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Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

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

{SEC(2025) 943 final} - {SWD(2025) 943 final} - {SWD(2025) 944 final}

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

Reviving the EU's economy and strengthening its international position are central to the European Commission's mandate. As stated in the Draghi and Letta reports[1] and in the 2024-2029 Commission political guidelines[2], urgent action is required to improve economic performance and to ensure that the EU can decide its own future. The Competitiveness Compass[3] sets out a comprehensive plan to strengthen the EU's economy and harness its potential, with the Savings and Investments Union (SIU) acting as a key enabler for this plan. In March 2025, the Commission unveiled its SIU strategy[4]. It aims are to make it easier for citizens to grow their wealth by investing in capital markets, to increase the EU's investment capacity, and to integrate the EU's capital markets. By breaking down barriers in financial markets and facilitating cross-border capital flows, the SIU strategy can support the EU economy, stimulate job creation, and enhance competitiveness.

The need for urgent action has been widely recognised at the highest political level, including in statements and calls to action from the European Parliament[5], the European Council[6], the Eurogroup[7], the Euro Summit[8], and the European Central Bank (ECB)[9]. The International Monetary Fund[10] and the Organisation for Economic Co-operation and Development[11] have also called for action to address remaining barriers to financial market integration.

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1 E. Letta "Report on the Future of the Single Market". Available here: https://single-market-economy.ec.europa.eu/news/enrico-lettas-report-future-single-market-2024-04-10_en; Mario Draghi, 'The Future of European Competitiveness,' 2025. https://commission.europa.eu/topics/eu-competitiveness/draghi-report_en

2 Political Guidelines 2024-2029 | European Commission. https://commission.europa.eu/document/e6cd4328-673c-4e7a-8683-f63ffb2cf648_en

3 COM(2025) 30 final. https://commission.europa.eu/topics/eu-competitiveness/competitiveness-compass_en

4 Savings and investments union strategy to enhance financial opportunities for EU citizens and businesses - Finance

5 https://www.europarl.europa.eu/doceo/document/TA-10-2025-0185_EN.pdf

6 https://www.consilium.europa.eu/media/m5jlwe0p/euco-conclusions-20240417-18-en.pdf
https://www.consilium.europa.eu/media/viyhc2m4/20250320-european-council-conclusions-en.pdf

7 https://www.consilium.europa.eu/en/press/press-releases/2024/03/11/statement-of-the-eurogroup-in-inclusive-format-on-the-future-of-capital-markets-union/

8 "*We underline the sense of urgency and the shared responsibility for fast and decisive progress on a Savings and Investments Union with a particular focus on the Capital Markets Union to mobilise savings and unlock the financing of necessary investments to support EU competitiveness".* See Eur Summit meeting (20 March 2025) – Statement – page 1, https://www.consilium.europa.eu/media/ce3fkikz/20250320-euro-summit-statement-en.pdf

9 European Central Bank: "Capital markets union: a deep dive". Revised May 2025. Available here: https://www.ecb.europa.eu/pub/pdf/scpops/ecb.op369~246a103ed8.en.pdf?503a501a41fd4b4659d3b0616c405190

10 International Monetary Fund: "A Recovery Short of Europe's Full Potential", 24 October 2024. Available here: https://www.imf.org/en/Publications/REO/EU/Issues/2024/10/24/regional-economic-outlook-Europe-october-2024

11 OECD, Economic Surveys: European Union and Euro Area 2025, July 2025, Available here: https://www.oecd.org/content/dam/oecd/en/publications/reports/2025/07/oecd-economic-surveys-european-union-and-euro-area-2025_af6b738a/5ec8dcc2-en.pdf

Implementing the SIU requires comprehensive policy measures that will have an impact on various aspects of the EU's financial system, with a holistic approach encompassing both the capital markets and the banking sector. These measures are grouped into four interconnected pillars: (i) citizens and savings, (ii) investments and financing, (iii) market integration and scale; and (iv) efficient supervision. This legislative initiative focuses on market integration and scale, and efficient supervision.

This legislative initiative focuses on barriers stemming from the lack of harmonisation of EU rules and supervisory approaches resulting in the fragmentation and underperformance of EU capital markets. These barriers hinder market-driven efforts to expand business and build scale across the single market through cross-border activities. They also hinder the use of innovative digital technologies in three areas that are essential for the smooth and efficient functioning of EU capital markets, namely trading, post-trading and asset management.

