



2021/0376(COD)

16.5.2022

*****I**

DRAFT REPORT

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

(COM(2021)0721 – C9-0439/2021 – 2021/0376(COD))

Committee on Economic and Monetary Affairs

Rapporteur: Isabel Benjumea Benjumea

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

Amendments by Parliament set out in two columns

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

Amendments by Parliament in the form of a consolidated text

New text is highlighted in ***bold italics***. Deletions are indicated using either the ▬ symbol or strikeout. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a directive of the European Parliament and of the Council amending Directives 2011/61/EU and 2009/65/EC as regards delegation arrangements, liquidity risk management, supervisory reporting, provision of depositary and custody services and loan origination by alternative investment funds (COM(2021)0721 – C9-0439/2021 – 2021/0376(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2021)0721),
 - having regard to Article 294(2) and Article 114 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C9-0439/2021),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the opinion of the Committee on Legal Affairs on the use of delegated acts,
 - having regard to Rules 59, 40 and 41 of its Rules of Procedure,
 - having regard to the report of the Committee on Economic and Monetary Affairs (A9-0000/2022),
1. Adopts its position at first reading hereinafter set out;
 2. Approves its statement annexed to this resolution;
 3. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
 4. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Amendment 1

Proposal for a directive Recital 3

Text proposed by the Commission

(3) To increase the efficiency of AIFM activities, the list of authorised ancillary services set out in Article 6(4) of Directive 2011/61/EU should be extended to include benchmark administration governed by Regulation (EU) 2016/1011 of the European Parliament and of the Council²⁷ and credit servicing governed by Directive 2021/.../EU of the European Parliament and of the Council.²⁸

²⁷ Regulation (EU) 2016/1011 of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No 596/2014 (OJ L 171, 29.6.2016, p. 1–65).

²⁸ OJ C , , p. .

Amendment

(3) To increase the efficiency of AIFM activities, the list of authorised ancillary services set out in Article 6(4) of Directive 2011/61/EU should be extended to include benchmark administration governed by Regulation (EU) 2016/1011 of the European Parliament and of the Council²⁷ and credit servicing governed by Directive 2021/.../EU of the European Parliament and of the Council²⁸ ***and any other ancillary service which is not regulated as an investment service under Directive 2014/65/EU, which represents a continuation of the services already undertaken by the AIFM or a use of internal competences, and which does not create conflicts of interest that could not be managed by additional rules.***

²⁷ Regulation (EU) 2016/1011 of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No 596/2014 (OJ L 171, 29.6.2016, p. 1–65).

²⁸ OJ C , , p. .

Or. en

Amendment 2

Proposal for a directive Recital 4

Text proposed by the Commission

(4) To ensure legal ***certainly*** it should be clarified that AIFMs providing ancillary services involving financial instruments are subject to the rules laid down in Directive 2014/65/EU of the European Parliament and of the Council²⁹. With regard to other assets, which are not financial instruments, AIFMs should be required to comply with the requirements of Directive 2011/61/EU.

²⁹ Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).

Amendment

(4) To ensure legal ***certainty***, it should be clarified that AIFMs providing ancillary services involving financial instruments are subject to the rules laid down in Directive 2014/65/EU of the European Parliament and of the Council²⁹. With regard to other assets, which are not financial instruments, AIFMs should be required to comply with the requirements of Directive 2011/61/EU.

²⁹ Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).

Or. en

Amendment 3

Proposal for a directive

Recital 6

Text proposed by the Commission

(6) To develop a reliable overview of delegation activities in the Union governed by Article 20 of Directive 2011/61/EU and to inform future policy decisions or supervisory actions, competent authorities should provide the European Securities and Markets Authority ('ESMA') with delegation notifications where an AIFM delegates more portfolio management, or risk management functions of the AIF, than it manages itself to entities located in third countries.

Amendment

deleted

Or. en

Amendment 4

Proposal for a directive Recital 7

Text proposed by the Commission

Amendment

(7) In order to ensure consistent harmonisation of the notification process in the area of delegation, power should be delegated to the Commission to adopt regulatory technical standards by means of delegated acts pursuant to Article 290 of the Treaty on the Functioning of the European Union (TFEU) in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council³⁰ to specify the contents, forms and procedures to standardise the notification process of the AIFMs' delegation arrangements. The notification form should contain data fields indicating the activities making up the risk and portfolio management functions in order to determine whether an AIFM has delegated more of such functions than it has retained. Those regulatory technical standards should be adopted on the basis of a draft developed by ESMA.

deleted

³⁰ Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

Or. en

Amendment 5

Proposal for a directive Recital 7 a (new)

Text proposed by the Commission

Amendment

(7a) The marketing of AIFs is not always conducted by the AIFM directly but by one or several distributors either on behalf of the AIFM or on their own behalf. There could also be cases where an independent financial advisor markets a fund without the AIFM's knowledge. Most fund distributors are subject to regulatory requirements pursuant to Directive 2014/65/EU or Directive 2016/97/EU, which define the scope and extent of their responsibilities towards their own clients. Directive 2011/61/EU should therefore acknowledge the diversity of distribution arrangements and distinguish between arrangements whereby a distributor operates on behalf of the AIFM, which should be considered to be a delegation arrangement, and arrangements whereby a distributor acts on its own behalf, in which case the provisions of that Directive regarding delegation should not apply.

Or. en

Amendment 6

Proposal for a directive Recital 9

Text proposed by the Commission

Amendment

(9) Common rules should *also* be laid down to establish an efficient internal market for loan-originating AIFs, to ensure a uniform level of investor protection in the Union, to make it possible for AIFs to develop their activities by originating loans in all Member States of the Union and to

(9) Investment funds providing loans can be a source of alternative financing for the real economy. Indeed, such funds can provide critical funding for Union small and medium-sized enterprises for which traditional lending sources are more difficult to access. Moreover, the

facilitate the access to finance by EU companies, a key objective of the Capital Markets Union ('CMU').³¹ However, given the fast-growing private credit market, it is necessary to address the potential micro risks and macro prudential risks that loan originating AIFs could pose and spread to the broader financial system. The rules applicable to AIFMs managing loan-originating funds should be harmonised in order to improve risk management across the financial market and increase transparency for investors.

value of private credit should be recognised in promoting investor confidence in the Union market. However, diverging national regulatory approaches hinder the establishment of an efficient internal market for loan-originating AIFs by promoting regulatory arbitrage and varying levels of investor protection. Common rules should *therefore* be laid down to establish an efficient internal market for loan-originating AIFs, to ensure a uniform level of investor protection in the Union, to make it possible for AIFs to develop their activities by originating loans in all Member States of the Union and to facilitate the access to finance by EU companies, a key objective of the Capital Markets Union ('CMU').³¹ However, given the fast-growing private credit market, it is necessary to address the potential micro risks and macro prudential risks that loan originating AIFs could pose and spread to the broader financial system. The rules applicable to AIFMs managing loan-originating funds should be harmonised in order to improve risk management across the financial market and increase transparency for investors. *However, it should be recalled that Directive 2011/61/EU does not regulate specific investment products.*

³¹ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, A Capital Markets Union for people and businesses-new action plan (COM/2020/590 final).

³¹ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, A Capital Markets Union for people and businesses-new action plan (COM/2020/590 final).

Or. en

Amendment 7

Proposal for a directive Recital 12

Text proposed by the Commission

(12) In order to limit conflicts of interest, AIFMs and their staff should not receive loans from loan-originating AIFs that they manage. Similarly, the AIF's depositary and its staff or the AIFM's delegate and its staff should be prohibited from receiving loans from the associated AIFs.

Amendment

(12) In order to limit conflicts of interest, AIFMs and their staff should not receive loans from loan-originating AIFs that they manage. Similarly, the AIF's depositary and its staff or the AIFM's delegate and its staff ***or entities within the same group as the AIFM and their staff*** should be prohibited from receiving loans from the associated AIFs.

Or. en

Amendment 8

Proposal for a directive Recital 13

Text proposed by the Commission

(13) Directive 2011/61/EU should recognise the right of AIFs to originate loans and trade those loans on the secondary market. ***To avert moral hazard and maintain the general credit quality of loans originated by AIF's, such loans should be subject to risk retention requirements to avoid situations in*** which loans are originated with the sole purpose of selling them.

Amendment

(13) Directive 2011/61/EU should recognise the right of AIFs to originate loans and trade those loans on the secondary market. ***However, AIFs should not follow an originate-to-distribute investment strategy, namely an investment strategy under*** which loans are originated with the sole purpose of selling them.

Or. en

Amendment 9

Proposal for a directive Recital 14

Text proposed by the Commission

(14) Long-term, illiquid loans held by AIF may create liquidity mismatches if the AIFs open-ended structure allows investors to redeem their fund units or shares on a frequent basis. It is **therefore** necessary to mitigate risks related to maturity transformation by imposing a closed-ended structure for AIFs originating loans because close-ended funds would not be vulnerable to redemption demands and could hold originated loans to maturity.

Amendment

(14) Long-term, illiquid loans held by an AIF **might** create liquidity mismatches if the AIFs open-ended structure allows investors to redeem their fund units or shares on a frequent basis. **Therefore, where an AIFM is not able to demonstrate to the competent authorities of its home Member State that the AIF has liquidity robustness**, it is necessary to mitigate risks related to maturity transformation by imposing a closed-ended structure for AIFs originating loans because close-ended funds would not be vulnerable to redemption demands and could hold originated loans to maturity. **In order to ensure consistent criteria for the determination by competent authorities of whether an AIF has demonstrated liquidity robustness for those purposes, power should be delegated to the Commission to adopt regulatory technical standards by means of delegated acts pursuant to Article 290 of the Treaty on the Functioning of the European Union (TFEU) in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council^{1a} to establish those criteria. Those regulatory technical standards should be adopted on the basis of a draft developed by ESMA.**

^{1a} **Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).**

Or. en

Amendment 10

Proposal for a directive Recital 17

Text proposed by the Commission

(17) In preparation for the future changes to the supervisory reporting obligations the scope of the data that can be required from AIFMs should be widened by removing the limitations, which focus on major trades and exposures or counterparties. If ESMA determines that a full portfolio disclosure to supervisors on a periodic basis is warranted, the provisions of Directive 2011/61/EU should accommodate the necessary broadening of the reporting scope.

Amendment

(17) In preparation for the future changes to the supervisory reporting obligations the scope of the data that can be required from AIFMs should be widened by removing the limitations, which focus on major trades and exposures or counterparties **and by adding other categories of data to be supplied to competent authorities**. If ESMA determines that a full portfolio disclosure to supervisors on a periodic basis is warranted, the provisions of Directive 2011/61/EU should accommodate the necessary broadening of the reporting scope.

Or. en

Amendment 11

Proposal for a directive Recital 21

Text proposed by the Commission

(21) To enable managers of open-ended AIFs based in any Member State to deal with redemption pressures under stressed market conditions, they should be required to choose at least one LMT from the harmonised list set out in the Annex, in addition to the possibility to suspend redemptions. When an AIFM takes a decision to activate or deactivate **the LMT**, it should notify the supervisory authorities. This would allow supervisory authorities to better handle potential spill-overs of liquidity tensions into the wider market.

