent authorities, EBA, the European Supervisory Authority (European Insurance and Occupational Pensions Authority) established by Regulation (EU) No 1094/2010 of the European Parliament and of the Council* and	3. All the information exchanged under this Directive between ESMA, the competent authorities, EBA, the European Supervisory Authority (European Insurance and Occupational Pensions Authority) established by Regulation (EU) No 1094/2010 of the European Parliament and of the Council* and

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	the ESRB shall be considered confidential, except:	the ESRB shall be considered confidential, except:	the ESRB shall be considered confidential, except:	the ESRB shall be considered confidential, except: Text Origin: Commission Proposal
Article 1, first paragraph, point (18)(a), amending provision, numbered paragraph (3), point (a)				
211	(a) where ESMA or the competent authority or another authority or body concerned states at the time of communication that such information may be disclosed;	(a) where ESMA or the competent authority or another authority or body concerned states at the time of communication that such information may be disclosed;	(a) where ESMA or the competent authority or another authority or body concerned states at the time of communication that such information may be disclosed;	(a) where ESMA or the competent authority or another authority or body concerned states at the time of communication that such information may be disclosed; Text Origin: Commission Proposal
Article 1, first paragraph, point (18)(a), amending provision, numbered paragraph (3), point (b)				
212	(b) where disclosure is necessary for legal proceedings;	(b) where disclosure is necessary for legal proceedings;	(b) where disclosure is necessary for legal proceedings;	(b) where disclosure is necessary for legal proceedings; Text Origin: Commission Proposal
Article 1, first paragraph, point (18)(a), amending provision, numbered paragraph (3), point (c)				
213	(c) where the information disclosed is used in a summary or in an aggregate form in which individual financial market participants cannot be identified.	(c) where the information disclosed is used in a summary or in an aggregate form in which individual financial market participants cannot be identified.	(c) where the information disclosed is used in a summary or in an aggregate form in which individual financial market participants cannot be identified.	(c) where the information disclosed is used in a summary or in an aggregate form in which individual financial market participants cannot be identified. Text Origin: Commission Proposal

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Article 1, first paragraph, point (18)(a), amending provision, numbered paragraph (3), first paragraph				
214	*Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC (OJ L 331, 15.12.2010, p. 48).;	*Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC (OJ L 331, 15.12.2010, p. 48).;	*Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC (OJ L 331, 15.12.2010, p. 48).;	*Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC (OJ L 331, 15.12.2010, p. 48).; Text Origin: Commission Proposal
Article 1, first paragraph, point (18)(b)				
215	(b) in paragraph 4, the following point (d) is added:	(b) in paragraph 4, the following point (d) is added:	(b) in paragraph 4, the following point (d) is added: <u>deleted</u>	
Article 1, first paragraph, point (18)(b), amending provision, first paragraph				
216	(d) require non-EU AIFMs that are marketing in the Union AIFs that they manage or EU AIFMs managing non-EU AIFs to activate or deactivate a liquidity management tool referred to in point 1 or 2 of Annex V or selected by the AIFM, whichever is more suitable considering the type of open-ended AIF concerned and the	(d) require non-EU AIFMs that are marketing in the Union AIFs that they manage or EU AIFMs managing non-EU AIFs to activate or deactivate a liquidity management tool referred to in point 1 or 2 of Annex V or selected by the AIFM, whichever is more suitable considering the type of open-ended AIF concerned and the	(d) require non-EU AIFMs that are marketing in the Union AIFs that they manage or EU AIFMs managing non-EU AIFs to activate or deactivate a liquidity management tool referred to in point 1 or 2 of Annex V or selected by the AIFM, whichever is more suitable considering the type of open-ended AIF concerned and the	TM0305 this provision would currently only apply to marketing under NPPRs under Art 42 (first case) or 36 (second case). CONS believe powers should remain at national level.

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	investor protection or financial stability risks that necessitate this requirement.;	investor protection or financial stability risks that necessitate this requirement.;	investor protection or financial stability risks that necessitate this requirement.; deleted	
Article 1, first paragraph, point (19)				
217	(19) Article 50 is amended as follows:	(19) Article 50 is amended as follows:	(19) Article 50 is amended as follows:	(19) Article 50 is amended as follows: Text Origin: Commission Proposal
Article 1, first paragraph, point (19)(a)				
218	(a) paragraph 5 is replaced by the following:	(a) paragraph 5 is replaced by the following:	(a) paragraph 5 is replaced by the following:	(a) paragraph 5 is replaced by the following: Text Origin: Commission Proposal
Article 1, first paragraph, point (19)(a), amending provision, numbered paragraph (5)				
219	5. Where the competent authorities of one Member State have reasonable grounds to suspect that acts contrary to this Directive are being or have been carried out by an AIFM not subject to supervision of those competent authorities, they shall notify ESMA and the competent authorities of the home and host Member States of the AIFM concerned thereof in as	5. Where the competent authorities of one Member State have reasonable <u>clear and demonstrable</u> grounds to suspect that acts contrary to this Directive are being or have been carried out by an AIFM not subject to supervision of those competent authorities, <u>or by an entity appointed as depositary by an AIFM,</u> they shall notify ESMA and	5. Where the competent authorities of one Member State have reasonable grounds to suspect that acts contrary to this Directive are being or have been carried out by an AIFM not subject to supervision of those competent authorities, they shall notify ESMA and the competent authorities of the home and host Member States of the AIFM concerned thereof in as	TM0305 Council asks to discuss at next TM. Inclusion of depositaries may negate the need for line 227a. But NB 'competent authorities' is only those responsible for AIFMs - may exclude those regulating AIFs Text Origin: EP Mandate

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	specific a manner as possible. The recipient authorities shall take appropriate action, shall inform ESMA and the notifying competent authorities of the outcome of that action and, to the extent possible, of significant interim developments. This paragraph shall be without prejudice to the competences of the notifying competent authority.;	the competent authorities of the home and host Member States of the AIFM <u>or those of the entity</u> concerned thereof in as specific a manner as possible. The recipient authorities shall take appropriate action, shall inform ESMA and the notifying competent authorities of the outcome of that action and, to the extent possible, of significant interim developments. This paragraph shall be without prejudice to the competences of the notifying competent authority.;	specific a manner as possible. The recipient authorities shall take appropriate action, shall inform ESMA and the notifying competent authorities of the outcome of that action and, to the extent possible, of significant interim developments. This paragraph shall be without prejudice to the competences of the notifying competent authority.;	
Article 1, first paragraph, point (19)(b)				
220	(b) the following paragraphs 5a to 5g are inserted:	(b) the following paragraphs 5a to 5g are inserted:	(b) the following paragraphs 5a to 5g are inserted:	(b) the following paragraphs 5a to 5g are inserted: Text Origin: Commission Proposal
Article 1, first paragraph, point (19)(b), amending provision, first paragraph				
221	5a. The competent authorities of the home Member State of an AIFM shall notify the competent authorities of the host Member State of the AIFM, ESMA and the ESRB prior to exercising powers pursuant to Article 46(2), point (j), or Article 47(4), point (d).	5a. The competent authorities of the home Member State of an AIFM shall notify the competent authorities of the host Member State of the AIFM, ESMA and the ESRB <u>and ESMA</u> prior to exercising powers pursuant to Article 46(2), point (j), or Article 47(4), point (d).	5a. The competent authorities of the home Member State of an AIFM shall notify the competent authorities of the host Member State of the AIFM, ESMA and the ESRB <u>prior to and ESMA in parallel with</u> exercising powers pursuant to Article 46(2), point (j) <u>and, if there</u>	5a. <u>When</u> the competent authorities of the home Member State of an AIFM <u>exercise powers pursuant to Article 46(2), point (j), they</u> shall notify the competent authorities of the host Member State of the AIFM, ESMA and the ESRB prior to exercising powers pursuant to

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
		<u>The competent authorities of the home Member State of the AIFM shall notify ESRB if there is any potential risk to the stability and integrity of the financial system.</u>	<u>are potential risks to the stability and integrity of the financial system, the ESRB thereof.</u> Article 47(4), point (d).	Article 46(2), point (j), or Article 47(4), point (d) and ESMA, and, if there are potential risks to the stability and integrity of the financial system, also the ESRB. TM0305 drafting / order aligned with 331 Reference to 47(4)d) removed as that is an ESMA power [not prejudging question of whether that provision is included or not] Text Origin: EP Mandate
Article 1, first paragraph, point (19)(b), amending provision, second paragraph				
222	5b. The competent authority of the host Member State of an AIFM may request the competent authority of the home Member State of the AIFM to exercise powers laid down in Article 46(2), point (j) or Article 47(4), point (d), specifying the reasons for the request and notifying ESMA and the ESRB thereof.	5b. The competent authority of the host Member State of an AIFM may request the competent authority of the home Member State of the AIFM to exercise powers laid down in Article 46(2), point (j) or Article 47(4), point (d), specifying the reasons for the request and notifying ESMA and, <u>in the case of any potential risk to the stability and integrity of the financial system,</u> the ESRB thereof.	5b. The competent authority of the host Member State of an AIFM may request the competent authority of the home Member State of the AIFM to exercise powers laid down in Article 46(2), point (j) or Article 47(4), point (d) , specifying the reasons for the request and notifying ESMA and, <u>if there are potential risks to the stability and integrity of the financial system,</u> the ESRB thereof.	5b. The competent authority <u>authorities</u> of the host Member State of an AIFM may request the competent authority <u>authorities</u> of the home Member State of the AIFM to exercise powers laid down in Article 46(2), point (j) or Article 47(4), point (d) , specifying the reasons for the request and notifying ESMA and, <u>if there are potential risks to the stability and integrity of the financial system,</u> the ESRB thereof. TM0305 same comment as 221 ref 47(4)(d) Text Origin: Council Mandate
Article 1, first paragraph, point (19)(b), amending provision, third paragraph				

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
223	5c. Where the competent authority of the home Member State of the AIFM does not agree with the request referred to in paragraph 5b, it shall inform the competent authority of the host Member State of the AIFM, ESMA and the ESRB thereof, stating its reasons.	5c. Where the competent authority of the home Member State of the AIFM does not agree with the request referred to in paragraph 5b, it shall inform the competent authority of the host Member State of the AIFM, ESMA and, <u>in case of any potential risk to the stability and integrity of the financial system</u> , the ESRB thereof, stating its reasons.	5c. Where the competent authority of the home Member State of the AIFM does not agree with the request referred to in paragraph 5b, it shall inform the competent authority of the host Member State of the AIFM <u>and, ESMA, stating its reasons and, if there are potential risks to the stability and integrity of the financial system, the ESRB thereof, ESMA and the ESRB thereof, stating its reasons.</u>	5c. Where the competent authority <u>authorities</u> of the home Member State of the AIFM does not agree with the request referred to in paragraph 5b, it <u>they</u> shall inform the competent authority <u>authorities</u> of the host Member State of the AIFM <u>and ESMA, stating their reasons and, if there are potential risks to the stability and integrity of the financial system, the ESRB thereof, ESMA and the ESRB thereof, stating its reasons.</u> TM0305 Text Origin: Council Mandate
Article 1, first paragraph, point (19)(b), amending provision, fourth paragraph				
224	5d. Based on the information received in accordance with paragraphs 5b and 5c, ESMA shall issue an opinion to the competent authorities of the home Member State of the AIFM on exercising powers laid down in Article 46(2), point (j) or Article 47(4), point (d).	5d. Based on the information received in accordance with paragraphs 5b and 5c, ESMA shall issue an opinion to the competent authorities of the home Member State of the AIFM on exercising powers laid down in Article 46(2), point (j) or Article 47(4), point (d). <u>The opinion shall be communicated to the authority of the host Member State.</u>	5d. Based on the information received in accordance with paragraphs 5b and 5c, ESMA shall issue an opinion <u>in a reasonable timeframe</u> to the competent authorities of the home Member State of the AIFM on exercising powers laid down in Article 46(2), point (j) or Article 47(4), point (d).	5d. Based on the information received in accordance with paragraphs 5b and 5c, ESMA shall issue an opinion <u>without undue delay</u> to the competent authorities of the home Member State of the AIFM on exercising powers laid down in Article 46(2), point (j). <u>ESMA shall communicate that opinion to the competent authorities of the host Member State.</u> or Article 47(4), point (d). TM0305 Text Origin: Council Mandate

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	Article 1, first paragraph, point (19)(b), amending provision, fifth paragraph			
225	5e. Where the competent authority does not act in accordance or does not intend to comply with ESMA's opinion referred to in paragraph 5d, it shall inform ESMA, stating its reasons for the non-compliance or intention. ESMA may publish the fact that a competent authority does not comply or intend to comply with its advice. ESMA may also decide, on a case-by-case basis, to publish the reasons provided by the competent authority in this regard. ESMA shall give the competent authorities advance notice about such publication.	5e. Where the competent authority does not act in accordance or does not intend to comply with ESMA's opinion referred to in paragraph 5d, it shall inform ESMA <u>and the competent authority of the host Member State</u>, stating its reasons for the non-compliance or intention. <u>In the event of a serious threat to investor protection, a threat to the orderly functioning and integrity of financial markets or a risk to the stability of the whole or part of the financial system in the Union, and unless such publication is in conflict with the legitimate interest of the share or unit-holders or of the public</u>, ESMA may publish the fact that a competent authority does not comply or intend to comply with its advice. ESMA may also decide, on a case-by-case basis, to publish, together with the reasons provided <u>stated</u> by the competent authority in this regard <u>for the non-compliance or intention</u>. ESMA shall give the competent authorities advance notice about such publication.	5e. Where the competent authority does not act in accordance or does not intend to comply with ESMA's opinion referred to in paragraph 5d, it shall inform ESMA, stating its reasons for the non-compliance or intention. ESMA may publish the fact that a competent authority does not comply or intend to comply with its advice. ESMA may also decide, on a case-by-case basis, to publish the reasons provided by the competent authority in this regard, together with the reasons stated by the competent authority for the non-compliance or intention, unless such publication is in conflict with the legitimate interest of the share or unit-holders or of the public, or could seriously jeopardise the orderly functioning and integrity of financial markets or the stability of the whole or part of the financial system of the Union. ESMA shall give the competent authorities advance notice about such publication.	5e. Where the competent authority <u>does</u> authorities do not act in accordance or does <u>do</u> not intend to comply with ESMA's opinion referred to in paragraph 5d, it <u>they</u> shall inform ESMA <u>and the competent authorities of the host Member State</u>, stating its <u>the</u> reasons for the non-compliance or intention. <u>In the event of a serious threat to investor protection, to the orderly functioning and integrity of financial markets or to the stability of the whole or part of the financial system in the Union, where the benefits of publication would outweigh the amplification of those threats by that publication, and unless such publication is in conflict with the legitimate interests of the unit-holders or of the public</u>, ESMA may publish the fact that at <u>the</u> competent authority <u>does</u> authorities do not comply or intend to comply with its advice. ESMA may also decide, on a case-by-case basis, to publish together with the reasons provided <u>stated</u> by the competent authority in this regard <u>authorities for the non-compliance or intention</u>. ESMA shall give the competent authorities

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
				advance notice about ^{of} such publication. ² TM0305 cf 335
Article 1, first paragraph, point (19)(b), amending provision, sixth paragraph				
226	5f. The competent authority of the host Member State of an AIFM may request the competent authority of the home Member State of the AIFM to exercise, without delay, powers laid down in Article 46(2), specifying the reasons for its request and notifying ESMA and, if there are potential risks to the stability and integrity of the financial system, the ESRB thereof.	5f. The competent authority of the host Member State of an AIFM may, <u>where it has good reasons to suspect that acts contrary to this Directive are being or have been carried out by the AIFM</u> , request the competent authority of the home Member State of the AIFM to exercise, without delay, powers laid down in Article 46(2), specifying the reasons for its request <u>in as specific a manner as possible</u> and notifying ESMA and, if there are potential risks to the stability and integrity of the financial system, the ESRB thereof.	5f. The competent authority of the host Member State of an AIFM may request the competent authority of the home Member State of the AIFM to exercise, without delay, powers laid down in Article 46(2), specifying the reasons for its request and notifying ESMA and, if there are potential risks to the stability and integrity of the financial system, the ESRB thereof.	TM0305 Council asks to discuss at later meeting. Discussion of potential overlap with line 222 which concerns point (j) of 46(2).
Article 1, first paragraph, point (19)(b), amending provision, sixth paragraph, first paragraph				
227	The competent authority of the home Member State of the AIFM shall, without delay, inform the competent authority of the host Member State of the AIFM, ESMA and, if there are potential risks to stability and integrity of the financial system, the ESRB of the powers exercised and its findings.	The competent authority of the home Member State of the AIFM shall, without <u>undue</u> delay, inform the competent authority of the host Member State of the AIFM, ESMA and, if there are potential risks to stability and integrity of the financial system, the ESRB of the powers exercised and its findings.	The competent authority of the home Member State of the AIFM shall, without delay, inform the competent authority of the host Member State of the AIFM, ESMA and, if there are potential risks to stability and integrity of the financial system, the ESRB of the powers exercised and its findings.	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	Article 1, first paragraph, point (19)(b), amending provision, sixth paragraph, first paragraph a			
227a		<u>5fa. Where a Member State has exercised the option provided for in Article 21(5a) and where the competent authorities of the home Member State of an AIF have reasonable grounds to suspect that acts contrary to this Directive are being or have been carried out by a depositary not subject to supervision of those competent authorities, such competent authorities shall without delay notify ESMA and the competent authorities of the depositary concerned thereof in a manner as specific as possible. The recipient authorities shall take appropriate action and inform ESMA and the notifying competent authorities of the outcome of that action. This paragraph shall be without prejudice to the competences of the notifying competent authorities.</u>	<u>5fa. Where a Member States has exercised the option provided for in Article 21, paragraph 5, point (c), and where the competent authorities of the home Member State of an AIF or, in case where the AIF is not regulated, the competent authorities of the home Member State of an AIFM have reasonable grounds to suspect that acts contrary to this Directive are being or have been carried out by a depositary not subject to supervision of those competent authorities, such competent authorities shall without delay notify ESMA and the competent authorities of the depositary concerned thereof in a manner as specific as possible. The recipient authorities shall take appropriate action, shall inform ESMA and the notifying competent authorities of the outcome of that action. This paragraph shall be without prejudice to the competences of the notifying competent authorities.</u>	<u>5fa. Where a Member State has exercised the option provided for in Article 21(5a), and where the competent authorities of the home Member State of an AIF or, in case where the AIF is not regulated, the competent authorities of the home Member State of an AIFM have reasonable grounds to suspect that acts contrary to this Directive are being or have been carried out by a depositary not subject to supervision of those competent authorities, such competent authorities shall without delay notify ESMA and the competent authorities of the depositary concerned thereof in a manner as specific as possible. The recipient authorities shall take appropriate action, shall inform ESMA and the notifying competent authorities of the outcome of that action. This paragraph shall be without prejudice to the competences of the notifying competent authorities.</u> TM0305 column shows Council text compared to EP. Question if this line is required if 219 includes depositaries but NB "the