Despite the harmonisation of regulatory frameworks and the existence of financial services passports, persistent fragmentation as a result of these barriers limits the potential benefits of the EU's single market. These barriers arise from differences in regulatory approaches, often reflecting the use of discretions in the transposition and interpretation of EU directives and varying approaches to supervision. These barriers unnecessarily complicate the cross-border activities of financial market participants. As a result, either they cannot fully benefit from economies of scale and improved operational efficiency or there is no sufficient incentive for them to facilitate cross-border investments. This raises costs, delays time to market, restricts the choice of financial products and services available to businesses and the public, and makes those products and services more expensive.

This initiative also emphasises the importance of technological developments and innovation in the financial sector. Regulatory barriers are hindering the uptake and use of newer-generation technologies, such as distributed ledger technology (DLT) and tokenisation of financial instruments. Such technologies have the potential to improve financial services for people and businesses.

Divergent supervisory practices can also act as a barrier to capital market integration, as financial market participants operating across borders must manage different requirements across the single market. This fragmentation of supervisory practices creates additional costs, increased complexity and legal uncertainty for operators, especially those who intend to do business and invest across the EU. The legal uncertainty and the uneven playing field that this creates makes the EU a less appealing investment destination.

Objectives of the proposal

The general objective of this initiative is to integrate EU capital markets and improve the functioning of the EU single market in financial services for the benefit of investors, businesses and the wider EU economy. This contributes to the SIU's core objective to enable access to a wider range of financial opportunities for investors and businesses and to mobilise savings for productive investment.

The initiative will contribute to achieving the general objective through the following specific objectives.

Enable further market integration and scale effects

The proposed amendments aim to remove barriers to integration in the core sectors of trading, post-trading and asset management, and improve the ability of market actors to operate more seamlessly across Member States, thereby enabling market integration and scale. It will foster competition, ensuring that scale benefits are effectively passed on to end users.

Enable integrated supervision

More efficient and harmonised supervision is essential to integrate EU capital markets. As progress is made towards deeper capital market integration, it is crucial for the EU supervisory framework to evolve in lock step. The initiative therefore aims to address the shortcomings and inefficiencies in the current supervisory framework, by tackling inconsistencies and complexities arising from fragmented national supervisory approaches. It aims to make supervision more effective, more conducive to cross-border activities, and more responsive to emerging risks, while reducing unnecessary burdens on firms. For certain significant and cross-border entities in the areas of trading and post-trading, and for entities in new areas like crypto-asset service providers, pooling supervision at EU level can promote market integration and more efficient functioning of the capital markets. For large asset management groups and investment funds, stronger convergence and coordination of supervision at EU level will remove barriers and increase cross-border activities. Across the board, the initiative aims is to strengthen the use and effectiveness of the supervisory convergence tools of the European Securities and Markets Authority (ESMA), and introduce new tools, thereby supporting a single market for financial service.

Facilitate innovation

Finally, the proposed amendments aim to remove regulatory obstacles to DLT-based innovation, with a view to creating a framework to enable the use of new technologies in the provision of financial services. For innovation to thrive, both the DLT Pilot Regime and the standard rulebook should allow the industry to use DLT to bring efficient solutions to the market, while ensuring that associated risks are mitigated. By removing these barriers, the proposed amendments also aim to increase competition in the area of trading and post-trading services, which will lead to improved market outcomes and enhancing capital market efficiency.

Achieve simplification

The review of specific legislative files presents an opportunity to simplify by reducing administrative burdens. The package aims to streamline regulatory requirements, making cross-border activities more cost-effective. Simplification is pursued in several ways: moving certain provisions from directives to regulations; narrowing the scope for nationally imposed ‘gold-plating’ measures; refining Level 2 empowerments; streamlining overlapping, costly and inefficient supervisory arrangements; and more generally removing barriers in EU and national frameworks for market operators and investors.

The market integration and supervision package comprises three legislative proposals, namely: proposals for a Master Regulation and a Master Directive which amend several existing pieces of EU capital market legislation, and a proposal for a Settlement Finality Regulation, which amends the Financial Collateral Directive and repeals the Settlement Finality Directive.

- **Consistency with existing policy provisions in the policy area**

The proposed amendments in this package are consistent with existing provisions in the field of financial services. They aim to foster stronger market integration and achieve efficiency gains by: (i) removing barriers to cross-border activity and innovation, (ii) increasing regulatory and supervisory convergence; and (iii) strengthening supervisory capacity in the relevant sectors. These amendments are consistent with the goals of competition, efficient functioning of the single market in financial services, and promoting the freedom to provide services across the EU, without compromising financial stability, market integrity or investor protection. This ensures that the EU financial market remains safe and globally attractive. Implementing these amendments as a package allows to ensure consistency across sectoral legislations under review. The proposed amendments also seek to address shortcomings and inefficiencies in the current supervisory framework by tackling the inconsistencies and complexities arising from fragmented national supervisory approaches.