Amendment

(21) To enable managers of open-ended AIFs based in any Member State to deal with redemption pressures under stressed market conditions, they should be required to choose at least one LMT from the harmonised list set out in the Annex, in addition to the possibility to suspend redemptions. When an AIFM takes a decision to activate or deactivate **certain LMTs in situations of liquidity stress**, it should notify the supervisory authorities. This would allow supervisory authorities to better handle potential spill-overs of liquidity tensions into the wider market.

Amendment 12

Proposal for a directive

Recital 23

Text proposed by the Commission

(23) In order to ensure consistent harmonisation in the area of liquidity risk management by the managers of open-ended funds, power should be delegated to the Commission to adopt regulatory technical standards by means of delegated acts pursuant to Article 290 of the Treaty on the Functioning of the European Union (TFEU) in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council⁴² to specify the process for choosing and using LMTs to facilitate market and supervisory convergence. Those regulatory technical standards should be adopted on the basis of a draft developed by ESMA.

⁴² Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

Amendment

(23) In order to ensure consistent harmonisation in the area of liquidity risk management by the managers of open-ended funds, power should be delegated to the Commission to adopt regulatory technical standards by means of delegated acts pursuant to Article 290 of the Treaty on the Functioning of the European Union (TFEU) in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council⁴² to specify the process for choosing and using LMTs to facilitate market and supervisory convergence. Those regulatory technical standards should be adopted on the basis of a draft developed by ESMA. ***Those standards should recognise that the primary responsibility for liquidity risk management remains with the AIFM.***

⁴² Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

Amendment 13

Proposal for a directive Recital 24

Text proposed by the Commission

(24) To ensure investor protection **and to address** financial stability risks, the competent authorities should be able to request that a manager of an open-ended fund activate or deactivate the appropriate LMT.

Amendment

(24) To ensure investor protection **where there are** financial stability risks, **in exceptional circumstances and after consulting the manager concerned**, the competent authorities should be able to request that a manager of an open-ended fund activate or deactivate the appropriate LMT.

Or. en

Amendment 14

Proposal for a directive Recital 28

Text proposed by the Commission

(28) To support supervisory convergence in the area of delegation ESMA should conduct peer review on the supervisory practices with a particular focus on preventing the creation of letter-box entities. ESMA's analysis of the peer **reviews** will feed into the review of the measures adopted in this Directive and inform the European Parliament, the Council and the Commission of any additional measures that may be needed to support the effectiveness of the delegation regimes laid down in Directive 2011/61/EU.

Amendment

(28) To support supervisory convergence in the area of delegation ESMA should conduct **a** peer review on the supervisory practices with a particular focus on preventing the creation of letter-box entities. ESMA's analysis of the peer **review** will feed into the review of the measures adopted in this Directive and inform the European Parliament, the Council and the Commission of any additional measures that may be needed to support the effectiveness of the delegation regimes laid down in Directive 2011/61/EU.

Or. en

Amendment 15

Proposal for a directive Recital 28 a (new)

Text proposed by the Commission

Amendment

(28a) The marketing of UCITS is not always conducted by the management company directly but by one or several distributors either on behalf of the management company or on their own behalf. There could also be cases where an independent financial advisor markets a fund without the management company's knowledge. Most fund distributors are subject to regulatory requirements pursuant to Directive 2014/65/EU or Directive 2016/97/EU, which define the scope and extent of their responsibilities towards their own clients. Directive 2009/65/EC should therefore acknowledge the diversity of distribution arrangements and distinguish between arrangements whereby a distributor operates on behalf of the management company, which should be considered to be a delegation arrangement, and arrangements whereby a distributor acts on its own behalf, in which case the provisions of that Directive regarding delegation should not apply.

Or. en

Amendment 16

Proposal for a directive Recital 29

Text proposed by the Commission

Amendment

(29) Some concentrated markets lack a competitive supply of depositary services. To address this shortage of service providers that can lead to increased costs for AIFMs and a less efficient AIF market,

(29) Some concentrated markets lack a competitive supply of depositary services. To address this shortage of service providers that can lead to increased costs for AIFMs and a less efficient AIF market,

competent authorities should be able to permit AIFMs or AIFs to procure depositary services located in other Member States while the Commission assesses, in the context of its review of Directive 2011/61/EU, whether it would be appropriate to propose measures to achieve a more integrated market.

competent authorities should be able to permit AIFMs or AIFs to procure depositary services located in other Member States while the Commission assesses, in the context of its review of Directive 2011/61/EU, whether it would be appropriate to propose measures to achieve a more integrated market. ***As part of that review, the Commission should carry out a comprehensive study on the potential benefits and risks of introducing a Union depositary passport, in particular in terms of reducing costs, allowing the choice of more competitive depositary services from other Member States and extending the choices available to managers.***

Or. en

Amendment 17

Proposal for a directive Recital 31

Text proposed by the Commission

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

Amendment

(31) In order to better protect investors, the information flow from AIFMs to AIF investors should be increased. To allow an AIFs investors to better track the investment fund's expenses, AIFMs should periodically report on all fees and charges that are directly or indirectly allocated to the AIF. AIFMs should also be required to report to investors on the portfolio composition of originated loans.

Or. en

Amendment 18

Proposal for a directive Recital 38

Text proposed by the Commission

Amendment

(38) To develop a reliable overview of delegation activities in the Union governed by Article 13 of Directive 2009/65/EC and to inform future policy decisions or supervisory actions, competent authorities should provide ESMA with delegation notifications where a UCITS management company delegates more portfolio management or risk management functions, than it manages itself, to entities located in third countries. *deleted*

Or. en

Amendment 19

Proposal for a directive Recital 39

Text proposed by the Commission

Amendment

(39) In order to ensure consistent harmonisation of the notification process in the area of delegation, power should be delegated to the Commission to adopt regulatory technical standards by means of delegated acts pursuant to Article 290 of the Treaty on the Functioning of the European Union (TFEU) in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council⁴⁵ to specify the contents, forms and procedures to standardise the notification process of UCITS delegation arrangements. The notification form should contain data fields indicating the activities making up the risk and portfolio management functions in order to determine whether a *deleted*

UCITS management company has delegated more of such functions than it has retained. Those regulatory technical standards should be adopted based on a draft developed by ESMA.

⁴⁵ *Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).*

Or. en

Amendment 20

Proposal for a directive Recital 42

Text proposed by the Commission

(42) To enable UCITS management companies based in any Member State to deal with redemption pressures under stressed market conditions, they should be required to choose at least one LMT from the harmonised list set out in the Annex in addition to the possibility to suspend redemptions. When a management company takes a decision to activate or deactivate *the LMT*, it should notify the supervisory authorities. This would allow supervisory authorities to better handle potential spill-overs of liquidity tensions into the wider market.

Amendment

(42) To enable UCITS management companies based in any Member State to deal with redemption pressures under stressed market conditions, they should be required to choose at least one LMT from the harmonised list set out in the Annex in addition to the possibility to suspend redemptions. When a management company takes a decision to activate or deactivate *certain LMTs in situations of liquidity stress*, it should notify the supervisory authorities. This would allow supervisory authorities to better handle potential spill-overs of liquidity tensions into the wider market.

Or. en

Amendment 21

Proposal for a directive Recital 44

Text proposed by the Commission

(44) To ensure investor protection **and to address** financial stability risks, the competent authorities should be able to request that a UCITS management company activates or deactivates the appropriate LMT.

Amendment

(44) To ensure investor protection **if there are** financial stability risks, **in exceptional circumstances and after consulting the management company concerned**, the competent authorities should be able to request that a UCITS management company activates or deactivates the appropriate LMT.

Or. en

Amendment 22

Proposal for a directive Recital 45

Text proposed by the Commission

(45) In order to ensure consistent harmonisation in the area of liquidity risk management by the managers of UCITS, power should be delegated to the Commission to adopt regulatory technical standards by means of delegated acts pursuant to Article 290 of the Treaty on the Functioning of the European Union (TFEU) in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council⁴⁸ to specify the process for choosing and using LMTs to facilitate market and supervisory convergence. Those regulatory technical standards should be adopted on the basis of a draft developed by ESMA.

Amendment

(45) In order to ensure consistent harmonisation in the area of liquidity risk management by the managers of UCITS, power should be delegated to the Commission to adopt regulatory technical standards by means of delegated acts pursuant to Article 290 of the Treaty on the Functioning of the European Union (TFEU) in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council⁴⁸ to specify the process for choosing and using LMTs to facilitate market and supervisory convergence. Those regulatory technical standards should be adopted on the basis of a draft developed by ESMA. **Those standards should recognise that the primary responsibility for liquidity risk management remains with the UCITS manager.**

⁴⁸ Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

⁴⁸ Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

Or. en

Amendment 23

Proposal for a directive Recital 46

Text proposed by the Commission

(46) To support market monitoring by the supervisory authorities, the information gathering and sharing through supervisory reporting should be improved by subjecting UCITS to supervisory reporting obligations. The ESAs and the ECB should be requested, with the support of national competent authorities where necessary, to assess the data needs of the different supervisory authorities considering the existing reporting requirements under other Union and national legislation, in particular Regulation (EU) No 600/2014, Regulation (EU) No 2019/834, Regulation (EU) No 1011/2012 and Regulation (EU) No 1073/2013. The outcome of this preparatory work would permit an informed policy decision as to what extent and in which form UCITS should be reporting to the competent authorities on their trades.

Amendment

(46) To support market monitoring by the supervisory authorities, the information gathering and sharing through supervisory reporting should be improved by subjecting UCITS to supervisory reporting obligations, ***in particular as regards the delegation of functions***. The ESAs and the ECB should be requested, with the support of national competent authorities where necessary, to assess the data needs of the different supervisory authorities considering the existing reporting requirements under other Union and national legislation, in particular Regulation (EU) No 600/2014, Regulation (EU) No 2019/834, Regulation (EU) No 1011/2012 and Regulation (EU) No 1073/2013. The outcome of this preparatory work would permit an informed policy decision as to what extent and in which form UCITS should be reporting to the competent authorities on their trades.

Or. en

Amendment 24

Proposal for a directive Recital 50

Text proposed by the Commission

(50) To support supervisory convergence in the area of delegation ESMA should conduct *peer reviews* on the supervisory practices particularly focusing on preventing creation of letter-box entities. ESMA's analysis of the peer *reviews* would feed into the review of the measures adopted in this Directive and inform the European Parliament, the Council and the Commission what additional measures may be needed to support effectiveness of the delegation regime laid down in Directive 2009/65/EC.

Amendment

(50) To support supervisory convergence in the area of delegation ESMA should conduct *a peer review* on the supervisory practices particularly focusing on preventing creation of letter-box entities. ESMA's analysis of the peer *review* would feed into the review of the measures adopted in this Directive and inform the European Parliament, the Council and the Commission what additional measures may be needed to support effectiveness of the delegation regime laid down in Directive 2009/65/EC.

