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2012/0168(COD)

11.01.2013

# AMENDEMENTS

## 33 - 136

**Projet de rapport**  
**Sven Giegold**  
(PE500.449v01-00)

on the proposal for a directive of the European Parliament and of the Council amending Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) as regards depositary functions, remuneration policies and sanctions

Proposition de directive  
(COM(2012)0350 – C7-0178/2012 – 2012/0168(COD))

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PE502.071v02-00

**EN**

*United in diversity*

**EN**

**Amendment 33**  
**Syed Kamall**

**Proposal for a directive**  
**Recital 2**

*Text proposed by the Commission*

(2) In order to address the potentially detrimental effect of poorly designed remuneration structures on the sound management of risks and control of risk-taking behaviour by individuals, there should be an express obligation for undertakings of collective investment in transferable securities (UCITS) management companies to establish and maintain, for those categories of staff whose professional activities have a material impact on the risk profiles of the UCITS they manage, remuneration policies and practices that are consistent with sound and effective risk management. Those categories of staff should **at least include senior management, risk takers, control functions**, and any employees receiving total remuneration that takes them into the same remuneration bracket as senior management and **risk takers**. Those rules should also apply to UCITS investment companies that do not designate a management company.

*Amendment*

(2) In order to address the potentially detrimental effect of poorly designed remuneration structures on the sound management of risks and control of risk-taking behaviour by individuals, there should be an express obligation for undertakings of collective investment in transferable securities (UCITS) management companies to establish and maintain, for those categories of staff whose professional activities have a material impact on the risk profiles of the UCITS they manage, remuneration policies and practices that are consistent with sound and effective risk management. Those categories of staff should **be employees who have a material impact on the risk profile of the funds and the management company**, and any employees receiving total remuneration that takes them into the same remuneration bracket as senior management and **those having a material impact on the risk profile of the funds and the management company**. Those rules should also apply to UCITS investment companies that do not designate a management company.

Or. en

*Justification*

*The need for remuneration provisions relate to the management of risk and the identification of an entity's risk profile. Therefore the scope should be limited to employees who have a material impact on the risk profile of the funds, as required under CRD 3 and related CEBS/EBA guidance.*

**Amendment 34**  
**Burkhard Balz**

**Proposal for a directive**  
**Recital 2**

*Text proposed by the Commission*

(2) In order to address the potentially detrimental effect of poorly designed remuneration structures on the sound management of risks and control of risk-taking behaviour by individuals, there should be an express obligation for undertakings of collective investment in transferable securities (UCITS) management companies to establish and maintain, for those categories of staff whose professional activities have a material impact on the risk profiles of the UCITS they manage, remuneration policies and practices that are consistent with sound and effective risk management. Those categories of staff should at least include senior management, risk takers, control functions, and any employees receiving total remuneration that takes them into the same remuneration bracket as senior management and risk takers. Those rules should also apply to UCITS investment companies that do not designate a management company.

*Amendment*

(2) In order to address the potentially detrimental effect of poorly designed remuneration structures on the sound management of risks and control of risk-taking behaviour by individuals, there should be an express obligation for undertakings of collective investment in transferable securities (UCITS) management companies to establish and maintain, for those categories of staff whose professional activities have a material impact on the risk profiles of the UCITS they manage, remuneration policies and practices that are consistent with sound and effective risk management. Those categories of staff should, ***in accordance with Directive 2011/61/EU***, at least include senior management, risk takers, control functions, and any employees receiving total remuneration that takes them into the same remuneration bracket as senior management and risk takers. Those rules should also apply to UCITS investment companies that do not designate a management company.

Or. en

**Amendment 35**  
**Syed Kamall**

**Proposal for a directive**  
**Recital 3**

*Text proposed by the Commission*

(3) The principles governing remuneration

*Amendment*

(3) The principles governing remuneration

policies should recognise that UCITS management companies are able to apply those policies in different ways according to their size and the size of the UCITS they manage, their internal organisation and the nature, scope and complexity of their activities.

policies should recognise that UCITS management companies are able to apply those policies in different ways according to their size and the size of the UCITS they manage, their internal organisation and the nature, scope and complexity of their activities. ***However it may not always be proportionate for some UCITS management companies to comply with all the principles.***

Or. en

#### *Justification*

*As required under CRD3 and CEBS/EBA guidance, competent authorities can decide whether it would be disproportionate to apply remuneration provisions designed for bankers who trade off their own account to UCITS fund managers, who are trading on behalf of their client. Given that fund managers do not pose the same systemic risk as CRD-regulated institutions and that fund managers are agents for their clients, this is vital to ensure a proportionate approach.*

#### **Amendment 36 Syed Kamall**

#### **Proposal for a directive Recital 3 a (new)**

*Text proposed by the Commission*

*Amendment*

***(3 a) Where a UCITS management company is part of a group which has implemented a group-wide remuneration policy in compliance with Directive 2002/87/EC, compliance with the remuneration requirements should be considered as meeting the remuneration requirements provided for in this Directive.***

Or. en

#### *Justification*

*Where a group already has in a place a remuneration policy in accordance with Directive*

2002/87/EC, it should be regarded as complying with this Directive to avoid unnecessary complexity.

**Amendment 37**  
**Syed Kamall**

**Proposal for a directive**  
**Recital 4**

*Text proposed by the Commission*

(4) The principles regarding sound remuneration policies established in this Directive should be consistent with and be complemented by the principles set out in the Commission Recommendation 2009/384/EC of 30 April 2009 on remuneration policies in the financial services sector.

*Amendment*

(4) The principles regarding sound remuneration policies established in this Directive should be consistent with and be complemented by the principles set out in the Commission Recommendation 2009/384/EC of 30 April 2009 on remuneration policies in the financial services sector ***as well as the work of the FSB and G20 commitments to mitigate risk in the financial services sector.***

Or. en

*Justification*

*This emphasises the international nature of these initiatives and the focus these initiatives have on mitigating risk in the financial services sector.*

**Amendment 38**  
**Burkhard Balz**

**Proposal for a directive**  
**Recital 4 a (new)**

*Text proposed by the Commission*

*Amendment*

***(4 a) In addition to pro rata remuneration, costs and expenses directly linked to the maintenance and protection of investments, such as those for legal action, protection or enforcement of the rights of the unit-holder or for retrieval of or compensation for lost assets, should be charged to the fund by the management***

*company. The Commission should assess which are the common costs and expenses related to products in the Member States for retail investment products. The Commission should start a consultation with the relevant industry and conduct an impact assessment, to be followed by a legislative process in case there is a need for harmonisation.*

Or. en

**Amendment 39**  
**Thomas Mann**

**Proposal for a directive**  
**Recital 4 a (new)**

*Text proposed by the Commission*

*Amendment*

*(4 a) Remuneration paid from the fund to management companies should, like the remuneration paid by management companies to their staff, be consistent with sound and effective risk management and not encourage risk-taking which harms the interests of investors.*

Or. en

*Justification*

*The UCITS directive does not yet address the issue of remuneration of fund management companies. Arguments about aligning remuneration with the interests of investors apply equally to such remuneration as to the remuneration of individual staff. It is therefore consequent to extend the discussion to the remuneration of providers of investment products.*

**Amendment 40**  
**Olle Schmidt**

**Proposal for a directive**  
**Recital 4 a (new)**

*Text proposed by the Commission*

*Amendment*

***(4 a) In addition to pro rata remuneration, costs and expenses directly linked to the maintenance and protection of investments, for example expenses for legal action, protection and enforcement of the unit-holders rights, consulting and audit services or for retrieval of or compensation for lost assets, should be charged to the fund by the management company. The Commission should analyse which product-related costs and expenses are conventional in the Member States for retail investment products. If there is a need for harmonisation the Commission should make appropriate proposals after thorough consultations with the industry and on the basis of a conclusive impact assessment.***

Or. en

*Justification*

*There exists a general lack of knowledge concerning the full cost-structure linked to the maintenance of a UCITS by European regulators and policy makers. Without this knowledge regulators run into the risk to draw the wrong conclusions on appropriate provisions in terms of the determination of admissible costs and expenditures. The consequences might result in an unintended cut of necessary services linked to the maintenance of a UCITS at the expense of investors.*

**Amendment 41**  
**Thomas Mann**

**Proposal for a directive**  
**Recital 4 b (new)**

*Text proposed by the Commission*

*Amendment*

***(4 b) It might be appropriate to define regulatory parameters for remuneration and expenditure charged at the product level. In the interest of effective investor protection and the level playing field in***

*the financial sector, such regulatory measures should not be confined to UCITS, but should encompass all retail investment products covered by the Commission's proposal for a Regulation on Key Information Document for investment products. The Commission should investigate the need for such initiative based on market evidence of charges structures and their consistency with the interests of investors as well as with the prudent businessman principle and should submit the results to the European Parliament and to the Council together with legislative proposals if deemed necessary.*

Or. en

#### *Justification*

*The UCITS directive does not yet address the issue of remuneration of fund management companies. Arguments about aligning remuneration with the interests of investors apply equally to such remuneration as to the remuneration of individual staff. It is therefore consequent to extend the discussion to the remuneration of providers of investment products.*

#### **Amendment 42**

**Syed Kamall**

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

#### **Recital 5**

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

(5) In order to promote supervisory convergence in the assessment of remuneration policies and practices, the European Securities and Markets Authority (ESMA), established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council should ensure the existence of guidelines on sound remuneration policies in the asset management sector. The European Banking Authority (EBA) established by Regulation (EU) No 1093/2010 of the

##### *Amendment*

(5) In order to promote supervisory convergence in the assessment of remuneration policies and practices, the European Securities and Markets Authority (ESMA), established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council should ensure the existence of guidelines on sound remuneration policies in the asset management sector. The European Banking Authority (EBA) established by Regulation (EU) No 1093/2010 of the



European Parliament and of the Council should assist ESMA in the elaboration of such guidelines.

European Parliament and of the Council should assist ESMA in the elaboration of such guidelines. ***Guidelines produced by ESMA on remuneration policies should, where appropriate, be aligned as far as possible with those for funds regulated under the AIFMD.***

Or. en

### *Justification*

*Requirements for UCITS regulated managers' remuneration should be aligned as far as possible with AIFMD because in many cases a manager may be regulated under both directives.*

### **Amendment 43**

**Thomas Mann**

### **Proposal for a directive**

#### **Recital 5**

#### *Text proposed by the Commission*

(5) In order to promote supervisory convergence in the assessment of remuneration policies and practices, the European Securities and Markets Authority (ESMA), established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council should ensure the existence of guidelines on sound remuneration policies in the asset management sector. The European Banking Authority (EBA) established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council should assist ESMA in the elaboration of such guidelines.