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
				competent authorities of the home Member State of an AIF" Text Origin: Council Mandate
Article 1, first paragraph, point (19)(b), amending provision, seventh paragraph				
228	5g. ESMA may request the competent authority to submit explanations to ESMA in relation to specific cases, which have cross-border implications, concern investor protection issues or pose risks to the financial stability.;	5g. ESMA may request the competent authority to submit explanations to ESMA in <u>a reasonable time frame in</u> relation to specific cases, which have cross-border implications, concern <u>raise a serious threat to</u> investor protection, <u>threaten the orderly functioning and integrity of financial markets</u> issues or pose risks to the <u>stability of the whole or part of the financial stability system in the Union.</u> ;	5g. ESMA may request the competent authority to submit explanations to ESMA in <u>a reasonable timeframe in</u> relation to specific cases, which have cross-border implications, concern <u>raise a serious threat to</u> investor protection, <u>threaten the orderly functioning and integrity of financial markets</u> issues or pose risks to the <u>stability of the whole or part of the financial stability system in the Union.</u> ;	5g. ESMA may request the competent authority <u>authorities</u> to submit explanations to ESMA <u>without undue delay</u> in relation to specific cases, which have cross-border implications, concern <u>raise a serious threat to</u> investor protection, <u>threaten the orderly functioning and integrity of financial markets</u> issues or pose risks to the <u>stability of the whole or part of the financial stability system in the Union.</u> ; TM0305 Text Origin: EP Mandate
Article 1, first paragraph, point (19)(ba)				
228a				<u>(ba) paragraph 6 is replaced by the following:</u>
Article 1, first paragraph, point (19)(bb)				
228b				<u>In order to ensure uniform application of this Directive</u>

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			PUBLIC	<u>concerning the exchange of information, ESMA may develop draft implementing technical standards to determine the procedures for exchange of information between competent authorities and between the competent authorities, the ESAs, the ESRB, and members of the ESCB.</u> TM2504 following COM email
Article 1, first paragraph, point (19)(c)				
229	(c) the following paragraph 7 is added:	(c) the following paragraph 7 is added:	(c) the following paragraph 7 is added:	(c) the following paragraph 7 is added: Text Origin: Commission Proposal
Article 1, first paragraph, point (19)(c), amending provision, numbered paragraph (7)				
230	7. ESMA shall develop draft regulatory technical standards indicating in which situations the competent authorities may exercise the powers set out in Article 46(2), point (j) and in which situations they may put forward the requests referred to in paragraphs 5b and 5f. When developing those standards, ESMA shall consider the potential implications of such supervisory	7. ESMA shall develop draft regulatory technical standards indicating in which situations the competent authorities may exercise the powers set out in Article 46(2), point (j) and in which situations they may put forward the requests referred to in paragraphs 5b and 5f. When developing those standards, ESMA shall consider the potential implications of such supervisory	7. ESMA shall develop draft regulatory technical standards indicating in which situations <u>guidelines providing indications to</u> the competent authorities may in their exercise <u>of</u> the powers set out in Article 46(2), point (j), <u>and indications on the</u> and in which situations they may put <u>that may lead to putting</u> forward the requests referred to in	TM0305 Political issue linked to lines 132 133, also to removal of redemption gates from 46(2)(j)

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	intervention for investor protection and the financial stability in another Member State or in the Union.	intervention for <u>reasonable and efficient</u> investor protection and the financial stability in another Member State or in the Union. <u>Those standards shall recognise that the primary responsibility for liquidity risk management remains with the AIFM and that intervention by the competent authorities is a last resort.</u>	paragraphs 5b and 5f. When developing those standards <u>guidelines</u> , ESMA shall consider the potential implications of such supervisory intervention for investor protection and the financial stability in another Member State or in the Union.	
Article 1, first paragraph, point (19)(c), amending provision, numbered paragraph (7), first paragraph				
231	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.;	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.;	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.; <u>deleted</u>	
231a			<u>(19a) Article 60 is replaced by the following:</u>	
231b			<u>: 'Article 60 Disclosure of derogations</u>	
Article 1, first paragraph, point (19)(c), amending provision, numbered paragraph (7), first paragraph a				

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
231c			<u>. Where a Member State makes use of derogation or option provided by Articles 6, 9, 15(3 and 15(4aa), 21, 22, 28, 43 and Article 61(5), it shall inform the Commission thereof as well as of any subsequent changes. The Commission shall make the information public on a web-site or by other easily accessible means.'</u>	TM0305 wait until list complete - cf lines 107 etc
Article 1, first paragraph, point (20)				
232	(20) in Article 61, paragraph 5 is replaced by the following:	(2019a) in Article 61, paragraph 5 is replaced by the following <u>is amended as follows:</u> <u>(a) paragraph 5 is deleted:</u>	(20) in Article 61, paragraph 5 is replaced by the following <u>the following paragraph 6 is inserted:</u>	(20) in Article 61, paragraph 5 is replaced by the following <u>is amended as follows:</u> <u>(a) paragraph 5 is deleted:</u> TM0305. Para 5 is obsolete therefore repealed Text Origin: EP Mandate
Article 1, first paragraph, point (20), amending provision, numbered paragraph (5)				
233	‘ 5. The competent authorities of the home Member State of an AIF or in case where the AIF is not regulated the competent authorities of the home Member State of an AIFM may allow institutions referred to in point (a) of Article 21(3) and established in another Member State	<i>deleted</i>	‘ 5. The competent authorities of the home Member State of an AIF or in case where the AIF is not regulated the competent authorities of the home Member State of an AIFM may allow institutions referred to in point (a) of Article 21(3) and established in another Member	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	to be appointed as a depositary. This provision shall be without prejudice to the full application of Article 21, with the exception of point (a) of paragraph 5 of that Article on the place where the depositary is to be established.;		State to be appointed as a depositary. This provision shall be without prejudice to the full application of Article 21, with the exception of point (a) of paragraph 5 of that Article on the place where the depositary is to be established.; <u>deleted</u>	
233a		<u>(b) the following paragraph is added:</u>		
Article 1, first paragraph, point (20), amending provision, numbered paragraph (5a)				
233b		" <u>'5a. AIFMs in so far as they manage AIFs that originate loans and that have been constituted before ... [date of entry into force of this amending Directive] may continue to manage such AIFs without complying with Article 16(2a) of this Directive until ... [5 years + date of entry into force of this amending Directive]. By way of derogation, loan-originating AIFs constituted before ... [date of entry into force of this amending Directive] and that do not raise additional capital after ... [5 years + date of entry into force of this amending Directive] shall be</u>	<u>6. AIFMs in so far as they manage AIFs that originate loans and that have been constituted before [date of adoption of this Directive] may continue to manage such AIFs without complying with point (d) of Article 15(3), paragraphs 4a to 4f of Article 15 and Article 16(2a) of this Directive until [5 years + date of adoption of this Directive]. By way of derogation, loan-originating AIFs constituted before [date of adoption of this Directive] and that do not raise additional capital shall be deemed to comply with the above-mentioned Articles.'</u>	TM0305 COM to look in particular at scope of provisions to be grandfathered

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
		<u>deemed to comply with the above-mentioned Articles'</u>	"	
Article 1, first paragraph, point (21)				
234	(21) the following Article 69b is inserted:	(21) the following Article 69b is inserted:	(21) the following Article 69b is inserted:	(21) the following Article 69b is inserted: Text Origin: Commission Proposal
Article 1, first paragraph, point (21), amending provision, first paragraph				
235	Article 69b	Article 69b	Article 69b	Article 69b Text Origin: Commission Proposal
Article 1, first paragraph, point (21), amending provision, second paragraph				
236	Review	Review	Review	Review Text Origin: EP Mandate
Article 1, first paragraph, point (21), amending provision, numbered paragraph (1)				
237	1. By [Please insert date = 60 months after the entry into force of this Directive] and following the peer reviews by ESMA referred to in Article 38a and reports produced by ESMA in accordance with	1. By [Please insert date = 60 months after the entry into force of this Directive] and following the peer reviews by ESMA referred to in Article 38a and reports produced by ESMA in accordance with	1. By [Please insert date = 60 months after the entry into force of this Directive] and following the peer reviews by ESMA referred to in Article 38a and reports produced by ESMA in accordance with	TM0305 dependent on outcome on peer review lines 193ff

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	Article 7(9), the Commission shall initiate a review of the functioning of the rules laid down in this Directive and the experience acquired in applying them. That review shall include an assessment of the following aspects:	Article 7(9), the Commission shall initiate a review of the functioning of the rules laid down in this Directive and the experience acquired in applying them. That review shall include an assessment of the following aspects:	Article 7(9), the Commission shall initiate a review of the functioning of the rules laid down in this Directive and the experience acquired in applying them. That review shall include an assessment of the following aspects:	
Article 1, first paragraph, point (21), amending provision, numbered paragraph (1), point (a)				
238	(a) the impact on financial stability of the availability and activation of liquidity management tools by AIFMs;	(a) the impact on financial stability of the availability and activation of liquidity management tools by AIFMs;	(a) the impact on financial stability of the availability and activation of liquidity management tools by AIFMs;	(a) the impact on financial stability of the availability and activation of liquidity management tools by AIFMs; Text Origin: Commission Proposal
Article 1, first paragraph, point (21), amending provision, numbered paragraph (1), point (b)				
239	(b) the effectiveness of the AIFM authorisation requirements in Articles 7 and 8 and delegation regime laid down in Article 20 of this Directive with regard to preventing the creation of letter-box entities in the Union;	(b) the effectiveness of the AIFM authorisation requirements in Articles 7 and 8 and delegation regime laid down in Article 20 of this Directive with regard to preventing the creation of letter-box entities in the Union;	(b) the effectiveness of the AIFM authorisation requirements in Articles 7 and 8 and delegation regime laid down in Article 20 of this Directive with regard to preventing the creation of letter-box entities in the Union;	(b) the effectiveness of the AIFM authorisation requirements in Articles 7 and 8 and <u>as regards the</u> delegation regime laid down in Article 20 of this Directive, <u>in particular</u> with regard to preventing the creation of letter-box entities in the Union; TM0305 COM support deletion of letter-box. EP prefer to keep in order to delimit scope of review. CONS prefer to maintain own text (broader review) but to consider this text - not yet agreed

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
				Text Origin: EP Mandate
Article 1, first paragraph, point (21), amending provision, numbered paragraph (1), point (c)				
240	(c) the appropriateness of the requirements applicable to AIFMs managing loan-originating AIFs laid down in Article 15;	(c) the appropriateness of the requirements applicable to AIFMs managing loan-originating AIFs laid down in Article 15;	(c) the appropriateness of the requirements applicable to AIFMs managing loan-originating AIFs laid down in Article 15;	(c) the appropriateness of the requirements applicable to AIFMs managing loan-originating AIFs laid down in Article 15; Text Origin: Commission Proposal
Article 1, first paragraph, point (21), amending provision, numbered paragraph (1), point (d)				
241	(d) the appropriateness of complementing this Directive with a depositary passport.	(d) the appropriateness of complementing this Directive with a effectiveness and the impact on financial stability of the depositary passport.	(d) the <u>functioning and appropriateness of complementing this Directive with the power of competent authorities to allow the appointment of a depositary passport in another Member State as set out in Article 21(5), point c, including the relevance of the quantitative criteria laid down in Article 21(5), point (c), subparagraph ii.</u>	(d) the appropriateness of complementing this Directive with <u>functioning of the regime allowing the appointment of a depositary passport in another Member State as set out in Article 21(5a), including the appropriateness of the quantitative criteria laid down in Article 21(5a), point (b), [and the potential benefits and risks, including to financial stability, of extending that regime].</u> TM0305 Work in progress. CONS to consider, in particular addition of words in []. EP to consider whether this would remove need of line 241b. Text Origin: Council Mandate
Article 1, first paragraph, point (21), amending provision, numbered paragraph (1), point (da)				

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
241a		<u>(da) the appropriateness of the requirements applicable to AIFMs managing AIFs on behalf of a third party as laid down in Article 14(2a).</u>		TM0305 dependent on outcome on white label products
241b		<u>1a. For the purposes of point (d) of paragraph 1, the Commission shall by ... [24 months after the entry into force of this amending Directive] carry out a comprehensive study on the potential benefits and risks of introducing an EU depositary passport.</u>		
Article 1, first paragraph, point (21), amending provision, numbered paragraph (2)				
242	2. By [Please insert date = 24 months after the entry into force of this Directive], ESMA shall submit to the Commission a report for the development of an integrated supervisory data collection, which shall focus on how to:	2. By [Please insert date = 24 months after the entry into force of this Directive], ESMA shall submit to the Commission a report for the development of an integrated supervisory data collection, which shall focus on how to:	2. By [Please insert date = 24 months after the entry into force of this Directive], ESMA shall submit to the Commission a report for the development of an integrated supervisory data collection, which shall focus on how to:	2. By [Please insert date = 24 months after the entry into force of this Directive], ESMA shall submit to the Commission a report for the development of an integrated supervisory data collection, which shall focus on how to: Text Origin: Commission Proposal
Article 1, first paragraph, point (21), amending provision, numbered paragraph (2), point (a)				
243				

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	(a) reduce areas of duplications and inconsistencies between the reporting frameworks in the asset management sector and other sectors of the financial industry;	(a) reduce areas of duplications and inconsistencies between the reporting frameworks in the asset management sector and other sectors of the financial industry;	(a) reduce areas of duplications and inconsistencies between the reporting frameworks in the asset management sector and other sectors of the financial industry;	(a) reduce areas of duplications and inconsistencies between the reporting frameworks in the asset management sector and other sectors of the financial industry; Text Origin: Commission Proposal
Article 1, first paragraph, point (21), amending provision, numbered paragraph (2), point (b)				
244	(b) data standardisation and efficient sharing and use of data already reported within any Union reporting framework by any relevant competent authority, at Union or national level.	(b) data standardisation and efficient sharing and use of data already reported within any Union reporting framework by any relevant competent authority, at Union or national level.	(b) data standardisation and efficient sharing and use of data already reported within any Union reporting framework by any relevant competent authority, at Union or national level.	(b) data standardisation and efficient sharing and use of data already reported within any Union reporting framework by any relevant competent authority, at Union or national level. Text Origin: Commission Proposal
Article 1, first paragraph, point (21), amending provision, numbered paragraph (3)				
245	3. When preparing the report referred to in paragraph 2, ESMA shall work in close cooperation with the European Central Bank (ECB), the other European Supervisory Authorities and, where relevant, the national competent authorities.	3. When preparing the report referred to in paragraph 2, ESMA shall work in close cooperation with the European Central Bank (ECB), the other European Supervisory Authorities and, where relevant, the national competent authorities.	3. When preparing the report referred to in paragraph 2, ESMA shall work in close cooperation with the European Central Bank (ECB), the other European Supervisory Authorities and, where relevant, the national competent authorities.	3. When preparing the report referred to in paragraph 2, ESMA shall work in close cooperation with the European Central Bank (ECB), the other European Supervisory Authorities and, where relevant, the national competent authorities. Text Origin: Commission Proposal
Article 1, first paragraph, point (21), amending provision, numbered paragraph (4)				
246				

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	4. Following the review referred to in paragraph 1, and after consulting ESMA, the Commission shall submit a report to the European Parliament and to the Council presenting the conclusions of that review.;	4. Following the review referred to in paragraph 1, and after consulting ESMA, the Commission shall submit a report to the European Parliament and to the Council presenting the conclusions of that review.;	4. Following the review referred to in paragraph 1, and after consulting ESMA, the Commission shall submit a report to the European Parliament and to the Council presenting the conclusions of that review.;	4. Following the review referred to in paragraph 1, and after consulting ESMA, the Commission shall submit a report to the European Parliament and to the Council presenting the conclusions of that review.;
				Text Origin: Commission Proposal
246a		<u>The Commission shall gather information for that report without broadening reporting obligations, including for AIFMs, and by using information from all relevant and reliable sources, including Union institutions, national competent authorities or internationally recognised bodies and organisations.</u> ;		
Article 1, first paragraph, point (22)				
247	(22) Annex I is amended as set out in Annex I to this Directive;	(22) Annex I is amended as set out in Annex I to this Directive;	(22) Annex I is amended as set out in Annex I to this Directive;	(22) Annex I is amended as set out in Annex I to this Directive;
				Text Origin: Commission Proposal
Article 1, first paragraph, point (23)				

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
248	(23) The text in Annex II to this Directive is added as Annex V.	(23) The text in Annex II to this Directive is added as Annex V.	(23) The text in Annex II to this Directive is added as Annex V.	(23) The text in Annex II to this Directive is added as Annex V. Text Origin: Commission Proposal
Article 2				
249	Article 2 Amendments to Directive 2009/65/EC	Article 2 Amendments to Directive 2009/65/EC	Article 2 Amendments to Directive 2009/65/EC	Article 2 Amendments to Directive 2009/65/EC Text Origin: Commission Proposal
Article 2, first paragraph				
250	Directive 2009/65/EC is amended as follows:	Directive 2009/65/EC is amended as follows:	Directive 2009/65/EC is amended as follows:	Directive 2009/65/EC is amended as follows: Text Origin: Commission Proposal
Article 2, first paragraph, point (1)				
251	(1) in Article 2(1), the following point (u) is added:	(1) in Article 2(1), the following point (u) is added:	(1) in Article 2(1), the following point (u) is added:	(1) in Article 2(1), the following point (u) is added: Text Origin: Commission Proposal
Article 2, first paragraph, point (1), amending provision, first paragraph				
252	,	,	,	,

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	(u) 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*.'	(u) 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*.'	(u) 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*.'	(u) 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*.'
				Text Origin: Commission Proposal
Article 2, first paragraph, point (1), amending provision, first paragraph, first paragraph				
253	* 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);'	* 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);'
				Text Origin: Commission Proposal
253a		<i><u>(1a) in Article 5, paragraph 8 is replaced by the following:</u></i>		
253b		"		

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
		<u>‘(8) In order to ensure consistent harmonisation of this Article, the European Supervisory Authority (European Securities and Markets Authority) (ESMA), established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council I shall develop draft regulatory technical standards to specify the information to be provided to the competent authorities in the application for authorisation of a UCITS, including the programme of activity, and situations where the name of a UCITS could be materially deceptive or misleading to the investor.’;</u>		
253c			<u>(1a) Article 6 is amended as follows:</u>	
253d		<u>(a) in Article 6(3), the following point is inserted:</u>	<u>(a) paragraph 3 is amended as follows:</u>	
253e				

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			<u>(i) in point (b), the following subparagraphs (iii) and (iv) are inserted:</u>	
Article 2, first paragraph, point (1a)				
253f			<u>‘(iii) reception and transmission of orders in relation to financial instruments.’</u>	<u>‘(iii) reception and transmission of orders in relation to financial instruments.’</u> cf AIFMD 6(4)(b)(iii). Related to line71b Text Origin: Council Mandate
253g			<u>‘(iv) any other ancillary service where the ancillary service represents a continuation of the services already undertaken by the management company and does not create conflicts of interest that could not be managed by additional rules.’</u>	
Article 2, first paragraph, point (1b)				
253h			<u>(ii) the following points (c) is added:</u>	<u>(ii) the following point (c) is added:</u> Text Origin: Council Mandate
Article 2, first paragraph, point (1c)				

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
253i		<u><i>'(ba) benchmark administration in accordance with Regulation (EU) 2016/1011.'</i></u>	<u><i>'(c) administration of benchmarks, in accordance with Regulation (EU) 2016/1011;';</i></u>	<u><i>'(c) administration of benchmarks in accordance with Regulation (EU) 2016/1011;';</i></u> BS 2104 cf line 70 Text Origin: Council Mandate
Article 2, first paragraph, point (1d)				
253j			<u><i>(iii) the last subparagraph is replaced by the following:</i></u>	<u><i>(iii) the last subparagraph is replaced by the following:</i></u> Text Origin: Council Mandate
Article 2, first paragraph, point (1e)				
253k			<u><i>'Management companies shall not be authorised under this Directive to provide only the services referred to in this paragraph. Management companies shall not be authorized to administer benchmarks which are used in their managed UCITS.'</i></u>	<u><i>'Management companies shall not be authorised under this Directive to provide only the services referred to in this paragraph. Management companies shall not be authorised to administer benchmarks which are used in the UCITS that they manage.'</i></u> BS 2104 cf 71b, 71d and 71f Text Origin: Council Mandate
Article 2, first paragraph, point (1e)(a)				
253l				