Or. en

Amendment 25

Proposal for a directive Recital 52 a (new)

Text proposed by the Commission

Amendment

(52a) In carrying out its functions under Directives 2009/65/EC and 2011/61/EU, ESMA should follow a risk-based approach.

Or. en

Amendment 26

Proposal for a directive Article 1 – paragraph 1 – point -1 (new) Directive 2011/61/EU Article 4 – paragraph 1 – point ag

Text proposed by the Commission

Amendment

(-1) in Article 4(1), point (ag) is replaced by the following:

'(ag) 'professional investor' means an investor:

- which is considered to be a professional client or may, on request, be treated as a professional client within the meaning of Annex II to *Directive 2014/65/EC*; or

- which has committed to investing a minimum of EUR 100 000 and has stated in writing, in a separate document from the contract to be concluded for the commitment to invest, that they are aware of the risks associated with the envisaged commitment or investment; or

- which is a member of senior staff, portfolio manager, director, officer, agent or employee of the manager or of an affiliate of the manager and has sufficient knowledge about the AIF concerned.'

Or. en

Amendment 27

Proposal for a directive

Article 1 – paragraph 1 – point 1 – introductory part

Directive 2011/61/EU

Article 4 – points ap a (new) and ap b (new)

Text proposed by the Commission

Amendment

(1) in Article 4(1), the following **point (ap) is added:**

(1) in Article 4(1), the following **points are added:**

Or. en

Amendment 28

Proposal for a directive

Article 1 – paragraph 1 – point 1

Directive 2011/61/EU

Article 4 – point ap a (new)

Text proposed by the Commission

Amendment

(apa) ‘loan origination’ means the granting of loans by an AIF as the original lender;

Or. en

Amendment 29

Proposal for a directive

Article 1 – paragraph 1 – point 1

Directive 2011/11/EU

Article 4 – paragraph 1 – point ap b (new)

Text proposed by the Commission

Amendment

(apb) ‘shareholder loan’ means a loan granted by an AIF to an undertaking in which it holds directly or indirectly at least 5 % of the capital or voting rights, where the loan cannot be sold to third-parties independently of the capital instruments held by the AIF in the same undertaking.

Or. en

Amendment 30

Proposal for a directive

Article 1 – paragraph 1 – point 2 – point a – introductory part

Directive 2011/61/EU

Article 6 – paragraph 4 – points c, d and da (new)

Text proposed by the Commission

Amendment

(a) in paragraph 4, the following points

(a) in paragraph 4, the following points

(c) *and* (d) are added:

(c), (d) *and* (da) are added:

Or. en

Amendment 31

Proposal for a directive

Article 1 – paragraph 1 – point 2 – point a

Directive 2011/61/EU

Article 6 – paragraph 4 – point d a (new)

Text proposed by the Commission

Amendment

(da) any other ancillary service which is not a service listed in Section A of Annex I to Directive 2014/65/EU, which represents a continuation of the services already undertaken by the AIFM or a use of internal competences and which does not create conflicts of interest that could not be managed by additional rules;

Or. en

Amendment 32

Proposal for a directive

Article 1 – paragraph 1 – point 3 – point a

Directive 2011/61/EU

Article 7 – paragraph 2 – point a – subpoint i

Text proposed by the Commission

Amendment

(i) a *detailed* description of their role, title and level of seniority;

(i) a description of their role, title and level of seniority;

Or. en

Amendment 33

Proposal for a directive

Article 1 – paragraph 1 – point 3 – point a

Text proposed by the Commission

(e) information on arrangements made for the delegation and sub-delegation to third parties of functions as referred to in Article 20 **and a detailed** description of the human and technical resources to be used by the AIFM for monitoring and controlling the delegate.;

Amendment

(e) information on arrangements made for the delegation and sub-delegation to third parties of functions as referred to in Article 20 **comprising:**

(i) the legal name and legal entity identifier (LEI) of the AIFM;

(ii) the legal name and LEI of the AIF and its investment strategy;

(iii) the legal name and LEI of each delegate, its jurisdiction of establishment and, where relevant, its supervisory authority;

(iv) a brief description of the delegated risk management functions, including whether each such delegation amounts to a partial or full delegation;

(v) a brief description of the delegated portfolio management functions, by investment strategy and relevant geographies, including whether each such delegation amounts to a partial or full delegation;

(vi) a brief description of other functions listed in Annex I which the AIFM additionally performs;

(vii) a description of the human and technical resources to be used by the AIFM for monitoring and controlling the delegate.

Or. en

Amendment 34

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

Text proposed by the Commission

Amendment

(b) paragraph 5 is replaced by the following: **deleted**

5. The competent authorities shall, on a quarterly basis, inform ESMA of authorisations granted or withdrawn in accordance with this Chapter.

ESMA shall keep a central public register identifying each AIFM authorised under this Directive, a list of the AIFs managed and/or marketed in the Union by such AIFMs and the competent authority for each such AIFM. The register shall be made available in electronic format.

Where an AIFM delegates more portfolio management or risk management functions to entities located in third countries than it retains, the competent authorities shall, on an annual basis, notify ESMA of all such delegations ('delegation notifications').

The delegation notifications shall include the following:

- (a) information on the AIFM and the AIF concerned;**
- (b) information on the delegate, specifying the delegate's domicile and whether it is a regulated entity or not;**
- (c) a description of the delegated portfolio management and risk management functions;**
- (d) a description of the retained portfolio management and risk management functions;**
- (e) any other information necessary to analyse the delegation arrangements;**
- (f) a description of the competent authorities' supervisory activities, including desk-based reviews and on-site inspections and the results of such**

activities;

(g) any details on the cooperation between the competent authority of the AIFM and the supervisory authority of the delegate.

Or. en

Amendment 35

Proposal for a directive

Article 1 – paragraph 1 – point 3 – point c – introductory part

Directive 2011/61/EU

Article 7 – paragraph 8 and 9

Text proposed by the Commission

Amendment

(c) the following **paragraphs 8 and 9** are added:

(c) the following **paragraph 9 is** added:

Or. en

Amendment 36

Proposal for a directive

Article 1 – paragraph 1 – point 3 – point c

Directive 2011/61/EU

Article 7 – paragraph 8

Text proposed by the Commission

Amendment

8. ESMA shall develop draft regulatory technical standards to determine the content of the delegation notifications and the standard forms, templates and procedures for the transmission of the delegation notifications in a language customary to the sphere of finance. The standard forms and templates shall include information fields covering all information referred to in paragraph 5, fourth subparagraph.

deleted

Power is delegated to the Commission to adopt the regulatory technical standards

referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

Or. en

Amendment 37

Proposal for a directive

Article 1 – paragraph 1 – point 3 – point c

Directive 2011/61/EU

Article 7 – paragraph 9

Text proposed by the Commission

9. ESMA shall provide the European Parliament, the Council and the Commission with **regular reports, at least every two years**, analysing market practices regarding delegation to entities located in third countries and compliance with Articles 7 and 20.;

Amendment

9. **By ... [12 months before the date of the review referred to in Article 69b]** ESMA shall provide the European Parliament, the Council and the Commission with **a report** analysing market practices regarding delegation to entities located in third countries and compliance with Articles 7 and 20.;

Or. en

Amendment 38

Proposal for a directive

Article 1 – paragraph 1 – point 5 – point a

Directive 2011/61/EU

Article 15 – paragraph 3 – point d

Text proposed by the Commission

(d) for loan **granting** activities, implement effective policies, procedures and processes for the granting of credit, for assessing the credit risk and for administering and monitoring their credit portfolio, keep those policies, procedures and processes up to date and effective and review them regularly and at least once a year.;

Amendment

(d) for loan **originating** activities, **other than in respect of shareholder loans where such loans do not exceed in aggregate 150% of the net asset value of the AIF**, implement effective policies, procedures and processes for the granting of credit, for assessing the credit risk and for administering and monitoring their credit portfolio, keep those policies, procedures and processes up to date and

effective and review them regularly and at least once a year.;

Or. en

Amendment 39

Proposal for a directive

Article 1 – paragraph 1 – point 5 – point b

Directive 2011/61/EU

Article 15 – paragraph 4a – introductory part

Text proposed by the Commission

4a. An AIFM shall ensure that a loan originated to any single borrower by the AIF it manages does not exceed 20 % of the AIF's capital where the borrower is one of the following:

Amendment

4a. An AIFM shall ensure that a loan originated to any single borrower by the AIF it manages does not exceed 20 % of the AIF's capital ***or commitments or overall subscriptions*** where the borrower is one of the following:

Or. en

Amendment 40

Proposal for a directive

Article 1 – paragraph 1 – point 5 – point b

Directive 2011/61/EU

Article 15 – paragraph 4d – point aa (new)

Text proposed by the Commission

Amendment

(aa) an entity within the same group as the AIFM;

Or. en

Amendment 41

Proposal for a directive

Article 1 – paragraph 1 – point 5 – point b

Directive 2011/61/EU

Article 15 – paragraph 4d – point b

Text proposed by the Commission

Amendment

(b) its depositary;

(b) *its depositary and delegates of its* depositary;

Or. en

Amendment 42

Proposal for a directive

Article 1 – paragraph 1 – point 5 – point b

Directive 2011/61/EU

Article 15 – paragraph 4e

Text proposed by the Commission

Amendment

4e. An AIFM shall ensure that the AIF it manages retains, on an ongoing basis, 5% of the notional value of the loans it has originated and subsequently sold on the secondary market.

deleted

The requirement set out in the first subparagraph does not apply to the loans that the AIF has purchased on the secondary market.’;

Or. en

Amendment 43

Proposal for a directive

Article 1 – paragraph 1 – point 5 – point b

Directive 2011/61/EU

Article 15 – paragraph 4 e a (new)

Text proposed by the Commission

Amendment

4ea. Member States shall prohibit AIFMs from managing AIFs whose investment strategy is to originate loans with the sole purpose of transferring those loans to third parties (“originate-to-distribute”).

Amendment 44

Proposal for a directive

Article 1 – paragraph 1 – point 6

Directive 2011/61/EU

Article 16 – paragraph 2a – subparagraph 1

Text proposed by the Commission

An AIFM shall ensure that the AIF it manages is closed-ended ***if the notional value of its originated loans exceeds 60 %*** of its ***net asset value***.

Amendment

An AIFM shall ensure that the AIF it manages is closed-ended ***when the AIFM is not able to demonstrate to the competent authorities of its home Member State that the AIF has liquidity robustness***.

Or. en

Amendment 45

Proposal for a directive

Article 1 – paragraph 1 – point 6

Directive 2011/61/EU

Article 16 – paragraph 2b

Text proposed by the Commission

2b. After assessing the suitability in relation to the pursued investment strategy, the liquidity profile and the redemption policy, an AIFM that manages an open-ended AIF shall select at least one appropriate liquidity management tool from the list set out in Annex V, points 2 ***to 4***, for possible use in the interest of the AIF's investors. The AIFM shall implement detailed policies and procedures for the activation and deactivation of any selected liquidity management tool and the operational and administrative arrangements for the use of such tool.