#### *Amendment*

(5) In order to promote supervisory convergence in the assessment of remuneration policies and practices, the European Securities and Markets Authority (ESMA), established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council should ensure the existence of guidelines on sound remuneration policies in the asset management sector. The European Banking Authority (EBA) established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council should assist ESMA in the elaboration of such guidelines. ***The guidelines should in particular provide further instructions on partial neutralisation of the remuneration principles reconcilable with the risk profile, risk appetite and the strategy of the management company and the UCITS it manages.***

*Justification*

*The principle of proportionality is an integral element of sound remuneration principles as it allows to adjust the regulatory approach to various business models. The proposed guidelines should specify the parameters for appropriate application of the remuneration principles in different product environments.*

**Amendment 44**  
**Burkhard Balz**

**Proposal for a directive**  
**Recital 7**

*Text proposed by the Commission*

(7) In order to ensure the necessary level of harmonisation of the relevant regulatory requirements in different Member States additional rules should be adopted defining the tasks and duties of depositaries, designating the legal entities that may be appointed as depositaries and clarifying the liability of depositaries in cases UCITS assets are lost in custody or in the case of depositaries' improper performance of their oversight duties. ***Such improper performance may result in the loss of assets but also in the loss of the value of assets, if, for example, a depositary tolerated investments that were not compliant with fund rules, while exposing the investor to unexpected or anticipated risks.*** Additional rules should also clarify the conditions under which depositary functions may be delegated.

*Amendment*

(7) In order to ensure the necessary level of harmonisation of the relevant regulatory requirements in different Member States additional rules should be adopted defining the tasks and duties of depositaries, designating the legal entities that may be appointed as depositaries and clarifying the liability of depositaries in cases UCITS assets are lost in custody or in the case of depositaries' improper performance of their oversight duties. Additional rules should also clarify the conditions under which depositary functions may be delegated.

**Amendment 45**  
**Astrid Lulling**

**Proposal for a directive**  
**Recital 7**

*Text proposed by the Commission*

(7) In order to ensure the necessary level of harmonisation of the relevant regulatory requirements in different Member States additional rules should be adopted defining the tasks and duties of depositaries, designating the legal entities that may be appointed as depositaries and clarifying the liability of depositaries in cases UCITS assets are lost in custody or in the case of depositaries' improper performance of their oversight duties. ***Such improper performance may result in the loss of assets but also in the loss of the value of assets, if, for example, a depositary tolerated investments that were not compliant with fund rules, while exposing the investor to unexpected or anticipated risks.*** Additional rules should also clarify the conditions under which depositary functions may be delegated.

*Amendment*

(7) In order to ensure the necessary level of harmonisation of the relevant regulatory requirements in different Member States additional rules should be adopted defining the tasks and duties of depositaries, designating the legal entities that may be appointed as depositaries and clarifying the liability of depositaries in cases UCITS assets are lost in custody or in the case of depositaries' improper performance of their oversight duties. Additional rules should also clarify the conditions under which depositary functions may be delegated.

Or. en

**Amendment 46**  
**Olle Schmidt**

**Proposal for a directive**  
**Recital 7**

*Text proposed by the Commission*

(7) In order to ensure the necessary level of harmonisation of the relevant regulatory requirements in different Member States additional rules should be adopted defining the tasks and duties of depositaries, designating the legal entities that may be appointed as depositaries and clarifying the liability of depositaries in cases UCITS assets are lost in custody or in the case of depositaries' improper performance of their oversight duties. ***Such improper performance may result in the loss of assets but also in the loss of the value of***

*Amendment*

(7) In order to ensure the necessary level of harmonisation of the relevant regulatory requirements in different Member States additional rules should be adopted defining the tasks and duties of depositaries, designating the legal entities that may be appointed as depositaries and clarifying the liability of depositaries in cases UCITS assets are lost in custody or in the case of depositaries' improper performance of their oversight duties. Additional rules should also clarify the conditions under which depositary functions may be delegated.

*assets, if, for example, a depositary tolerated investments that were not compliant with fund rules, while exposing the investor to unexpected or anticipated risks.* Additional rules should also clarify the conditions under which depositary functions may be delegated.

Or. en

#### *Justification*

*It is not clear as to what is meant by a depositary tolerating investments that are not compliant with fund rules. The fund manager is primarily responsible for ensuring that the fund remains compliant with its investment restrictions as laid out in the offering documents. The role of the depositary is one of oversight to ensure that the manager is not breaching the investment limits of the fund on a post-trade basis.*

#### **Amendment 47** **Wolf Klinz**

#### **Proposal for a directive** **Recital 7**

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

(7) In order to ensure the necessary level of harmonisation of the relevant regulatory requirements in different Member States additional rules should be adopted defining the tasks and duties of depositaries, designating the legal entities that may be appointed as depositaries and clarifying the liability of depositaries in cases UCITS assets are lost in custody or in the case of depositaries' improper performance of their oversight duties. ***Such improper performance may result in the loss of assets but also in the loss of the value of assets, if, for example, a depositary tolerated investments that were not compliant with fund rules, while exposing the investor to unexpected or anticipated risks. Additional rules should also clarify the conditions under which depositary functions may be delegated.***

##### *Amendment*

(7) In order to ensure the necessary level of harmonisation of the relevant regulatory requirements in different Member States additional rules should be adopted defining the tasks and duties of depositaries, designating the legal entities that may be appointed as depositaries and clarifying the liability of depositaries in cases UCITS assets are lost in custody or in the case of depositaries' improper performance of their oversight duties.

**Amendment 48**

**Wolf Klinz**

**Proposal for a directive**

**Recital 14 a (new)**

*Text proposed by the Commission*

*Amendment*

***(14 a) The financial instrument held in custody by the depositary should not be reused by the depositary or by any third party to whom the custody function has been delegated for their own account.***

Or. en

**Amendment 49**

**Anne E. Jensen, Olle Schmidt**

**Proposal for a directive**

**Recital 17**

*Text proposed by the Commission*

*Amendment*

***(17) A third party to whom the safe-keeping of assets is delegated should be able to maintain an omnibus account, as a common segregated account for multiple UCITS.***

***deleted***

Or. en

*Justification*

*Recital 17 confirms that third parties to whom the safekeeping of assets is delegated should be able to maintain an omnibus account. However, the last part of that Recital could be interpreted as a requirement for “UCITS only” omnibus accounts. The introduction of such a measure could indeed result in a multiplication in the number of accounts to be opened creating additional operational risk and cost inefficiencies without conferring material benefit.*

**Amendment 50**  
**Anne E. Jensen, Olle Schmidt**

**Proposal for a directive**  
**Recital 21**

*Text proposed by the Commission*

(21) It is necessary to specify and clarify the UCITS depository's liability in case of the loss of a financial instrument that is held in custody. The depository should be liable, where a financial instrument held in custody has been lost, to return a financial instrument of the identical type or of the corresponding amount to the UCITS. ***No further discharge of liability in case of loss of assets should be envisaged***, except where the depository is able to prove that the loss is due to an 'external event beyond its reasonable control, the consequences of which would have been unavoidable despite all reasonable efforts to the contrary'. ***In this context***, a depository should not be able to rely on internal situations such as a fraudulent act by an employee to discharge itself of liability.

*Amendment*

(21) It is necessary to specify and clarify the UCITS depository's liability in case of the loss of a financial instrument that is held in custody. The depository should be liable, where a financial instrument held in custody has been lost, to return a financial instrument of the identical type or of the corresponding amount to the UCITS except where the depository is able to prove that the loss is due to an 'external event beyond its reasonable control, the consequences of which would have been unavoidable despite all reasonable efforts to the contrary'. ***Both acts of State and acts of God are considered as external events beyond reasonable control. Examples of acts of State are nationalisation, national laws, Government or Government agency decisions which impact the financial instruments held in custody. By contrast*** a depository should not be able to rely on internal situations such as a fraudulent act by an employee to discharge itself of liability.

Or. en

*Justification*

*The definition of external events should be consistent with the AIFMD re-quirements set out in Article 101 (2) of the draft level 2 Regulation. In order to reinforce legal certainty a reference to the Acts of God and Acts of States - such as nationalizations, national laws, decrees – should be included in the recital 21.*

**Amendment 51**  
**Anne E. Jensen, Olle Schmidt**

**Proposal for a directive  
Recital 21 a (new)**

*Text proposed by the Commission*

*Amendment*

***(21 a) Where the depositary delegates custody tasks and the financial instruments held in custody by a third party are lost, the depositary should be liable. However, provided that the depositary is expressly allowed to discharge itself of liability subject to a contractual transfer of such liability to that third party, pursuant to a written contract between the depositary and the UCITS or the management company acting on behalf of the UCITS in which such a discharge is objectively justified, and that the third party can be held liable for the loss based on a contract between the depositary and the third party, the depositary should be able to discharge itself of liability if it can prove that it has exercised due skill, care and diligence and that the specific requirements for delegation are met. By imposing the requirement of a contractual transfer of liability to the third party, this Directive intends to attach external effects to such contract, making the third party directly liable to the UCITS or to the investors of the UCITS for the loss of the financial instruments held in custody.***

Or. en

*Justification*

*The aims of depositary liability should be aligned to the high standards of AIFMD. The possibility of contractual discharge of liability as in the AIFMD should also be possible in UCITS. This convergence would have an important benefit of creating one single liability regime for depositary activities. Imposing different liability regimes on different types of investment schemes would lead to increasing administrative burdens and costs to be paid by investors.*

**Amendment 52**  
**Anne E. Jensen, Olle Schmidt**

**Proposal for a directive**  
**Recital 21 b (new)**

*Text proposed by the Commission*

*Amendment*

***(21 b) Further, where the law of a third country requires that certain financial instruments be held in custody by a local entity and there are no local entities that satisfy all depositary delegation requirements, the depositary should be able to discharge itself of liability provided that: the rules or instruments of incorporation of the UCITS concerned expressly allow for such a discharge; the investors have been duly informed of that discharge and the circumstances justifying the discharge prior to their investment; the UCITS or the management company on behalf of the UCITS instructed the depositary to delegate the custody of such financial instruments to a local entity; there is a written contract between the depositary and the UCITS or the management company acting on behalf of the UCITS, which expressly allows such a discharge; and there is a written contract between the depositary and the third party which expressly transfers the liability of the depositary to that third party and makes it possible for the UCITS or the management company acting on behalf of the UCITS, to make a claim against the third party in respect of the loss of financial instruments or for the depositary to make such a claim on their behalf.***

Or. en

*Justification*

*The aims of depositary liability should be aligned to the high standards of AIFMD. The possibility of contractual discharge of liability as in the AIFMD should also be possible in UCITS. This convergence would have an important benefit of creating one single liability*



*regime for depositary activities. Imposing different liability regimes on different types of investment schemes would lead to increasing administrative burdens and costs to be paid by investors.*

**Amendment 53**  
**Anne E. Jensen, Olle Schmidt**

**Proposal for a directive**  
**Recital 21 c (new)**

*Text proposed by the Commission*

*Amendment*

***(21 c) The depositary shall ensure that UCITS cash account must be opened at a central bank, a credit institution authorised in accordance with Directive 2006/48/EC or a bank authorised in a third country. The depositary's liability shall not apply to such cash account held by the depositary. However the depositary will be held liable for losses suffered as a result of the depositary's negligent or intentional failure to properly fulfil its obligations pursuant to this directive.***

Or. en

*Justification*

*It is necessary to specify that the strict depositary liability only applies to financial instruments and not to deposits held with other credit institutions or third country banks.*