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			<u>(b) paragraph 4 is replaced by the following:</u>	<u>(b) paragraph 4 is replaced by the following:</u> Text Origin: Council Mandate
Article 2, first paragraph, point (1f)				
253m			<u>‘4. Article 9(2) of Directive (EU) 2019/2034, 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 3, points (a) and (b), are provided by management companies.’</u>	<u>‘4. 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 3, points (a) and (b), of this Article are provided by management companies.’</u> BS 2104 cf line 73. CONS to check ref 9(2) IFR Text Origin: Council Mandate
Article 2, first paragraph, point (2)				
254	(2) Article 7(1) is amended as follows:	(2) Article 7(1) is amended as follows:	(2) Article 7(1) is amended as follows:	(2) Article 7(1) is amended as follows: Text Origin: Commission Proposal
Article 2, first paragraph, point (2)(a)				
255	(a) points (b) and (c) are replaced by the following:	(a) points (b) and (c) are replaced by the following:	(a) points (b) and (c) are replaced by the following:	(a) points (b) and (c) are replaced by the following:

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
				Text Origin: Commission Proposal
Article 2, first paragraph, point (2)(a), amending provision, first paragraph				
256	(b) the persons who effectively conduct the business of a management company are of sufficiently good repute and are sufficiently experienced also in relation to the type of UCITS managed by the management company, the names of those persons and of every person succeeding them in office being communicated forthwith to the competent authorities and the conduct of the business of a management company being decided by at least two natural persons who are either employed full-time by that management company or who are committed full-time to conduct the business of that management company and who are resident in the Union meeting such conditions;	(b) the persons who effectively conduct the business of a management company are of sufficiently good repute and are sufficiently experienced also in relation to the type of UCITS managed by the management company, the names of those persons and of every person succeeding them in office being communicated forthwith to the competent authorities and the conduct of the business of a management company being decided by at least two natural persons who are either employed full-time <u>or on a full-time equivalent basis</u> by that management company or who are committed full-time to conduct the business of that management company and who are resident in the Union meeting such conditions;	(b) the persons who effectively conduct the business of a management company are of sufficiently good repute and are sufficiently experienced also in relation to the type of UCITS managed by the management company, the names of those persons and of every person succeeding them in office being communicated forthwith to the competent authorities and the conduct of the business of a management company being decided by at least two natural persons who are either employed full-time by that management company, <u>or executive member or members of the governing body of the management company</u> or who are committed full-time to conduct the business of that management company and who are resident in the Union, meeting such conditions.	(b) the persons who effectively conduct the business of a management company are of sufficiently good repute and are sufficiently experienced also in relation to the type of UCITS managed by the management company, the names of those persons and of every person succeeding them in office being communicated forthwith to the competent authorities and the conduct of the business of a management company being decided by at least two natural persons who are either employed full-time by that management company, <u>or executive member or members of the governing body of the management company</u> or who are committed full-time to conduct the business of that management company and who are resident <u>domiciled</u> in the Union, meeting such conditions. BS 2104 cf 103 2504 'domiciled' cf 103 on COM recommendation

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
				Text Origin: Council Mandate
Article 2, first paragraph, point (2)(a), amending provision, first paragraph a				
256a		<u>(ba) the management company ensures that at least one member of its governing body is a non-executive director. The management company, 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 management company 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 management company is managing UCITS in the best interest of investors. Non-executive directors shall contribute to ensuring that the management company complies with the requirements regarding conflicts of interests and acting in the best interests of the UCITS and their investors, as specified in this Directive;</u>		

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Article 2, first paragraph, point (2)(a), amending provision, second paragraph				
257	(c) the application for authorisation is accompanied by a programme of activity setting out, at least, the organisational structure of the management company, specifying technical and human resources that will be used to conduct the business of the management company, information about the persons effectively conducting the business of that management company, including:	(c) the application for authorisation is accompanied by a programme of activity setting out, at least, the organisational structure of the management company, specifying technical and human resources that will be used to conduct the business of the management company, information about the persons effectively conducting the business of that management company, including:	(c) the application for authorisation is accompanied by a programme of activity setting out, at least, the organisational structure of the management company, specifying technical and human resources that will be used to conduct the business of the management company, information about the persons effectively conducting the business of that management company, including:	(c) the application for authorisation is accompanied by a programme of activity setting out, at least, the organisational structure of the management company, specifying technical and human resources that will be used to conduct the business of the management company, information about the persons effectively conducting the business of that management company, including: Text Origin: Commission Proposal
Article 2, first paragraph, point (2)(a), amending provision, second paragraph(i)				
258	(i) a detailed description of their role, title and level of seniority;	(i) a detailed description of their role, title and level of seniority;	(i) a detailed description of their role, title and level of seniority;	(i) a detailed description of their role, title and level of seniority; Text Origin: Council Mandate
Article 2, first paragraph, point (2)(a), amending provision, second paragraph(ii)				
259	(ii) a description of their reporting lines and responsibilities inside and outside of the management company;	(ii) a description of their reporting lines and responsibilities inside and outside of the management company;	(ii) a description of their reporting lines and responsibilities inside and outside of the management company;	(ii) a description of their reporting lines and responsibilities inside and outside of the management company; Text Origin: Commission Proposal
Article 2, first paragraph, point (2)(a), amending provision, second paragraph(iii)				

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
260	(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;;	(iii) an overview of their time allocated to each responsibility;; Text Origin: Commission Proposal
260a		<u>(iiia) information on how the management company intends to comply with its obligations under this Directive, and with its obligations under Regulation (EU) 2019/2088 and a detailed description of the appropriate human and technical resources that will be used by the management company to this effect;'</u>		
Article 2, first paragraph, point (2)(b)				
261	(b) the following point (e) is added:	(b) the following point (e) is added:	(b) the following point (e) is added:	(b) the following point (e) is added: Text Origin: Commission Proposal
Article 2, first paragraph, point (2)(b), amending provision, first paragraph				
262	(e) information is provided by the management company on	(e) information is provided by the management company on	(e) information is provided by the management company on	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	arrangements made for the delegation to third parties of functions in accordance with Article 13 and a detailed presentation of the human and technical resources to be used by the management company for monitoring and controlling the delegate.;	arrangements made for the delegation to third parties of functions in accordance with Article 13 and a detailed presentation of the human and technical resources to be used by the management company for monitoring and controlling the delegate. <u>including:</u>	arrangements made for the delegation to third parties of functions in accordance with Article 13 and a detailed presentation of the human and technical resources to be used by the management company for monitoring and controlling the delegate.;	
262a		<u>(i) the legal name and relevant legal identifier of the management company;</u> <u>(i) the legal name and relevant legal identifier of the management company;</u>		
262b		<u>(ii) the legal name and relevant legal identifier of the UCITS and its investment strategy;</u>		
262c		<u>(iii) the legal name and relevant legal identifier of each delegate, its jurisdiction of establishment and, where relevant, its supervisory authority;</u>		

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
262d		<u>(iv) a brief description of the delegated risk management functions, including whether each such delegation amounts to a partial or full delegation;</u>		
262e		<u>(v) a brief description of the delegated portfolio management functions, by investment strategy and relevant geographies, including whether each such delegation amounts to a partial or full delegation;</u>		
262f		<u>(vi) a brief description of other functions listed in Annex II which the management company additionally performs; and</u>		
262g		<u>(vii) for each of the following, a detailed description of the human and technical resources:</u>		
262h				

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
		<u>(i) - employed by or committed to the management company for performing day-to-day portfolio or risk management tasks within the management company;</u>		
262i		<u>(ii) - employed by or committed to the delegate for performing those services on a delegated basis; and</u>		
262j		<u>(iii) - employed by or committed to the management company for monitoring and controlling the delegate;</u>		
262k		<u>(viii) an explanation of the added value of the delegation to the investor.';</u>		
262l		<u>(2a) in Article 7, the following paragraph is inserted:</u>		

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
262m		" <u>'1a. A management company 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.'</u> "		
Article 2, first paragraph, point (3)				
263	(3) Article 13 is amended as follows:	(3) Article 13 is amended as follows:	(3) Article 13 is amended as follows:	(3) Article 13 is amended as follows: Text Origin: Commission Proposal
Article 2, first paragraph, point (3)(a)				
264	(a) paragraph 1 is amended as follows:	(a) paragraph 1 is amended as follows:	(a) paragraph 1 is amended as follows:	(a) paragraph 1 is amended as follows: Text Origin: Commission Proposal
Article 2, first paragraph, point (3)(a)(i)				
265	(i) the introductory phrase is replaced by the following:	(i) the introductory phrase is replaced by the following:	(i) the introductory phrase is replaced by the following:	(i) the introductory phrase is replaced by the following:

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
				Text Origin: Commission Proposal
Article 2, first paragraph, point (3)(a)(i), amending provision, numbered paragraph (1)				
266	1. Management companies, which intend to delegate to third parties the task of carrying out, on their behalf, one or more of the functions listed in Annex II and the services referred to in Article 6(3), shall notify the competent authorities of their home Member State before the delegation arrangements become effective. The following conditions shall be met;	1. Management companies, which intend to delegate to third parties the task of carrying out, on their behalf, one or more of the functions listed in Annex II and the services referred to in Article 6(3), shall notify the competent authorities of their home Member State before the delegation arrangements become effective. The following conditions shall be met;	1. Management companies, which intend to delegate to third parties the task of carrying out, on their behalf, one or more of the functions listed in Annex II and^{or} the services referred to in Article 6(3), shall notify the competent authorities of their home Member State before the delegation arrangements become effective. The following conditions shall be met:;	1. Management companies, which intend to delegate to third parties the task of carrying out, on their behalf, one or more of the functions listed in Annex II and^{or} of the services referred to in Article 6(3), shall notify the competent authorities of their home Member State before the delegation arrangements become effective. The following conditions shall be met:; BS 2104 cf line 138 Text Origin: Council Mandate
Article 2, first paragraph, point (3)(a)(ii)				
267	(ii) point (b) is replaced by the following:	(ii) point (b) is replaced by the following:	(ii) point (b) is replaced by the following:	(ii) point (b) is replaced by the following: Text Origin: Commission Proposal
Article 2, first paragraph, point (3)(a)(ii), amending provision, first paragraph				
268				

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	(b) the mandate must not prevent the effectiveness of supervision over the management company, and, in particular, must not prevent the management company from acting, or the UCITS from being managed, in the best interests of its investors and clients.;	(b) the mandate must not prevent the effectiveness of supervision over the management company, and, in particular, must not prevent the management company from acting, or the UCITS from being managed, in the best interests of its investors and clients.;	(b) the mandate must not prevent the effectiveness of supervision over the management company, and, in particular, must not prevent the management company from acting, or the UCITS from being managed, in the best interests of its investors and clients.;	(b) the mandate must not prevent the effectiveness of supervision over the management company, and, in particular, must not prevent the management company from acting, or the UCITS from being managed, in the best interests of its investors and clients.;
				Text Origin: Commission Proposal
Article 2, first paragraph, point (3)(a)(iii)				
269	(iii) points (g), (h) and (i) are replaced by the following:	(iii) points (g), (h) and (i) are replaced by the following:	(iii) points (g), (h) and (i) are replaced by the following:	(iii) points (g), (h) and (i) are replaced by the following:
				Text Origin: Commission Proposal
Article 2, first paragraph, point (3)(a)(iii), amending provision, first paragraph				
270	(g) the mandate must not prevent the persons who conduct the business of the management company from giving further instructions to the undertaking to which functions or provision of services are delegated at any time or from withdrawing the mandate with immediate effect when this is in the interest of investors and clients.	(g) the mandate must not prevent the persons who conduct the business of the management company from giving further instructions to the undertaking to which functions or provision of services are delegated at any time or from withdrawing the mandate with immediate effect when this is in the interest of investors and clients.	(g) the mandate must not prevent the persons who conduct the business of the management company from giving further instructions to the undertaking to which functions or provision of services are delegated at any time or from withdrawing the mandate with immediate effect when this is in the interest of investors and clients.	(g) the mandate must not prevent the persons who conduct the business of the management company from giving further instructions to the undertaking to which functions or provision of services are delegated at any time or from withdrawing the mandate with immediate effect when this is in the interest of investors and clients.
				Text Origin: Commission Proposal

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Article 2, first paragraph, point (3)(a)(iii), amending provision, second paragraph				
271	(h) having regard to the nature of the functions and provision of services to be delegated, the undertaking to which functions or provision of services will be delegated must be qualified and capable of undertaking the functions or performing the services in question; and	(h) having regard to the nature of the functions and provision of services to be delegated, the undertaking to which functions or provision of services will be delegated must be qualified and capable of undertaking the functions or performing the services in question; and	(h) having regard to the nature of the functions and provision of services to be delegated, the undertaking to which functions or provision of services will be delegated must be qualified and capable of undertaking the functions or performing the services in question; and	(h) having regard to the nature of the functions and provision of services to be delegated, the undertaking to which functions or provision of services will be delegated must be qualified and capable of undertaking the functions or performing the services in question; and Text Origin: Commission Proposal
Article 2, first paragraph, point (3)(a)(iii), amending provision, third paragraph				
272	(i) the UCITS' prospectuses must list the services and functions which the management company has been allowed to delegate in accordance with this Article;;	(i) the UCITS' prospectuses must list the services and functions which the management company has been allowed to delegate in accordance with this Article;;	(i) the UCITS' prospectuses must list the services and functions which the management company has been allowed to delegate in accordance with this Article;;	(i) the UCITS' prospectuses must list the services and functions which the management company has been allowed to delegate in accordance with this Article;; Text Origin: Commission Proposal
Article 2, first paragraph, point (3)(a)(iv)				
273	(iv) the following point (j) is added:	(iv) the following point (j) is added:	(iv) the following point (j) is added:	(iv) the following point (j) is added: Text Origin: Commission Proposal

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Article 2, first paragraph, point (3)(a)(iv), amending provision, first paragraph				
274	‘ (j) the management company must be able to justify its entire delegation structure on objective reasons.;’	‘ (j) the management company must be able to justify its entire delegation structure on objective reasons.;’	‘ (j) the management company must be able to justify its entire delegation structure on objective reasons.;’	‘ (j) the management company must be able to justify its entire delegation structure on objective reasons.;’ Text Origin: Commission Proposal
Article 2, first paragraph, point (3)(b)				
275	(b) paragraph 2 is replaced by the following:	(b) (aa) paragraph 2 is replaced by the following:	(b) paragraph 2 is replaced by the following:	
Article 2, first paragraph, point (3)(b), amending provision, numbered paragraph (2)				
276	‘ 2. The liability of the management company or the depositary shall not be affected by delegation to third parties of any functions or of provision of services by the management company. The management company shall not delegate its functions or provision of services to the extent that, in essence, it can no longer be considered to be the manager of the UCITS and to the extent that it becomes a letter-box entity.;’	‘ 2. (2) The liability of the management company or the depositary shall not be affected by delegation to third parties of any functions or of provision of services by the management company. The management company shall not delegate its functions or provision of services to the extent that, in essence, it can no longer be considered to be the manager of the UCITS and to the extent that it becomes a letter-box entity.;’	‘ 2. The liability of the management company or the depositary shall not be affected by delegation to third parties of any functions or of provision of services by the management company. The management company shall not delegate its functions or provision of services to the extent that, in essence, it can no longer be considered to be the manager of the UCITS <u>or the provider of the services</u> and to the extent that it becomes a letter-box entity.;’	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Article 2, first paragraph, point (3)(ba)				
276a		<u>(ba) the following paragraphs are inserted:</u>		<u>(ba) the following paragraphs are inserted:</u> Text Origin: EP Mandate
276b		" <u>'2a. By way of derogation from paragraphs 1 and 2, where the marketing function, as referred to in the third indent of Annex II, is performed by one or several distributors which are acting on their own behalf and which market the UCITS under Directive 2014/65/EU or through insurance-based investment products in accordance with Directive 2016/97/EU, such function shall not be considered to be a delegation that is subject to the requirements set out in paragraphs 1 and 2, irrespective of any distribution agreement between the management company and the distributor.'</u>	<u>2a. By way of derogation from the paragraphs 1 and 2 of this Article, where the marketing function as referred in Annex II is performed by one or several distributors, which are not acting on their own behalf and which market the UCITS under Directive 2014/65/EU or through insurance-based investment products in accordance with Directive 2016/97/EU, such function shall not be considered a delegation subject to the requirements laid down in the abovementioned paragraphs irrespective of any distribution agreement between the management company and the distributor'</u> renumbered 2a for comparison with EP text	
276c				

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
		<u>2b. The management company shall ensure that the management of funds for which it is the management company complies with the requirements set out in this Directive. That obligation applies irrespective of the regulatory status or location of any delegate or subdelegate.</u>; "		
Article 2, first paragraph, point (3)(c)				
277	(c) the following paragraphs 3, 4, 5 and 6 are added:	(c) the following paragraphs 3, 4, 5 and 6 are added:	(c) the following paragraphs 3, 4, 5 <u>and 6 and 5</u> are added:	(c) the following paragraphs 3, 4, 5 <u>and 6 and 4</u> are added: NB: see comment on line 278 (only 2 paragraphs are added to Article 13, EP and CNL are deleting or repositioning the rest of paragraphs proposed by the EC). Text Origin: Commission Proposal
Article 2, first paragraph, point (3)(c), amending provision, numbered paragraph (3)				
278	‘ 3. Where a management company 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	<i>deleted</i>	‘ 3. Where a management company 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	NB: if this paragraph goes to 276b, then on line 277 only 2 paragraphs are added.