Amendment

2b. After assessing the suitability in relation to the pursued investment strategy, the liquidity profile and the redemption policy, an AIFM that manages an open-ended AIF shall select at least one appropriate liquidity management tool from the list set out in Annex V, points 2, ***3, 4, 5, 6 and 8***, for possible use in the interest of the AIF's investors. The AIFM shall implement detailed policies and procedures for the activation and deactivation of any selected liquidity management tool and the operational and administrative arrangements for the use of such tool.

Amendment 46

Proposal for a directive

Article 1 – paragraph 1 – point 6

Directive 2011/61/EU

Article 16 – paragraph 2c – subparagraph 1

Text proposed by the Commission

An AIFM that manages an open-ended AIF may, in the interest of AIF investors, temporarily suspend the repurchase or redemption of the AIF units or activate other liquidity management tools selected from the list set out in Annex V, points 2 **to 4, and** included in the fund rules or the instruments of incorporation of the AIFM.

Amendment

An AIFM that manages an open-ended AIF may, in the interest of AIF investors, temporarily suspend the repurchase or redemption of the AIF **shares or** units or activate other liquidity management tools selected from the list set out in Annex V, points 2, 3, 4, 5, 6 **and 8, where those tools are** included in the fund rules or the instruments of incorporation of the AIFM.

Or. en

Amendment 47

Proposal for a directive

Article 1 – paragraph 1 – point 6

Directive 2011/61/EU

Article 16 – paragraph 2d – subparagraph 1

Text proposed by the Commission

An AIFM shall, without delay, notify the competent authorities of its home Member State **when activating or deactivating a liquidity management tool mentioned in 2b.**

Amendment

Where, in situations of liquidity stress, an AIFM **activates or deactivates one of the liquidity management tools listed in points 1 to 4 of the list set out in Annex V** it shall, without delay, notify the competent authorities of its home Member State.

Or. en

Amendment 48

Proposal for a directive

Article 1 – paragraph 1 – point 6

Directive 2011/61/EU

Article 16 – paragraph 2d – subparagraph 2

Text proposed by the Commission

The competent authorities of the home Member State of the AIFM shall notify, without delay, the competent authorities of a host Member State of the AIFM, **ESMA and ESRB** of any notifications received in accordance with this paragraph.

Amendment

The competent authorities of the home Member State of the AIFM shall notify, without delay, the competent authorities of a host Member State of the AIFM **and ESMA** of any notifications received in accordance with this paragraph. ***The competent authorities of the home Member State of the AIFM shall notify the ESRB if there is any potential risk to the stability and integrity of the financial system.***

Or. en

Amendment 49

Proposal for a directive

Article 1 – paragraph 1 – point 6

Directive 2011/61/EU

Article 16 – paragraph 2f

Text proposed by the Commission

2f. ESMA shall develop draft regulatory technical standards to specify the characteristics of the liquidity management tools set out in Annex V.

Amendment

deleted

Or. en

Amendment 50

Proposal for a directive

Article 1 – paragraph 1 – point 6

Directive 2011/61/EU

Article 16 – paragraph 2f a (new)

Text proposed by the Commission

Amendment

2fa. ESMA shall develop draft regulatory technical standards on the criteria to be used by competent authorities for determining whether an AIF has demonstrated liquidity robustness for the purposes of paragraph 2a.

Or. en

Amendment 51

Proposal for a directive

Article 1 – paragraph 1 – point 6

Directive 2011/61/EU

Article 16 – paragraph 2g

Text proposed by the Commission

Amendment

2g. ESMA shall develop draft regulatory technical standards on criteria for the selection and use of suitable liquidity management tools by the AIFMs for liquidity risk management, including appropriate disclosures to investors, taking into account the capability of such tools to reduce undue advantages for investors that redeem their investments first, and to mitigate financial stability risks.

2g. ESMA shall develop draft regulatory technical standards on criteria for the selection and use of suitable liquidity management tools by the AIFMs for liquidity risk management, including appropriate disclosures to investors, taking into account the capability of such tools to reduce undue advantages for investors that redeem their investments first, and to mitigate financial stability risks. **Those standards shall recognise that the primary responsibility for liquidity risk management remains with the AIFM. They shall allow adequate time for adaptation before they apply, in particular for existing AIFs.**

Or. en

Amendment 52

Proposal for a directive

Article 1 – paragraph 1 – point 6

Directive 2011/61/EU
Article 16 – paragraph 2h

Text proposed by the Commission

2h. Power is delegated to the Commission to adopt the regulatory technical standards referred to in paragraphs **2f** and 2g of this Article in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.;

Amendment

2h. Power is delegated to the Commission to adopt the regulatory technical standards referred to in paragraphs **2fa** and 2g of this Article in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.;

Or. en

Amendment 53

Proposal for a directive

Article 1 – paragraph 1 – point 7 – point c a (new)

Directive 2011/61/EU

Article 20 – paragraph 6 a (new)

Text proposed by the Commission

Amendment

(ca) the following paragraph 6a is inserted:

‘(6a) By way of derogation from paragraphs 1 to 6 of this Article, where the marketing function as referred in point (b) of Annex I, paragraph 2, is performed by one or several distributors which are not acting on behalf of the AIFM, pursuant to an agreement between the AIFM and that distributor or those distributors, such function shall not be considered to be a delegation subject to the requirements set out in paragraphs 1 to 6 of this Article.’

Or. en

Amendment 54

Proposal for a directive

Article 1 – paragraph 1 – point 8 – point b – point i

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36/72

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Directive 2011/61/EU
Article 21 – paragraph 11 – subparagraph 2 – point c

Text proposed by the Commission

(c) the depositary has exercised all due skill, care and diligence in the selection and the appointment of any third party to whom it wants to delegate parts of its tasks, except where that third party is a central securities depository acting in the capacity of an issuer CSD as defined in **Article 1, point (e), of Commission Delegated Regulation (EU) 2017/392***, and keeps exercising all due skill, care and diligence in the periodic review and ongoing monitoring of any third party to whom it has delegated parts of its tasks and of the arrangements of the third party in respect of the matters delegated to it;

Amendment

(c) the depositary has exercised all due skill, care and diligence in the selection and the appointment of any third party to whom it wants to delegate parts of its tasks, except where that third party is a central securities depository acting in the capacity of an issuer CSD as defined in **the delegated act adopted on the basis of Articles 29(3) and 48(10) of Regulation (EU) No 909/2014**, and keeps exercising all due skill, care and diligence in the periodic review and ongoing monitoring of any third party to whom it has delegated parts of its tasks and of the arrangements of the third party in respect of the matters delegated to it;

Or. en

Amendment 55

Proposal for a directive

Article 1 – paragraph 1 – point 8 – point b – point ii

Directive 2011/61/EU

Article 21 – paragraph 11 – subparagraph 5

Text proposed by the Commission

For the purposes of this paragraph, the provision of services by a central securities depository acting in the capacity of an issuer CSD as defined in **Article 1, point (e) of Commission Delegated Regulation (EU) 2017/392** shall not be considered a delegation of the depositary's custody functions. ;

Amendment

For the purposes of this paragraph, the provision of services by a central securities depository acting in the capacity of an issuer CSD as defined in **the delegated act adopted on the basis of Articles 29(3) and 48(10) of Regulation (EU) No 909/2014** shall not be considered a delegation of the depositary's custody functions. **The provision of services by a central securities depository acting in the capacity of an investor CSD as defined in that delegated act shall be considered a delegation of the depositary's custody**

functions.

Or. en

Amendment 56

Proposal for a directive

Article 1 – paragraph 1 – point 8 – point c

Directive 2011/61/EU

Article 21– paragraph 16

Text proposed by the Commission

16. The depositary shall make available to its competent authorities, to the competent authorities of the AIF that has appointed it as a depositary and to the competent authorities of the AIFM that manages that AIF, ***on request***, all information that it has obtained while performing its duties and that may be necessary for the competent authorities of the AIF or the AIFM. If the competent authorities of the AIF or the AIFM are different from those of the depositary, the competent authorities of the depositary shall share the information received without delay with the competent authorities of the AIF and the AIFM.;

Amendment

16. The depositary shall make available to its competent authorities, to the competent authorities of the AIF that has appointed it as a depositary and to the competent authorities of the AIFM that manages that AIF, all information that it has obtained while performing its duties and that may be necessary for the competent authorities of the AIF or the AIFM. If the competent authorities of the AIF or the AIFM are different from those of the depositary, the competent authorities of the depositary shall share the information received without delay with the competent authorities of the AIF and the AIFM, ***and the competent authorities of the AIF or the AIFM shall share without delay with the competent authorities of the depositary any information relevant for the exercise of those authorities' supervisory powers;***

Or. en

Amendment 57

Proposal for a directive

Article 1 – paragraph 1 – point 9 – point a – point ii

Directive 2011/61/EU

Article 23 – paragraph 1 – point ia

Text proposed by the Commission

Amendment

- (ii) *point (ia) is inserted:* *deleted*
(ia) *a list of fees and charges that will be applied in connection with the operation of the AIF and that will be borne by the AIFM or its affiliates.;*

Or. en

Amendment 58

Proposal for a directive

Article 1 – paragraph 1 – point 9 – point b

Directive 2011/61/EU

Article 23 – paragraph 4 – point d

Text proposed by the Commission

Amendment

- (d) originated *loan portfolio*;
(d) *portfolio composition of* originated *loans*;

Or. en

Amendment 59

Proposal for a directive

Article 1 – paragraph 1 – point 9 – point b

Directive 2011/61/EU

Article 23 – paragraph 4 – point e

Text proposed by the Commission

Amendment

- (e) on *a quarterly* basis, all direct and indirect fees and charges that were directly or indirectly charged *or allocated* to the AIF *or to any of its investments*;
(e) on *an annual* basis, all direct and indirect fees and charges that were directly or indirectly charged to the AIF;

Or. en

Amendment 60

Proposal for a directive

Article 1 – paragraph 1 – point 9 – point b

Directive 2011/61/EU

Article 23 – paragraph 4 – point f

Text proposed by the Commission

(f) on *a quarterly* basis, any parent company, subsidiary or special purpose entity established in relation to the AIF's investments by the AIFM, *the staff of the AIFM or the AIFM's direct or indirect affiliates*;

Amendment

(f) on *an annual* basis, any parent company, subsidiary or special purpose entity established in relation to the AIF's investments by the AIFM.

Or. en

Amendment 61

Proposal for a directive

Article 1 – paragraph 1 – point 10 – point a

Directive 2011/61/EU

Article 24 – paragraph 1 – subparagraph 1

Text proposed by the Commission

An AIFM shall regularly report to the competent authorities of its home Member State on the markets and instruments in which it trades on behalf of the AIFs it manages.