**Amendment 54**  
**Olle Schmidt**

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

*Text proposed by the Commission*

*Amendment*

***(24 a) In the light of the provisions in this Directive determining the scope of the functions of depositaries and their liabilities, the Commission should analyse in which situations the failure of a UCITS***

*depository or a sub-custodian could lead to losses to UCITS unit holders, whether through the loss of net asset value of their units or other causes, which are not recoverable under those provisions and which, therefore, requires, to obtain insurance or some kind of compensation scheme which covers the custodian against the failure of a sub-custodian.*

*The analysis should further investigate how to ensure that, in such situations, protection of investors or transparency is equivalent, whatever the chain of intermediation between the investor and the transferable securities affected by the failure. That analysis should be submitted to the European Parliament and to the Council, together with legislative proposals if necessary.*

Or. en

**Amendment 55**

**Burkhard Balz**

**Proposal for a directive**

**Recital 24 a (new)**

*Text proposed by the Commission*

*Amendment*

*(24 a) In the light of the provisions in this Directive determining the scope of the functions of depositaries and their liabilities, the Commission should analyse in which situations the failure of a UCITS depository or a subcustodian could lead to losses to UCITS unit holder whether through the loss of net asset value of their units or other causes, which are not recoverable under those provisions and which, therefore, requires to obtain insurance or some kind of compensation scheme which covers the custodian against the failure of a sub-custodian. The analysis should further investigate how to ensure that, in such situations,*

*protection of investors or transparency is equivalent, whatever the chain of intermediation between the investor and the transferable securities affected by the failure. That analysis should be submitted to the European Parliament and to the Council, together with legislative proposals if necessary.*

Or. en

**Amendment 56**  
**Burkhard Balz**

**Proposal for a directive**  
**Recital 29**

*Text proposed by the Commission*

(29) In order to detect potential breaches, competent authorities should be entrusted with the necessary investigatory powers, and should establish effective mechanisms to encourage reporting of *potential or* actual breaches.

*Amendment*

(29) In order to detect potential breaches, competent authorities should be entrusted with the necessary investigatory powers, and should establish effective mechanisms to encourage reporting of actual breaches.

Or. en

**Amendment 57**  
**Syed Kamall**

**Proposal for a directive**  
**Article 1 – paragraph 1 – point 1**  
Directive 2009/65/EC  
Article 14a – Paragraph 3

*Text proposed by the Commission*

The remuneration policies and practices shall apply to those *categories of staff, including senior management, risk takers, control functions and any employee receiving total remuneration that falls within the remuneration bracket of senior management and risk takers and* whose

*Amendment*

The remuneration policies and practices shall apply to those *employees* whose professional activities have a material impact on the risk profiles of the management companies or of UCITS they manage.

professional activities have a material impact on the risk profiles of the management companies or of UCITS they manage.

Or. en

*Justification*

*The need for remuneration provisions relate to the management of risk and the identification of an entity's risk profile. Therefore the scope should be limited to employees who have a material impact on the risk profile of the funds, as required under CRD 3 and related CEBS/EBA guidance.*

**Amendment 58**  
**Burkhard Balz**

**Proposal for a directive**  
**Article 1 – paragraph 1 – point 1**  
Directive 2009/65/EC  
Article 14 a – paragraph 3

*Text proposed by the Commission*

3. The remuneration policies and practices shall apply to those categories of staff, including *senior management, risk takers, control functions and any employee receiving total remuneration that falls within the remuneration bracket of senior management and risk takers and whose professional activities have* a material impact on the risk profiles of the management companies or of UCITS they manage.

*Amendment*

3. The remuneration policies and practices shall apply to those categories of staff, including *personnel such as* senior management, risk takers *or personnel in control functions who have* a material impact on the risk profiles of the management companies or of UCITS they manage.

Or. en

**Amendment 59**  
**Olle Schmidt**

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

*Text proposed by the Commission*

3. The remuneration policies and practices shall apply to those categories of staff, including senior management, risk takers, control functions and any employee receiving total remuneration that falls within the remuneration bracket of senior management and risk takers and whose professional activities have a material impact on the risk profiles of the **management companies or of UCITS** they manage.

*Amendment*

3. The remuneration policies and practices shall apply to those categories of staff, **employees and fund managers who take investment decisions that materially affect the risk position of the fund**, including senior management, risk takers, control functions and any employee receiving total remuneration that falls within the remuneration bracket of senior management and risk takers and whose professional activities have a material impact on the risk profiles of the UCITS they manage.

Or. en

*Justification*

*The categories of staff to which the remuneration policies apply should be aligned with the requirements for banks under CRD III and the AIFMD. It should be clarified that the remuneration policies and practices shall apply to those categories of staff whose professional activities have a material impact on the risk profiles of the UCITS they manage, and not, as the provision reads, the management companies they manage. The management company has no risk profile.*

**Amendment 60**  
**Thomas Mann**

**Proposal for a directive**  
**Article 1 – paragraph 1 – point 1**  
Directive 2009/65/EC  
Article 14b – paragraph 1 – point c

*Text proposed by the Commission*

(c) the management body of the management company, in its supervisory function, adopts and periodically reviews the general principles of the remuneration policy and is responsible for its implementation;

*Amendment*

(c) the management body of the management company, in its supervisory function, adopts and periodically reviews the general principles of the remuneration policy and is responsible for **and ultimately oversees** its implementation;

*Justification*

*The amendment strengthens the role of the management body of the management company in implementing the principles of the remuneration policy.*

**Amendment 61**  
**Olle Schmidt**

**Proposal for a directive**

**Article 1 – paragraph 1 – point 1**

Directive 2009/65/EC

Article 14b – paragraph 1 – point c

*Text proposed by the Commission*

(c) the management body of the management company, in its supervisory function, adopts and periodically reviews the general principles of the remuneration policy and is responsible for its implementation;

*Amendment*

(c) ***at least*** the management body of the management company, in its supervisory function, adopts and periodically reviews the general principles of the remuneration policy and is responsible for its implementation;

***Members of the management body who perform executive functions shall not be responsible for setting the remuneration policy. Management body members and employees involved in setting the remuneration policy and its implementation shall have expertise in risk management and remuneration.***

*Justification*

*The remuneration policy in listed companies should be determined by the annual meeting of shareholders. At least the management body of the management company shall be obliged to adopt and periodically review the remuneration policy. Adapted to respect the diversity of EU board structures where a two tier board structure means that the supervisory board would oversee and approve, but not set, the remuneration policy.*

**Amendment 62**  
**Burkhard Balz**

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**Proposal for a directive**  
**Article 1 – paragraph 1 – point 1**  
Directive 2009/65/EC  
Article 14 b – paragraph 1 – point c

*Text proposed by the Commission*

(c) the management body of the management company, in its supervisory function, adopts and periodically reviews the general principles of the remuneration policy and is responsible for its implementation;

*Amendment*

(c) the management body of the management company, in its supervisory function, adopts and periodically reviews the general principles of the remuneration policy and is responsible for its implementation. ***The remuneration system shall be primarily controlled by the chief executive officer and the management team;***

Or. en

**Amendment 63**  
**Burkhard Balz**

**Proposal for a directive**  
**Article 1 – paragraph 1 – point 1**  
Directive 2009/65/EC  
Article 14 b – paragraph 1 – point d a (new)

*Text proposed by the Commission*

*Amendment*

***(da) comprehensive and timely information about remuneration practices is disclosed to all stakeholders by means of a website and upon request;***

Or. en

**Amendment 64**  
**Thomas Mann**

**Proposal for a directive**  
**Article 1 – paragraph 1 – point 1**  
Directive 2009/65/EC  
Article 14b – paragraph 1 – point j

*Text proposed by the Commission*

(j) fixed and variable components of total remuneration are appropriately balanced and the fixed component represents a sufficiently high proportion of the total remuneration to allow the operation of a fully flexible policy on variable remuneration components, including the possibility to pay no variable remuneration component;

*Amendment*

(j) fixed and variable components of total remuneration are appropriately balanced and the fixed component represents a sufficiently high proportion of the total remuneration to allow the operation of a fully flexible policy on variable remuneration components, including the possibility to pay no variable remuneration component, ***taking into account the differences among risk profiles and other characteristics of management companies and UCITS they manage and without prejudice to the specific ratio between fixed and variable components which can/shall be determined by the UCITS management company;***

Or. en

*Justification*

*Various risk profiles and other characteristics of management companies and UCITS justify a broad range of remuneration policies, also in terms of the proportion of fixed and variable remuneration components. The overall acceptable range cannot be determined in absolute figures or a maximum ratio. Instead, when setting up and applying remuneration policies, these differences have duly to be taken into account.*

**Amendment 65**  
**Burkhard Balz**

**Proposal for a directive**  
**Article 1 – paragraph 1 – point 1**  
Directive 2009/65/EC  
Article 14 b – paragraph 1 – point j a (new)

*Text proposed by the Commission*

*Amendment*

***(ja) competent authorities set the appropriate ratios between the fixed and the variable component of the total remuneration;***

Or. en



**Amendment 66**  
**Olle Schmidt**

**Proposal for a directive**  
**Article 1 – paragraph 1 – point 1**  
Directive 2009/65/EC  
Article 14 b – paragraph 1 – point m

*Text proposed by the Commission*

(m) subject to the legal structure of the UCITS and its fund rules or instruments of incorporation, a substantial portion, and in any event at least 50% of any variable remuneration consists of units of the UCITS concerned, or equivalent ownership interests, or share-linked instruments or equivalent non-cash instruments, unless the management of UCITS accounts for less than 50% of the total portfolio managed by the management company, in which case the minimum of 50% does not apply.

*Amendment*

(m) subject to the legal structure of the UCITS and its fund rules or instruments of incorporation, a substantial portion, and in any event at least 50% of any variable remuneration consists of units of the UCITS concerned, or equivalent ownership interests, or share-linked instruments or equivalent non-cash instruments ***in the financial group***, unless the management of UCITS accounts for less than 50% of the total portfolio managed by the ***financial group or the*** management company in which case the minimum of 50% does not apply.

Or. en

*Justification*

*Where UCITS are part of a wider financial group already subject to remuneration requirements, policies, practices and disclosures applied on a group-wide basis that are consistent with the principles of sound compensation practices should apply to the extent that they are equivalent to the requirements of this directive.*

**Amendment 67**  
**Olle Schmidt**

**Proposal for a directive**  
**Article 1 – paragraph 1 – point 1**  
Directive 2009/65/EC  
Article 14 b – paragraph 1 – point n – subparagraph 1

*Text proposed by the Commission*

(n) a substantial portion, and in any event

*Amendment*

(n) ***in accordance with Directive***

at least 40%, of the variable remuneration component, is deferred over a period which is appropriate in view of the life cycle **and** redemption policy of the UCITS concerned and is correctly aligned with the nature of the risks of the UCITS in question.

**2011/61/EU** a substantial portion, and in any event at least 40%, of the variable remuneration component, is deferred over a period which is appropriate in view of the life cycle **or** redemption policy of the UCITS concerned and is correctly aligned with the nature of the risks of the UCITS in question.