- **Consistency with other Union policies**

This proposal is consistent with the core objective of the SIU strategy, which is to enable access to a wider range of financial opportunities for investors and businesses, thereby mobilising savings for productive investment. This proposal is interlinked with other initiatives included in the SIU strategy, for instance the initiatives on pensions, on increasing retail participation in capital markets, and on market-based financing of the real economy. These initiatives are designed to reinforce each other and collectively contribute to the overall goals. Other measures in the SIU strategy, such as the financial literacy strategy, the recommendation on savings and investment accounts, the measure to promote equity investments, including through legislative programmes, and the measures on supplementary pensions will be less effective if the barriers to further integration of EU capital markets are not removed and continue to impose high costs on investors and businesses.

The proposal is also consistent with the EU policy to enhance Europe's competitiveness, the strategy outlined in the Competitiveness Compass, the single market strategy, the EU start-up and scale-up strategy, and the Communication on a Simpler and Faster Europe.

The proposed amendments will boost the attractiveness of EU capital markets, thereby helping to finance the EU's priorities. They will do so, in particular: (i) by further harmonising the rules; (ii) making it easier for trading venues, financial market infrastructures and investment funds to operate and provide services across borders, thus reducing costs for all market participants; and (iii) as regards innovation, by ensuring that the DLT Pilot Regime, which is designed to support DLT-based innovation in financial services and post-trade legislation remain fit for purpose for innovation.

This package is also consistent with, and will contribute to, the Commission's simplification agenda and the single market strategy. It will do so, in particular: (i) by harmonising and streamlining some of the rules applicable to trading, post-trading and investment funds; and (ii) by moving part of the requirements applicable to those sectors from Directives to Regulations.

By removing barriers to further integration of capital markets, the measures under this initiative complement other EU initiatives, such as the 28th regime.

Finally, this initiative is in line with the Commission's digital finance strategy[12], which supports the deployment of new technologies in financial services, by ambitiously adapting the existing rules to accommodate new technologies, such as DLT.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

Article 114 of the Treaty on the Functioning of the European Union (TFEU) confers on the European Parliament and the Council the power to adopt measures to harmonise national provisions on the establishment and functioning of the internal market. Article 114 TFEU also allows the EU to take measures to eliminate existing obstacles to the exercise of fundamental freedoms and to prevent such obstacles from emerging, including those that make it difficult for economic operators, including investors, to take full advantage of the benefits of the internal market.

Article 53(1) TFEU (ex-Article 47(2) EC) is the legal basis for Directives 2009/65/EC, 2011/61/EU and 2014/65/EU. This Article is the appropriate legal basis for the policy options chosen and the specific design of the rules on the take-up and conduct of activities by self-employed persons. It is used to regulate financial intermediaries, their investment services and activities.

The proposed improvements to these frameworks seek to further market integration in the trading and asset management sectors, while ensuring an overall robust supervision of financial stability risks.

- **Subsidiarity (for non-exclusive competence)**

The EU may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. According to this principle, EU action may only be taken if the envisaged aims cannot be achieved by Member States alone. Regulation of investment services, rules for undertakings for collective investments in transferable securities (UCITS) and alternative investment fund managers (AIFM) are long established at EU level.

Directives 2009/65/EC, 2011/61/EU and 2014/65/EU were adopted in full respect of the principle of subsidiarity, pursuing the inherently transnational objectives to remove market fragmentation, address the risks to financial stability and ensure a high level of investor protection. The Directive was the instrument chosen to strike an appropriate balance between the EU-level and the national level. In this regard, this proposal, like the Directives it seeks to amend, is in full compliance with the principle of subsidiarity.

Unilateral action by Member States in the areas covered by these Directives cannot fill the regulatory gaps and achieve these objectives individually. The challenges that arise with the differing transposition of Directives in Member States are inherently transnational and cannot be adequately resolved through isolated and uncoordinated national efforts. National policy measures to develop domestic capital markets risk intensifying fragmentation instead of contributing to further integrating national markets into one large and developed capital market. Therefore, an approach at EU level is necessary to remove these barriers, promote the seamless provision of cross-border financial services and products and facilitate the integration required to advance the SIU.