Amendment

An AIFM shall regularly report to the competent authorities of its home Member State on the markets and instruments in which it trades on behalf of the AIFs it manages, *and on other relevant economic and accounting information set out in paragraph 2.*

Or. en

Amendment 62

Proposal for a directive

Article 1 – paragraph 1 – point 10 – point b a (new)

Directive 2011/61/EU

Article 24 – paragraph 2 – points ea and eb (new)

(ba) in paragraph 2, the following points are added:

‘(ea) the total amount of leverage of the net asset value employed by the AIF;

(eb) information regarding delegation arrangements concerning portfolio management or risk management functions and in particular:

(i) information on the entities to which such functions have been delegated (name and LEI of each delegate, its jurisdiction of establishment and, where relevant, its supervisory authority);

(ii) information on the function delegated, the type of delegation (full or partial), and the date of the delegation agreement or contract;

(iii) where sub-delegation arrangements are in place, the same information in respect of the sub-delegates and the functions sub-delegated;

(iv) the date of conclusion and expiration of the delegation and sub-delegation arrangements;

(v) a description of the periodic due diligence measures carried out by the AIFM to oversee, monitor and control the delegate, including the date of performance of those measures, the issues identified and, where relevant, the measures and timeline adopted to address those issues.

Or. en

Amendment 63

Proposal for a directive

Article 1 – paragraph 1 – point 10 – point c

Directive 2011/61/EU

Article 24 – paragraph 6 – subparagraph 1

Text proposed by the Commission

ESMA shall develop draft regulatory technical standards specifying the details to be reported according to paragraphs 1 and 2. ESMA shall take into account other reporting requirements to which the AIFMs are subject and the report issued in accordance with paragraph 2 of Article 69b.

Amendment

ESMA shall develop draft regulatory technical standards specifying the details to be reported according to paragraphs 1 and 2. ***In order to reduce duplication and inconsistencies between reporting frameworks***, ESMA shall take into account other reporting requirements to which the AIFMs are subject and the report issued in accordance with paragraph 2 of Article 69b.

Or. en

Amendment 64

Proposal for a directive

Article 1 – paragraph 1 – point 10 – point d

Directive 2011/61/EU

Article 24 – paragraph 7 – subparagraph 1 – point a

Text proposed by the Commission

(a) the format and data standards for the reports referred to in paragraphs 1 and 2;

Amendment

(a) the format and data standards for the reports referred to in paragraphs 1 and 2, ***which shall include in particular global LEIs and international securities identification numbers (ISINs)***;

Or. en

Amendment 65

Proposal for a directive

Article 1 – paragraph 1 – point 10 – point d

Directive 2011/61/EU

Article 24 – paragraph 7 – subparagraph 1 – point b a (new)

Text proposed by the Commission

Amendment

(ba) methods and arrangements for submitting the reports referred to in paragraphs 1 and 2, including methods

and arrangements to improve data standardisation and efficient sharing and use of data already reported in any Union reporting framework by any relevant competent authority, at Union or national level.

Or. en

Amendment 66

Proposal for a directive

Article 1 – paragraph 1 – point 10 – point d

Directive 2011/61/EU

Article 24 – paragraph 7 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

Whenn developing those draft technical standards, ESMA shall take into account international developments and standards agreed at Union or global level and the findings of the report issued in accordance with Article 69b(2).

Or. en

Amendment 67

Proposal for a directive

Article 1 – paragraph 1 – point 14

Directive 2011/61/EU

Article 38a – paragraph 1

Text proposed by the Commission

Amendment

1. ESMA shall, ***on a regular basis and at least every two years***, conduct a peer review analysis of the supervisory activities of the competent authorities in relation to the application of Article 20. That peer review analysis shall focus on the measures taken to prevent that AIFMs, which delegate performance of portfolio management or risk management to third

1. ***By ... [12 months before the date of the review referred to in Article 69b], and otherwise as necessary***, ESMA shall conduct a peer review analysis of the supervisory activities of the competent authorities in relation to the application of Article 20. That peer review analysis shall focus on the measures taken to prevent that AIFMs, which delegate performance of

parties located in third countries, become letter-box entities.

portfolio management or risk management to third parties located in third countries, become letter-box entities.

Or. en

Amendment 68

Proposal for a directive

Article 1 – paragraph 1 – point 17

Directive 2011/61/EU

Article 46 – paragraph 2 – point j

Text proposed by the Commission

(j) in the interest of investors ***or of the public***, require AIFMs to activate or deactivate a liquidity management tool referred to in point 1 or 2 of Annex V or selected by the AIFM in accordance with Article 16(2b), whichever is more suitable considering the type of open-ended AIF or group of open-ended AIFs concerned and ***investor protection or*** financial stability risks that necessitate this requirement.;

Amendment

(j) in the interest of investors, ***in exceptional circumstances and after consulting the AIFM***, require AIFMs to activate or deactivate a liquidity management tool referred to in point 1 or 2 of Annex V or selected by the AIFM in accordance with Article 16(2b), whichever is more suitable considering the type of open-ended AIF or group of open-ended AIFs concerned and ***if there are*** financial stability risks that necessitate this requirement.;

Or. en

Amendment 69

Proposal for a directive

Article 1 – paragraph 1 – point 18 – point b

Directive 2011/61/EU

Article 47 – paragraph 4 – point d

Text proposed by the Commission

(b) ***in paragraph 4, the following point (d) is added:***

(d) ***require non-EU AIFMs that are marketing in the Union AIFs that they manage or EU AIFMs managing non-EU AIFs to activate or deactivate a liquidity***

Amendment

deleted

management tool referred to in point 1 or 2 of Annex V or selected by the AIFM, whichever is more suitable considering the type of open-ended AIF concerned and the investor protection or financial stability risks that necessitate this requirement.;

Or. en

Amendment 70

Proposal for a directive

Article 1 – paragraph 1 – point 19 – point a

Directive 2011/61/EU

Article 50 – paragraph 5

Text proposed by the Commission

5. Where the competent authorities of one Member State have reasonable grounds to suspect that acts contrary to this Directive are being or have been carried out by an AIFM not subject to supervision of those competent authorities, they shall notify ESMA and the competent authorities of the home and host Member States of the AIFM concerned thereof in as specific a manner as possible. The recipient authorities shall take appropriate action, shall inform ESMA and the notifying competent authorities of the outcome of that action and, to the extent possible, of significant interim developments. This paragraph shall be without prejudice to the competences of the notifying competent authority.;

Amendment

5. Where the competent authorities of one Member State have reasonable grounds to suspect that acts contrary to this Directive are being or have been carried out by an AIFM not subject to supervision of those competent authorities, ***or by an entity appointed as depositary by an AIFM***, they shall notify ESMA and the competent authorities of the home and host Member States of the AIFM ***or the entity*** concerned thereof in as specific a manner as possible. The recipient authorities shall take appropriate action, shall inform ESMA and the notifying competent authorities of the outcome of that action and, to the extent possible, of significant interim developments. This paragraph shall be without prejudice to the competences of the notifying competent authority.;

Or. en

Amendment 71

Proposal for a directive

Article 1 – paragraph 1 – point 19 – point b

Directive 2011/61/EU
Article 50 – paragraph 5a

Text proposed by the Commission

5a. The competent authorities of the home Member State of an AIFM shall notify the competent authorities of the host Member State of the AIFM, ***ESMA and the ESRB*** prior to exercising powers pursuant to Article 46(2), point (j), or Article 47(4), point (d).

Amendment

5a. The competent authorities of the home Member State of an AIFM shall notify the competent authorities of the host Member State of the AIFM ***and ESMA*** prior to exercising powers pursuant to Article 46(2), point (j), or Article 47(4), point (d). ***The competent authorities of the home Member State of the AIFM shall notify ESRB if there is any potential risk to the stability and integrity of the financial system.***

Or. en

Amendment 72

Proposal for a directive

Article 1 – paragraph 1 – point 19 – point b

Directive 2011/61/EU
Article 50 – paragraph 5b

Text proposed by the Commission

5b. The competent authority of the host Member State of an AIFM may request the competent authority of the home Member State of the AIFM to exercise powers laid down in Article 46(2), point (j) or Article 47(4), point (d), specifying the reasons for the request and notifying ESMA and the ESRB thereof.

Amendment

5b. The competent authority of the host Member State of an AIFM may request the competent authority of the home Member State of the AIFM to exercise powers laid down in Article 46(2), point (j) or Article 47(4), point (d), specifying the reasons for the request and notifying ESMA and, ***in the case of any potential risk to the stability and integrity of the financial system,*** the ESRB thereof.

Or. en

Amendment 73

Proposal for a directive

Article 1 – paragraph 1 – point 19 – point b

Text proposed by the Commission

5c. Where the competent authority of the home Member State of the AIFM does not agree with the request referred to in paragraph 5b, it shall inform the competent authority of the host Member State of the AIFM, ESMA and the ESRB thereof, stating its reasons.

Amendment

5c. Where the competent authority of the home Member State of the AIFM does not agree with the request referred to in paragraph 5b, it shall inform the competent authority of the host Member State of the AIFM **and ESMA and, in case of any potential risk to the stability and integrity of the financial system,** the ESRB thereof, stating its reasons.

Or. en

Amendment 74

Proposal for a directive

Article 1 – paragraph 1 – point 19 – point c

Directive 2011/61/EU

Article 50 – paragraph 7 – subparagraph 1

Text proposed by the Commission

ESMA shall develop draft regulatory technical standards indicating in which situations the competent authorities may exercise the powers set out in Article 46(2), point (j) and in which situations they may put forward the requests referred to in paragraphs 5b and 5f. When developing those standards, ESMA shall consider the potential implications of such supervisory intervention for investor protection and the financial stability in another Member State or in the Union.