Or. en

#### *Justification*

*Due to the fact that most European fund managers hold licenses under both the UCITS Directive and AIFMD, it needs to be ensured that the determination of remuneration provisions for UCITS Manager will be in line with the already existing requirement applicable for AIFM-Manager. Since most UCITS are open-ended it is not possible to set the variable remuneration component based on the lifecycle of the UCITS. In these cases, the deferral period shall be at least three to five years.*

#### **Amendment 68** **Burkhard Balz**

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

##### **Article 1 – paragraph 1 – point 1**

Directive 2009/65/EC

Article 14b – paragraph 1 – point n – subparagraph 1

#### *Text proposed by the Commission*

(n) a substantial portion, and in any event at least 40%, of the variable remuneration component, is deferred over a period which is appropriate in view of the life cycle and redemption policy of the UCITS concerned and is correctly aligned with the nature of the risks of the UCITS in question.

#### *Amendment*

(n) **in accordance with Directive 2011/61/EU**, a substantial portion, and in any event at least 40%, of the variable remuneration component, is deferred over a period which is appropriate in view of the life cycle and redemption policy of the UCITS concerned and is correctly aligned with the nature of the risks of the UCITS in question.

Or. en

#### **Amendment 69** **Olle Schmidt**

**Proposal for a directive**  
**Article 1 – paragraph 1 – point 1**  
Directive 2009/65/EC  
Article 14b – paragraph 2

*Text proposed by the Commission*

2. The principles set out in paragraph 1 shall apply to remuneration of any type paid by the management companies and to any transfer of units or shares of the UCITS, made to the benefits of those categories of staff, including senior management, risk takers, control functions and any employee receiving total remuneration that falls into the remuneration bracket of senior management and risk takers, whose professional activities have a material impact on **their** risk profile or the risk profiles of the UCITS that they manage.

*Amendment*

2. The principles set out in paragraph 1 shall apply to remuneration of any type paid by the management companies and to any transfer of units or shares of the UCITS, made to the benefits of those categories of staff, including senior management, risk takers, control functions and any employee receiving total remuneration that falls into the remuneration bracket of senior management and risk takers, whose professional activities have a material impact on **the** risk profile or the risk profiles of the UCITS that they manage.

Or. en

*Justification*

*It should be clarified that the remuneration policies and practices shall apply to those categories of staff whose professional activities have a material impact on the risk profiles of the UCITS they manage*

**Amendment 70**  
**Syed Kamall**

**Proposal for a directive**  
**Article 1 – paragraph 1 – point 1**  
Directive 2009/65/EC  
Article 14b – paragraph 3 – subparagraph 2

*Text proposed by the Commission*

The remuneration committee shall be responsible for the preparation of decisions regarding remuneration, including those which have implications for the risk and risk management of the management

*Amendment*

The remuneration committee, **where it is appropriate for the firm to set up such a body**, shall be responsible for the preparation of decisions regarding remuneration, including those which have

company or the UCITS concerned and which are to be taken by the management body in its supervisory function. The remuneration committee shall be chaired by a member of the management body who does not perform any executive functions in the management company concerned. The members of the remuneration committee shall be members of the management body who do not perform any executive functions in the management company concerned.

implications for the risk and risk management of the management company or the UCITS concerned and which are to be taken by the management body in its supervisory function. The remuneration committee shall be chaired by a member of the management body who does not perform any executive functions in the management company concerned. The members of the remuneration committee shall be members of the management body who do not perform any executive functions in the management company concerned.

Or. en

### *Justification*

*For smaller funds, it would not be proportionate to have a remuneration committee.*

#### **Amendment 71** **Arlene McCarthy**

**Proposal for a directive**  
**Article 1 – paragraph 1 – point 3**  
Directive 2009/65/EC  
Article 22 – paragraph 5 – point a – introductory part

#### *Text proposed by the Commission*

(a) for financial instruments that may be held in custody, the depositary shall:

#### *Amendment*

(a) for financial instruments ***as defined in MIFIR*** that may be held in custody, the depositary shall:

Or. en

#### **Amendment 72** **Thomas Mann**

**Proposal for a directive**  
**Article 1 – paragraph 1 – point 3**  
Directive 2009/65/EC  
Article 22 – paragraph 5a

*Text proposed by the Commission*

*Amendment*

***5a. The financial instruments held in custody by the depositary may not be reused by the depositary for its own account or by any third party to whom the custody has been delegated.***

Or. en

*Justification*

*According to Article 21(10) third subparagraph of the AIFMD, the fund assets shall not be reused by the depositary without the prior consent of the AIF or the AIFM. In order to ensure higher standards of investor protection for UCITS, the reuse of financial instruments by the depositary or a third party should be generally excluded.*

**Amendment 73**  
**Jean-Paul Gauzès**

**Proposal for a directive**  
**Article 1 – paragraph 1 – point 3**  
2009/65/EC  
Article 22 – paragraph 5 a (new)

*Text proposed by the Commission*

*Amendment*

***5 a. The financial instruments held in custody by the depositary cannot be reused for its own account by the depositary or by any third party to whom the custody has been delegated.***

***Reuse should be understood as any transactions, on the financial instruments held in custody, including but not limited to transferring, pledging, selling, lending.***

Or. en

**Amendment 74**  
**Arlene McCarthy**

**Proposal for a directive**  
**Article 1 – paragraph 1 – point 3**

Directive 2009/65/EC  
Article 22 – paragraph 5 a (new)

*Text proposed by the Commission*

*Amendment*

***5a. The depository shall provide the UCITS manager on a monthly basis with a comprehensive inventory of all of the assets held in the name of the UCITS.***

Or. en

**Amendment 75**  
**Wolf Klinz**

**Proposal for a directive**  
**Article 1 – paragraph 1 – point 3**  
Directive 2009/65/EC  
Article 22 – point 5a (new)

*Text proposed by the Commission*

*Amendment*

***5a. The assets held in custody by the depository shall not be reused by the depository or by any third party to whom the custody function has been delegated for their own account.***

Or. en

**Amendment 76**  
**Syed Kamall**

**Proposal for a directive**  
**Article 1 – paragraph 1 – point 3**  
Directive 2009/65/EC  
Article 22 – Paragraph 6

*Text proposed by the Commission*

*Amendment*

***6. Member States shall ensure that in the event of insolvency of the depository, assets of a UCITS held by the depository in custody are unavailable for distribution***

*deleted*

*among or realisation for the benefit of creditors of the depositary.*

Or. en

*Justification*

*Insolvency law varies significantly across the Member States and requires a thorough legal analysis before legislation is introduced. Furthermore it is unclear how this would apply to delegates in third countries.*

**Amendment 77**  
**Jean-Paul Gauzès**

**Proposal for a directive**  
**Article 1 – paragraph 1 – point 3**  
Directive 2009/65/EC  
Article 22 – paragraph 6

*Text proposed by the Commission*

6. Member States shall ensure that in the event of insolvency of the depositary, ***assets of a UCITS held by the depositary in custody*** are unavailable for distribution among or realisation for the benefit of creditors of the depositary.

*Amendment*

6. Member States shall ensure that in the event of insolvency of the depositary ***and/or any regulated entity which holds in custody financial instruments belonging to a UCITS, these financial instruments*** are unavailable for distribution among or realisation for the benefit of creditors of the depositary ***and /or the regulated entity.***

Or. en

**Amendment 78**  
**Anne E. Jensen, Olle Schmidt**

**Proposal for a directive**  
**Article 1 – paragraph 1 – point 3**  
Directive 2009/65/EC  
Article 22 – paragraph 6

*Text proposed by the Commission*

6. Member States shall ensure that in the event of insolvency of the depositary,

*Amendment*

6. Member States shall ensure that in the event of insolvency of the depositary,

**assets** of a UCITS held by the depositary in custody are unavailable for distribution among or realisation for the benefit of creditors of the depositary.

**financial instruments** of a UCITS held by the depositary in custody are unavailable for distribution among or realisation for the benefit of creditors of the depositary.

Or. en

*Justification*

*For the sake of clarity and consistency with the terminology used in the UCITS V legislative proposal and, in particular, in Article 22.5(a), the word “assets” in Articles 22.6 should be replaced by the words “financial instruments” (indeed, as per the distinction made in Article 22.5(a), “financial instruments” are the only assets capable of being held in custody).*

**Amendment 79**  
**Astrid Lulling**

**Proposal for a directive**  
**Article 1 – paragraph 1 – point 3**  
Directive 2009/65/EC  
Article 22 – paragraph 6

*Text proposed by the Commission*

6. Member States shall ensure that in the event of insolvency of the depositary, **assets of a UCITS** held by the depositary in custody are unavailable for distribution among or realisation for the benefit of creditors of the depositary.

*Amendment*

6. Member States shall ensure that in the event of insolvency of the depositary, **non-cash instruments** held by the depositary in custody are unavailable for distribution among or realisation for the benefit of creditors of the depositary.

Or. en

*Justification*

*individual EU Member States take full ownership for ensuring that there are laws in place which allow full investor protection to ensure that financial instruments held in custody are unavailable for distribution among or realisation for the benefit of creditors of the depositary or its EU delegate.*

**Amendment 80**  
**Burkhard Balz**



**Proposal for a directive**  
**Article 1 – paragraph 1 – point 3**  
Directive 2009/65/EC  
Article 22 – paragraph 6

*Text proposed by the Commission*

6. Member States shall ensure that in the event of insolvency of the depositary, ***assets of a UCITS held by the depositary*** in custody are unavailable for distribution among or realisation for the benefit of creditors of the depositary.

*Amendment*

6. Member States shall ensure that in the event of insolvency of the depositary, ***and / or of any regulated entity holding in custody financial instruments which belong to a UCITS these financial instruments*** are unavailable for distribution among or realisation for the benefit of creditors of the depositary.