[12] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52020DC0591

- **Proportionality**

The proposed amendments respect the principle of proportionality, as set out in Article 5 of the Treaty on European Union (TEU), and do not go beyond what is necessary to achieve the objectives of completing a single market for asset management and trading, while promoting the freedom of establishment for financial entities and cross-border activities and competition, and safeguarding the orderly functioning of the single market.

This initiative is intended to remove barriers that trading venues, UCITS management companies and AIFMs face. The regulatory changes specifically aim to remove barriers within the single market to allow for increased competition and scaling up of existing businesses and the development of new ones, and at the same time ensure effective risk management and investor protection, including through improved effective supervision. This initiative is proportionate as it only removes requirements for stakeholders and does not add new ones.

The package involves a broad review of the trading and asset management rules with the objective to harmonise and streamline requirements for business operations, including easing some requirements within groups and for services provided on a cross-border basis, under a single license. Investment funds would gain immediate and full single market access upon authorisation, and asset management groups would be able to operate more efficiently across borders. On supervision, the amendments aim to strengthen the use and effectiveness of supervisory convergence tools and powers, focusing on ESMA and its governance. Supervisory powers would also be transferred to ESMA for the most significant infrastructures (trading venues). ESMA would also have a reinforced role in fostering supervisory convergence for UCITS and AIFs marketed on a cross-border basis.

While divergent application of EU rules and differences between Member States' national laws create market inefficiencies and burdens, the amendments will create a more harmonised and proportionate application of the EU rules on cross-border activities.

- **Choice of the instrument**

This proposal amends specific parts of Directives 2009/65/EC, 2011/61/EU and 2014/65/EU. The objective is to harmonise or remove national rules that are making the single market more fragmented, creating inefficiencies in the markets concerned. The proposal aims to harmonise and clarify regulatory standards that Member States have to transpose into their national law, furthering market integration. Therefore, a Directive introducing the necessary amendments to the existing Directives governing AIFMs, UCITS and Markets in Financial Infrastructure Directive activities is the most appropriate choice. This is because the proposed amendments are inter-linked and are part of a broader political effort to create a single market for capital by harmonising the rules and removing barriers to cross-border activities in the financial sectors that form the backbone of capital markets financing. Combining the amendments in a legislative package helps ensure that the overall text is consistent.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Ex-post evaluations/fitness checks of existing legislation**

Currently, there are no effective solutions to ensure cross-border provision of services in the sectors that fall within the scope of this package or they are hampered by divergent national rules. Moreover, the EU rules need to be updated to make it easier to provide financial

services using new technologies, in particular DLT, which can improve the efficiency of the capital markets.

Non-aligned supervisory practices and weak supervisory convergence tools and powers at EU level exacerbate these issues. These barriers lead to market inefficiencies, limited economies of scale, reduced liquidity in capital markets, increased costs for investors, restricted access to a broader investor base across borders, and higher capital costs for EU companies, ultimately undermining the productivity and competitiveness of the EU economy.

In the trading area, the EU trading landscape suffers from a lack of seamless cross-border operation of trading infrastructures, on the one hand, and access by users of those infrastructures, in particular smaller brokers, on the other hand. MiFID rules do not recognize group structures. As a result, groups have less capacity to allocate resources freely and efficiently among the entities that are part of the same group. This in turn reduces the potential to harness economies of scale and hinders market integration. There is therefore a need to simplify requirements for those entities that do not wish to rely on better passporting opportunities, and prefer continuing to operate as a group of trading infrastructures.

In the post-trading area, entities that wish to operate across borders still face significant compliance, operational and adaptation costs due to a complex regulatory landscape that is not fully harmonised, and to supplementary, often diverging, national rules and specificities. Groups operating trading infrastructures across multiple Member States face regulatory barriers: in allocating resources optimally and are not able to fully capitalise on the synergies from legal consolidation (i.e. mergers or acquisitions). In addition, the lack of a well-defined passporting regime creates uncertainty for market operators about whether they can use this additional avenue for providing cross-border services. As a result, the opportunities afforded by the single market are not being fully seized, leading to suboptimal outcomes.

These issues also affect infrastructure users as they are unable to navigate the EU trading infrastructure as a single, integrated pool of liquidity, which limits their ability to operate efficiently and effectively across the EU. As a result, end investors, particularly retail investors, face higher trading costs, in particular when they wish to invest across borders, and are deprived of the potential benefits of diversifying their portfolios with a broader range of investment opportunities. To remove barriers linked to supervisory fragmentation, the related provisions in MiFID should be amended to introduce direct EU-level supervision of certain trading venues.