Amendment

ESMA shall develop draft regulatory technical standards indicating in which situations the competent authorities may exercise the powers set out in Article 46(2), point (j) and in which situations they may put forward the requests referred to in paragraphs 5b and 5f. When developing those standards, ESMA shall consider the potential implications of such supervisory intervention for investor protection and the financial stability in another Member State or in the Union. ***Those standards shall recognise that the primary responsibility for liquidity risk management remains with the AIFM and that intervention by the competent authorities is a last resort.***

Or. en

Amendment 75

Proposal for a directive

Article 1 – paragraph 1 – point 20

Directive 2011/61/EU

Article 61 – paragraph 5

Text proposed by the Commission

5. The competent authorities of the home Member State of an AIF or in case where the AIF is not regulated the competent authorities of the home Member State of an AIFM may allow institutions referred to in point (a) of Article 21(3) and established in another Member State to be appointed as a depositary. This provision shall be without prejudice to the full application of Article 21, with the exception of point (a) of paragraph 5 of that Article on the place where the depositary is to be established.;

Amendment

5. The competent authorities of the home Member State of an AIF or, in case where the AIF is not regulated, the competent authorities of the home Member State of an AIFM, may allow institutions referred to in point (a) of Article 21(3) and established in another Member State to be appointed as a depositary. ***When exercising that possibility, the competent authorities shall decide on a case-by-case basis and shall notify ESMA of decisions taken in that regard.*** This provision shall be without prejudice to the full application of Article 21, with the exception of point (a) of paragraph 5 of that Article on the place where the depositary is to be established.;

Or. en

Amendment 76

Proposal for a directive

Article 1 – paragraph 1 – point 21

Directive 2011/61/EU

Article 69b – paragraph 1 – introductory part

Text proposed by the Commission

1. By [***Please insert date*** = 60 months after the entry into force of this Directive] and following the peer ***reviews*** by ESMA referred to in Article 38a and reports produced by ESMA in accordance with Article 7(9), the Commission shall initiate a review of the functioning of the rules laid down in this Directive and the experience acquired in applying them. That review

Amendment

1. By .. [60 months after the entry into force of this Directive] and following the peer ***review*** by ESMA referred to in Article 38a and reports produced by ESMA in accordance with Article 7(9), the Commission shall initiate a review of the functioning of the rules laid down in this Directive and the experience acquired in applying them. That review shall include

shall include an assessment of the following aspects:

an assessment of the following aspects:

Or. en

Amendment 77

Proposal for a directive

Article 1 – paragraph 1 – point 21

Directive 2011/61/EU

Article 69b – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1 a. For the purposes of point (d) of paragraph 1, the Commission shall by ... [24 months after the entry into force of this Directive] carry out a comprehensive study on the potential benefits and risks of introducing an EU depositary passport.

Or. en

Amendment 78

Proposal for a directive

Article 2 – paragraph 1 – point 3 – point b a (new)

Directive 2009/65/EC

Article 13 – paragraph 2a (new)

Text proposed by the Commission

Amendment

(ba) the following paragraph 2a is inserted:

‘2a. By way of derogation from paragraphs 1 and 2 of this Article, where the marketing function, as referred to in the third indent of Annex II, is performed by one or several distributors which are not acting on behalf of the UCITS, pursuant to an agreement between the UCITS and that distributor or those distributors, such function shall not be considered to be a delegation that is subject to the requirements set out in

paragraphs 1 and 2 of this Article.'

Or. en

Amendment 79

Proposal for a directive

Article 2 – paragraph 1 – point 3 – point c – introductory part

Directive 2009/65/EC

Article 13 – paragraphs 3 to 6

Text proposed by the Commission

Amendment

(c) the following paragraphs 3, 4, 5 and 6 are added:

(c) the following paragraphs 5 and 6 are added:

Or. en

Amendment 80

Proposal for a directive

Article 2 – paragraph 1 – point 3 – point c

Directive 2009/65/EC

Article 13 – paragraph 3

Text proposed by the Commission

Amendment

3. *Where a management company delegates more portfolio management or risk management functions to entities located in third countries than it retains, the competent authorities shall, on an annual basis, notify ESMA of all such delegations ('delegation notifications').*

deleted

The delegation notifications shall include the following:

(a) information on the UCITS and its management company concerned;

(b) information on the delegate, specifying the delegate's domicile and whether it is a regulated entity or not;

(c) a description of the delegated portfolio management and risk

management functions;

(d) a description of the retained portfolio management and risk management functions;

(e) any other information necessary to analyse the delegation arrangements;

(f) a description of the competent authorities' supervisory activities, including desk-based reviews and on-site inspections and the results of such activities;

(g) any details on the cooperation between the competent authority and the supervisory authority of the delegate.

Or. en

Amendment 81

Proposal for a directive

Article 2 – paragraph 1 – point 3 – point c

Directive 2009/65/EC

Article 13 – paragraph 4

Text proposed by the Commission

Amendment

4. ESMA shall develop draft regulatory technical standards to determine the content of the delegation notifications and the standard forms, templates and procedures for the transmission of the delegation notifications in a language customary to the sphere of finance. The standard forms and templates shall include information fields covering all information referred to in paragraph 3.

deleted

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

Or. en

Amendment 82

Proposal for a directive

Article 2 – paragraph 1 – point 3 – point c

Directive 2009/65/EC

Article 13 – paragraph 5

Text proposed by the Commission

5. ESMA shall provide the European Parliament, the Council and the Commission with **regular reports, at least every two years**, analysing market practices regarding delegation to entities located in third countries and compliance with Articles 7 and 13.

Amendment

5. **By ... [12 months before the date of the review referred to in Article 110a]** ESMA shall provide the European Parliament, the Council and the Commission with **a report** analysing market practices regarding delegation to entities located in third countries and compliance with Articles 7 and 13.

Or. en

Amendment 83

Proposal for a directive

Article 2 – paragraph 1 – point 4

Directive 2009/65/EC

Article 18a – paragraph 2

Text proposed by the Commission

2. After assessing the suitability in relation to the pursued investment strategy, the liquidity profile and the redemption policy, a management company shall select at least one appropriate liquidity management tool from the list set out in Annex IIA, points 2 **to 4**, and include in the fund **rules** or the instruments of incorporation of the investment company for possible use in the interest of the UCITS' investors. The management company shall implement detailed policies and procedures for the activation and deactivation of any selected liquidity management tool and the operational and administrative arrangements for the use of

Amendment

2. After assessing the suitability in relation to the pursued investment strategy, the liquidity profile and the redemption policy, a management company shall select at least one appropriate liquidity management tool from the list set out in Annex IIA, points 2, **3, 4, 5, 6 and 8**, and include in the fund **rule** or the instruments of incorporation of the investment company for possible use in the interest of the UCITS' investors. The management company shall implement detailed policies and procedures for the activation and deactivation of any selected liquidity management tool and the operational and administrative arrangements for the use of

such tool.

such tool.

Or. en

Amendment 84

Proposal for a directive

Article 2 – paragraph 1 – point 4

Directive 2009/65/EC

Article 18a – paragraph 3

Text proposed by the Commission

Amendment

3. ESMA shall develop draft regulatory technical standards to define and specify the characteristics of the liquidity management tools set out in Annex IIA.

deleted

Or. en

Amendment 85

Proposal for a directive

Article 2 – paragraph 1 – point 4

Directive 2009/65/EC

Article 18a – paragraph 4

Text proposed by the Commission

Amendment

4. ESMA shall develop draft regulatory technical standards on criteria for the selection and use of suitable liquidity management tools by the management companies for liquidity risk management, including appropriate disclosures to investors, taking into account the capability of such tools to reduce undue advantages for investors that redeem their investments first, and to mitigate financial stability risks.

4. ESMA shall develop draft regulatory technical standards on criteria for the selection and use of suitable liquidity management tools by the management companies for liquidity risk management, including appropriate disclosures to investors, taking into account the capability of such tools to reduce undue advantages for investors that redeem their investments first, and to mitigate financial stability risks. **Those standards shall recognise that the primary responsibility for liquidity risk management remains with the UCITS. They shall allow adequate time for**

adaptation before they apply, in particular for existing UCITS.

Or. en

Amendment 86

Proposal for a directive

Article 2 – paragraph 1 – point 5

Directive 2009/65/EC

Article 20a – paragraph 1

Text proposed by the Commission

1. A management company shall regularly report to the competent authorities of its home Member State on the markets and instruments in which it trades on behalf of the UCITS it manages.

Amendment

1. A management company shall regularly report to the competent authorities of its home Member State on the markets and instruments in which it trades on behalf of the UCITS it manages, ***and other relevant economic and accounting information contained in paragraph 1a.***

Or. en

Amendment 87

Proposal for a directive

Article 2 – paragraph 1 – point 5

Directive 2009/65/EC

Article 20a – paragraph 1a (new)

Text proposed by the Commission

Amendment

1 a. A management company shall regularly report to the competent authorities of its home Member State information regarding delegation arrangements concerning portfolio management or risk management functions and in particular:

(i) information on the entities to which such functions have been delegated (name and legal entity identifier of each delegate, its jurisdiction of establishment

and, where relevant, its supervisory authority);

(ii) information on the function delegated, the type of delegation (full or partial), and the date of the delegation agreement or contract;

(iii) where sub-delegation arrangements are in place, the same information in respect of the sub-delegates and the functions sub-delegated;

(iv) the date of conclusion and expiration of the delegation and sub-delegation arrangements;

(v) a description of periodic due diligence measures carried out by the management company to oversee, monitor and control the delegate, including the date of performance of these measures, the issues identified and, where relevant, the measures and timeline adopted to address those issues.

Or. en

Amendment 88

Proposal for a directive

Article 2 – paragraph 1 – point 5

Directive 2009/65/EC

Article 20a – paragraph 2 – subparagraph 1

Text proposed by the Commission

ESMA shall develop draft regulatory technical standards specifying the details to be reported in accordance with **paragraph 1**. ESMA shall take into account other reporting requirements to which the management companies are subject and the report issued in accordance with Article 20b.

Amendment

ESMA shall develop draft regulatory technical standards specifying the details to be reported in accordance with **paragraphs 1 and 1a of this Article**. ESMA shall take into account other reporting requirements to which the management companies are subject and the report issued in accordance with Article 20b.

Or. en

Amendment 89

Proposal for a directive

Article 2 – paragraph 1 – point 5

Directive 2009/65/EC

Article 20a – paragraph 3 – subparagraph 1 – point a

Text proposed by the Commission

(a) the format and data standards for the reports referred to in **paragraph 1**;

Amendment

(a) the format and data standards for the reports referred to in **paragraphs 1 and 1a**;

Or. en

Amendment 90

Proposal for a directive

Article 2 – paragraph 1 – point 5

Directive 2009/65/EC

Article 20a – paragraph 3 – subparagraph 1 – point b a (new)

Text proposed by the Commission

Amendment

(ba) methods and arrangements for submitting the reports referred to in paragraphs 1 and 1a, including methods and arrangements to improve data standardisation and efficient sharing and use of data already reported within any Union reporting framework by any relevant competent authority, at Union or national level.

Or. en

Amendment 91

Proposal for a directive

Article 2 – paragraph 1 – point 5

Directive 2009/65/EC

Article 20a – paragraph 3 – subparagraph 1a (new)

Text proposed by the Commission

Amendment

1a. *When developing those draft technical standards, ESMA shall take into account international developments and standards agreed at Union or global level and the findings of the report issued in accordance with Article 20b.*

Or. en

Amendment 92

Proposal for a directive

Article 2 – paragraph 1 – point 6 – point a

Directive 2009/65/EC

Article 22a – paragraph 2 – point c

Text proposed by the Commission

Amendment

(c) the depositary has exercised all due skill, care and diligence in the selection and the appointment of any third party to whom it intends to delegate parts of its tasks, except where that third party is a central securities depository acting in the capacity of an issuer CSD as defined in **Article 1, point (e) of Commission Delegated Regulation (EU) 2017/392***, and continues to exercise all due skill, care and diligence in the periodic review and ongoing monitoring of any third party to which it has delegated parts of its tasks and of the arrangements of the third party in respect of the matters delegated to it.