Or. en

**Amendment 81**  
**Arlene McCarthy**

**Proposal for a directive**  
**Article 1 – paragraph 1 – point 3**  
Directive 2009/65/EC  
Article 22– paragraph 7 – subparagraph 3 – point c

*Text proposed by the Commission*

(c) for custody tasks referred to in ***point (a) of*** paragraph 5, is subject to an external periodic audit to ensure that the financial instruments are in its possession;

*Amendment*

(c) for custody tasks referred to in paragraph 5, is subject to an external periodic audit to ensure that the financial instruments are in its possession;

Or. en

**Amendment 82**  
**Jean-Paul Gauzès**

**Proposal for a directive**  
**Article 1 – paragraph 1 – point 3**  
Directive 2009/65/EC  
Article 22 – paragraph 7 – subparagraph 3 – point d

*Text proposed by the Commission*

(d) segregates the assets of the clients of the depositary from its own assets and from the assets of the depositary in such a way that they can at any time be clearly identified as belonging to clients of a particular depositary;

*Amendment*

(d) segregates the assets of the clients of the depositary from its own assets and from the assets of the depositary in such a way that they can at any time be clearly identified as belonging to clients of a particular depositary. ***Where it is ascertained without doubt that according to the applicable law of the third party, in the event of insolvency of the third party the assets of a UCITS held in custody by this third party are available for distribution among or realisation for the benefit of creditors of the third party, condition (d) is deemed not to be met as segregation will not be effective.***

Or. en

**Amendment 83**  
**Burkhard Balz**

**Proposal for a directive**

**Article 1 – paragraph 1 – point 3**

Directive 2009/65/EC

Article 22 – paragraph 7 – subparagraph 7 – point d

*Text proposed by the Commission*

(d) segregates the assets of the clients of the depositary from its own assets and from the assets of the depositary in such a way that they can at any time be clearly identified as belonging to clients of a particular depositary;

*Amendment*

(d) segregates the assets of the clients of the depositary from its own assets and from the assets of the depositary in such a way that they can at any time be clearly identified as belonging to clients of a particular depositary. ***Where it is ascertained that according to the applicable law of the third party, in the event of insolvency of the third party the assets of a UCITS held in custody by this third part are available for distribution among or realisation for the benefit of creditors of the third party, this point is not deemed to be met as segregation will not be effective.***

**Amendment 84**  
**Burkhard Balz**

**Proposal for a directive**  
**Article 1 – paragraph 1 – point 3**  
2009/65/EC  
Art 22 – paragraph 7 – point e

*Text proposed by the Commission*

*Amendment*

*(e) in the event of insolvency of the third party, assets of a UCITS held by the third party in custody are unavailable for distribution among or realisation for the benefit of creditors of the third party;* *deleted*

Or. en

**Amendment 85**  
**Jean-Paul Gauzès**

**Proposal for a directive**  
**Article 1 – paragraph 1 – point 3**  
Directive 2009/65/EC  
Article 22 – paragraph 7 – subparagraph 3 – point e

*Text proposed by the Commission*

*Amendment*

*(e) in the event of insolvency of the third party, assets of a UCITS held by the third party in custody are unavailable for distribution among or realisation for the benefit of creditors of the third party;* *deleted*

Or. en

**Amendment 86**  
**Syed Kamall**

**Proposal for a directive**  
**Article 1 – paragraph 1 – point 3**

Directive 2009/65/EC  
Article 22 – paragraph 7 – subparagraph 3 – point e

*Text proposed by the Commission*

*Amendment*

***(e) in the event of insolvency of the third party, assets of a UCITS held by the third party in custody are unavailable for distribution among or realisation for the benefit of creditors of the third party;*** ***deleted***

Or. en

*Justification*

*Insolvency law varies significantly across the Member States and requires a thorough legal analysis before legislation is introduced. Furthermore it is unclear how this would apply to delegates in third countries.*

**Amendment 87**  
**Anne E. Jensen, Olle Schmidt**

**Proposal for a directive**  
**Article 1 – paragraph 1 – point 3**  
Directive 2009/65/EC  
Article 22 – paragraph 7 – subparagraph 3 – point e

*Text proposed by the Commission*

*Amendment*

***(e) in the event of insolvency of the third party, assets of a UCITS held by the third party in custody are unavailable for distribution among or realisation for the benefit of creditors of the third party;***

***(e) makes adequate arrangements so that in the event of insolvency of the third party, assets of a UCITS held by the third party in custody are unavailable for distribution among or realisation for the benefit of creditors of the third party;***

Or. en

**Amendment 88**  
**Jean-Paul Gauzès**

**Proposal for a directive**  
**Article 1 – paragraph 1 – point 3**

*Text proposed by the Commission*

*Amendment*

***Notwithstanding point (b) of the third subparagraph where the law of a third country requires that certain financial instruments be held in custody by a local entity and no local entities satisfy the delegation requirements laid down in that point, the depositary may delegate its functions to such a local entity only to the extent required by the law of the third country and only for as long as there are no local entities that satisfy the delegation requirements, and only where:***

***deleted***

***(a) the investors of the relevant UCITS are duly informed that such delegation is required due to legal constraints in the law of the third country and of the circumstances justifying the delegation, prior to their investment;***

***(b) the UCITS, or the management company on behalf of the UCITS, have instructed the depositary to delegate the custody of such financial instruments to such a local entity.***

Or. en

#### **Amendment 89**

**Anne E. Jensen, Olle Schmidt**

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

#### **Article 1 – paragraph 1 – point 3**

Directive 2009/65/EC

Article 22 – paragraph 7 – subparagraph 4 – introductory part

*Text proposed by the Commission*

*Amendment*

Notwithstanding ***point (b)*** of the third subparagraph where the law of a third country requires that certain financial instruments be held in custody by a local entity and no local entities satisfy the

Notwithstanding ***points (b) or (e)*** of the third subparagraph where the law of a third country requires that certain financial instruments be held in custody by a local entity and no local entities satisfy the

delegation requirements laid down in *that point*, the depositary may delegate its functions to such a local entity only to the extent required by the law of the third country and only for as long as there are no local entities that satisfy the delegation requirements, and only where:

delegation requirements laid down in *either of these points*, the depositary may delegate its functions to such a local entity only to the extent required by the law of the third country and only for as long as there are no local entities that satisfy the delegation requirements, and only where:

Or. en

**Amendment 90**  
**Thomas Mann**

**Proposal for a directive**

**Article 1 – paragraph 1 – point 3**

Directive 2009/65/EC

Article 22 – paragraph 7 – subparagraph 4 – introductory part

*Text proposed by the Commission*

Notwithstanding *point (b)* of the third subparagraph where the law of a third country requires that certain financial instruments be held in custody by a local entity and no local entities satisfy the delegation requirements laid down in that point, the depositary may delegate its functions to such a local entity only to the extent required by the law of the third country and only for as long as there are no local entities that satisfy the delegation requirements, and only where:

*Amendment*

Notwithstanding *points (b) and (e)* of the third subparagraph where the law of a third country requires that certain financial instruments be held in custody by a local entity and no local entities satisfy the delegation requirements laid down in that point, the depositary may delegate its functions to such a local entity only to the extent required by the law of the third country and only for as long as there are no local entities that satisfy the delegation requirements, and only where:

Or. en

*Justification*

*Article 22(7) third subparagraph (e) of the Commission proposal would preclude sub-custody of UCITS assets in countries where asset segregation is not recognised for insolvency purposes or where the risk of non-recognition cannot be excluded. This might lead to inability of UCITS to invest only as a result of deficiencies in national insolvency regimes. The AM allows delegation of custody where the law of a third country requires a local sub-custodian, UCITS investors are duly informed and the UCITS or its management company instruct the depositary to delegate the custody.*

**Amendment 91**  
**Anne E. Jensen, Olle Schmidt**

**Proposal for a directive**  
**Article 1 – paragraph 1 – point 3**  
Directive 2009/65/EC  
Article 22 – paragraph 7 – subparagraph 4 – point a

*Text proposed by the Commission*

(a) the investors of the relevant UCITS are duly informed that such delegation is required due to legal constraints in the law of the third country and of the circumstances justifying the delegation, prior to their investment;

*Amendment*

(a) the investors of the relevant UCITS are duly informed that such delegation is required due to legal constraints in the law of the third country and of the circumstances justifying the delegation **and the risks involved in such delegation**, prior to their investment;

Or. en

*Justification*

*In some jurisdictions outside the EU, it might be very difficult for the depositary to determine in advance how the insolvency rules might apply. The effects of insolvency can depend to a great extent on the surrounding circumstances and the protective measures undertaken by the third party with regard to the fund assets.*

**Amendment 92**  
**Syed Kamall**

**Proposal for a directive**  
**Article 1 – paragraph 1 – point 4 – point b**  
Directive 2009/65/EC  
Article 23 – paragraph 3

*Text proposed by the Commission*

(b) Paragraphs 3, 4, 5 and 6 are deleted.

*Amendment*

(b) Paragraphs 4, 5 and 6 are deleted.

Or. en

**Amendment 93**  
**Anne E. Jensen, Olle Schmidt**

**Proposal for a directive**

**Article 1 – paragraph 1 – point 4 – point a**

Directive 2009/65/EC

Article 23 – paragraph 2 – point ba (new)

*Text proposed by the Commission*

*Amendment*

***(ba) any other category of institution, including National Central Banks, that is subject to prudential regulation and ongoing supervision and which on [date of entry into force of the UCITS V Directive] falls within the categories of institution determined by Member States to be eligible to be a depositary under Article 23(3) of Directive 2009/65/EC provided that it is subject to capital requirements as well as to prudential and organisational requirements of the same effect as entities under (a) and (b).***

Or. en

**Amendment 94**

**Syed Kamall**

**Proposal for a directive**

**Article 1 – paragraph 1 – point 4 – point a**

Directive 2009/65/EC

Article 23 – paragraph 2 – point ba (new)

*Text proposed by the Commission*

*Amendment*

***(ba) an institution authorised by the competent authority of its home Member State under Article 23(3) of Directive 2009/65/EC and which is subject to capital, prudential and organisational requirements and ongoing supervision.***

Or. en

*Justification*

*In some Member States, depositaries have a special depositary licence and are subject to similar organisational and conduct of business rules as MiFID firms. Properly regulated*



*depositories should remain licensed as this increases investor choice and allows for a type of entity whose sole focus is to provide depositary services.*

**Amendment 95**  
**Syed Kamall**

**Proposal for a directive**

**Article 1 – paragraph 1 – point 3**

2009/65/EC

Article 22 – paragraph 7– subparagraph 4 a (new)

*Text proposed by the Commission*

*Amendment*

***Notwithstanding point (d) of the third sub-paragraph where, for reasons of the applicable law of a third country, including in particular the law relating to property or insolvency, the arrangements made by the depositary in compliance with point (d) of this third sub-paragraph are not sufficient to safeguard the UCITS's ownership rights in the event of the third party's insolvency, the depositary may delegate its functions to such local entity only where:***

***(a) the depositary has informed the UCITS, or the management company on behalf of the UCITS, of the risk involved in such delegation;***

***(b) the investors of the relevant UCITS are duly informed prior to their investment that the risk of such delegation is required to effect the investment strategy of the UCITS;***

***(c) the UCITS, or the management company on behalf of the UCITS, has instructed the depositary to delegate the custody of such financial instruments to such local entity;***

***(d) the depositary takes such additional measures as are necessary to safeguard the UCITS's ownership rights.***

Or. en

## *Justification*

*As drafted, if an insolvency ring-fence in a third country were ineffective due to operational rather than legal reasons, the depositary would still be responsible for the loss. The legal risk of a particular jurisdiction not recognising the effects of segregation is a risk that a UCITS holder has to bear if the investment is made in that particular jurisdiction. The amendment seeks to allow this risk to be permissible subject to certain stringent caveats being met.*

### **Amendment 96** **Arlene McCarthy**

**Proposal for a directive**  
**Article 1 – paragraph 1 – point 5**  
Directive 2009/65/EC  
Article 24 – paragraph 1 – subparagraph 1

#### *Text proposed by the Commission*

Member States shall ensure that the depositary shall be liable to the UCITS and to the unit holders of the UCITS for the loss by the depositary or a third party to whom the custody of financial instruments held in custody in accordance with **point (a) of** Article 22(5) has been delegated.