On asset management, the management and marketing of UCITS and AIFs are mainly governed by Directives, which allow for national discretionary powers (discretions) in many areas. As a result, even though the applicable EU legislation provides for passporting of services, a patchwork of national requirements and practices still makes passport marketing and management extremely difficult to navigate. Diverging national practices and administrative requirements in the authorisation process also create obstacles to developing a true single market for UCITS, management companies and AIFMs In addition, Directive 2011/61/EU and Directive 2009/65/EC allow for limited cross-border access of depositary services for AIFs and UCITS in the EU, which leads to market fragmentation and particularly impacts smaller Member States. Under the current framework, UCITS are not allowed to appoint a depositary in a Member State other than their home Member State, while AIFMs are allowed to appoint a depositary in a Member State other than the Member State of the AIF they manage under strict conditions and where the AIF is in a market with inadequate depositary services. While the initial requirement to appoint a domestic depositary aimed to

ensure strong regulatory oversight and investor protection, it has created several challenges that harm the functioning and competitiveness of the AIF and UCITS market across the EU, leading to higher fees, lower service quality and reduced operational efficiency.

Moreover, the current regulatory framework does not recognise the group structure for asset management companies, forcing each individual management company or AIFM to meet organisational requirement separately. In addition, the intra-group delegation of functions is treated the same as third-party delegation, requiring management companies and AIFMs to carry out due diligence, monitoring and oversight activities even when delegating within the same group. All of these issues contribute to a concentration of UCITS and AIFs in a few Member States with large and mature financial sectors, while limiting the growth of the fund industry in others.

Finally, the current frameworks do not allow ESMA to effectively contribute to addressing diverging national supervisory practices or resolve disagreements between national competent authorities as regards the cross-border operations of investment funds, asset managers and asset management groups, which leads to fragmented supervisory models and limited cooperation between national authorities. As a result, the current frameworks undermine the objectives of the single market by perpetuating geographic disparities and hindering the integration of EU financial markets. To address barriers linked to the fragmentation of the investment funds markets, the related provisions in Directive 2011/61/EU and Directive 2009/65/EC should be amended to remove the above-mentioned barriers, create a more integrated market and strengthen the role of ESMA in fostering supervisory convergence.

On supervision, there are two main issues. First, supervision of financial entities is largely conducted at national level. This results in a fragmented supervisory landscape that creates barriers to cross-border activities because of divergent application of EU law and divergent supervisory practices, approaches and requirements. Enforcement actions, such as infringements, can address specific instances of non-compliance, and peer reviews aim to increase supervisory convergence, but they are not sufficient to resolve the underlying divergent supervisory practices. Second, the EU has limited powers and tools to enforce consistent application of EU rules and adopt a unified single market supervisory approach. The use of supervisory convergence tools remains sporadic. They have limitations, are not used consistently and can be difficult to use due to procedural constraints and lack of enforceability.

- **Stakeholder consultations**

The following consultation activities have helped to shape the content of this proposal:

- European Commission ‘Call for evidence on the Savings and Investments Union: ‘Fostering integration and scale and more efficient supervision in EU capital markets’, from 8 May to 5 June 2025;
- European Commission targeted consultation on ‘Integration of EU capital markets’ from 15 April to 10 June 2025.

The call for evidence generated 53 responses from a broad range of stakeholders. Business associations formed the largest group, accounting for 62.3% of responses, and representing the investment, banking and asset management industries. Companies and businesses, primarily from the financial sector, accounted for 20.8%. Individual members of the public accounted for 9.4% of responses, while other categories, including chambers of commerce,

professional associations and advisory firms, accounted for 5.7%, and non-governmental organisations (NGOs) accounted for 1.9%.

The purpose of the call for evidence was to (i) gather stakeholders' views on barriers that prevent the EU's trading and post-trading infrastructures from reaping the benefits of a truly frictionless single market; (ii) examine whether the current regulatory and supervisory setting is fit for the capital markets and in particular for market operators with strong cross-border activities or operating in new or emerging sectors; and (iii) review the European Supervisory Authorities' toolbox to assess areas where its effectiveness and efficiency can be strengthened and improved.