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	such delegations ('delegation notifications').		such delegations ('delegation notifications'). NB Council para 3 at 276b above, renumbered 2a	
Article 2, first paragraph, point (3)(c), amending provision, numbered paragraph (3), first paragraph				
279	The delegation notifications shall include the following:	<i>deleted</i>	The delegation notifications shall include the following: deleted	<i>deleted</i>
Article 2, first paragraph, point (3)(c), amending provision, numbered paragraph (3), first paragraph, point (a)				
280	(a) information on the UCITS and its management company concerned;	<i>deleted</i>	(a) information on the UCITS and its management company concerned; deleted	<i>deleted</i>
Article 2, first paragraph, point (3)(c), amending provision, numbered paragraph (3), first paragraph, point (b)				
281	(b) information on the delegate, specifying the delegate's domicile and whether it is a regulated entity or not;	<i>deleted</i>	(b) information on the delegate, specifying the delegate's domicile and whether it is a regulated entity or not; deleted	<i>deleted</i>
Article 2, first paragraph, point (3)(c), amending provision, numbered paragraph (3), first paragraph, point (c)				
282	(c) a description of the delegated portfolio management and risk management functions;	<i>deleted</i>	(c) a description of the delegated portfolio management and risk management functions; deleted	<i>deleted</i>
Article 2, first paragraph, point (3)(c), amending provision, numbered paragraph (3), first paragraph, point (d)				
283				

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	(d) a description of the retained portfolio management and risk management functions;	<i>deleted</i>	(d) a description of the retained portfolio management and risk management functions; <u>deleted</u>	<i>deleted</i>
Article 2, first paragraph, point (3)(c), amending provision, numbered paragraph (3), first paragraph, point (e)				
284	(e) any other information necessary to analyse the delegation arrangements;	<i>deleted</i>	(e) any other information necessary to analyse the delegation arrangements; <u>deleted</u>	<i>deleted</i>
Article 2, first paragraph, point (3)(c), amending provision, numbered paragraph (3), first paragraph, point (f)				
285	(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) a description of the competent authorities' supervisory activities, including desk-based reviews and on-site inspections and the results of such activities; <u>deleted</u>	<i>deleted</i>
Article 2, first paragraph, point (3)(c), amending provision, numbered paragraph (3), first paragraph, point (g)				
286	(g) any details on the cooperation between the competent authority and the supervisory authority of the delegate.	<i>deleted</i>	(g) any details on the cooperation between the competent authority and the supervisory authority of the delegate. <u>deleted</u>	<i>deleted</i>
Article 2, first paragraph, point (3)(c), amending provision, numbered paragraph (4)				
287	4. 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	<i>deleted</i>	4. 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	<i>deleted</i>

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	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 3.		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 3. <u>deleted</u>	
Article 2, first paragraph, point (3)(c), amending provision, numbered paragraph (4), first paragraph				
288	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.	deleted	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. <u>deleted</u>	deleted
Article 2, first paragraph, point (3)(c), amending provision, numbered paragraph (5)				
289	5. 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 13.	5. <u>By ... [24 months after the date of application of this amending Directive]</u> ESMA shall provide the European Parliament, the Council and the Commission with regular reports, at least every two years, a <u>report</u> analysing market practices regarding delegation to entities located in third countries and compliance with Articles 7 and 13.	54. Before the start of the review referred to in Article 110a, 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 13 <u>a report analysing market practices regarding delegation and compliance with Articles 7 and 13, based, inter alia, on the data reported to competent authorities in accordance with point (e) of Article 20a and on the</u>	5. <u>By ... [60 months after the date of application of this amending directive],</u> 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 13 <u>a report analysing market practices regarding delegation and compliance with Articles 7 and 13, based, inter alia, on the data reported to competent authorities</u>

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			<u>exercise of its supervisory convergence powers.</u>	<u>in accordance with Article 20a, point (e) and on the exercise of its supervisory convergence powers.</u> NB: this will be new paragraph 3 BS2104 cf line 101 Text Origin: Council Mandate
Article 2, first paragraph, point (3)(c), amending provision, numbered paragraph (6)				
290	6. The Commission shall adopt, by means of delegated acts in accordance with Article 112a, measures specifying:	6. The Commission shall adopt, by means of delegated acts in accordance with Article 112a, measures specifying:	6.5. The Commission shall adopt, by means of delegated acts in accordance with Article 112a, measures specifying:	6.4 The Commission shall adopt, by means of delegated acts in accordance with Article 112a, measures specifying: NB: this will be new paragraph 4 Text Origin: Commission Proposal
Article 2, first paragraph, point (3)(c), amending provision, numbered paragraph (6), point (a)				
291	(a) the conditions for fulfilling the requirements set out in paragraph 1;	(a) the conditions for fulfilling the requirements set out in paragraph 1;	(a) the conditions for fulfilling the requirements set out in paragraph 1;	(a) the conditions for fulfilling the requirements set out in paragraph 1; Text Origin: Commission Proposal
Article 2, first paragraph, point (3)(c), amending provision, numbered paragraph (6), point (b)				
292	(b) the conditions under which the management company of UCITS shall be deemed to have delegated	(b) the conditions under which the management company of UCITS shall be deemed to have delegated	(b) the conditions under which the management company of UCITS shall be deemed to have delegated	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	its functions to the extent that it becomes a letter-box entity and can no longer be considered to be the manager of the UCITS as set out in paragraph 2.;	its functions to the extent that it becomes a letter-box entity and can no longer be considered to be the manager of the UCITS as set out in paragraph 2.;	its functions to the extent that it becomes a letter-box entity and can no longer be considered to be the manager of the UCITS <u>or the provider of the services</u> as set out in paragraph 2.;	
292a		<u>(3a) Article 14 is amended as follows:</u>		
292b		<u>(a) in paragraph 1, point (a) is replaced by the following:</u>		
292c		" <u>'(a) acts honestly and fairly in conducting its business activities in the best interests of the UCITS it manages and the integrity of the market in particular as regards fees and costs charged to investors;'</u> "		
292d				

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
		<u>(b) the following paragraphs are inserted:</u>		
292e		" <u>'2a. For the purposes of point (a) of paragraph 1, ESMA shall by ... [18 months after the entry into force of this amending Directive] submit a report to the European Parliament, the Council and the Commission:</u>		
292f		<u>(a) - assessing the costs charged by management companies to investors in UCITS, and the reasons for cost levels and for differences between them;</u>		
292g		<u>(b) - proposing criteria for assessing whether the level of such costs is appropriate, in particular when compared to the level of costs in other jurisdictions worldwide;</u>		
292h				

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
		<u>(c) - proposing, if needed, options for action by competent authorities or by legislators in respect of inappropriate or undue levels of such costs.</u>		
292i		<u>The report shall assess the potential impact of each such option.</u>		
292j		<u>That report may be combined with the report required in accordance with Article 12(3a) [AIFMD].</u>		
292k		<u>Competent Authorities shall have the power to require, on a one time basis, information from UCITS management companies on costs insofar as that is needed for the purpose of that report. The competent authorities shall avoid duplication with existing reporting obligations.</u>		
292l				

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
		<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>		
292m		<u>2b. In the light of the report referred to in paragraph 2a, and without prejudice to other legislative or regulatory options including Commission proposals to revise this Directive or ESMA guidelines, ESMA may develop draft regulatory technical standards to specify:</u>		
292n		<u>(a) criteria for the assessment by competent authorities whether the level of costs charged by management companies to investors in UCITS is appropriate;</u>		
292o		<u>(b) actions that those authorities should take in respect of inappropriate or undue levels of such costs.</u>		

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
292p		<u>Power is conferred on the Commission to adopt the regulatory technical standards referred to in this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.’;</u>	PUBLIC	
292q		<u>(c) the following paragraphs are added:</u>		
292r		“ <u>‘3a. Where a management company intends to manage a UCITS on behalf of a third party, including but not limited to under a mandate in accordance with Article 6(3)(a) or under a delegation in accordance with Article 13, and where the third party is to have significant control over the UCITS’ design, distribution and management, the management company shall employ heightened scrutiny of the potential for conflicts of interest. The management company engaging in such a relationship shall submit to the competent</u>		

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
		<u>authorities of its home Member State detailed explanations and evidence on their compliance with paragraphs 1 and 2. In particular, it 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.</u>		
292s		<u>3b. In order to ensure uniform conditions of application of this Article, ESMA shall develop draft regulatory technical standards to specify:</u>		
292t		<u>(a) the types of relationship between the management company and a third party when the management company manages a UCITS on behalf of the third party and of conflicts of interest as referred to in paragraph 3a;</u>		

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
292u		<u>(b) criteria to be used by the relevant competent authorities to assess whether UCITS comply with their obligations under paragraph 3a.</u>		
292v		<u>Power is conferred on the Commission to adopt the regulatory technical standards referred to in this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.;</u>		
Article 2, first paragraph, point (4)				
293	(4) the following Article 18a is inserted:	(4) the following Article 18a is inserted:	(4) the following Article 18a is inserted:	
Article 2, first paragraph, point (4), amending provision, first paragraph				
294	Article 18a	Article 18a	Article 18a	Article 18a Text Origin: Commission Proposal
Article 2, first paragraph, point (4), amending provision, numbered paragraph (1)				
295				

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	1. Member States shall ensure that at least the liquidity management tools set out in Annex IIA are available to UCITS.	1. Member States shall ensure that at least the liquidity management tools set out in Annex IIA are available to UCITS.	1. Member States shall ensure that at least the liquidity management tools set out in Annex IIA are available to UCITS.	1. Member States shall ensure that at least the liquidity management tools set out in Annex IIA are available to UCITS. Text Origin: Commission Proposal
Article 2, first paragraph, point (4), amending provision, numbered paragraph (2)				
296	2. After assessing the suitability in relation to the pursued investment strategy, the liquidity profile and the redemption policy, a management company shall select at least one appropriate liquidity management tool from the list set out in Annex IIA, points 2 to 4, and include in the fund rules or the instruments of incorporation of the investment company for possible use in the interest of the UCITS' investors. The management company shall implement detailed policies and procedures for the activation and deactivation of any selected liquidity management tool and the operational and administrative arrangements for the use of such tool.	2. After assessing the suitability in relation to the pursued investment strategy, the liquidity profile and the redemption policy, a management company shall select at least one appropriate liquidity management tool from the list set out in Annex IIA, points 2 to 4 ⁷ , and include in the fund rules or the instruments of incorporation of the investment company for possible use in the interest of the UCITS' investors. <u>Subject to Article 84, this shall not prevent a UCITS from using other tools from Annex IIA, points 2 to 8.</u> The management company shall implement detailed policies and procedures for the activation and deactivation of any selected liquidity management tool and the operational and administrative arrangements for the use of such tool. <u>By way of derogation from the first subparagraph, a management company may select only one</u>	2. After assessing the suitability in relation to the pursued investment strategy, the liquidity profile and the redemption policy, a management company shall select at least one ^{two} appropriate liquidity management tool ^{tools} from the list set out in Annex IIA, points 2 to 4 ⁷ , and include in the fund rules or the instruments of incorporation of the investment company for possible use in the interest of the UCITS' investors. <u>The By way of derogation, a management company shall implement detailed policies and procedures for the activation and deactivation of any selected liquidity management tool and the operational and administrative arrangements for the use of such tool may select only one liquidity management tool from Annex IIA, points 2 to 7 for a UCITS it manages, if that UCITS is authorised as money market fund</u>	2. After assessing the suitability in relation to the pursued investment strategy, the liquidity profile and the redemption policy, a management company shall select at least one ^{two} appropriate liquidity management tool ^{tools} from the list set out in Annex IIA, points 2 to 4 ⁷ , and include in the fund rules or the instruments of incorporation of the investment company for possible use in the interest of the UCITS' investors. <u>It shall not be possible for that selection to include only the tools set out in points 5a and 5b of that list.</u> <u>By way of derogation from the first subparagraph, a management company may select only one liquidity management tool from Annex IIA, points 2 to 7, for a UCITS that it manages, if that UCITS is authorised as money market fund in accordance with Regulation (EU) 2017/1131.</u> The

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
		<u>liquidity management tool from Annex IIA, points 2 to 7, for a UCITS that it manages, if that UCITS is authorised as money market fund in accordance with Regulation (EU) 2017/1131.</u>	<u>in accordance with Regulation (EU) 2017/1131.</u>	management company shall implement detailed policies and procedures for the activation and deactivation of any selected liquidity management tool and the operational and administrative arrangements for the use of such tool. TM 15.03 Note that EP text limiting to one LMT is an error, agreed compromise was for two
Article 2, first paragraph, point (4), amending provision, numbered paragraph (2), point (a)				
296a			<u>The management company shall implement detailed policies and procedures for the activation and deactivation of any selected liquidity management tool and the operational and administrative arrangements for the use of such tool.</u>	<u>The management company shall implement detailed policies and procedures for the activation and deactivation of any selected liquidity management tool and the operational and administrative arrangements for the use of such tool.</u> TM 15.03 Text Origin: Council Mandate
296b			<u>Redemption in kind as referred to in Annex IIA, point 7, can only be activated to meet redemptions</u>	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			<u>requested by professional investors and if the redemption in kind corresponds to a pro rata share of the assets held by the UCITS.</u>	
296c			<u>By way of derogation from subparagraph 3, the redemption in kind may not correspond to a pro rata share of the assets held by the UCITS if that UCITS is solely marketed to professional investors or where the aim of that UCITS's investment policy is to replicate the composition of a certain stock or debt securities index, as referred to in Article 53, and additionally if that UCITS is an Exchange Traded Fund as defined in article 2(26) of MiFIR.</u>	
Article 2, first paragraph, point (4), amending provision, numbered paragraph (3)				
297	3. ESMA shall develop draft regulatory technical standards to define and specify the characteristics of the liquidity management tools set out in Annex IIA.	3. ESMA shall develop draft regulatory technical standards to define and specify <u>guidelines to specify best practice as regards</u> the characteristics of the liquidity management tools set out in Annex IIA.	3. ESMA shall develop draft regulatory technical standards to define and specify the characteristics of the liquidity management tools set out in Annex IIA.	
Article 2, first paragraph, point (4), amending provision, numbered paragraph (4)				
298				

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	4. ESMA shall develop draft regulatory technical standards on criteria for the selection and use of suitable liquidity management tools by the management companies for liquidity risk management, including appropriate disclosures to investors, taking into account the capability of such tools to reduce undue advantages for investors that redeem their investments first, and to mitigate financial stability risks.	4. <u>By ... /12 months after the entry into force of this amending Directive/</u> ESMA shall develop draft regulatory technical standards on criteria for <u>the disclosure to competent authorities and investors of information related to</u> the selection and use of suitable <u>calibration of</u> liquidity management tools by the management companies for liquidity risk management; including appropriate disclosures to investors, taking into account the capability of such tools to reduce undue advantages for investors that redeem their investments first, and to mitigate financial stability risks and for mitigating financial stability risks. Those standards shall recognise international standards for liquidity risk management for collective investment schemes from February 2018 and that the primary responsibility for liquidity risk management, including the selection and use of liquidity management tools, remains with the management company. They shall allow adequate time for adaptation before they apply, in particular for existing UCITS.	4. ESMA shall develop draft regulatory technical standards on <u>guidelines determining</u> criteria for the selection and use of suitable liquidity management tools by the management companies for liquidity risk management, including appropriate disclosures to investors, taking into account the capability of such tools to reduce undue advantages for investors that redeem their investments first, and to mitigate financial stability risks. <u>These guidelines shall include indications on the circumstances in which side pockets can be activated.</u>	
Article 2, first paragraph, point (4), amending provision, numbered paragraph (5)				
299				

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	5. Power is delegated to the Commission to adopt the regulatory technical standards referred to in paragraphs 3 and 4 in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.;	5. Power is delegated to the Commission to adopt the regulatory technical standards referred to in paragraphs 3 and paragraph 4 in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.;	5. Power is delegated to the Commission to adopt <u>supplement this Directive by adopting</u> the regulatory technical standards referred to in paragraphs 3 and 4 in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.;	
Article 2, first paragraph, point (5)				
300	(5) the following Articles 20a and 20b are inserted:	(5) the following Articles 20a and 20b are inserted:	(5) the following Articles 20a and 20b are inserted:	(5) the following Articles 20a and 20b are inserted: Text Origin: Commission Proposal
Article 2, first paragraph, point (5), amending provision, first paragraph				
301	Article 20a	Article 20a	Article 20a	Article 20a Text Origin: Commission Proposal
Article 2, first paragraph, point (5), amending provision, numbered paragraph (1)				
302	1. A management company shall regularly report to the competent authorities of its home Member State on the markets and instruments in which it trades on behalf of the UCITS it manages.	1. A management company shall regularly report to the competent authorities of its home Member State on the markets and instruments in which it trades on behalf of the UCITS it manages. <u>It shall provide the information on the assets and liabilities of</u>	1. A management company shall regularly report to the competent authorities of its <u>the</u> home Member State <u>of the UCITS</u> on the markets and instruments in which it trades on behalf of the UCITS it manages.	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
		<u>investment funds which the company reports to their national central banks under Regulation (EU) No 1073/2013 of the European Central Bank¹ as well as information on the instruments in which it is trading, on markets of which it is a member or where it actively trades, and on the exposures of each of the UCITS it manages.</u> <u>1. Regulation (EU) No 1073/2013 of the European Central Bank of 18 October 2013 concerning statistics on the assets and liabilities of investment funds (recast) (ECB/2013/38).</u>		
Article 2, first paragraph, point (5), amending provision, unnumbered paragraph				
302a			<u>It shall, in respect of each UCITS it manages, provide information on the instruments in which it is trading, on markets of which it is a member or where it actively trades, and on the exposures and holdings of each UCITS. It shall include the relevant identifiers to connect the data provided on assets, UCITS and the management company to other supervisory or publicly available data sources.</u>	<u>1a. It shall, in respect of each UCITS it manages, provide information on the instruments in which it is trading, on markets of which it is a member or where it actively trades, and on the exposures and assets of each UCITS. It shall include the relevant identifiers to connect the data provided on assets, UCITS and the management company to other supervisory or publicly available data sources.</u> TM 28.3, text added further to the review of the EC, "Holdings" replaced with "assets"

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
				TM 28.3 The formulation of 302g (replace "relevant" with "necessary to connect") applies to 171j 170, and 302a too.
Article 2, first paragraph, point (5), amending provision, numbered paragraph (1a), introductory part				
302b			<u>1a. A management company shall, for each of the UCITS it manages, provide the following to the competent authorities of the home Member State of the UCITS:</u>	<u>1b. A management company shall, for each of the UCITS it manages, provide the following to the competent authorities of the UCITS home Member State:</u> TM 28.3 Added further to the review of the EC.
Article 2, first paragraph, point (5), amending provision, numbered paragraph (1b), point (a)				
302c			<u>(a) any new arrangements for managing the liquidity of the UCITS, including the selection and activation of liquidity management tools;</u>	<u>(a) the arrangements for managing the liquidity of the UCITS, including the current selection of liquidity management tools, and any activation or deactivation thereof;</u> TM 28.3 Added further to the review of the EC. Related to Art 24.2.b of AIFMD
Article 2, first paragraph, point (5), amending provision, numbered paragraph (1b), point (b)				
302d				

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			<u>(b) the current risk profile of the UCITS.</u>	<u>(b) the current risk profile of the UCITS, including the market risk, liquidity risk, counterparty risk and [other risks including] operational risk and the total amount of leverage employed by the UCITS;</u> TM 28.3 CNL to come back on the part between square brackets. Leverage risk included, as in 171a
Article 2, first paragraph, point (5), amending provision, numbered paragraph (1b), point (c)				
302e			<u>(c) the results of the stress tests performed in accordance with Article 51(1).</u>	<u>(c) the results of the stress tests performed in accordance with Article 51(1).</u> TM 28.3 Article 24.2.3 of existing text of AIFMD
Article 2, first paragraph, point (5), amending provision, numbered paragraph (1b), point (d)				
302f		<u>(a) 1a. A management company shall regularly report to the competent authorities of its home Member State the following information regarding delegation arrangements concerning portfolio management or risk management functions and in particular with respect to each UCITS managed or marketed in the Union:</u>	<u>(d) information on delegation arrangements which involve the delegation of collective or discretionary portfolio management or risk management functions. The information provided shall cover the following:</u>	<u>(d) information regarding delegation arrangements concerning portfolio management or risk management functions as follows:"</u> COMMENT SUGGESTED BY EC : 1603 CONS to check deletion of collective or discretionary. EP to check change 'in particular' to 'as follows' (more exhaustive).