#### *Amendment*

Member States shall ensure that the depositary shall be liable to the UCITS and to the unit holders of the UCITS for the loss by the depositary or a third party to whom the custody of financial instruments held in custody in accordance with Article 22(5) has been delegated.

Or. en

### **Amendment 97** **Syed Kamall**

**Proposal for a directive**  
**Article 1 – paragraph 1 – point 5**  
Directive 2009/65/EC  
Article 24 – paragraph 2 – subparagraph 1a (new)

#### *Text proposed by the Commission*

#### *Amendment*

***Notwithstanding the first subparagraph of this paragraph, in case of a loss of financial instruments held in custody by a third party pursuant to Article 22(7), the depositary may in certain circumstances be discharged of its liability if it can prove that:***

*(a) all requirements for the delegation of its custody task set out in Article 22(7) are met;*

*(b) a written contract between the depositary and the third party expressly transfers the liability of the depositary to that third party and makes it possible for the UCITS or the management company acting on behalf of the UCITS to make a claim against the third party in respect of the loss of financial instruments or for the depositary to make such a claim on their behalf; and*

*(c) a written contract between the depositary and the UCITS or the management company acting on behalf of the UCITS, expressly allows a discharge of the depositary's liability and establishes the objective reason to contract such a discharge;*

*(d) the unit holders of the relevant UCITS are duly informed of the circumstances justifying the contractual discharge of liability, prior to their investment;*

*ESMA shall develop draft regulatory technical standards specifying a non-exhaustive list of the circumstances under which the depositary may discharge itself of its liability and the measures that should be taken to inform the unit holders in accordance with (d).*

*Notwithstanding subparagraphs (b) and (c), the UCITS or management company acting on behalf of the UCITS must prove that it has itself conducted due diligence on delegates in the custody chain and has informed its unit holders of its intention to continue its investment irrespective of the contractual discharge of liability. The UCITS or management company acting on behalf of the UCITS must also notify the competent authority of its intention to go ahead with the discharge of liability.*

Or. en

## *Justification*

*Depositaries should be able to discharge themselves of liability if they believe a third party does not meet expected operational and functional standards. However an asymmetry of information could put depositaries in a stronger position to negotiate themselves out of liability. Therefore there should be a non exhaustive list of circumstances where this discharge should be possible. UCITS managers should also conduct due diligence themselves and also notify the competent authority.*

### **Amendment 98** **Sari Essayah**

**Proposal for a directive**  
**Article 1 – paragraph 1 – point 5**  
Directive 2009/65/EC  
Article 24 – paragraph 2 – subparagraph 1a (new)

*Text proposed by the Commission*

*Amendment*

***Notwithstanding the first subparagraph of this paragraph, in case of a loss of financial instruments held in custody by a third party pursuant to Article 22(7), the depositary may under exceptional circumstances be discharged of its liability if it can prove that:***

***(a) all requirements for the delegation of its custody task set out in Article 22(7) are met;***

***(b) a written contract between the depositary and the third party expressly transfers the liability of the depositary to that third party and makes it possible for the UCITS or the management company acting on behalf of the UCITS to make a claim against the third party in respect of the loss of financial instruments or for the depositary to make such a claim on their behalf; and***

***(c) a written contract between the depositary and the UCITS or the management company acting on behalf of the UCITS, expressly allows a discharge of the depositary's liability and establishes the objective reason to contract such a discharge***

***(d) the unit holders of the relevant UCITS are duly informed of the exceptional circumstances justifying the contractual discharge of liability, prior to their investment;***

***ESMA shall develop draft regulatory technical standards specifying the exceptional circumstances under which the depositary may discharge itself of its liability and the measures that should be taken to inform the unit holders in accordance with (d).***

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

Or. en

*Justification*

*Alignment with AIFMD.*

**Amendment 99**  
**Anne E. Jensen, Olle Schmidt**

**Proposal for a directive**  
**Article 1 – paragraph 1 – point 5**  
Directive 2009/65/EC  
Article 24 – paragraph 2 – subparagraph 1 a (new) and paragraph 2 a (new) and 2 b (new)

*Text proposed by the Commission*

*Amendment*

***Notwithstanding the first subparagraph of this paragraph, in case of a loss of financial instruments held in custody by a third party pursuant to Article 22(7), the depositary may discharge itself of liability if it can prove that:***

***(a) all requirements for the delegation of its custody tasks set out in the second subparagraph of Article 22(7) are met;***

*(b) a written contract between the depositary and the third party expressly transfers the liability of the depositary to that third party and makes it possible for the UCITS or the management company acting on behalf of the UCITS to make a claim against the third party in respect of the loss of financial instruments or for the depositary to make such a claim on their behalf; and*

*(c) a written contract between the depositary and the UCITS or the management company action on behalf of the UCITS, expressly allows a discharge of the depositary's liability and establishes the objective reason to contract such a discharge.*

*2a. Further, where the law of a third country requires that certain financial instruments are held in custody by a local entity and there are no local entities that satisfy the delegation requirements laid down in art 22 (7) point b of the third subparagraph, the depositary can discharge itself of liability provided that the following conditions are met:*

*(a) the rules or instruments of incorporation of the UCITS concerned expressly allow for such a discharge under the conditions set out in this paragraph;*

*(b) the investors of the relevant UCITS have been duly informed of that discharge and of the circumstances justifying the discharge prior to their investment;*

*(c) the UCITS or the management company action on behalf of the UCITS instructed the depositary to delegate the custody of such financial instruments to a local entity;*

*(d) there is a written contract between the depositary and the UCITS or the management company acting on behalf of the UCITS which expressly allows such a discharge; and*

*(e) there is a written contract between the depositary and the third party that expressly transfers the liability of the depositary to that local entity and makes it possible for the UCITS or the management company acting on behalf of the UCITS to make a claim against that local entity in respect of the loss of financial instruments or for the depositary to make such a claim on their behalf.*

*2b. Unit holders in the UCITS may invoke the liability of the depositary directly or indirectly through the management company.*

Or. en

#### *Justification*

*The aims of depositary liability should be aligned to the high standards of AIFMD. The possibility of contractual discharge of liability as in the AIFMD should also be possible in UCITS. This convergence would have an important benefit of creating one single liability regime for depositary activities. Imposing different liability regimes on different types of investment schemes would lead to increasing administrative burdens and costs to be paid by investors.*

#### **Amendment 100**

**Anne E. Jensen, Olle Schmidt**

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

#### **Article 1 – paragraph 1 – point 5**

Directive 2009/65/EC

Article 24 – paragraph 3

*Text proposed by the Commission*

*Amendment*

***3. The liability of the depositary referred to in paragraph 1 shall not be excluded or limited by agreement.***

***deleted***

Or. en

#### **Amendment 101**

**Astrid Lulling**

**Proposal for a directive**  
**Article 1 – paragraph 1 – point 5**  
Directive 2009/65/EC  
Article 24 – paragraph 3

*Text proposed by the Commission*

*Amendment*

**3. The liability of the depositary referred to in paragraph 1 shall not be excluded or limited by agreement.** *deleted*

Or. en

*Justification*

*Although contractual discharge of liability is in general inappropriate for UCITS there is a number of very limited and exceptional circumstances referred to in Article 22(7) of the current proposal where such a possibility would be justified such as where financial instruments are held in custody by a local entity and there are no local entities that satisfy the delegation requirements.*

**Amendment 102**  
**Anne E. Jensen, Olle Schmidt**

**Proposal for a directive**  
**Article 1 – paragraph 1 – point 5**  
Directive 2009/65/EC  
Article 24 – paragraph 4

*Text proposed by the Commission*

*Amendment*

**4. Any agreement that contravenes the provision of paragraph 3 shall be void.** *deleted*

Or. en

**Amendment 103**  
**Astrid Lulling**

**Proposal for a directive**  
**Article 1 – paragraph 1 – point 5**  
Directive 2009/65/EC  
Article 24 – paragraph 4



*Text proposed by the Commission*

*Amendment*

**4. Any agreement that contravenes the provision of paragraph 3 shall be void.** **deleted**

Or. en

*Justification*

*Although contractual discharge of liability is in general inappropriate for UCITS there is a number of very limited and exceptional circumstances referred to in Article 22(7) of the current proposal where such a possibility would be justified such as where financial instruments are held in custody by a local entity and there are no local entities that satisfy the delegation requirements.*

**Amendment 104**

**Anne E. Jensen, Olle Schmidt**

**Proposal for a directive**

**Article 1 – paragraph 1 – point 5**

Directive 2009/65/EC

Article 24 – paragraph 5

*Text proposed by the Commission*

*Amendment*

**5. Unit holders in the UCITS may invoke the liability of the depositary directly or indirectly through the management company.**

**5. Liability to the investors of the UCITS may be invoked directly or indirectly through the management company, depending upon the legal nature of the relationship between the depositary, the management company and the investors.**

Or. en

*Justification*

*The provisions in relation to the invoking of claims should be consistent across UCITS and AIFMD and the legal nature of the relationship between the parties should continue to govern the ability to pursue a direct claim.*

**Amendment 105**

**Thomas Mann**

**Proposal for a directive**  
**Article 1 – paragraph 1 – point 5**  
Directive 2009/65/EC  
Article 24 – paragraph 5

*Text proposed by the Commission*

5. Unit holders in the UCITS may invoke the liability of the depositary directly or indirectly through the management company.

*Amendment*

5. Unit holders in the UCITS may invoke the liability of the depositary directly or indirectly through the management company, ***depending on the legal nature of the relationship between the depositary, the management company and the unit holders.***

Or. en

*Justification*

*In the Explanatory Memorandum to the proposal, the Commission recognises that the means of asserting the liability claim depend “on the legal nature of the relationship between the depositary, the management company and the unit-holders”. This interdependence has been reflected in both the corresponding AIFMD provision in Article 21(15) and the current UCITS standard of Article 24 second subparagraph. The amendment ensures that it is also acknowledged in the text of Article 24(5).*

**Amendment 106**  
**Sari Essayah**

**Proposal for a directive**  
**Article 1 – paragraph 1 – point 5**  
Directive 2009/65/EC  
Article 24 – paragraph 5

*Text proposed by the Commission*

5. ***Unit holders in*** the UCITS may ***invoke the liability of the depositary directly or indirectly through*** the management company.