(c) the depositary has exercised all due skill, care and diligence in the selection and the appointment of any third party to whom it intends to delegate parts of its tasks, except where that third party is a central securities depository acting in the capacity of an issuer CSD as defined in ***the delegated act adopted on the basis of Articles 29(3) and 48(10) of Regulation (EU) No 909/2014*** and continues to exercise all due skill, care and diligence in the periodic review and ongoing monitoring of any third party to which it has delegated parts of its tasks and of the arrangements of the third party in respect of the matters delegated to it.

*** Commission Delegated Regulation (EU) 2017/392 of 11 November 2016 supplementing Regulation (EU) No 909/2014 of the European Parliament and of the Council with regard to regulatory technical standards on authorisation, supervisory and operational requirements for central securities depositories (OJ L 65, 10.3.2017, p. 48)';**

Amendment 93

Proposal for a directive

Article 2 – paragraph 1 – point 6 – point b

Directive 2009/65/EC

Article 22a – paragraph 4

Text proposed by the Commission

4. For the purposes of this paragraph, the provision of services by a central securities depository acting in the capacity of an issuer CSD as defined in **Article 1, point (e), of Commission Delegated Regulation (EU) 2017/392** shall not be considered a delegation of the depository's custody functions. ;

Amendment

4. For the purposes of this paragraph, the provision of services by a central securities depository acting in the capacity of an issuer CSD as defined in **the delegated act adopted on the basis of Articles 29(3) and 48(10) of Regulation (EU) No 909/2014** shall not be considered a delegation of the depository's custody functions. ;

Amendment 94

Proposal for a directive

Article 2 – paragraph 1 – point 8

Directive 2009/65/EC

Article 84 – paragraph 2 – point b

Text proposed by the Commission

(b) in the interest of the unit-holders or of the public, competent authorities of a UCITS home Member State may require a UCITS to activate a liquidity management tool referred to in points 1 or 2 of Annex IIA or selected and notified by the UCITS in accordance with Article 18a(2), whichever is more suitable considering the type of UCITS and the risks that necessitate taking this measure.

Amendment

(b) in the interest of the unit-holders or of the public, **in exceptional circumstances and after consulting the UCITS**, competent authorities of a UCITS home Member State may require a UCITS to activate a liquidity management tool referred to in points 1 or 2 of Annex IIA or selected and notified by the UCITS in accordance with Article 18a(2), whichever is more suitable considering the type of UCITS and the risks that necessitate taking this measure.

Amendment 95

Proposal for a directive

Article 2 – paragraph 1 – point 8

Directive 2009/65/CE

Article 84 – paragraph 3 – subparagraph 1

Text proposed by the Commission

The UCITS shall notify, without delay, the competent authorities of *their* home Member State and the competent authorities of all Member States in which it markets its units, ***when activating or deactivating a liquidity management tool referred to in paragraph 2, point (a).***

Amendment

Where a UCITS uses one of the liquidity management tools listed at points 1 to 4 of the list set out in Annex IIA, in situations of liquidity stress, it shall notify, without delay, the competent authorities of *its* home Member State and the competent authorities of all Member States in which it markets its units.

Or. en

Amendment 96

Proposal for a directive

Article 2 – paragraph 1 – point 8

Directive 2009/65/EC

Article 84 – paragraph 3 – subparagraph 2

Text proposed by the Commission

The competent authorities of the home Member State of the UCITS shall inform, without delay, ESMA ***and the ESRB*** about any notification received in accordance with this paragraph.

Amendment

The competent authorities of the home Member State of the UCITS shall inform, without delay, ESMA about any notification received in accordance with this paragraph. ***The competent authorities of the home Member State of the UCITS shall inform ESRB if there is any potential risk to stability and integrity of financial system.***

Or. en

Amendment 97

Proposal for a directive

Article 2 – paragraph 1 – point 8

Directive 2009/65/EC

Article 84 – paragraph 3a

Text proposed by the Commission

3a. The competent authorities of the UCITS home Member State shall notify the competent authorities of all Member States in which the UCITS markets its units, ESMA **and the ESRB** prior to exercising powers pursuant to paragraph 2, point (b).

Amendment

3a. The competent authorities of the UCITS home Member State shall notify the competent authorities of all Member States in which the UCITS markets its units, ESMA prior to exercising powers pursuant to paragraph 2, point (b). ***The competent authorities of the home Member State of the UCITS shall inform ESRB if there is any potential risk to stability and integrity of financial system.***

Or. en

Amendment 98

Proposal for a directive

Article 2 – paragraph 1 – point 8

Directive 2009/65/EC

Article 84 – paragraph 3b

Text proposed by the Commission

3b. The competent authority of the Member States in which a UCITS markets its units may request the competent authority of the UCITS home Member State to exercise powers laid down in paragraph 2, point (b), specifying the reasons for the request and notifying ESMA and the ESRB thereof.

Amendment

3b. The competent authority of the Member States in which a UCITS markets its units may request the competent authority of the UCITS home Member State to exercise powers laid down in paragraph 2, point (b), specifying the reasons for the request and notifying ESMA and, ***in case of any potential risk to the stability and integrity of the financial system,*** the ESRB thereof.

Or. en

Amendment 99

Proposal for a directive

Article 2 – paragraph 1 – point 8

Directive 2009/65/EC

Article 84 – paragraph 3c

Text proposed by the Commission

3c. Where the competent authority of the UCITS home Member State does not agree with the request referred to in paragraph 3b, it shall inform the requesting competent authority, ESMA and the ESRB thereof, stating the reasons for the disagreement.

Amendment

3c. Where the competent authority of the UCITS home Member State does not agree with the request referred to in paragraph 3b, it shall inform the requesting competent authority, ESMA and, ***in case of any potential risk to the stability and integrity of the financial system***, the ESRB thereof, stating the reasons for the disagreement.

Or. en

Amendment 100

Proposal for a directive

Article 2 – paragraph 1 – point 8

Directive 2009/65/EC

Article 84 – paragraph 3f

Text proposed by the Commission

3f. ESMA shall develop draft regulatory technical standards indicating in which situations the competent authorities may exercise the powers set out in paragraph 2, point (b). When developing those standards, ESMA shall consider the potential implications of such supervisory intervention for investor protection and the financial stability in another Member State or in the Union.

Amendment

3f. ESMA shall develop draft regulatory technical standards indicating in which situations the competent authorities may exercise the powers set out in paragraph 2, point (b). When developing those standards, ESMA shall consider the potential implications of such supervisory intervention for investor protection and the financial stability in another Member State or in the Union. ***Those standards shall recognise that the primary responsibility for liquidity risk management remains with the UCITS and that intervention by the competent authorities is a last resort.***

Or. en

Amendment 101

Proposal for a directive

Article 2 – paragraph 1 – point 9

Directive 2009/65/EC

Article 98 – paragraph 3 – subparagraph 1

Text proposed by the Commission

The competent authority of the UCITS host Member State may request the competent authority of the UCITS home Member State to exercise, without delay, powers laid down in paragraph 2 specifying the reasons for its request and notifying ESMA and, if there are potential risks to the stability and integrity of the financial system, the ESRB thereof.

Amendment

The competent authority of the UCITS host Member State may, ***in exceptional circumstances***, request the competent authority of the UCITS home Member State to exercise, without delay, powers laid down in paragraph 2 specifying the reasons for its request and notifying ESMA and, if there are potential risks to the stability and integrity of the financial system, the ESRB thereof.

Or. en

Amendment 102

Proposal for a directive

Article 2 – paragraph 1 – point 10

Directive 2009/65/EC

Article 101a – paragraph 1

Text proposed by the Commission

1. ESMA shall, ***on a regular basis and at least every two years***, conduct a peer review analysis of the supervisory activities of the competent authorities in relation to the application of Article 13. That peer review analysis shall focus on the measures taken to prevent that management companies, which delegate performance of portfolio management or risk management to third parties located in third countries, become letter-box entities.

Amendment

1. ***By ... [12 months before the date of the review referred to in Article 110a], and otherwise as necessary***, ESMA shall conduct a peer review analysis of the supervisory activities of the competent authorities in relation to the application of Article 13. That peer review analysis shall focus on the measures taken to prevent that management companies, which delegate performance of portfolio management or risk management to third parties located in third countries, become letter-box entities.

Or. en

Amendment 103

Proposal for a directive

Annex II

Directive 2011/61/EU

Annex V – title

Text proposed by the Commission

LIQUIDITY MANAGEMENT
INSTRUMENTS AVAILABLE TO
AIFMs MANAGING OPEN-ENDED
AIFs

Amendment

LIQUIDITY MANAGEMENT **TOOLS**
AVAILABLE TO AIFMs MANAGING
OPEN-ENDED AIFs

Or. en

Amendment 104

Proposal for a directive

Annex II

Directive 2011/61/EU

Annex V – point 1

Text proposed by the Commission

(1) Suspension of redemptions and subscriptions: suspension of redemptions and subscriptions implies that investors are temporarily unable to redeem or purchase fund's shares.

Amendment

(1) Suspension of redemptions and subscriptions: suspension of redemptions and subscriptions implies that investors are temporarily unable to redeem or purchase fund's **units or** shares.

Or. en

Amendment 105

Proposal for a directive

Annex II

Directive 2011/61/EU

Annex V – point 2

Text proposed by the Commission

(2) Redemption gates: a redemption gate is a temporary restriction of the right

Amendment

(2) Redemption gates: a redemption gate is a temporary restriction of the right

of shareholders to redeem their shares. This restriction *may be full, so that investors cannot redeem their shares at all, or* partial, so that investors can only redeem a certain portion of their shares.

of shareholders to redeem their *units or* shares. This restriction *is* partial, so that investors can only redeem a certain portion of their *units or* shares.

Or. en

Amendment 106

Proposal for a directive
Annex II
Directive 2011/61/EU
Annex V – point 3

Text proposed by the Commission

(3) Notice periods: a notice period refers to the period of advance notice that investors must give to fund managers when redeeming their shares.

Amendment

(3) Notice periods: a notice period refers to the period of advance notice that investors must give to fund managers when redeeming their *units or* shares.

Or. en

Amendment 107

Proposal for a directive
Annex II
Directive 2011/61/EU
Annex V – point 4

Text proposed by the Commission

(4) Redemption fees: a redemption fee is a fee charged to investors when redeeming their fund's shares.

Amendment

(4) Redemption fees: a redemption fee is a *pre-determined* fee charged to investors when redeeming their fund's *units or* shares.

Or. en

Amendment 108

Proposal for a directive

Annex II

Directive 2011/61/EU

Annex V – point 5

Text proposed by the Commission

(5) Swing pricing: swing pricing can be used to adjust the price of shares in an investment fund so that it reflects the cost of fund transactions resulting from investor activity.

Amendment

(5) Swing pricing: swing pricing can be used to adjust the price of **units or** shares in an investment fund so that it reflects the cost of fund transactions resulting from investor activity.