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	Article 2, first paragraph, point (5), amending provision, numbered paragraph (1b), point (d)(i)			
302g		<u>(i) information on the entities to which such functions have been delegated, namely the name and relevant legal identifier of each delegate, its jurisdiction of establishment and, where relevant, its supervisory authority;</u>	<u>(i) information on the delegates, specifying the delegates' name and domicile, whether they have any close links with the management company and whether they are authorised or regulated entities for the purpose of asset management. The information shall include the relevant identifiers of the delegates to connect the information provided to other supervisory or publicly available data sources;</u>	<u>(i) information on the delegates, specifying the delegates' name and domicile, whether they have any close links with the management company, whether they are authorised or regulated entities for the purpose of asset management and where relevant, their supervisory authority, including the identifiers of the delegates that are necessary to connect the information provided to other supervisory or publicly available data sources;</u> TM 28.3 Text suggested by the EC The formulation (replace "relevant" with "necessary to connect" applies to 171j 170, and 302a too).
	Article 2, first paragraph, point (5), amending provision, numbered paragraph (1b), point (d)(ii)			
302h		<u>(ii) for each of the following, a description of the human and technical resources:</u> Related to Council text in line 302 n (iv)		<u>(ii) for each of the following, the number of full-time equivalent human resources employed by:</u> TM 28.3 TEXT and comment suggested by EC 1603: recital to clarify no employee relationship is implied. Technical

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
				resources for consideration in Art 7/20 AIFMD (Art. 13 UCITS).
Article 2, first paragraph, point (5), amending provision, numbered paragraph (1b), point (d)(iii)				
302i		<u>- employed by or committed to the management company for performing day-to-day portfolio or risk management tasks within the management company;</u>		<u>- the management company for performing day-to-day portfolio or risk management tasks within that management company;</u> TM 28.3 To align with AIFMD.
Article 2, first paragraph, point (5), amending provision, numbered paragraph (1b), point (d)(iv)				
302j		<u>- employed by or committed to the delegate for performing those services on a delegated basis; and</u>		TM 28.3 Comment by EC: 1603: no agreement. Council will consider. Commission refers to Art 20(1)(b)) AIFMD (and 13 UCITS).
Article 2, first paragraph, point (5), amending provision, numbered paragraph (1b), point (d)(v)				
302k		<u>- employed by or committed to the management company for monitoring and controlling the delegate;</u>		<u>- the management company for monitoring the delegated activity</u> TM 28.3 Comment by the EC: 1603: Taken from Council 171L. 'delegated activity' from existing Art 20(1)(f) [COM1] [COM1]Reading the text again, it is not 100% clear whether

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
				asset managers aggregate their own resources with the resources of a delegate (since management company also employ delegate(s)). To be on the safe side, we suggest to add “within the management company”
Article 2, first paragraph, point (5), amending provision, numbered paragraph (1b), point (d)(vi)				
302l		<u>(iii) information on the function delegated, the type of delegation (full or partial), and the date of the delegation agreement or contract;</u>	<u>(ii) list and description of the activities concerning risk management and portfolio management functions which are delegated;</u>	<u>(ii) list and description of the activities concerning risk management and portfolio management functions which are delegated</u> TM 28.3, taken from EC
Article 2, first paragraph, point (5), amending provision, numbered paragraph (1b), point (d)(vii)				
302m			<u>(iii) where the portfolio management function is delegated, the amount and percentage of the UCITS's assets which are subject to delegation arrangements concerning the portfolio management function;</u>	<u>(iii) where the portfolio management function is delegated, the amount and percentage of the UCITS' assets which are subject to delegation arrangements concerning the portfolio management function;</u> TM 28.3 Taken from EC
Article 2, first paragraph, point (5), amending provision, numbered paragraph (1b), point (d)(viii)				
302n				

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			<u>(iv) number of full-time equivalent human resources employed by the management company to monitor the delegation arrangements;</u>	TM 28.3. To be deleted at suggestion of EC. It is now in 302k
Article 2, first paragraph, point (5), amending provision, numbered paragraph (1b), point (d)(ix)				
302o		.	<u>(v) description of periodic due diligence measures carried out by the management company to maintain oversight on, monitor and control the delegate, including the date of performance of these measures, the issues identified and, where relevant, the measures and timeline adopted to address these issues;</u>	<u>(v) the number and dates of periodic due diligence reviews carried out by the management company to monitor the delegated activity, a list of issues identified and, where relevant, the measures adopted to address those issues and the date by which those measures are to be completed.</u> TM 28.3 EP considering the Due Dilligence question and will come back on it.
Article 2, first paragraph, point (5), amending provision, numbered paragraph (1b), point (d)(x)				
302p		<u>(iv) where sub-delegation arrangements are in place, the same information in respect of the sub-delegates and the functions sub-delegated;</u>	<u>(vi) where sub-delegation arrangements are in place, information required in points (i) to (iii) on the sub-delegates and the activities related to the portfolio and risk management functions that are sub-delegated;</u>	<u>(vi) where sub-delegation arrangements are in place, information required in points (i) to (iii) on the sub-delegates and the activities related to the portfolio and risk management functions that are sub-delegated;</u> TM 28.3 EC suggestion
Article 2, first paragraph, point (5), amending provision, numbered paragraph (1b), point (d)(xi)				

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
302q		<u>(v) the date of conclusion and expiration of the delegation and sub-delegation arrangements;</u>	<u>(vii) the commencement and expiry date of the delegation and sub-delegation arrangements.</u>	<u>(vii) the commencement and expiry date of the delegation and sub-delegation arrangements.</u> TM 28.3 EC suggestion Text Origin: Council Mandate
Article 2, first paragraph, point (5), amending provision, numbered paragraph (1b), point (d)(xii)				
302r		<u>(vi) confirmation that the management company has implemented periodic due diligence measures to oversee, monitor and control the delegate, and kept records of issues identified and, where relevant, the measures adopted to address those issues.</u> cf Council 302o	:	TM 28.3 EC suggestion To be deleted. dealt with in 302o above
Article 2, first paragraph, point (5), amending provision, numbered paragraph (1b), point (d)(xiii)				
302s		.	<u>(e) the list of Member States in which the units of the UCITS are actually marketed by its management company or by a distributor which is acting on behalf of that management company.</u>	<u>(e) the list of Member States in which the units of the UCITS are actually marketed by its management company or by a distributor which is acting on behalf of that management company.</u> TM 28.3 suggestion of EC. EP to check

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
				Text Origin: Council Mandate
Article 2, first paragraph, point (5), amending provision, numbered paragraph (1b), point (d)(xiv)				
302t		<u>1b. The ECB and national authorities shall grant ESMA access to data on assets and liabilities (fund inventories) of UCITS funds provided by fund managers pursuant to Regulation (EU) No 1073/2013.</u>	<u>1b. The competent authorities of the home Member State of the UCITS shall ensure that all information gathered under the first paragraph in respect of all UCITS that they supervise and the information gathered under Article 7 is made available, without delay, to competent authorities of other relevant Member States, ESMA and the ESRB by means of the procedures set out in Articles 102 to 105 on cooperation agreements and exchange of information. They shall, without delay, also provide information by means of those procedures, and bilaterally to the competent authorities of other Member States directly concerned, if a management company under their responsibility, or UCITS managed by that management company could potentially constitute an important source of counterparty risk to a credit institution, other systemically relevant institutions in other Member States, or the stability of the financial system in another Member State.</u>	TM 28.3: Corresponds to AIFMD. EC will provide text.

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
302u		.		
Article 2, first paragraph, point (5), amending provision, numbered paragraph (1b), point (d)(xv)				
302v		<u>1c. A management company shall, for each of the UCITS it manages, provide the following to the competent authorities of its home Member State:</u>		TM 28.3 delete Covered in line 302b
Article 2, first paragraph, point (5), amending provision, numbered paragraph (1b), point (d)(xvi)				
302w		<u>(a) if relevant, information on tools used for managing the liquidity of the UCITS according to Article 84(2);</u>		TM 28.3 delete Covered in line 302c
Article 2, first paragraph, point (5), amending provision, numbered paragraph (1b)				
302x		<u>(b) the current risk profile of the UCITS and the risk management systems employed by the management company to manage the market risk, liquidity risk, counterparty risk and other risks including operational risk;</u>	<u>1b.</u>	TM 28.3 delete Covered in line 302d
Article 2, first paragraph, point (5), amending provision, numbered paragraph (1b), point (d)(xviii)				
302y		<u>(c) the results of stress tests performed.</u>		TM 28.3 delete

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
				Covered in line 302e
Article 2, first paragraph, point (5), amending provision, numbered paragraph (1b), point (d)(xix)				
302z				<u>1d. The competent authorities of the home Member State of the UCITS management company shall ensure that all information gathered under this Article [and the information gathered under Article 7] is made available to competent authorities of other relevant Member States, the ESAs, the ESRB and, for statistical purposes, members of the ESCB by means of the procedures set out in Article 101 on supervisory cooperation.</u> TM2504 data sharing cf 181b. DRAFT from COM email of 2404. Reference to Art 7 tbc.
Article 2, first paragraph, point (5), amending provision, numbered paragraph (2)				
303	2. ESMA shall develop draft regulatory technical standards specifying the details to be reported in accordance with paragraph 1. ESMA shall take into account other reporting requirements to which the management companies are subject and the report issued in accordance with Article 20b.	2. ESMA shall develop draft regulatory technical standards specifying the details to be reported in accordance with paragraph <u>paragraphs 1, 1a and 1c of this Article</u>. ESMA shall take into account other reporting requirements to which the management companies are subject and the report issued in accordance	2. ESMA shall develop draft regulatory technical standards specifying the details to be reported in accordance with paragraph 1. ESMA shall take into account other reporting requirements to which the management companies are subject and the report issued in accordance with Article 20b.	2. ESMA shall develop draft regulatory technical standards specifying: <u>(a)</u> the details <u>of the information</u> to be reported in accordance with paragraph 1. ESMA shall take into account other reporting requirements to which the management companies are subject

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
		with Article 20b. <u>Regulatory technical standards shall set out the appropriate level of standardisation of the information to be reported.</u>		and the report issued in accordance with Article 20b <u>according to paragraphs 1, 1a and 1c,</u> <u>(aa) the appropriate level of standardisation of the information to be reported according to paragraph [1a], point (d),</u> <u>(b) the reporting frequency and timing.</u> TM 28.3 Text Origin: Council Mandate
Article 2, first paragraph, point (5), amending provision, numbered paragraph (2), first paragraph a				
303a			<u>(a) the details of the information to be reported in accordance with paragraph 1 and 1a, letters a) to c) and e). These draft regulatory technical standards shall also set out the appropriate level of standardisation of the information to be reported according to paragraph 1a, letter d), without introducing additional reporting obligations. ESMA shall take into account other reporting requirements to which the management companies are subject and the findings of the report issued in accordance with Article 20b; and</u>	<u>When developing the draft regulatory technical standards referred to in point (aa), ESMA shall not introduce reporting obligations additional to those set out in paragraph [1a], point (d).</u> <u>When developing the draft regulatory technical standards referred to in points (a) and (aa), ESMA shall take into consideration other reporting requirements to which the management companies are subject, international developments and standards, and the findings of the report issued in accordance with Article 20b.</u>

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
				TM 28.3 Text suggested by EC, but with reference to "UCITS" replaced with "management companies".
303b			<u>(b) the reporting frequency and timing.</u>	
Article 2, first paragraph, point (5), amending provision, numbered paragraph (2), first paragraph				
304	ESMA shall submit those draft regulatory technical standards to the Commission by [Please insert date = 36 months after the entry into force of this Directive].	ESMA shall submit those draft regulatory technical standards to the Commission by [Please insert date = 36 months after the entry into force of this Directive].	ESMA shall submit those draft regulatory technical standards to the Commission by [Please insert date = 36 months after the entry into force of this Directive].	
Article 2, first paragraph, point (5), amending provision, numbered paragraph (2), second paragraph				
305	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.	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.	Power is delegated to the Commission to adopt <u>supplement this directive by adopting</u> the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.	
Article 2, first paragraph, point (5), amending provision, numbered paragraph (2), second paragraph a				
305a		<u>2a. Where necessary for the effective monitoring of systemic risk, the competent authorities of</u>		

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
		<i><u>the home Member State may require additional reporting to that described in paragraph 1, on a periodic or on an ad-hoc basis. The competent authorities shall inform ESMA about the additional reporting requirements.</u></i>		TM 28.3 Lines 305a and 305b should become one new paragraph above paragraph 2 (above the RTS). CNL to check on this.
Article 2, first paragraph, point (5), amending provision, numbered paragraph (2a)				
305b		<i><u>In exceptional circumstances and where required in order to ensure the stability and integrity of the financial system, ESMA after consulting the ESRB may request the competent authorities of the home Member State to impose additional reporting requirements.</u></i>		<i><u>2aa 'In exceptional circumstances and where required in order to ensure the stability and integrity of the financial system, or to promote long-term sustainable growth, ESMA may, after consulting the ESRB, request the competent authorities of the home Member State to impose additional reporting requirements.'</u></i> TM 28.3 at suggestion of the EC. "long term sustainable growth" mention inserted to reflect EP amendment on AIFMD.
Article 2, first paragraph, point (5), amending provision, numbered paragraph (3)				
306	3. ESMA shall develop draft implementing technical standards specifying:	3. ESMA shall develop draft implementing technical standards specifying:	3. ESMA shall develop draft implementing technical standards specifying:	3. ESMA shall develop draft implementing technical standards specifying: Text Origin: Commission Proposal

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Article 2, first paragraph, point (5), amending provision, numbered paragraph (3), point (a)				
307	(a) the format and data standards for the reports referred to in paragraph 1;	(a) the format and data standards for the reports referred to in paragraph 1 <u>paragraphs 1, 1a and 1c of this Article which shall include in particular relevant legal identifiers;</u>	(a) the format and data standards for the reports referred to in paragraph 1 <u>and 1a</u> ;	(a) the format and data standards for the reports referred to in paragraph 1 <u>paragraphs 1, 1a and 1c of this Article;</u> <u>(aa) the legal identifiers that are necessary to connect the data in those reports on assets, UCITS and management companies to other supervisory or publicly available data sources;</u> TM 28.3 Text suggested by EC. Review to ensure coherence with AIFMD formulation.
Article 2, first paragraph, point (5), amending provision, numbered paragraph (3), point (b)				
308	(b) the reporting frequency and timing.	(b) the reporting frequency and timing.	(b) the reporting frequency and timing.	<i>deleted</i> TM 28.3 To be deleted given that frequency and timing is now in RTS in 303
Article 2, first paragraph, point (5), amending provision, numbered paragraph (3), point (ba)				
308a		<u>(ba) methods and arrangements for submitting the reports referred to in paragraphs 1 and 1a, including methods and arrangements to improve data</u>	<u>(ba) methods and arrangements for submitting the reports referred to in paragraphs 1 and 1a, including methods and arrangements to improve data</u>	<u>(b) methods and arrangements for submitting the reports referred to in paragraphs 1 and 1a, including methods and arrangements to improve data standardisation and</u>

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
		<u>standardisation and efficient sharing and use of data already reported within any Union reporting framework by any relevant competent authority, at Union or national level.</u>	<u>standardisation and efficient sharing and use of data already reported within any Union reporting framework by any relevant competent authority, at Union or national level.</u>	<u>efficient sharing and use of data already reported in any Union reporting framework by any relevant competent authority, at Union or national level, taking into account the findings of the report issued in accordance with Article 20b.</u> TM 28.3 EC suggestion text.
Article 2, first paragraph, point (5), amending provision, numbered paragraph (3), point (bb)				
308b		<u>When developing those draft technical standards, ESMA shall take into account international developments and standards agreed at Union or global level and the findings of the report issued in accordance with Article 20b.</u>		TM 28.3: To be deleted Given that this is now covered in RTS in 303a the line remains empty.
Article 2, first paragraph, point (5), amending provision, numbered paragraph (3), first paragraph				
309	ESMA shall submit those draft implementing technical standards to the Commission by [Please insert date = 36 months after the entry into force of this Directive].	ESMA shall submit those draft implementing technical standards to the Commission by [Please insert date = 36 months after the entry into force of this Directive].	ESMA shall submit those draft implementing technical standards to the Commission by [Please insert date = 36 months after the entry into force of - this Directive].	ESMA shall submit those draft implementing technical standards to the Commission by [Please insert date = 36 months after the entry into force of this Directive]. Text Origin: Commission Proposal
Article 2, first paragraph, point (5), amending provision, numbered paragraph (3), second paragraph				
310				

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	Power is delegated to the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.	Power is delegated to the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.	Power is delegated to the Commission to adopt ^{supplement} <u>this directive by adopting</u> the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.	Power is delegated to ^{conferred on} the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010. TM 28.3 EC Suggestion for text
310a		<u>3a. The competent authorities of the home Member State of the UCITS management company shall ensure that all information gathered in accordance with paragraphs 1, 1a, 1c and 2a in respect of all UCITS management companies that they supervise is made available to competent authorities of other relevant Member States, ESMA and the ESRB by means of the procedures set out in Article 101 on supervisory cooperation.</u>		
Article 2, first paragraph, point (5), amending provision, fifth paragraph				
311	Article 20b	Article 20b	Article 20b	Article 20b Text Origin: Commission Proposal
Article 2, first paragraph, point (5), amending provision, numbered paragraph (1)				

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
312	1. By [Please insert date = 24 months after the entry into force of this Directive], ESMA shall submit to the Commission a report for the development of an integrated supervisory data collection, which shall focus on how to:	1. By [Please insert date = 24 months after the entry into force of this Directive], ESMA shall submit to the Commission a report for the development of an integrated supervisory data collection, which shall focus on how to:	1. By [Please insert date = 24 months after the entry into force of this Directive], ESMA shall submit to the Commission a report for the development of an integrated supervisory data collection, which shall focus on how to:	1. By [Please insert date = 24 months after the entry into force of this Directive], ESMA shall submit to the Commission a report for the development of an integrated supervisory data collection, which shall focus on how to: Text Origin: Commission Proposal
Article 2, first paragraph, point (5), amending provision, numbered paragraph (1), point (a)				
313	(a) reduce areas of duplications and inconsistencies between the reporting frameworks in the asset management sector and other sectors of the financial industry and	(a) reduce areas of duplications and inconsistencies between the reporting frameworks in the asset management sector and other sectors of the financial industry and	(a) reduce areas of duplications and inconsistencies between the reporting frameworks in the asset management sector and other sectors of the financial industry and	(a) reduce areas of duplications and inconsistencies between the reporting frameworks in the asset management sector and other sectors of the financial industry and Text Origin: Commission Proposal
Article 2, first paragraph, point (5), amending provision, numbered paragraph (1), point (b)				
314	(b) improve data standardisation and efficient sharing and use of data already reported within any Union reporting framework by any relevant competent authority, at Union or national level.	(b) improve data standardisation and efficient sharing and use of data already reported within any Union reporting framework by any relevant competent authority, at Union or national level.	(b) improve data standardisation and efficient sharing and use of data already reported within any Union reporting framework by any relevant competent authority, at Union or national level.	(b) improve data standardisation and efficient sharing and use of data already reported within any Union reporting framework by any relevant competent authority, at Union or national level. Text Origin: Commission Proposal

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
314a		<u>(ba) improve the cost-benefit balance of the burden of information collection for the overall benefit of UCITS and of investors;</u>		
314b		<u>In that report, ESMA shall also provide detailed comparison and best practices of data collection in the Union with world leading markets for retail investment funds and the impact of data collection on competitiveness.</u>		
Article 2, first paragraph, point (5), amending provision, numbered paragraph (2)				
315	2. When preparing the report referred to in paragraph 1, ESMA shall work in close cooperation with the European Central Bank (ECB), the other European Supervisory Authorities, and, where relevant, the national competent authorities.;	2. When preparing the report referred to in paragraph 1, ESMA shall work in close cooperation with the European Central Bank (ECB), the other European Supervisory Authorities, and, where relevant, the national competent authorities.;	2. When preparing the report referred to in paragraph 1, ESMA shall work in close cooperation with the European Central Bank (ECB), the other European Supervisory Authorities, and, where relevant, the national competent authorities.;	2. When preparing the report referred to in paragraph 1, ESMA shall work in close cooperation with the European Central Bank (ECB), the other European Supervisory Authorities, and, where relevant, the national competent authorities.;
Article 2, first paragraph, point (6)				
316				

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	(6) Article 22a is amended as follows:	(6) Article 22a is amended as follows:	(6) Article 22a is amended as follows:	(6) Article 22a is amended as follows: Text Origin: Commission Proposal
Article 2, first paragraph, point (6)(a)				
317	(a) in paragraph 2, point (c) is replaced by the following:	(a) in paragraph 2, point (c) is replaced by the following:	(a) in paragraph 2, point (c) is replaced by the following:	(a) in paragraph 2, point (c) is replaced by the following: Text Origin: Commission Proposal
Article 2, first paragraph, point (6)(a), amending provision, first paragraph				
318	(c) the depositary has exercised all due skill, care and diligence in the selection and the appointment of any third party to whom it intends to delegate parts of its tasks, except where that third party is a central securities depository acting in the capacity of an issuer CSD as defined in Article 1, point (e) of Commission Delegated Regulation (EU) 2017/392*, and continues to exercise all due skill, care and diligence in the periodic review and ongoing monitoring of any third party to which it has delegated parts of its tasks and of the arrangements of the third party in respect of the matters delegated to it.	(c) the depositary has exercised all due skill, care and diligence in the selection and the appointment of any third party to whom it intends to delegate parts of its tasks, except where that third party is a central securities depository acting in the capacity of an issuer CSD as defined in Article 1, point (e) of Commission Delegated <u>the delegated act adopted on the basis of Articles 29(3) and 48(10) of Regulation (EU) 2017/392*, No 909/2014</u> and continues to exercise all due skill, care and diligence in the periodic review and ongoing monitoring of any third party to which it has delegated parts of its tasks and of the arrangements of the	(c) the depositary has exercised all due skill, care and diligence in the selection and the appointment of any third party to whom it intends to delegate parts of its tasks, except where that third party is a central securities depository acting in the capacity of an issuer <u>investor</u> CSD as defined in Article 1, point (e) <u>(f)</u> of Commission Delegated Regulation (EU) 2017/392*, and continues to exercise all due skill, care and diligence in the periodic review and ongoing monitoring of any third party to which it has delegated parts of its tasks and of the arrangements of the third party in respect of the matters delegated to it.	