*Amendment*

5. ***Liability to the investors of*** the UCITS may ***be invoked directly or indirectly through the management company, depending upon the legal nature of the relationship between the depositary, the management company and the investors.***

Or. en

*Justification*

*Alignment with AIFMD*

**Amendment 107**

**Burkhard Balz**

**Proposal for a directive**

**Article 1 – paragraph 1 – point 5**

Directive 2009/65/EC

Article 24 – paragraph 5

*Text proposed by the Commission*

*5. Unit holders in the UCITS may invoke the liability of the depositary directly or indirectly through the management company.*

*Amendment*

*5. Liability to investors may be invoked directly or indirectly through the management company, depending upon the legal nature of the relationship between the depositary, the management company and the investors.*

Or. en

**Amendment 108**

**Arlene McCarthy**

**Proposal for a directive**

**Article 1 – paragraph 1 – point 6**

Directive 2009/65/EC

Article 25 – paragraph 2 – paragraph 2a (new)

*Text proposed by the Commission*

*Amendment*

*The assets of the UCITS shall not be reused by the depositary or any other third party.*

Or. en

**Amendment 109**

**Syed Kamall**

**Proposal for a directive**  
**Article 1 – paragraph 1 – point 6**  
Directive 2009/65/EC  
Article 25 – paragraph 2 a (new)

*Text proposed by the Commission*

*Amendment*

***(2a) The depositary shall be independent of the management company, and where the UCITS is an investment company, the depositary shall also be independent of the investment company and the directors of the company.***

Or. en

*Justification*

*The Madoff scandal was primarily a consequence of conflicts of interests not being properly dealt with. Whilst functional and hierarchical separation exists in the current UCITS regulation, there remains a loophole in that an entity may still be both a management company and a depositary. Investors throughout the Union should be able to expect similar standards in this regard, no matter where the UCITS, the management company or the depositary is domiciled.*

**Amendment 110**  
**Anne E. Jensen, Olle Schmidt**

**Proposal for a directive**  
**Article 1 – paragraph 1 – point 6**  
Directive 2009/65/EC  
Article 25 – paragraph 2 – paragraph 2

*Text proposed by the Commission*

*Amendment*

A depositary shall not carry out activities with regard to the UCITS or the management company on behalf of the UCITS that may create conflicts of interest between the UCITS, the investors in the UCITS, the management company and itself, unless the depositary has functionally and hierarchically separated the performance of its depositary tasks from its other potentially conflicting tasks, and the potential conflicts of interest are

A depositary shall not carry out activities with regard to the UCITS or the management company on behalf of the UCITS that may create conflicts of interest between the UCITS, the investors in the UCITS, the management company and itself, unless the depositary has functionally and hierarchically separated the performance of its depositary tasks from its other potentially conflicting tasks, and the potential conflicts of interest are

properly identified, managed, monitored and disclosed to the investors of the UCITS.

properly identified, managed, monitored and disclosed to the investors of the UCITS. ***The assets referred to in Article 22(5) shall not be reused by the depositary without prior consent of the UCITS or the management company acting on behalf of the UCITS.***

Or. en

### *Justification*

*According to Article 21(10) of the AIFMD, “[the] assets referred to in [Article 21(8) AIFMD] shall not be reused by the depositary without the prior consent of the AIF or the AIFM acting on behalf of the AIF.” Given that the reuse of assets is not prohibited under UCITS rules, we believe it is of utmost importance that the same obligation to obtain prior consent of the UCITS or its management company be made explicitly applicable also to UCITS depositaries and their subcustodians.*

### **Amendment 111** **Syed Kamall**

**Proposal for a directive**  
**Article 1 – paragraph 1 – point 6**  
Directive 2009/65/EC  
Article 25 – paragraph 2 – subparagraph 2

#### *Text proposed by the Commission*

*A depositary shall not carry out activities with regard to the UCITS or the management company on behalf of the UCITS that may create conflicts of interest between the UCITS, the investors in the UCITS, the management company and itself, unless the depositary has **functionally and hierarchically separated the performance of its depositary tasks from its other** potentially conflicting tasks, and the potential conflicts of interest are properly identified, managed, monitored and disclosed to the investors of the UCITS.*

#### *Amendment*

***Neither the depositary nor any of its delegates nor any of its associates shall*** carry out activities with regard to the UCITS or the management company on behalf of the UCITS that may create conflicts of interest between the UCITS, the investors in the UCITS, the management company and itself, unless the depositary has ***ensured that there is functional and hierarchical separation of the performance of*** potentially conflicting tasks, and the potential conflicts of interest are properly identified, managed, monitored and disclosed to the investors of the UCITS.

Or. en

## *Justification*

*The Madoff scandal was primarily a consequence of conflicts of interests not being properly dealt with. Whilst functional and hierarchical separation exists in the current UCITS regulation, there remains a loophole in that an entity may still be both a management company and a depositary. Investors throughout the Union should be able to expect similar standards in this regard, no matter where the UCITS, the management company or the depositary is domiciled.*

### **Amendment 112** **Burkhard Balz**

**Proposal for a directive**  
**Article 1 – paragraph 1 – point 6**  
Directive 2009/65/EC  
Article 25 – paragraph 2 – subparagraph 2 a (new)

*Text proposed by the Commission*

*Amendment*

***These assets referred to in paragraph 5 shall not be reused by the depositary without prior consent of the UCITS or the management company acting on behalf of the UCITS.***

Or. en

### **Amendment 113** **Sari Essayah**

**Proposal for a directive**  
**Article 1 – paragraph 1 – point 6**  
Directive 2009/65/EC  
Article 25 – paragraph 2 – subparagraph 2 a (new)

*Text proposed by the Commission*

*Amendment*

***The assets referred to in Article 22(5) shall not be reused by the depositary without prior consent of the UCITS or the management company acting on behalf of the UCITS.***

Or. en

*Justification*

*Alignment with AIFMD.*

**Amendment 114**  
**Jean-Paul Gauzès**

**Proposal for a directive**  
**Article 1 – paragraph 1 – point 8**  
Directive 2009/65/EC  
Article 26a

*Text proposed by the Commission*

The depositary shall make available to its competent authorities, competent authorities of the *management company's home Member State* and the competent authorities of the UCITS *home Member State, on request, all information which it has obtained while performing its duties and that may be necessary for the competent authorities to carry out their duties under this Directive.*

*Amendment*

The depositary shall make available to its competent authorities, *on request, all information which it has obtained while performing its duties and that may be necessary for the* competent authorities of the *UCITS or the UCITS management company. If the competent authorities of the UCITS or the UCITS management company 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 UCITS and the management company.*

Or. en

**Amendment 115**  
**Olle Schmidt**

**Proposal for a directive**  
**Article 1 – paragraph 1 – point 8**  
Directive 2009/65/EC  
Article 26b – paragraph 1 – point a

*Text proposed by the Commission*

(a) the particulars that need to be included in the written contract referred to in Article 22(2);

*Amendment*

(a) the particulars *in relation to this Directive* that need to be included in the written contract referred to in Article 22(2);

*Justification*

*The meaning of “the particulars that need to be included in the written contract” must be clarified. The Commission should only be empowered to adopt measures specifying the particulars that need to be included in the written contract as regards requirements in relation to the UCITS Directive. Member States should have the right to determine the particulars that need to be included in the written contract as regards requirements in relation to national laws and regulations.*

**Amendment 116**  
**Syed Kamall**

**Proposal for a directive**  
**Article 1 – paragraph 1 – point 8**  
Directive 2009/65/EC  
Article 26b – paragraph 1 – point f a (new)

*Text proposed by the Commission*

*Amendment*

***(f a) the conditions for fulfilling the independence requirement and what is to be understood by associate in Article 25.***

*Justification*

*There must be further articulation about what is meant by “independently”. The depositary’s oversight role is a critical part of the UCITS governance structure and therefore what is meant by independence must be clarified.*

**Amendment 117**  
**Anne E. Jensen, Olle Schmidt**

**Proposal for a directive**  
**Article 1 – paragraph 1 – point 8**  
Directive 2009/65/EC  
Article 26b – paragraph 1 – point fa (new) and fb (new)

*Text proposed by the Commission*

*Amendment*

***(f a) the level of capital required to act as***



*a depositary in accordance with Article 23(2)(c)*

*(f b) the prudential and organisational requirements required to act as a depositary in accordance with Article 23(2)(c)*

Or. en

*Justification*

*The most important point is to make sure that all authorized entities are subject to similar rules, in order to ensure a level playing field without undermining the protection of UCITS investors. Other types of institutions than credit institutions and MiFID firms which are currently authorized to act as depositaries in their jurisdiction should remain eligible to act as depositaries provided that they are subject to prudential regulation and ongoing supervision.*

**Amendment 118**  
**Thomas Mann**

**Proposal for a directive**  
**Article 1 – paragraph 1 – point 11**  
Directive 2009/65/EC  
Article 69 – paragraph 3

*Text proposed by the Commission*

*Amendment*

***The annual report shall also contain:***

***deleted***

***(a) the total amount of remuneration for the financial year, split into fixed and variable remuneration paid by the management company and by the investment company to its staff, and the number of beneficiaries, and where relevant, the carried interest paid by the UCITS;***

***(b) the aggregate amount of remuneration broken down by senior management and members of staff of the management company and, where relevant, of the investment company, whose actions have a material impact on the risk profile of the UCITS.***

*Justification*

*Remuneration disclosure via fund prospectuses is not proportionate in the area of UCITS management. The “Principles for Sound Compensation Practices” of the Financial Stability Forum (FSF) are especially critical for large, systemically important firms. UCITS managements companies are not systemically important market participants, nor was the UCITS sector one of the root causes of the crisis. A further criterion for distinguishing UCITS from AIF and the business models prevailing in the banking and investment banking sector is the strict product regulation.*

**Amendment 119**  
**Olle Schmidt**

**Proposal for a directive**  
**Article 1 – paragraph 1 – point 11**  
 Directive 2009/65/EC  
 Article 69 – paragraph 3 – point b

*Text proposed by the Commission*

(b) the aggregate amount of remuneration broken down by **senior management and members of staff** of the management company **and**, where relevant, of the investment company, whose actions have a material impact on the risk profile of the UCITS.

*Amendment*

(b) the aggregate amount of remuneration broken down by **categories of staff as referred to in Article 14a(3)** of the **financial group**, management company **or**, where relevant, of the investment company, whose actions have a material impact on the risk profile of the UCITS.