Across all stakeholder groups, there was broad agreement on the need for more integrated capital markets and enhanced supervisory convergence. This was accompanied by a shared call for simplification, proportionality and legal certainty. Stakeholders widely recognised that a more integrated and efficient financial ecosystem would enhance Europe's competitiveness, improve access to finance, and expand investment opportunities. Nonetheless, they stressed that reforms must remain balanced, transparent and inclusive, demonstrating tangible benefits for citizens and the real economy. The level of support for centralising supervision at EU level varied significantly among stakeholders. Business associations and companies tended to prefer incremental progress within the current institutional structure, while NGOs and some members of the public favoured stronger EU-level oversight to ensure consistency and accountability.

In addition to the call for evidence, the targeted consultation on 'Integration of EU capital markets' gathered views from a broad group of stakeholders on various aspects of the EU capital markets. The online questionnaire was structured in two parts. Part 1 covered simplification and burden reduction of the EU regulatory framework in the trading, post-trading and asset management sectors, barriers to cross-border operations in the trading space and to liquidity deepening in EU capital markets, and barriers to cross-border provisions of post-trade services. Part 2 included questions on: cross-sectoral barriers in the trading and post-trading sectors (e.g. relating to innovation, group synergies, issuance of financial instruments); barriers to cross-border provision of asset management services and investment funds; and barriers specifically linked to supervision.

In total, 297 stakeholders replied to the targeted consultation through the Commission website. The majority of contributions came from business associations (31%) and companies or business entities (27%), followed by public authorities (12%). Additional input was received from NGOs (4%), EU citizens (3%), trade unions (2%), and one consumer organisation. The consultation thus attracted a diverse range of respondents from the industry, including market participants, representative associations and public authorities.

In parallel, bilateral meetings were held with selected stakeholders to gather additional input and explore specific concerns in greater depth. The Commission also introduced various aspects of the review at a meeting with representatives of the European Parliament and Member State financial services attachés in October and November 2025.

The results of the call for evidence and targeted consultation have been considered in the proposal and the Commission has sought to take account of the different stakeholder interests expressed. The most significant areas where respondents identified scope for improvements were examined and have been included in the proposal. These include calls for a more proportionate, simpler and more harmonised regulatory framework that reduces burdens and

eliminates barriers in the areas of trading, post-trading and cross-border distribution of investment funds, as well as increasing the efficiency and convergence of supervision of financial entities.

- **Collection and use of expertise**

When preparing this initiative, the Commission consulted several studies and sources of information. The Commission organised in September 2024 a round-table discussion on consolidation in the investment funds sector and trading and post-trading infrastructure with private and public stakeholders, and experts in those sectors. The Commission has also organised separate bilateral outreach to key stakeholders and workshops with the industry. The studies used to prepare this proposal have been referenced in the impact assessment accompanying this proposal and documenting the barriers that this package is trying to address.

- **Impact assessment**

In line with the Better Regulation policy, the Commission conducted an impact assessment of policy alternatives. Beyond the option of no EU action (Baseline scenario – Option 1), two packages of policy options were identified based on a call for evidence, a targeted consultation, other stakeholder engagements, a study on consolidation and reducing fragmentation in trading and post-trading infrastructures in Europe, a study of barriers to, and drivers of, the scaling-up of funds investing in innovative and growth companies, literature reviews, and previous initiatives and reports documenting the most significant barriers to the integration of EU capital markets that have been existing for several years and have not yet been fully addressed.

Option 1 is the baseline option of doing nothing. Option 2 involves a broad review of the trading, post-trading and asset management rulebooks to harmonise and streamline requirements for business operations, including easing some requirements within groups and for services provided on a cross-border basis, under a single license. In the settlement area, interconnectedness between central securities depositories (CSDs) would also be improved. Option 2 would also include amendments to post-trade legislation to make it more technologically neutral as well as to the DLT Pilot Regime (DLTPR) to expand its scope and scale. Investment funds would gain immediate and full single market access upon authorisation, and asset management groups would be able to operate more efficiently across borders. On supervision, Option 2 aims to strengthen the use and effectiveness of supervisory convergence tools and powers, focusing on the European Securities and Markets Authorities (ESMA) and its governance. This option also involves transferring supervisory powers to ESMA for the most significant infrastructures (central counterparties, CSDs and trading venues) and for all the crypto-asset service providers (CASPs), and to have ESMA coordinating the supervision of large asset managers and investment funds.

Option 3 builds on Option 2 but is more far-reaching with additional elements to establish an integrated market, such as, for instance, mandatory connection between significant trading venues, mandating links between CSDs, creating group-level authorisation for asset managers, full flexibility in the DLTPR, ESMA direct supervision of all infrastructures, asset managers and CASPs.