Or. en

Amendment 109

Proposal for a directive

Annex II

Directive 2011/61/EU

Annex V – point 6

Text proposed by the Commission

(6) Anti-dilution levy: an anti-dilution levy is a charge applied to individual transacting investors, payable to the fund, to protect remaining investors from bearing the costs associated with purchases or sales of assets because of large inflows or outflows. An anti-dilution levy does not involve any adjustment to the value of the fund's shares.

Amendment

(6) Anti-dilution levy: an anti-dilution levy is a charge applied to individual transacting investors, payable to the fund, to protect remaining investors from bearing the costs associated with purchases or sales of assets because of large inflows or outflows. An anti-dilution levy does not involve any adjustment to the value of the fund's **units or** shares. ***The levy shall be calculated taking into consideration ongoing liquidity costs and market conditions.***

Or. en

Amendment 110

Proposal for a directive

Annex IV

Directive 2009/65/EC
Annex IIA – title

Text proposed by the Commission

LIQUIDITY MANAGEMENT
INSTRUMENTS AVAILABLE TO
UCITS

Amendment

LIQUIDITY MANAGEMENT **TOOLS**
AVAILABLE TO UCITS

Or. en

Amendment 111

Proposal for a directive Annex IV

Directive 2009/65/EC
Annex IIA – point 1

Text proposed by the Commission

(1) Suspension of redemptions and subscriptions: suspension of redemptions and subscriptions implies that investors are temporarily unable to redeem or purchase fund's *shares*.

Amendment

(1) Suspension of redemptions and subscriptions: suspension of redemptions and subscriptions implies that investors are temporarily unable to redeem or purchase fund's **units**.

Or. en

Amendment 112

Proposal for a directive Annex IV

Directive 2009/65/EC
Annex IIA – point 2

Text proposed by the Commission

(2) Redemption gates: a redemption gate is a temporary restriction of the right of *shareholders* to redeem their *shares*. This restriction **may be full, so that investors cannot redeem their shares at all, or** partial, so that investors can only redeem a certain portion of their *shares*.

Amendment

(2) Redemption gates: a redemption gate is a temporary restriction of the right of **unitholders** to redeem their **units**. This restriction **is** partial, so that investors can only redeem a certain portion of their **units**.

Amendment 113

Proposal for a directive

Annex IV

Directive 2009/65/EC

Annex IIA – point 3

Text proposed by the Commission

(3) Notice periods: a notice period refers to the period of advance notice that investors must give to fund managers when redeeming their *shares*.

Amendment

(3) Notice periods: a notice period refers to the period of advance notice that investors must give to fund managers when redeeming their *units*.

Or. en

Amendment 114

Proposal for a directive

Annex IV

Directive 2009/65/EC

Annex IIA – point 4

Text proposed by the Commission

(4) Redemption fees: a redemption fee is a fee charged to investors when redeeming their fund's *shares*.

Amendment

(4) Redemption fees: a redemption fee is a fee charged to investors when redeeming their fund's *units*.

Or. en

Amendment 115

Proposal for a directive

Annex IV

Directive 2009/65/EC

Annex IIA – point 5

Text proposed by the Commission

(5) Swing pricing: swing pricing can be used to adjust the price of *shares* in an

Amendment

(5) Swing pricing: swing pricing can be used to adjust the price of *units* in an

investment fund so that it reflects the cost of fund transactions resulting from investor activity.

investment fund so that it reflects the cost of fund transactions resulting from investor activity.

Or. en

Amendment 116

Proposal for a directive

Annex IV

Directive 2009/65/EC

Annex IIA – point 6

Text proposed by the Commission

(6) Anti-dilution levy: an anti-dilution levy is a charge applied to individual transacting investors, payable to the fund, to protect remaining investors from bearing the costs associated with purchases or sales of assets because of large inflows or outflows. An anti-dilution levy does not involve any adjustment to the value of the fund's *shares*.

Amendment

(6) Anti-dilution levy: an anti-dilution levy is a charge applied to individual transacting investors, payable to the fund, to protect remaining investors from bearing the costs associated with purchases or sales of assets because of large inflows or outflows. An anti-dilution levy does not involve any adjustment to the value of the fund's *units*.

Or. en

Amendment 117

Proposal for a directive

Annex IV

Directive 2011/65/EC

Annex IIA – point 7

Text proposed by the Commission

(7) Redemptions in kind: redemptions-in-kind allow the fund manager to meet a redemption request by transferring securities held by the fund, instead of cash, to the redeeming *shareholders*.

Amendment

(7) Redemptions in kind: redemptions-in-kind allow the fund manager to meet a redemption request by transferring securities held by the fund, instead of cash, to the redeeming *unitholders*.

Or. en

EXPLANATORY STATEMENT

Background to the Commission proposal

The Alternative Investment Fund Manager Directive (AIFMD) was adopted in 2011 in the wake of the global financial crisis, to achieve coherent supervision and management of the risks that alternative investment funds (AIFs) may generate, and to afford protection to investors.

Article 69 of the Directive calls for a review of its application, impact and scope. In this context, the European Commission presented in June 2020 a report and a detailed assessment to the European Parliament and the Council of the EU. The ‘back to back’ evaluation of the AIFMD contained in the Commission Impact Assessment finds that the Directive largely achieved its objectives, but could benefit from some improvements in areas that were either not sufficiently addressed in 2011 or that have evolved considerably since then.

Against this backdrop, the Commission also adopted a new Capital Markets Union (CMU) action plan on 24 September 2020.

The Commission has pointed out that completion of the CMU is needed more than ever in the current context. In order to support the economic recovery following the COVID-19 pandemic and the ongoing Russia aggression against Ukraine, the EU needs the sort of deep, competitive, efficient and reliable sources of funding and investment that integrated capital markets can offer.

In accordance with the conclusions of its report, its assessment and its CMU action plan, the Commission unveiled on 25 November 2021 its proposal for amending Directives 2011/61/EU and 2009/65/EC as regards delegation arrangements, liquidity risk management, supervisory reporting, provision of depositary and custody services and loan origination by alternative investment funds.

This Commission proposal is a regulatory fitness and performance programme (REFIT) initiative, part of the 2021 Commission work programme and the joint declaration on legislative priorities. Some elements are also relevant for retail collective investment schemes, regulated by the Undertakings for Collective Investment in Transferable Securities (UCITS) Directive, which is therefore also proposed to be amended in order to ensure coherence with the AIFMD.

The review of AIFMD together with the UCITS Directive is an essential part of the CMU project, one of the EU's greatest ambitions since 2015.

The Commission proposal

The proposal of the European Commission, who, for the first time since its political response to the global financial crisis, has sought to review the functioning of these instruments in the Union with the purpose of strengthening the European financial system. The rapporteur

welcomes the European Commission's commitment to the launch of the Capital Markets Union legislative package last November 2021 and considers it a necessary step towards the completion of the Capital Markets Union.

The global crisis caused by COVID-19 pandemic has made even more evident the intrinsic value that capital markets have for our households and businesses as a means of financing. A robust banking system in Europe has proven itself to be essential, but not enough for a strong response from our markets to unexpected shocks or crisis. Capital markets are a fundamental tool for the recapitalisation of our companies and to support the recovery of our European economy in these critical moments.

With regard to this proposed revision, it is worthy to note the benefits of alternative investment funds and collective investment vehicles in transferable securities as tools for diversifying investment portfolios and as an instruments for promoting savings for investors. In short, this Directive is intended to meet some of the major challenges and objectives set out in the European Commission's 2020 action plan since the launch of the CMU project.

The market of asset managers in Europe is functioning well and the European Union is a region that attracts large operations and international managers who want to invest in our markets. According to 2022 ESMA report *Annual Statistical Report on EU Alternative Investment Funds*, the size of the EU Alternative Investment Funds (AIF) market continued to expand to reach 5.9tn EUR in net asset value at the end of 2020, which represents one-third of the European Economic Area fund industry at the same date.

Being aware of the growing trend of this industry, which has increased by 8% over the same period in 2019, but is still below other markets such as the US, it is essential to reflect on how to continue facilitating this sector to grow in volume and quality at a pace that will make the EU a more competitive region.

European capital markets have grown in volume over the past few years, but there is still plenty of room for growth. The European Union operates and competes in a global market and the development of its industry must go a step further.

Position of the Rapporteur

The amendments proposed by the rapporteur in this draft report are the result of an in-depth study of the subject matter and extensive discussions with various regulators, supervisors and stakeholders. The ultimate objective of the rapporteur's proposal is no other than to improve, enhance and facilitate the growth of the asset manager market in Europe.

With the amendments contained in this draft report, the rapporteur expects that the European capital markets, in particular with regard to alternative investment funds and undertakings for collective investment in transferable securities, can improve their functioning by encouraging their growth and global competitiveness.

This draft report responds to the Commission's proposal, seeking to complete and contribute to the integration objective of European capital markets. In this sense, the main areas of improvement for the rapporteur are:

- **Delegation and supervisory reporting.** The rapporteur considers that delegation is an essential part of the activity of AIFMs. Delegation allows asset managers to set up a fund in the EU and carry out portfolio management or risk management from other jurisdictions. In order to promote this activity, this draft report tries to strike a balance not to burden this process, while at the same time granting comprehensive reporting powers to competent authorities.
- **Liquidity management tools (LMTs).** The rapporteur welcomes that these tools are extended and available on a pan-European basis to make markets more liquid and attractive to investors. The proposed changes to the European Commission proposal aims to clarify that the decision of liquidity management tools' primary responsibility is a task for the manager. Consequently, any role of the competent authorities to activate or deactivate LMTs should be limited to extraordinary circumstances, after consultation with the manager.
- **Loan origination funds.** The rapporteur welcomes the fact that European markets are potentially developing this area. Loan originating funds have positioned themselves as a very positive alternative financing instrument for real economy, SMEs and other investors. For that reason, the amendments proposed in this draft report aim to do away with unnecessarily risk retention and to caution against creating product specific rules.
- **Depository services.** The rapporteur is aware of the core function that depository services have for the well-functioning of the funds industry. Inspired by the principle of competitiveness and integration of the markets, the proposed changes intend to set the path toward a more efficient depository services among Member States. The rapporteur encourages the European Commission to launch a comprehensive study on the cost, benefits and feasibility of a depository passport in the EU.
- **Transparency, data collection and disclosure.** The rapporteur encourages a full transparent regime in which data collection and disclosure to investors is fully guaranteed but without undermining the growth and competitiveness of European capital markets. Cooperation between NCAs and ESMA should be improved and simplified in order to avoid duplications, granting quality of information reported and making a more efficient supervisory convergence regime.

Starting from this draft report and with the further collaboration of the rest of political groups, the rapporteur is confident that the outcome of this process will lead to the strengthening of the European sector and the growth of the alternative investment fund industry and undertakings for collective investment in transferable securities.

The European Parliament's response will be firm and targeted towards the goal of making capital more accessible in Europe, to ensure that managers have sufficient incentives to get their operations off the ground and to achieve the most efficient mode of supervision to ensure stability in the markets and a safe environment for investors.