Or. en

*Justification*

*Where UCITS are part of a wider financial group already subject to remuneration requirements, policies, practices and disclosures applied on a group-wide basis that are consistent with the principles of sound compensation practices should apply to the extent that they are equivalent to the requirements of this directive.*

**Amendment 120**  
**Arlene McCarthy**

**Proposal for a directive**  
**Article 1 – paragraph 1 – point 11 b (new)**

Directive 2009/65/EC  
Article 78 – paragraph 3 – points ea – ed (new)

*Text proposed by the Commission*

*Amendment*

***(11 b) In Article 78 (3) the following points are added:***

***(ea) description of the liability regime in case of asset loss;***

***(eb) identity of the ultimate holder of the UCITS assets;***

***(ec) information about security lending practices, including their benefits and risks;***

***(ed) the availability of a monthly comprehensive inventory made by the depository of all assets held in the name of the UCITS, which shall be provided to the unit holders by the UCITS manager on request .***

Or. en

**Amendment 121**  
**Olle Schmidt**

**Proposal for a directive**  
**Article 1 – paragraph 1 – point 11 a (new)**  
Directive 2009/65/EC  
Article 90 – paragraph 2 a (new)

*Text proposed by the Commission*

*Amendment*

***(11 a) In Article 90, the following paragraph is added:***

***The law, fund rules, or the instrument of incorporation of an investment company, shall provide that such remuneration and expenditure are consistent with, and promote, sound and effective risk management and do not encourage risk-taking which is inconsistent with the risk profiles of the UCITS or with the business strategy, objectives, values and interests of the UCITS and the investors of such***

***UCITS. A variable component shall not primarily be based on performance fees to the management company of the UCITS.***

Or. en

*Justification*

*It is more reasonable to ask the Commission to analyze which product-related costs and expenses are conventional in the Member States for retail investment products. The broad diversity of UCITS means a range of factors should be assessed when determining variable remuneration. It should not exclusively be based either on the size of the fund, value of assets under management or performance fees to the management company of the UCITS.*

**Amendment 122**  
**Arlene McCarthy**

**Proposal for a directive**  
**Article 1 – paragraph 1 – point 11 a (new)**  
Directive 2009/65/EC  
Article 90 – paragraph 2 a (new)

*Text proposed by the Commission*

*Amendment*

***(11 a) In Article 90, the following paragraph is added:***

***"The law, fund rules, or the instrument of incorporation of an investment company, shall provide that such remuneration, expenditure or costs are consistent with, and promote, sound and effective risk management and do not encourage risk-taking which is inconsistent with the risk profiles of the UCITS or with the business strategy, objectives, values and interests of the UCITS and the investors of such UCITS. A variable component shall vary only in proportion to the size of the fund or to the value of the assets under management."***

Or. en

**Amendment 123**

**Thomas Mann**

**Proposal for a directive**

**Article 1 – paragraph 1 – point 11 a (new)**

Directive 2009/65/EC

Article 90 – paragraph 2 a (new)

*Text proposed by the Commission*

*Amendment*

***(11 a) In Article 90, the following paragraph is added:***

***"The law, fund rules, or the instrument of incorporation of an investment company shall provide that such remuneration, expenditure or costs are consistent with and promote sound and effective risk management and do not encourage risk-taking which does not comply with the risk profiles of the UCITS or with the investment strategy, objectives and interests of the UCITS and the investors of such UCITS."***

Or. en

*Justification*

*The UCITS directive does not yet address the issue of remuneration of fund management companies. Arguments about aligning remuneration with the interests of investors apply equally to such remuneration as to the remuneration of individual staff. It is therefore consequent to extend the discussion to the remuneration of providers of investment products.*

**Amendment 124**

**Olle Schmidt**

**Proposal for a directive**

**Article 1 – paragraph 1 – point 13**

Directive 2009/65/EC

Article 99 – paragraph 1

*Text proposed by the Commission*

*Amendment*

1. Member States ***shall*** provide ***that their respective competent authorities may take***

1. ***Without prejudice to the supervisory powers of competent authorities in***

*appropriate* administrative *sanctions* and measures where the national provisions adopted in the implementation of this Directive have not been complied with, and shall ensure that those measures are applied. The sanctions and measures shall be effective, proportionate and dissuasive.

*accordance with Article 98, and the right for* Member States *to provide for and impose criminal sanctions, Member States shall lay down rules on* administrative *penalties* and measures where the national provisions adopted in the implementation of this Directive have not been complied with, and shall ensure that those measures are applied. *Member States may decide not to lay down rules for administrative sanctions on infringements, which are subject to national criminal law.* The sanctions and measures shall be effective, proportionate and dissuasive.

Or. en

#### *Justification*

*The provision should align with the current wording in CRD IV, MiFID, MAR and the Transparency Directive.*

#### **Amendment 125** **Olle Schmidt**

**Proposal for a directive**  
**Article 1 – paragraph 1 – point 13**  
Directive 2009/65/EC  
Article 99 – paragraph 2

#### *Text proposed by the Commission*

2. Member States shall ensure that where obligations apply to UCITS, management companies, investment companies or depositaries, in case of a breach, sanctions or measures may be applied to the members of the management body, and to any other individuals who under national law are responsible for the breach.

#### *Amendment*

2. Member States shall ensure that where obligations apply to UCITS, management companies, investment companies or depositaries, in case of a breach, sanctions or measures may be applied, *subject to the conditions laid down in national law*, to the members of the management body, and to any other individuals who under national law are responsible for the breach.

Or. en

*Justification*

*To align the provision with the current wording in CRD IV, MiFID, MAR and the Transparency Directive.*

**Amendment 126**

**Olle Schmidt**

**Proposal for a directive**

**Article 1 – paragraph 1 – point 14**

Directive 2009/65/EC

Article 99a – paragraph 1 – introductory part

*Text proposed by the Commission*

*Amendment*

*This Article shall apply when:*

*Member States shall ensure that their laws, regulations or administrative provisions provide for sanctions in respect of:*

Or. en

*Justification*

*The provision should align with the current wording in other EU directives and regulations.*

**Amendment 127**

**Olle Schmidt**

**Proposal for a directive**

**Article 1 – paragraph 1 – point 14**

Directive 2009/65/EC

Article 99a – paragraph 2 – point a

*Text proposed by the Commission*

*Amendment*

(a) a public statement which indicates the natural or legal person and the nature of the breach;

(a) **a warning or** a public statement which indicates the natural or legal person and the nature of the breach;

Or. en

*Justification*

*A public statement has the same meaning as a “warning”.*

**Amendment 128**

**Olle Schmidt**

**Proposal for a directive**

**Article 1 – paragraph 1 – point 14**

Directive 2009/65/EC

Article 99a – paragraph 2 – point e

*Text proposed by the Commission*

(e) in case of a legal person, imposing administrative pecuniary sanctions of up to 10% of the total annual turnover of that legal person in the preceding business year; ***where the legal person is a subsidiary of a parent undertaking, the relevant total annual turnover shall be the total annual turnover resulting from the consolidated account of the ultimate parent undertaking in the preceding business year;***

*Amendment*

(e) in case of a legal person, imposing administrative pecuniary sanctions of up to 10% of the total annual turnover of that legal person in the preceding business year;

Or. en

**Amendment 129**

**Wolf Klinz**

**Proposal for a directive**

**Article 1 – paragraph 1 – point 14**

Directive 2009/65/EC

Article 99a – paragraph 2 – point f

*Text proposed by the Commission*

(f) in case of a legal person, imposing ***administrative pecuniary sanctions of up to 10% of the total annual turnover of that legal person in the preceding business year; where the legal person is a subsidiary of a parent undertaking, the relevant total annual turnover shall be the***

*Amendment*

(f) in case of a legal person, imposing ***appropriate and dissuasive administrative pecuniary sanctions;***



*total annual turnover resulting from the consolidated account of the ultimate parent undertaking in the preceding business year;*

Or. en

**Amendment 130**  
**Wolf Klinz**

**Proposal for a directive**  
**Article 1 – paragraph 1 – point 14**  
Directive 2009/65/EC  
Article 99a – paragraph 2 – point f

*Text proposed by the Commission*

(f) in case of a natural person, imposing *administrative pecuniary sanctions of up to EUR 5 000 000, or in the Member States where the euro is not the official currency, the corresponding value in the national currency on the date of entry into force of this Directive;*

*Amendment*

(f) in case of a natural person, imposing *appropriate and dissuasive administrative pecuniary sanctions;*

Or. en

**Amendment 131**  
**Wolf Klinz**

**Proposal for a directive**  
**Article 1 – paragraph 1 – point 14**  
Directive 2009/65/EC  
Article 99d – paragraph 2 – point b

*Text proposed by the Commission*

(b) appropriate protection for employees of investment companies *and* management companies who report breaches committed within the company;

*Amendment*

(b) appropriate protection for employees of investment companies, management companies *and depositaries* who report breaches committed within the company;

Or. en

**Amendment 132**  
**Jean-Paul Gauzès**

**Proposal for a directive**

**Annex 1**

Directive 2009/65/EC

Annex I – schedule A – point 2 – subparagraph 2

*Text proposed by the Commission*

2.2. A description of any safe-keeping functions delegated by the depositary, ***the identification of the delegate and*** any conflicts of interest that may arise from such delegation

*Amendment*

2.2. A description of any safe-keeping functions delegated by the depositary, any conflicts of interest that may arise from such delegation ***and a statement that the list of delegates will be made available to investors on request.***

Or. en

**Amendment 133**  
**Anne E. Jensen, Olle Schmidt**

**Proposal for a directive**

**Annex 1**

Directive 2009/65/EC

Annex I – schedule A – point 2 – subparagraph 2

*Text proposed by the Commission*

2.2. A description of any ***safe-keeping*** functions delegated by the depositary, the identification of the delegate and any conflicts of interest that may arise from such delegation

*Amendment*

2.2. ***A statement that*** a description of any ***safekeeping*** functions delegated by the depositary, the identification of the delegate and any conflicts of interest that may arise from such delegation ***is available to investors on request.***

Or. en

*Justification*

*Information on the entities involved providing custody to the fund's assets is legitimate and useful information that should be made available to investors. However, requesting such disclosure to be made in the prospectus of the UCITS would raise significant practical and operational challenges as it would require frequent updates to the prospectus, in particular for funds using a wider custody network because of the geographic diversification of their investments.*

**Amendment 134**  
**Burkhard Balz**

**Proposal for a directive**  
**Annex 1**

Directive 2009/65/EC

Annex I – schedule A – point 2 – subparagraph 2

*Text proposed by the Commission*

2.2. A description of any safe-keeping functions delegated by the depositary, the identification of the delegate and any conflicts of interest that may arise from such delegation

*Amendment*

2.2. A **statement that a** description of any safe-keeping functions delegated by the depositary, the identification of the delegate and any conflicts of interest that may arise from such delegation **will be made available to investors on request.**

Or. en

**Amendment 135**  
**Syed Kamall**

**Proposal for a directive**  
**Annex 1**

Directive 2009/65/EC

Annex I – schedule A – point 2 – subparagraph 2

*Text proposed by the Commission*

**2.2. A description of any safe-keeping functions delegated by the depositary, the identification of the delegate and any conflicts of interest that may arise from such delegation**

*Amendment*

**2.2. Information on all entities involved in providing custody of the fund's assets, together with conflicts of interest that may arise, is available on request from the depositary.**

Or. en

*Justification*

*Investors should have access, on request, to information about the entire custody chain. This provision should be replaced with a requirement for the prospectus to state that information on the full custody chain is available on request from the depositary to avoid extending existing prospectuses too significantly.*

**Amendment 136**  
**Thomas Mann**

**Proposal for a directive**  
**Annex 1**

Directive 2009/65/EC

Annex I – schedule A – point 2 – subparagraph 2

*Text proposed by the Commission*

2.2. A description of any safe-keeping functions delegated by the depositary, the identification of the delegate and any conflicts of interest that may arise from such delegation

*Amendment*

2.2. A description of any safe-keeping functions delegated by the depositary, the identification of the delegate and any conflicts of interest that may arise from such delegation ***or, alternatively, a reference to sources where investors may obtain such information***

Or. en

*Justification*

*Given that operations of many UCITS require a global network of sub-custodians the identity of which may change on a common basis, it would be too intricate to require a full description of sub-custody arrangements in the fund prospectus. The amendment enables the UCITS or its manager to provide detailed information via other means, such as its internet homepage.*