The analysis assesses the options in relation to three objectives: (i) enabling further market integration and scale effects; (ii) enabling integrated supervision; and (iii) facilitating innovation. It shows that the additional elements in Option 3 would imply higher costs for the

sectors and for supervisors, outweighing the potential benefits. In addition, this option is less coherent with other EU policy initiatives and may have unintended consequences on competition and on financial stability risks.

The assessment concludes that Option 2 is the preferred policy package as it delivers significant integration benefits while remaining proportionate in terms of costs and subsidiarity. It combines extensive harmonisation of requirements in the relevant trading, post-trading and asset management frameworks and removal of barriers to cross-border activities, with stronger supervisory convergence tools and powers and EU-level supervision of the most significant infrastructures. These aspects reinforce one another. The harmonisation of rules in this package would facilitate the transfer of supervision of some operators and markets to the EU level and, in the case of CASPs, for all entities, and allow better enforcement of the single rulebook.

By removing undue regulatory barriers to integration, the measures under this option would ease regulatory burdens and operational complexity, thereby improving the efficiency of providing services across borders and fostering market integration. Implementation costs would fall mainly on infrastructures and national authorities. This option would also require significant resources and infrastructure development at ESMA, the majority of it would be fee funded. But all these costs are expected to be outweighed by efficiency gains and simplification in the medium term. The initiative would reduce legal uncertainty for issuers and investors, lower compliance costs and improve predictability. Increased flexibility in the DLT Pilot Regime and changes in sectoral legislation to make it more compatible with DLT would encourage greater uptake of this technology. Stronger supervisory convergence and a more integrated supervisory framework would level the playing field, limit regulatory arbitrage and reduce the administrative burden related to cross-border activities.

The initiative will facilitate investors' access to a wide range of investment opportunities and enable companies to raise capital across borders, including SMEs. It will therefore contribute to improve how we mobilise capital in Europe and allow the right financing ecosystem to emerge in order to support EU strategic priorities and make our economy stronger, more competitive.

The Regulatory Scrutiny Board issued a positive assessment of the impact assessment following a first negative opinion. To address the comments raised by the Board, the impact assessment has been revised in order to: (i) clarify the rationale for the initiative's scope and its role within the broader SIU strategy, including its interplay with other initiatives; (ii) streamline the sections on the problem definition and problem drivers; (iii) improve the explanations related to DLT-based innovation; (iv) clarify the intervention logic and the objectives. The text has also been revised to strengthen the analysis of the magnitude of the problems, based on additional quantitative inputs received from stakeholders and on other existing studies, to better assess costs/benefits. The text is also more transparent about the limitation in data availabilities and out-of scope factors that make a full robust modelling of the costs and benefits not possible. Stakeholder views have also been reflected more comprehensively through the text, and the impact of the proposed measures on different stakeholder groups better captured.

- **Regulatory fitness and simplification**

The measures proposed will ease regulatory burdens and operational complexity, thereby making the cross-border provision of services more efficient and fostering market integration. Implementation costs will fall mainly on infrastructures and national authorities. ESMA will

also need significant resources and infrastructure development. But all these costs are expected to be outweighed by efficiency gains and simplification in the medium term. The initiative will reduce legal uncertainty for issuers and investors, lower compliance costs and improve predictability. Increased flexibility in the DLT Pilot Regime and changes in sectoral legislation to make it more compatible with DLT will encourage greater uptake of this technology. Stronger supervisory convergence and a more integrated supervisory framework will level the playing field and reduce the administrative burden related for cross-border activities. Simplification will be achieved in a number of ways: transitioning certain provisions from directives to regulations; eliminating scope for nationally imposed 'gold-plating' measures;; streamlining overlapping, costly and inefficient supervisory arrangements; and more generally removing barriers in the EU and national frameworks for market operators and investors. With a view to simplifying the regulatory framework and reducing regulatory and administrative burdens, this proposal refines Level 2 empowerments by deleting and updating empowerments including those which following the consultations with the European Parliament, the Council and European Supervisory Authorities were considered non-essential for the effective functioning of the corresponding provisions in the basic acts. Furthermore, the Commission has, in this proposal, sought to limit as much as possible the number of new Level 2 empowerments. •

Fundamental rights

The proposal respects fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union, in particular the right to provide services in any Member State (Article 15(2), the freedom to conduct a business (Article 16), the right to property (Article 17), access to services of general economic interest to promote social and territorial cohesion within the Union (Article 36) and consumer protection (Article 38).