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		third party in respect of the matters delegated to it. ²		
Article 2, first paragraph, point (6)(a), amending provision, first paragraph, first paragraph				
319	* Commission Delegated Regulation (EU) 2017/392 of 11 November 2016 supplementing Regulation (EU) No 909/2014 of the European Parliament and of the Council with regard to regulatory technical standards on authorisation, supervisory and operational requirements for central securities depositories (OJ L 65, 10.3.2017, p. 48);		* Commission Delegated Regulation (EU) 2017/392 of 11 November 2016 supplementing Regulation (EU) No 909/2014 of the European Parliament and of the Council with regard to regulatory technical standards on authorisation, supervisory and operational requirements for central securities depositories (OJ L 65, 10.3.2017, p. 48) ² ;	
Article 2, first paragraph, point (6)(b)				
320	(b) paragraph 4 is replaced by the following:	(b) paragraph 4 is replaced by the following:	(b) paragraph 4 is replaced by the following:	(b) paragraph 4 is replaced by the following: Text Origin: Commission Proposal
Article 2, first paragraph, point (6)(b), amending provision, numbered paragraph (4)				
321	4. For the purposes of this paragraph, the provision of services by a central securities depository acting in the capacity of an issuer	4. For the purposes of this paragraph, the provision of services by a central securities depository acting in the capacity of an issuer	4. For the purposes of this paragraph, the provision of services by a central securities depository acting in the capacity of an issuer	

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	CSD as defined in Article 1, point (e), of Commission Delegated Regulation (EU) 2017/392 shall not be considered a delegation of the depositary's custody functions. ;	CSD as defined in <u>the delegated act adopted on the basis of Articles 29(3) and 48(10) of Regulation (EU) No 909/2014 shall not be considered a delegation of the depositary's custody functions.</u> <u>For the purposes of this paragraph, the provision of services by a central securities depositary acting in the capacity of an investor CSD as defined in</u> Article 1, point (e) (f), of Commission Delegated Regulation (EU) 2017/392 shall not be considered a delegation of the depositary's custody functions.-;	CSD as defined in Article 1, point (e), of Commission Delegated Regulation (EU) 2017/392 shall not be considered a delegation of the depositary's custody functions. <u>For the purposes of this paragraph, the provision of services by a central securities depositary acting in the capacity of an investor CSD as defined in Article 1, point (f) of Commission Delegated Regulation (EU) 2017/392 shall be considered to be a delegation of the depositary's custody functions.'</u> ;	
Article 2, first paragraph, point (7)				
322	(7) in Article 29(1), point (b) is replaced by the following:	(7) in Article 29(1), point (b) is replaced by the following:	(7) in Article 29(1), point (b) is replaced by the following:	(7) in Article 29(1), point (b) is replaced by the following: Text Origin: EP Mandate
Article 2, first paragraph, point (7), amending provision, first paragraph				
323	(b) the directors of the investment company must be of sufficiently good repute and be sufficiently experienced also in relation to the type of business pursued by the investment company and, to that	(b) the directors of the investment company must be of sufficiently good repute and be sufficiently experienced also in relation to the type of business pursued by the investment company and, to that	(b) the directors of the investment company must be of sufficiently good repute and be sufficiently experienced also in relation to the type of business pursued by the investment company and, to that	

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	end: the names of the directors and of every person succeeding them in office must be communicated forthwith to the competent authorities; the conduct of an investment company's business must be decided by at least either two full-time employees or two natural persons committed full-time to conduct the business of that management company and resident in the Union' meeting such conditions; and 'directors' shall mean those persons who, under the law or the instruments of incorporation, represent the investment company, or who effectively determine the policy of the company;;	end: the names of the directors and of every person succeeding them in office must be communicated forthwith to the competent authorities; the conduct of an investment company's business must be decided by at least either two full-time employees or two natural persons committed full-time <u>or on a full-time equivalent basis</u> to conduct the business of that management company and resident in the Union' meeting such conditions; and 'directors' shall mean those persons who, under the law or the instruments of incorporation, represent the investment company, or who effectively determine the policy of the company;;	end: the names of the directors and of every person succeeding them in office must be communicated forthwith to the competent authorities; the conduct of an investment company's business must be decided by at least either two full-time employees or two natural persons committed full-time to conduct the business of that management <u>and 'directors' shall mean those persons who, under the law or the instruments of incorporation, represent the investment company, or who effectively determine the policy of the company. The conduct of an investment company's business must be decided by at least two natural persons who are either employed full-time or executive member or members of the governing body of the management company committed full-time to conduct the business of that management</u> and resident in the Union' meeting such conditions; and 'directors' shall mean those persons who, under the law or the instruments of incorporation, represent the investment company, or who effectively determine the policy of the company <u>and who are in the Union, meeting such conditions.</u>;	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
323a		<u>(ba) the investment company must ensure that at least one member of its governing body is a non-executive director. The investment company, in appointing a non-executive director of its governing body, must 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 investment company must 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 investment company is managing UCITS in the best interest of investors. Non-executive directors shall contribute to ensuring that the investment company complies with the requirements regarding conflicts of interests and is acting in the best interests of the UCITS and their investors, as specified in this Directive';</u>		
323b				

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
		<u>(7a) in Article 57, the following paragraph is added:</u>		
323c		" <u>2a. Where the UCITS management company implements side pockets referred to in Article 84(2)(a) by means of assets segregation, the segregated assets can be excluded from the calculation of limits laid down in this Chapter.</u>		
Article 2, first paragraph, point (8)				
324	(8) in Article 84, paragraphs 2 and 3 are replaced by the following:	(8) in Article 84, paragraphs 2 and 3 are replaced by the following:	(8) in Article 84, paragraphs 2 and 3 are replaced by the following:	(8) in Article 84, paragraphs 2 and 3 are replaced by the following: Text Origin: Commission Proposal
Article 2, first paragraph, point (8), amending provision, numbered paragraph (2)				
325	‘ 2. By way of derogation from paragraph 1:	‘ 2. By way of derogation from paragraph 1:	‘ 2. By way of derogation from paragraph 1:	‘ 2. By way of derogation from paragraph 1: Text Origin: Commission Proposal
Article 2, first paragraph, point (8), amending provision, numbered paragraph (2), point (a)				

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326	(a) a UCITS may, in the interest of its unit-holders, temporarily suspend the repurchase or redemption of its units or activate other liquidity management tool selected in accordance with Article 18a(2);	(a) a UCITS may, in the interest of its unit-holders, temporarily suspend the repurchase or redemption of its units or activate other liquidity management tool selected in accordance with Article 18a(2). <u>In the interest of its unit-holders and to ensure subscriptions and redemptions are processed at a fair price, a UCITS may also activate side pockets as referred to in Annex IIA, point 8, when the UCITS cannot ensure the fair and accurate valuation of some assets or where some assets have become non-tradable;</u>	(a) a UCITS may, in the interest of its unit-holders, temporarily suspend the repurchase or redemption of its units or activate other <u>or deactivate another</u> liquidity management tool selected in accordance with Article 18a(2). <u>In the interest of its unit-holders and to ensure subscriptions and redemptions are processed at a fair price, a UCITS may also activate side pockets as referred to in Annex IIA point 8, in situations where the UCITS cannot ensure the fair and accurate valuation of some assets or where some assets have become non-tradable.</u>	(a) a UCITS may, in the interest of its unit-holders, temporarily suspend the repurchase or redemption of its units <u>as referred to in point 1 of the list set out in Annex IIA</u> or activate <u>or deactivate</u> other liquidity management tool <u>tools</u> selected <u>from points 2 to 7 of that list</u> in accordance with Article 18a(2). <u>The UCITS may also, in the interest of its unit-holders, activate side pockets as referred to in point 8 of that list.</u> TM2504 need for recital as in line 127
Article 2, first paragraph, point (8), amending provision, numbered paragraph (2), point (b)				
327	(b) in the interest of the unit-holders or of the public, competent authorities of a UCITS home Member State may require a UCITS to activate a liquidity management tool referred to in points 1 or 2 of Annex IIA or selected and notified by the UCITS in accordance with Article 18a(2), whichever is more suitable considering the type of UCITS and the risks that necessitate taking this measure.	(b) in the interest of the unit-holders or of the public, <u>in exceptional circumstances and after consulting the UCITS,</u> competent authorities of a UCITS home Member State may require a UCITS to activate a liquidity management tool referred to in points 1 or 2 of Annex IIA or selected and notified by the UCITS in accordance with Article 18a(2), whichever is more suitable considering the type of UCITS and the risks that necessitate taking this measure.	(b) in the interest of the unit-holders or of the public, competent authorities of a UCITS home Member State may require a UCITS to activate a liquidity management tool <u>the suspension of redemptions and subscriptions as</u> referred to in points 1 or 2 <u>point 1</u> of Annex IIA or selected and notified by the UCITS in accordance with Article 18a(2), whichever is more suitable considering the type of UCITS and the risks that necessitate taking this measure.	

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Article 2, first paragraph, point (8), amending provision, numbered paragraph (2), first paragraph				
328	The temporary suspension referred to in point (a) of the first subparagraph shall be provided for only in exceptional cases where circumstances so require and where suspension is justified having regard to the interests of the unit-holders.	The temporary suspension referred to in point (a) of the first subparagraph shall be provided for only in exceptional cases where circumstances so require and where suspension is justified having regard to the interests of the unit-holders.	The temporary suspension <u>and activation of side pockets</u> referred to in point (a) of the first subparagraph shall be provided for only in exceptional cases where circumstances so require and where suspension is justified having regard to the interests of the unit-holders.	The temporary suspension referred to in point (a) of the first subparagraph shall be provided for only <u>A UCITS may only use suspensions or side pockets as referred to in the first subparagraph</u> in exceptional cases where circumstances so require and where suspension is justified having regard to the interests of the unit-holders.
Article 2, first paragraph, point (8), amending provision, numbered paragraph (3)				
329	3. The UCITS shall notify, without delay, the competent authorities of their home Member State and the competent authorities of all Member States in which it markets its units, when activating or deactivating a liquidity management tool referred to in paragraph 2, point (a).	3.2a. The UCITS shall notify , without delay, <u>notify</u> the competent authorities of their <u>its</u> home Member State and the competent authorities of all Member States in which it markets its units, when activating or deactivating a liquidity management tool referred to in paragraph 2, point (a). <u>in any of the following circumstances:</u>	3. The UCITS shall notify, without delay, the competent authorities of their <u>its</u> home Member State and the competent authorities of all Member States in which it markets its units, when activating or deactivating a liquidity management tool <u>suspension of redemptions and redemption gates as</u> referred to in paragraph 2, point (a) <u>points 1 and 2 of Annex IIA.</u>	tm 29.3 Line discussed. CNL has changed the process to align to line 129 AIFMD.
329a		<u>- when, in situations of liquidity stress, a UCITS activates or deactivates one of the liquidity</u>		

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		<u>management tools listed in points 1 to 2 of Annex IIa</u>		
329b		- <u>when activating or deactivating side pockets as referred to in point 8 of Annex IIa,</u>	<u>. The UCITS shall notify the same competent authorities when activating or deactivating side pockets as referred to in point 8 of that Annex, in a reasonable timeframe prior to the activation or deactivation of this liquidity management tool.</u>	
329c		- <u>when activating or deactivating any other liquidity management tool in a manner that is not in the ordinary course of business as envisaged in the fund documentation.</u>	<u>. Member States may require UCITS to notify the competent authorities of its home Member State when the UCITS decides to activate redemption in kind, extend the notice period or increase the liquidity fee, the cap of the swing factor of the swing pricing or of the the anti-dilution levy fee set out in the fund prospectus or increase the bid-ask spread in dual pricing for liquidity management purposes.</u>	
Article 2, first paragraph, point (8), amending provision, numbered paragraph (3), first paragraph				
330	The competent authorities of the home Member State of the UCITS shall inform, without delay, ESMA	The competent authorities of the home Member State of the UCITS shall inform, without delay, ESMA	The competent authorities of the home Member State of the UCITS shall inform, without delay, ESMA	The competent authorities of the <u>UCITS</u> home Member State <u>shall inform, without delay, the</u>

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	and the ESRB about any notification received in accordance with this paragraph.	and the ESRB about any notification received in accordance with this paragraph. <u>The competent authorities of the home Member State of the UCITS shall inform ESRB if there is any potential risk to stability and integrity of financial system.</u>	and the ESRB <u>the competent authorities of a host Member State of the UCITS and, ESMA</u> about any notification received in accordance with this paragraph <u>and, if there are potential risks to the stability and integrity of the financial system, the ESRB thereof.</u>	<u>competent authorities</u> of the <u>management company's home Member State, the competent authorities of a UCITS</u> shall inform, without delay, ESMA and the ESRB about any notification <u>host Member State and ESMA of any notification received in accordance with this paragraph and, if there are potential risks to the stability and integrity of the financial system, also the ESRB thereof. [ESMA shall have the power to share the information</u> received in accordance with this paragraph <u>with competent authorities.]</u> TM 29.3 Text aligned to line 130. Double check for coherence. Text Origin: EP Mandate
Article 2, first paragraph, point (8), amending provision, numbered paragraph (3), first paragraph a				
330a		<u>ESMA shall have the power to share the information received in accordance with this paragraph with competent authorities.</u>		TM 29.3 Cell to be deleted, topic dealt with in line 330. the line remains empty.
Article 2, first paragraph, point (8), amending provision, third paragraph				
331	3a. The competent authorities of the UCITS home Member State shall notify the competent	3a. The competent authorities of the UCITS home Member State shall notify the competent	3a. The competent authorities of the UCITS home Member State shall notify the competent	3a. <u>When</u> the competent authorities of the UCITS home Member State <u>exercise powers pursuant to</u>

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	authorities of all Member States in which the UCITS markets its units, ESMA and the ESRB prior to exercising powers pursuant to paragraph 2, point (b).	authorities of all Member States in which the UCITS markets its units, ESMA and the ESRB prior to exercising powers pursuant to paragraph 2, point (b). <u>The competent authorities of the home Member State of the UCITS shall inform ESRB if there is any potential risk to stability and integrity of financial system.</u>	authorities of all Member States in which the UCITS markets its units, ESMA and the ESRB prior to and ESMA in parallel with exercising powers pursuant to paragraph 2, point (b) <u>and, if there are potential risks to the stability and integrity of the financial system, the ESRB thereof.</u>	<u>paragraph 2, point (b), they</u> shall notify the competent authorities of all a UCITS host Member States in which the UCITS markets its units, ESMA and the ESRB prior to exercising powers pursuant to paragraph 2, point (b) <u>State, the competent authorities of the management company's home Member State and ESMA, and, if there are potential risks to the stability and integrity of the financial system, also the ESRB.</u> tm 29.3, Text reworked at tech meeting, reflects structure of 330. Text Origin: Council Mandate
Article 2, first paragraph, point (8), amending provision, fourth paragraph				
332	3b. The competent authority of the Member States in which a UCITS markets its units may request the competent authority of the UCITS home Member State to exercise powers laid down in paragraph 2, point (b), specifying the reasons for the request and notifying ESMA and the ESRB thereof.	3b. The competent authority of the Member States in which a UCITS markets its units may request the competent authority of the UCITS home Member State to exercise powers laid down in paragraph 2, point (b), specifying the reasons for the request and notifying ESMA and, <u>in case of any potential risk to the stability and integrity of the financial system,</u> the ESRB thereof.	3b. The competent authority of the Member States in which a UCITS markets its units <u>or the competent authority of the management company</u> may request the competent authority of the UCITS home Member State to exercise powers laid down in paragraph 2, point (b), specifying the reasons for the request and notifying ESMA and, <u>if there are potential risks to the stability and integrity of the financial system,</u> the ESRB thereof.	3b. The competent authority of the authorities of a UCITS host Member States in which a UCITS markets its units <u>State or the competent authorities of the management company's home Member State</u> may request the competent authority <u>authorities</u> of the UCITS home Member State to exercise powers laid down in <u>pursuant to</u> paragraph 2, point (b), specifying the reasons for the request and notifying ESMA and, <u>if there are potential risks to the</u>

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				<u>stability and integrity of the financial system</u>, the ESRB thereof. TM 29.3. Text reworked at tehcnical meeting. Text aligned to 331, including "pursuant to" vs "laid down". Pursuant chosen since this is a directive. Text Origin: Council Mandate
Article 2, first paragraph, point (8), amending provision, fifth paragraph				
333	3c. Where the competent authority of the UCITS home Member State does not agree with the request referred to in paragraph 3b, it shall inform the requesting competent authority, ESMA and the ESRB thereof, stating the reasons for the disagreement.	3c. Where the competent authority of the UCITS home Member State does not agree with the request referred to in paragraph 3b, it shall inform the requesting competent authority, ESMA and, <u>in case of any potential risk to the stability and integrity of the financial system</u>, the ESRB thereof, stating the reasons for the disagreement.	3c. Where the competent authority of the UCITS home Member State does not agree with the request referred to in paragraph 3b, it shall inform the requesting competent authority, ESMA and the ESRB thereof, stating the reasons for the disagreement and ESMA, stating <u>the reasons for the disagreement and, if there are potential risks to the stability and integrity of the financial system, the ESRB thereof</u>.	3c. Where the competent authority<u>authorities</u> of the UCITS home Member State does<u>do</u> not agree with the request referred to in paragraph 3b, #they shall inform the requesting competent authority<u>authorities</u>, ESMA and, <u>where ESRB was informed of that request pursuant to paragraph 3b, the ESRB</u> the ESRB thereof, stating the reasons for the disagreement. TM 29.3 Text reworked to align to 332, to include ESRB in the communication of the objection whenever they are included in the initial notification. Text Origin: EP Mandate
Article 2, first paragraph, point (8), amending provision, sixth paragraph				
334	3d. On the basis of the information received in accordance with paragraphs 3b and 3c, ESMA shall	3d. On the basis of the information received in accordance with paragraphs 3b and 3c, ESMA shall	3d. On the basis of the information received in accordance with paragraphs 3b and 3c, ESMA shall	3d. On the basis of the information received in accordance with paragraphs 3b and 3c, ESMA shall

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	issue an opinion to the competent authorities of the UCITS home Member State on exercising powers laid down in paragraph 2, point (b).	issue an opinion to the competent authorities of the UCITS home Member State on exercising powers laid down in paragraph 2, point (b).	issue an opinion <u>in a reasonable timeframe</u> to the competent authorities of the UCITS home Member State on exercising powers laid down in paragraph 2, point (b).	<u>without undue delay</u> issue an opinion to the competent authorities of the UCITS home Member State on exercising powers laid down in paragraph 2, point (b). TM 29.3 "without undue delay" discussed and validated at the tech meeting. Text Origin: Commission Proposal
Article 2, first paragraph, point (8), amending provision, seventh paragraph				
335	3e. Where the competent authority does not act in accordance or does not intend to comply with ESMA's opinion referred to in paragraph 3d, it shall inform ESMA, stating the reasons for the non-compliance or intention. ESMA may publish the fact that a competent authority does not comply or intend to comply with its advice. ESMA may also decide, on a case-by-case basis, to publish the reasons provided by the competent authority in this regards. ESMA shall give the competent authorities advance notice about such publication.'	3e. Where the competent authority does not act in accordance or does not intend to comply with ESMA's opinion referred to in paragraph 3d, it shall inform ESMA, stating the reasons for the non-compliance or intention. <u>In the event of a serious threat to investor protection, a threat to the orderly functioning and integrity of financial markets or a risk to the stability of the whole or part of the financial system in the Union, and unless such publication is in conflict with the legitimate interest of the share or unit-holders or of the public,</u> ESMA may publish the fact that a competent authority does not comply or intend to comply with its advice. ESMA may also decide, on a case-by-case basis, to publish	3e. Where the competent authority does not act in accordance or does not intend to comply with ESMA's opinion referred to in paragraph 3d, it shall inform ESMA, stating the reasons for the non-compliance or intention. ESMA may publish the fact that a competent authority does not comply or intend to comply with its advice. ESMA may also decide, on a case-by-case basis, to publish the reasons provided by the competent authority in this regards, <u>including the reasons stated by the competent authority for the non-compliance or intention, unless such publication is in conflict with the legitimate interest of the unit-holders or of the public, or could seriously jeopardise the orderly functioning and integrity of</u>	3e. Where the competent authority <u>does</u> authorities do not act in accordance or does do not intend to comply with ESMA's opinion referred to in paragraph 3d, #they shall inform ESMA <u>and the requesting competent authorities,</u> stating the reasons for the non-compliance or intention. <u>In the event of a serious threat to investor protection, to the orderly functioning and integrity of financial markets or to the stability of the whole or part of the financial system in the Union, where the benefits of publication would outweigh the amplification of those threats by that publication, and unless such publication is in conflict with the legitimate interests of the unit-holders or of</u>

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		<u>together with</u> the reasons provided<u>stated</u> by the competent authority in this regards<u>for the non-compliance or intention</u>. ESMA shall give the competent authorities advance notice about such publication.’	<u>financial markets or the stability of the whole or part of the financial system of the Union</u>. ESMA shall give the competent authorities advance notice about such publication.’	<u>the public</u>, ESMA may publish the fact that at the competent authority<u>does authorities do</u> not comply or intend to comply with its advice- ESMA may also decide, on a case-by-case basis, to publish <u>together with</u> the reasons provided<u>stated</u> by the competent authority in this regards<u>authorities for the non-compliance or intention</u>. ESMA shall give the competent authorities advance notice about of such publication.’ TM 29.3 Text reworked at the technical meeting. In this case, we have drafted in UCITS and will arrange accordingly the relevant AIFMD line (225?). TM0305 info to requesting authorities added to align with 225 Text Origin: EP Mandate
Article 2, first paragraph, point (8), amending provision, eighth paragraph				
336	3f. ESMA shall develop draft regulatory technical standards indicating in which situations the competent authorities may exercise the powers set out in paragraph 2, point (b). When developing those standards, ESMA shall consider the potential implications of such supervisory intervention for investor	3f. ESMA shall develop draft regulatory technical standards indicating in which situations the competent authorities may exercise the powers set out in paragraph 2, point (b). When developing those standards, ESMA shall consider the potential implications of such supervisory intervention for investor	3f. ESMA shall develop draft regulatory technical standards indicating in which situations<u>guidelines providing indications to guide</u> the competent authorities may<u>in their</u> exercise <u>of</u> the powers set out in paragraph 2, point (b). When developing those standards<u>guidelines</u>, ESMA shall	

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	protection and the financial stability in another Member State or in the Union.	protection and the financial stability in another Member State or in the Union. <u>Those standards shall recognise that the primary responsibility for liquidity risk management remains with the UCITS and that intervention by the competent authorities is a last resort.</u>	consider the potential implications of such supervisory intervention for investor protection and the financial stability in another Member State or in the Union.	
Article 2, first paragraph, point (8), amending provision, eighth paragraph, first paragraph				
337	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.’;	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.’;	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.’; <u>deleted</u>	
Article 2, first paragraph, point (9)				
338	(9) in Article 98, the following paragraphs 3 and 4 are added:	(9) in Article 98, the following paragraphs 3 and 4 are added:	(9) in Article 98, the following paragraphs 3 and 4 are added:	(9) in Article 98, the following paragraphs 3 and 4 are added: Text Origin: Commission Proposal
Article 2, first paragraph, point (9), amending provision, numbered paragraph (3)				
339	‘ 3. The competent authority of the UCITS host Member State may	‘ 3. The competent authority of the UCITS host Member State may.	‘ 3. The competent authority of the UCITS host Member State may	

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	request the competent authority of the UCITS home Member State to exercise, without delay, powers laid down in paragraph 2 specifying the reasons for its request and notifying ESMA and, if there are potential risks to the stability and integrity of the financial system, the ESRB thereof.	<u>where it has good reasons to suspect that acts contrary to this Directive are being or have been carried out by the UCITS</u> , request the competent authority of the UCITS home Member State to exercise, without delay, powers laid down in paragraph 2 specifying the reasons for its request <u>in as specific a manner as possible</u> and notifying ESMA and, if there are potential risks to the stability and integrity of the financial system, the ESRB thereof.	request the competent authority of the UCITS home Member State to exercise, without delay, powers laid down in paragraph 2 specifying the reasons for its request and notifying ESMA and, if there are potential risks to the stability and integrity of the financial system, the ESRB thereof.	
Article 2, first paragraph, point (9), amending provision, numbered paragraph (3), first paragraph				
340	The competent authority of the UCITS home Member State shall, without delay, inform the competent authority of the UCITS host Member State, ESMA and, if there are potential risks to the stability and integrity of the financial system, the ESRB of the powers exercised and its findings.'	The competent authority of the UCITS home Member State shall, without <u>undue</u> delay, inform the competent authority of the UCITS host Member State, ESMA and, if there are potential risks to the stability and integrity of the financial system, the ESRB of the powers exercised and its findings.'	The competent authority of the UCITS home Member State shall, without delay, inform the competent authority of the UCITS host Member State, ESMA and, if there are potential risks to the stability and integrity of the financial system, the ESRB of the powers exercised and its findings.'	
Article 2, first paragraph, point (9), amending provision, numbered paragraph (4)				
341	4. ESMA may request the competent authority to submit explanations to ESMA in relation to specific cases, which have cross-border implications, concern	4. ESMA may request the competent authority to submit, <u>within a reasonable timeframe</u> , explanations to ESMA in relation to specific cases, which have cross-border implications, concern <u>pose a</u>	4. ESMA may request the competent authority to submit explanations to ESMA in relation to specific cases, which have cross-border implications, concern <u>raise a serious threat to</u> investor	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	investor protection issues or pose risks to the financial stability.’;	<u>serious threat to</u> investor protection, <u>threaten the orderly functioning and integrity of financial markets</u> issues or pose risks to the <u>stability of the whole or part of of</u> financial stability system.’;	protection, <u>threaten the orderly functioning and integrity of financial markets</u> issues or pose risks to the <u>stability of the whole or part of the</u> financial stability system <u>in the Union</u> .’;	
341a		<u>(9a) in Article 101(1), the first subparagraph is replaced by the following:</u>		
341b		“ <u>‘1. The competent authorities of the Member States shall cooperate with each other and with ESMA and the ESRB whenever necessary for the purpose of carrying out their duties under this Directive or of exercising their powers under this Directive or under national law.’;</u> ”		
Article 2, first paragraph, point (9a)				
341c				<u>(9a) In Article 101(9), the first subparagraph is replaced by the following:</u>

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Article 2, first paragraph, point (9b)				
341d				<u>In order to ensure uniform conditions of application of this Article and of Article 20a, ESMA may develop draft implementing technical standards to establish common procedures for competent authorities:</u> <u>(a) to cooperate in on-the-spot verifications and investigations as referred to in paragraphs 4 and 5, and</u> <u>(b) to determine the procedures for exchange of information between competent authorities, the ESAs, the ESRB, and members of the ESCB.</u> TM2504 data sharing as per COM email of 2404. Cf 228b.
Article 2, first paragraph, point (10)				
342	(10) the following Article 101a is inserted:	(10) the following Article 101a is inserted:	(10) the following Article 101a is inserted: deleted	
Article 2, first paragraph, point (10), amending provision, first paragraph				
343	Article 101a	Article 101a	Article 101a deleted	
Article 2, first paragraph, point (10), amending provision, numbered paragraph (1)				

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
344	1. ESMA shall, on a regular basis and at least every two years, conduct a peer review analysis of the supervisory activities of the competent authorities in relation to the application of Article 13. That peer review analysis shall focus on the measures taken to prevent that management companies, which delegate performance of portfolio management or risk management to third parties located in third countries, become letter-box entities.	1. ESMA shall, on a regular basis and at least every two years, By ... <u>[12 months before the date of the review referred to in Article 110a]</u> ESMA shall conduct a <u>one-off comprehensive</u> peer review analysis of the supervisory activities of the competent authorities in relation to the application of Article 13. That peer review analysis shall focus on the measures taken to prevent that management companies, which delegate performance of portfolio management or risk management to third parties located in third countries, become letter-box entities.	1. ESMA shall, on a regular basis and at least every two years, conduct a peer review analysis of the supervisory activities of the competent authorities in relation to the application of Article 13. That peer review analysis shall focus on the measures taken to prevent that management companies, which delegate performance of portfolio management or risk management to third parties located in third countries, become letter-box entities. <u>deleted</u>	
Article 2, first paragraph, point (10), amending provision, numbered paragraph (2)				
345	2. When conducting the peer review analysis, ESMA shall use transparent methods to ensure an objective assessment and comparison between the competent authorities reviewed.;	2. When conducting the peer review analysis, ESMA shall use transparent methods to ensure an objective assessment and comparison between the competent authorities reviewed.;	2. When conducting the peer review analysis, ESMA shall use transparent methods to ensure an objective assessment and comparison between the competent authorities reviewed.; <u>deleted</u>	
Article 2, first paragraph, point (11)				
346	(11) the following Article 110a is inserted:	(11) the following Article 110a is inserted:	(11) the following Article 110a is inserted:	(11) the following Article 110a is inserted:

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
				Text Origin: Commission Proposal
Article 2, first paragraph, point (11), amending provision, first paragraph				
347	Article 110a	Article 110a		Article 110a Text Origin: Commission Proposal
Article 2, first paragraph, point (11), amending provision, second paragraph				
348	By [Please insert date = 30 months after the entry into force of this Directive] and following the peer reviews and analysis referred to in Article 101a and the report produced by ESMA in accordance with Article 13(4), the Commission shall initiate a review of the delegation regime laid down in Article 13 with regard to preventing the creation of letter-box entities in the Union.;	By [Please insert date = 30 <u>40</u> months after the entry into force of this Directive] and following the peer reviews <u>review</u> and analysis referred to in Article 101a and the report produced by ESMA in accordance with Article 13(4), the Commission shall initiate a review of the delegation regime laid down in Article 13 with regard to preventing the creation of letter-box entities in the Union.;	By [Please insert date = 30 <u>60</u> months after the entry into force of this Directive] and following the peer reviews and analysis referred to in Article 101a and the report produced by ESMA in accordance with Article 13(4), the Commission shall initiate a review of the delegation regime laid down in Article 13 with regard to preventing the creation of letter-box entities in the Union.;	
Article 2, first paragraph, point (12)				
349	(12) Article 112a is amended as follows:	(12) Article 112a is amended as follows:	(12) Article 112a is amended as follows:	(12) Article 112a is amended as follows:

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
				Text Origin: Commission Proposal
Article 2, first paragraph, point (12)(a)				
350	(a) in paragraph 1, the following subparagraph is added:	(a) in paragraph 1, the following subparagraph is added:	(a) in paragraph 1, the following subparagraph is added:	(a) in paragraph 1, the following subparagraph is added: Text Origin: Commission Proposal
Article 2, first paragraph, point (12)(a), amending provision, first paragraph				
351	‘ The power to adopt the delegated acts referred to in Article 13 shall be conferred on the Commission for a period of four years from [Please insert the date of entry into force of this Directive.]; ,	‘ The power to adopt the delegated acts referred to in Article 13 shall be conferred on the Commission for a period of four years from [Please insert the date of entry into force of this Directive.]; ,	‘ The power to adopt the delegated acts referred to in Article 13 shall be conferred on the Commission for a period of four years from [Please insert the date of entry into force of this Directive.]; ,	‘ The power to adopt the delegated acts referred to in Article 13 shall be conferred on the Commission for a period of four years from [Please insert the date of entry into force of this Directive.]; , Text Origin: Commission Proposal
Article 2, first paragraph, point (12)(b)				
352	(b) in paragraph 3, the first sentence is replaced by the following:	(b) in paragraph 3, the first sentence is replaced by the following:	(b) in paragraph 3, the first sentence is replaced by the following:	(b) in paragraph 3, the first sentence is replaced by the following: Text Origin: Commission Proposal
Article 2, first paragraph, point (12)(b), amending provision, first paragraph				

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
353	‘ The delegation of power referred to in Articles 12, 13, 14, 18a, 20a, 26b, 43, 50a, 51, 60, 61, 62, 64, 75, 78, 81, 95 and 111 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.; ’	‘ The delegation of power referred to in Articles 12, 13, 14, 18a, 20a, 26b, 43, 50a, 51, 60, 61, 62, 64, 75, 78, 81, 95 and 111 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.; ’	‘ The delegation of power referred to in Articles 12, 13, 14, 18a, 20a, 26b, 43, 50a, 51, 60, 61, 62, 64, 75, 78, 81, 95 and 111 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.; ’	‘ The delegation of power referred to in Articles 12, 13, 14, 18a, 20a, 26b, 43, 50a, 51, 60, 61, 62, 64, 75, 78, 81, 95 and 111 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.; ’ Text Origin: Commission Proposal
Article 2, first paragraph, point (12)(c)				
354	(c) in paragraph 5, the first sentence is replaced by the following:	(c) in paragraph 5, the first sentence is replaced by the following:	(c) in paragraph 5, the first sentence is replaced by the following:	(c) in paragraph 5, the first sentence is replaced by the following: Text Origin: Commission Proposal
Article 2, first paragraph, point (12)(c), amending provision, first paragraph				
355	‘	‘	‘	‘

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	A delegated act adopted pursuant to Articles 12, 13, 14, 18a, 20a, 26b, 43, 50a, 51, 60, 61, 62, 64, 75, 78, 81, 95 and 111 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of three months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by three months at the initiative of the European Parliament or of the Council.;	A delegated act adopted pursuant to Articles 12, 13, 14, 18a, 20a, 26b, 43, 50a, 51, 60, 61, 62, 64, 75, 78, 81, 95 and 111 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of three months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by three months at the initiative of the European Parliament or of the Council.;	A delegated act adopted pursuant to Articles 12, 13, 14, 18a, 20a, 26b, 43, 50a, 51, 60, 61, 62, 64, 75, 78, 81, 95 and 111 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of three months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by three months at the initiative of the European Parliament or of the Council.;	A delegated act adopted pursuant to Articles 12, 13, 14, 18a, 20a, 26b, 43, 50a, 51, 60, 61, 62, 64, 75, 78, 81, 95 and 111 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of three months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by three months at the initiative of the European Parliament or of the Council.;
Article 2, first paragraph, point (13)				
356	(13) Annex I is amended as set out in Annex III to this Directive;	(13) Annex I is amended as set out in Annex III to this Directive;	(13) Annex I is amended as set out in Annex III to this Directive;	(13) Annex I is amended as set out in Annex III to this Directive;
Article 2, first paragraph, point (14)				
357	(14) The text in Annex IV to this Directive is added as Annex IIA.	(14) The text in Annex IV to this Directive is added as Annex IIA.	(14) The text in Annex IV to this Directive is added as Annex IIA.	(14) The text in Annex IV to this Directive is added as Annex IIA.

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
				Text Origin: Commission Proposal
Article 3				
358	Article 3 Transposition	Article 3 Transposition	Article 3 Transposition	Article 3 Transposition Text Origin: Commission Proposal
Article 3(1)				
359	1. Member States shall adopt and publish, by [Please insert date = 24 months after the entry into force of this Directive] at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.	1. Member States shall adopt and publish, by [Please insert date = 24 months after the entry into force of this Directive] at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.	1. Member States shall adopt and publish, by [Please insert date = 24 months after the entry into force of this Directive] at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.	1. Member States shall adopt and publish, by [Please insert date = 24 months after the entry into force of this Directive] at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions. Text Origin: Commission Proposal
Article 3(2)				
360	2. They shall apply those provisions from [...].	2. They shall apply those provisions from [...].	2. They shall apply those provisions from [...].	2. They shall apply those provisions from [...]. Text Origin: Commission Proposal
Article 3(3)				

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
361	3. When Member States adopt those provisions, they shall contain reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.	3. When Member States adopt those provisions, they shall contain reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.	3. When Member States adopt those provisions, they shall contain reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.	3. When Member States adopt those provisions, they shall contain reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made. Text Origin: Commission Proposal
Article 3(4)				
362	4. Member States shall communicate to the Commission the text of the main measures of national law which they adopt in the field covered by this Directive.	4. Member States shall communicate to the Commission the text of the main measures of national law which they adopt in the field covered by this Directive.	4. Member States shall communicate to the Commission the text of the main measures of national law which they adopt in the field covered by this Directive.	4. Member States shall communicate to the Commission the text of the main measures of national law which they adopt in the field covered by this Directive. Text Origin: Commission Proposal
Article 4				
363	Article 4 Entry into force	Article 4 Entry into force	Article 4 Entry into force	Article 4 Entry into force Text Origin: Commission Proposal
Article 4, first paragraph				
364	This Directive shall enter into force on the 20th day following that of its	This Directive shall enter into force on the 20th day following that of its	This Directive shall enter into force on the 20th day following that of its	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	publication in the Official Journal of the European Union.	publication in the Official Journal of the European Union.	publication in the <u>Official Journal of the European Union</u> Official Journal of the European Union.	
Article 5				
365	Article 5 Addressees	Article 5 Addressees	Article 5 Addressees	Article 5 Addressees Text Origin: Commission Proposal
Article 5, first paragraph				
366	This Directive is addressed to the Member States.	This Directive is addressed to the Member States.	This Directive is addressed to the Member States.	This Directive is addressed to the Member States. Text Origin: Commission Proposal
Formula				
367	Done at Brussels,	Done at Brussels,	Done at Brussels,	Done at Brussels, Text Origin: Commission Proposal
Formula				
368	For the European Parliament	For the European Parliament	For the European Parliament	For the European Parliament Text Origin: Commission Proposal
Formula				

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
369	The President	The President	The President	The President Text Origin: Commission Proposal
Formula				
370	For the Council	For the Council	For the Council	For the Council Text Origin: Commission Proposal
Formula				
371	The President	The President	The President	The President Text Origin: Council Mandate
Annex I				
371.1	Annex I	Annex I	Annex I <u>Annex I</u>	Annex I Text Origin: Commission Proposal
Annex I, first paragraph				
372	In Annex I, the following points 3 and 4 are added:	In Annex I, the following points 3 and 4 are added:	In Annex I, the following points 3 and 4 are added:	 Text Origin: Commission Proposal
372a		,		

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
		<u>-1. '(ca) management of joint ventures and of mandates in respect of immovable property</u>		
Annex I, first paragraph, amending provision, numbered paragraph (3)				
373	‘ 3. Originating loans.	3. Originating loans.	‘ 3. Originating loans <u>on behalf of the AIF.</u>	
Annex I, first paragraph, amending provision, numbered paragraph (4)				
374	4. Servicing securitisation special purpose entities.	4. Servicing securitisation special purpose entities.	4. Servicing securitisation special purpose entities.	‘ 4. Servicing securitisation special purpose entities. Text Origin: Commission Proposal
Annex II				
374.1	Annex II	Annex II	Annex II <u>Annex II</u>	Annex II Text Origin: Council Mandate
Annex II, amending provision, first paragraph				
375	‘ ANNEX V	‘ ANNEX V	‘ ANNEX V	‘ ANNEX V Annex V AIFMD and Annex IV UCITS done in TM 15.03

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
				Text Origin: Commission Proposal
Annex II, amending provision, second paragraph				
376	LIQUIDITY MANAGEMENT INSTRUMENTS AVAILABLE TO AIFMs MANAGING OPEN-ENDED AIFs	LIQUIDITY MANAGEMENT INSTRUMENTS <u>TOOLS</u> AVAILABLE TO AIFMs MANAGING OPEN-ENDED AIFs	LIQUIDITY MANAGEMENT INSTRUMENTS <u>TOOLS</u> AVAILABLE TO AIFMs MANAGING OPEN-ENDED AIFs	LIQUIDITY MANAGEMENT INSTRUMENTS <u>TOOLS</u> AVAILABLE TO AIFMs MANAGING OPEN-ENDED AIFs Text Origin: Council Mandate
Annex II, amending provision, numbered paragraph (1)				
377	(1) Suspension of redemptions and subscriptions: suspension of redemptions and subscriptions implies that investors are temporarily unable to redeem or purchase fund's shares.	(1) Suspension of redemptions and subscriptions: suspension of redemptions and subscriptions implies that investors are temporarily unable to redeem or purchase fund's <u>units or</u> shares.	(1) Suspension of redemptions and subscriptions: suspension of redemptions and subscriptions implies that investors are temporarily unable to redeem or purchase fund's shares <u>or units</u> .	(1) Suspension of redemptions and subscriptions: suspension of redemptions and subscriptions implies that investors are temporarily unable to redeem or purchase <u>means temporarily disallowing unitholders or shareholders from redeeming or purchasing the</u> fund's <u>units or</u> shares. TM 28.3 EC precise that in the second part of the sentence both purchase and redemption are both disallowed simultaneously. LL will transmit this information for the other linguistic versions. Text Origin: Council Mandate
Annex II, amending provision, numbered paragraph (2)				

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
378	(2) Redemption gates: a redemption gate is a temporary restriction of the right of shareholders to redeem their shares. This restriction may be full, so that investors cannot redeem their shares at all, or partial, so that investors can only redeem a certain portion of their shares.	(2) Redemption gates: a redemption gate is a temporary restriction of the right of shareholders to redeem their <u>units or</u> shares. This restriction may be full, so that investors cannot redeem their shares at all, or is partial, so that investors can only redeem a certain portion of their <u>units or</u> shares.	(2) Redemption gates: a redemption gate is a temporary restriction of the right of shareholders to redeem their shares <u>or units</u> . This restriction may be full, so that investors cannot redeem their shares at all, or is partial, so that investors can only redeem a certain portion of their shares <u>or units</u> .	(2) Redemption gates <u>gate</u> : a redemption gate is <u>means</u> a temporary <u>and partial</u> restriction of the right of unitholders or shareholders to redeem their shares . This restriction may be full, so that investors cannot redeem their units or shares at all, or partial, so that investors can only redeem a certain portion of their <u>units or</u> shares. Text Origin: Council Mandate
Annex II, amending provision, numbered paragraph (3)				
379	(3) Notice periods: a notice period refers to the period of advance notice that investors must give to fund managers when redeeming their shares.	(3) Notice periods: a notice period refers to the period of advance notice that investors must give to fund managers when redeeming their <u>units or</u> shares.	(3) Notice periods: a notice period refers to the period of advance notice that investors must give to fund managers when redeeming their shares. <u>The use of notice periods as a liquidity management tool entails extending the period of advance notice to provide the fund manager with the possibility of addressing redemption requests within a longer time frame.</u>	(3) <u>Extension of</u> notice periods: the extension of notice periods means extending the period of notice that unitholders or shareholders notice period refers to the period of advance notice that investors must give to fund managers when redeeming their <u>units or</u> shares. >TM 15.03: ? add purpose in recital Text Origin: EP Mandate
Annex II, amending provision, numbered paragraph (4)				
380	(4) Redemption fees: a redemption fee is a fee charged to investors when redeeming their fund's shares.	(4) Redemption fees: a redemption fee is a <u>pre-determined</u> fee charged to investors when redeeming their fund's <u>units or</u> shares.	(4) Redemption fees: a redemption fee is a fee charged to <u>Liquidity fees on redemption: a pre-determined fee, expressed in percentage of the</u>	(4) Redemption fees: a fee: redemption fee is <u>means</u> a fee, <u>within a predetermined range that takes account of the cost of</u>

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			<u>investment, is paid to the fund by investors when redeeming their fund's shares. It reflects the cost of achieving liquidity and ensures that investors who remain in the fund are not unfairly disadvantaged when other investors redeem their units or shares during the period. Liquidity management can entail the increase of the redemption fee;</u>	<u>liquidity, that is paid to the fund by unitholders or shareholders</u> charged to investors when redeeming their fund's shares <u>units or shares, and that ensures that unitholders or shareholders who remain in the fund are not unfairly disadvantaged.</u> Text Origin: Council Mandate
Annex II, amending provision, numbered paragraph (5)				
381	(5) Swing pricing: swing pricing can be used to adjust the price of shares in an investment fund so that it reflects the cost of fund transactions resulting from investor activity.	(5) Swing pricing: swing pricing can be used to adjust the price of <u>units or</u> shares in an investment fund so that it reflects the cost of fund transactions resulting from investor activity.	(5) Swing <u>and/or dual</u> pricing: swing these pricing <u>mechanisms</u> can be used to adjust the price of shares in an investment fund so that it reflects the cost of fund transactions resulting from investor activity <u>minimise the impact of fund redemptions and subscriptions to the value of the investment portfolio.</u>	deleted TM 15.03 Relationship 5a / 5b to be covered in line 126
Annex II, amending provision, numbered paragraph (5a)				
381a			<u>5a. Swing pricing refers to the adjustment of the single net asset value of the shares or units in an investment fund by the application to this price of a pre-determined factor ('swing factor') so that it reflects the cost of fund transactions resulting from</u>	<u>5a. Swing pricing: swing pricing means a pre-determined mechanism by which the net asset value of the units or shares of an investment fund is adjusted by the application of a factor ('swing factor') that reflects the cost of liquidity.</u>

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			<u>investor activity. Liquidity management can entail the increase of the swing factor, within a pre-determined limit.</u>	Text Origin: Council Mandate
Annex II, amending provision, numbered paragraph (5b)				
381b			<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 or shares in a fund, and the bid price, at which investors can sell their units or shares in a fund. These prices are calculated based on the net asset value per unit or share, added or reduced by a pre-determined amount covering the liquidity costs of each subscription or redemption.</u>	<u>5b. Dual pricing: dual pricing means a pre-determined mechanism by which the subscription and redemption prices of the units or shares of an investment fund are set by adjusting the net asset value per unit or share by a factor that reflects the cost of liquidity.</u> Text Origin: Council Mandate
Annex II, amending provision, numbered paragraph (6)				
382	(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 shares. <u>The levy shall be calculated taking into</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 value <u>price</u> of the fund's shares <u>or units. The levy is calculated taking into</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 <u>means a fee that is paid to the fund by a unitholder or shareholder when purchasing or redeeming units or shares, that compensates the fund for the cost of liquidity incurred</u> because of

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
		<u>consideration ongoing liquidity costs and market conditions.</u>	<u>consideration ongoing liquidity costs and market conditions.</u>	large inflows or outflows. An anti-dilution levy does not involve any adjustment to the value of the fund's shares <u>the size of that transaction, and that ensures that other unitholders or shareholders are not unfairly disadvantaged.</u> Text Origin: Council Mandate
Annex II, amending provision, numbered paragraph (7)				
383	(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 shareholders.	(7) Redemptions in kind: redemptions-in-kind allow the fund manager to meet a redemption request by transferring securities <u>assets</u> held by the fund, instead of cash, to the redeeming <u>unit or</u> shareholders.	(7) Redemptions in kind: redemptions-in-kind allow the fund manager to meet a redemption request by <u>means</u> transferring securities <u>assets</u> held by the fund, instead of cash, to the redeeming <u>meet redemption requests of unitholders or</u> shareholders. Text Origin: Council Mandate
Annex II, amending provision, numbered paragraph (8)				
384	(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 illiquid <u>the fund to segregate, in exceptional circumstances, certain</u> investments to be separated from remaining liquid <u>whose economic or legal features have changed significantly or become uncertain from other</u> investments of the investment fund.	(8) Side pockets: side pockets allow illiquid investments to be separated from remaining liquid investments <u>means separating certain assets, whose economic or legal features have changed significantly or become uncertain due to exceptional circumstances, from the other assets</u> of the investment fund.

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
				Text Origin: Council Mandate
Annex III				
384.1	Annex III	Annex III	Annex III Annex III	Annex III Text Origin: Commission Proposal
Annex III, first paragraph				
385	In Annex I, Schedule A, the table, point 1.13 is replaced by the following:	In Annex I, Schedule A, the table, point 1.13 is replaced by the following:	In Annex I, Schedule A, the table, point 1.13 is replaced by the following:	In Annex I, Schedule A, the table, point 1.13 is replaced by the following: Text Origin: Commission Proposal
Annex III, first paragraph, Table 1, Column 1, Row 1				
386	1.13. Procedures and conditions for repurchase or redemption of units, and circumstances in which repurchase or redemption may be suspended or other liquidity management tools may be activated.	1.13. Procedures and conditions for repurchase or redemption of units, and circumstances in which repurchase or redemption may be suspended or other liquidity management tools may be activated.	1.13. Procedures and conditions for repurchase or redemption of units, and circumstances in which repurchase or redemption may be suspended or other liquidity management tools may be activated.	1.13. Procedures and conditions for repurchase or redemption of units, and circumstances in which repurchase or redemption may be suspended or other liquidity management tools may be activated. Text Origin: Commission Proposal
Annex III, first paragraph, Table 1, Column 2, Row 1				
387				

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Annex III, first paragraph, Table 1, Column 3, Row 1				
388	1.13. Procedures and conditions for repurchase or redemption of units, and circumstances in which repurchase or redemption may be suspended or other liquidity management tools may be activated. In the case of investment companies having different investment compartments, information on how a unit-holder may pass from one compartment into another and the charges applicable in such cases.	1.13. Procedures and conditions for repurchase or redemption of units, and circumstances in which repurchase or redemption may be suspended or other liquidity management tools may be activated. In the case of investment companies having different investment compartments, information on how a unit-holder may pass from one compartment into another and the charges applicable in such cases.	1.13. Procedures and conditions for repurchase or redemption of units, and circumstances in which repurchase or redemption may be suspended or other liquidity management tools may be activated. In the case of investment companies having different investment compartments, information on how a unit-holder may pass from one compartment into another and the charges applicable in such cases.	1.13. Procedures and conditions for repurchase or redemption of units, and circumstances in which repurchase or redemption may be suspended or other liquidity management tools may be activated. In the case of investment companies having different investment compartments, information on how a unit-holder may pass from one compartment into another and the charges applicable in such cases. Text Origin: Commission Proposal
Annex IV				
388.1	Annex IV	Annex IV	Annex IV Annex IV	Annex IV Text Origin: Commission Proposal
Annex IV, amending provision, first paragraph				
389	‘ ANNEX IIA	‘ ANNEX IIA	‘ ANNEX IIA	‘ ANNEX IIA Text Origin: Commission Proposal

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Annex IV, amending provision, second paragraph				
390	LIQUIDITY MANAGEMENT INSTRUMENTS AVAILABLE TO UCITS	LIQUIDITY MANAGEMENT INSTRUMENTS <u>TOOLS</u> AVAILABLE TO UCITS	LIQUIDITY MANAGEMENT INSTRUMENTS <u>TOOLS</u> AVAILABLE TO UCITS	LIQUIDITY MANAGEMENT INSTRUMENTS <u>TOOLS</u> AVAILABLE TO UCITS Text Origin: EP Mandate
Annex IV, amending provision, numbered paragraph (1)				
391	(1) Suspension of redemptions and subscriptions: suspension of redemptions and subscriptions implies that investors are temporarily unable to redeem or purchase fund's shares.	(1) Suspension of redemptions and subscriptions: suspension of redemptions and subscriptions implies that investors are temporarily unable to redeem or purchase fund's shares <u>units</u> .	(1) Suspension of redemptions and subscriptions: suspension of redemptions and subscriptions implies that investors are temporarily unable to redeem or purchase fund's shares <u>or units</u> .	(1) Suspension of redemptions and subscriptions: suspension of redemptions and subscriptions implies that investors are temporarily unable to redeem or purchase <u>means temporarily disallowing unitholders or shareholders from redeeming or purchasing the</u> fund's <u>units or</u> shares.
Annex IV, amending provision, numbered paragraph (2)				
392	(2) Redemption gates: a redemption gate is a temporary restriction of the right of shareholders to redeem their shares. This restriction may be full, so that investors cannot redeem their shares at all, or partial, so that investors can only redeem a certain portion of their shares.	(2) Redemption gates: a redemption gate is a temporary restriction of the right of shareholders <u>unitholders</u> to redeem their shares <u>units</u> . This restriction may be full, so that investors cannot redeem their shares at all, or <u>is</u> partial, so that investors can only redeem a certain portion of their shares <u>units</u> .	(2) Redemption gates: a redemption gate is a temporary restriction of the right of shareholders to redeem their shares <u>units</u> . This restriction may be full, so that investors cannot redeem their shares at all, or <u>is</u> partial, so that investors can only redeem a certain portion of their shares <u>units</u> .	(2) Redemption gates <u>gate</u> : a redemption gate is <u>means</u> a temporary and partial restriction of the right of unitholders or shareholders to redeem their shares <u>units</u> . This restriction may be full, so that investors cannot redeem their <u>or</u> shares at all, or partial , so that investors can only redeem a certain portion of their <u>units or</u> shares.
Annex IV, amending provision, numbered paragraph (3)				

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
393	(3) Notice periods: a notice period refers to the period of advance notice that investors must give to fund managers when redeeming their shares.	(3) Notice periods: a notice period refers to the period of advance notice that investors must give to fund managers when redeeming their shares <u>units</u> .	(3) Notice periods: a notice period refers to the period of advance notice that investors must give to fund managers when redeeming their shares <u>units</u> . <u>The use of notice periods as a liquidity management tool entails extending the period of advance notice to provide the fund manager with the possibility of addressing redemption requests within a longer time frame.</u>	(3) <u>Extension of</u> notice periods: at the extension of notice periods means extending the period of notice that unitholders or shareholders <u>notice period refers to the period of advance notice that investors</u> must give to fund managers when redeeming their <u>units or</u> shares.
Annex IV, amending provision, numbered paragraph (4)				
394	(4) Redemption fees: a redemption fee is a fee charged to investors when redeeming their fund's shares.	(4) Redemption fees: a redemption fee is a fee charged <u>pre-determined</u> to investors when redeeming their fund's shares <u>units</u> .	(4) Redemption fees: a redemption fee is a fee charged to <u>Liquidity fees on redemption: a pre-determined fee, expressed in percentage of the investment, is paid to the fund by investors when redeeming their fund's</u> shares <u>units</u> . <u>It reflects the cost of achieving liquidity and ensures that investors who remain in the fund are not unfairly disadvantaged when other investors redeem their units during the period. Liquidity management can entail the increase of the redemption fee.</u>	(4) Redemption fees: a fee: redemption fee is <u>means</u> a fee, <u>within a predetermined range that takes account of the cost of liquidity, that is paid to the fund by unitholders or shareholders</u> charged to investors when redeeming their fund's shares <u>units or shares, and that ensures that unitholders or shareholders who remain in the fund are not unfairly disadvantaged.</u>
Annex IV, amending provision, numbered paragraph (5)				
395	(5) Swing pricing: swing pricing can be used to adjust the price of	(5) Swing pricing: swing pricing can be used to adjust the price of	(5) Swing <u>and/or dual</u> pricing: swing pricing <u>these mechanisms</u> can	<i>deleted</i>

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	shares in an investment fund so that it reflects the cost of fund transactions resulting from investor activity.	shares <u>units</u> in an investment fund so that it reflects the cost of fund transactions resulting from investor activity.	be used to adjust the price of shares in an investment fund so that it reflects the cost of fund transactions resulting from investor activity <u>minimise the impact of redemptions and subscriptions to the value of the investment portfolio.</u>	TM 15.03 Relationship 5a / 5b to be covered in line 196
Annex IV, amending provision, numbered paragraph (5a)				
395a			<u>5a. Swing pricing refers to the adjustment of the single net asset value of the units in an investment fund by the application to this price of a pre-determined factor ('swing factor') so that it reflects the cost of fund transactions resulting from investor activity. Liquidity management can entail the increase of the swing factor, within a pre-determined limit.</u>	<u>5a. Swing pricing: swing pricing means a pre-determined mechanism by which the net asset value of the units or shares of an investment fund is adjusted by the application of a factor ('swing factor') that reflects the cost of liquidity.</u>
Annex IV, amending provision, numbered paragraph (5b)				
395b			<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</u>	<u>5b. Dual pricing: dual pricing means a pre-determined mechanism by which the subscription and redemption prices of the units or shares of an investment fund are set by adjusting the net asset value per unit or share by a factor that reflects the cost of liquidity.</u>

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			<u>liquidity costs of each subscription or redemption.</u>	
Annex IV, amending provision, numbered paragraph (6)				
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 shares <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 value <u>price</u> of the fund's shares <u>units</u> . <u>The levy is calculated taking into consideration ongoing liquidity costs and market conditions.</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 <u>means a fee that is paid to the fund by a unitholder or shareholder when purchasing or redeeming units or shares, that compensates the fund for the cost of liquidity incurred</u> because of large inflows or outflows. An anti-dilution levy does not involve any adjustment to the value of the fund's shares <u>the size of that transaction, and that ensures that other unitholders or shareholders are not unfairly disadvantaged.</u>
Annex IV, amending provision, numbered paragraph (7)				
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 shareholders <u>unitholders</u> .	(7) Redemptions in kind: redemptions-in-kind allow the fund manager to meet a redemption request by transferring securities <u>assets</u> held by the fund, instead of cash, to the redeeming shareholders <u>unitholders</u> .	(7) Redemptions in kind: redemptions-in-kind allow the fund manager to meet a redemption request by <u>means</u> transferring securities <u>assets</u> held by the fund, instead of cash, to the redeeming <u>meet redemption</u>

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
				<u>requests of unitholders or</u> shareholders.
Annex IV, amending provision, numbered paragraph (8)				
398	(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 illiquid investments to be separated from remaining liquid <u>the fund to segregate, in exceptional circumstances, certain investments whose economic or legal features have changed significantly or become uncertain from other investments of the investment fund. The segregation cannot lead a UCITS to transform itself into a non-UCITS, pursuant to article 1(5) of the UCITS Directive.</u>	(8) Side pockets: side pockets allow illiquid investments to be separated from remaining liquid investments <u>means separating certain assets, whose economic or legal features have changed significantly or become uncertain due to exceptional circumstances, from the other assets</u> of the investment fund. TM 15.03 Aim to reflect last sentence of Council text in a recital