4. BUDGETARY IMPLICATIONS

The financial and budgetary impact of this package, including the Master Directive, is explained in detail in the legislative and financial statement annexed to the Master Regulation.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

The Commission will monitor progress towards achieving the specific objectives based on the non-exhaustive list of indicators listed in Section 9 of the accompanying impact assessment. The list focuses on the indicators per sector, but broader indicators to measure the wider impact on the market will also be monitored, even if those can be less directly attributed to this initiative. Such indicators include measures assessing access to capital and corporate financing structures or the level of retail investor participation in capital market.

Ex-post evaluation of all new legislative measures is a priority for the Commission. The Commission services will review the outputs, results and impacts of this initiative once the legal instrument has entered into force. After five years, the Commission will carry out the next evaluation of the amendments contained in this proposal, in line with the Commission's Better Regulation Guidelines.

- **Explanatory documents (for directives)**

No explanatory documents are considered necessary.

- **Detailed explanation of the specific provisions of the proposal**

This amending Directive has three main sections referring to the different Directives to be amended. Article 1 of the proposal contains amendments to Directive 2009/65/EC (UCITSD). Article 2 contains amendments to Directive 2011/61/EU (AIFMD), and Article 3 contains amendments to Directive 2014/65/EU (MiFID II). This explanatory memorandum explains the proposed amendments for each topic across the different Directives concerned.

Articles 1 and 2 – Amendments to UCITS and AIFMD

In Articles 1 and 2, the Commission proposes changes to Directive 2009/65/EC and Directive 2011/61/EU with the aim to remove barriers to the cross-border operations of fund managers and their EU groups, eliminate national discretions that could lead to diverging national requirements and supervisory practices, implement an EU-wide depositary passport and strengthen ESMA's powers to foster a common supervisory culture and better coordinate activities among national competent authorities.

Harmonisation of authorisation procedures

Article 5(6) of Directive 2009/65/EC is amended to clarify the scope and timing of the notification of material changes to the conditions of initial authorisation of the UCITS. Article 5(8) of Directive 2009/65/EC is also amended to empower ESMA with the obligation to develop draft regulatory technical standards to specify the procedures, timelines, forms and templates for the information that are provided as part of the authorisation of a UCITS.

Article 7(6) and (7) of Directive 2011/61/EU and Article 7(6) and 29 (5) and (6) Directive 2009/65/EC are amended to remove diverging national requirements and procedures in the authorisation of AIFMs and management companies. This is done by mandating ESMA to develop draft regulatory technical standards to specify the information to be provided to the national competent authorities and the format, template and procedures for the provision of such information.

EU groups of management companies and AIFMs

Article 4(1) of Directive 2011/61/EU and Article 2(1) of Directive 2009/65/EC are supplemented to introduce the concept of an EU group of management companies or AIFMs, which shall include authorised management companies, AIFMs, credit institutions and investment firms. In the same context, Article 7(2) of Directive 2011/61/EU and Article 7(1) of Directive 2009/65/EC is supplemented to clarify that AIFMs and management companies can demonstrate at the time of authorisation that they make use of the human and technical resources of other entities within the same EU group and that they are no longer required to provide information on the delegation and sub-delegation of functions to other EU entities of that group. Moreover, Article 20 of Directive 2011/61/EU and Article 13 of Directive 2009/65/EC are supplemented to clarify that where an AIFM or management company rely on other EU entities within their EU group to carry out their activities, such arrangements shall not qualify as a delegation and shall not be subject to the requirements on the delegation of functions, other than the requirement to duly inform the competent authorities of the home Member State of the AIFM or management company that functions or services are performed by other entities within the EU group.

Elimination of national discretions

Articles 6(4), 7(2), 9(6), 21(3), 22(2) and 29(2) of Directive 2011/61/EU and Articles 6(3), 7(1), 29(1), 39(6), 45(2), 51(2) and (3), 52(2) to (5), 53(1), 54(1), 55(1), and (2), 56(3), 57(1), 69(2) and (4) and 83(2) of Directive 2009/65/EC are amended to remove national discretions that allow Member States to interpret, supplement, or derogate from core rules and which impose barriers to the development of the Single Market. Similarly, Articles 12(1) and (3) and 18(1) and (2) of Directive 2011/61/EU and Articles 12(1) and (3), 14(1) and (2) and 31 of Directive 2009/65/EC are amended to ensure that harmonised rules of conduct and prudential rules for AIFMs and management companies are applied across the Union.

Simplification of disclosure obligations for white labels

Article 14(2a) of Directive 2011/61/EU and Article 14 (2a) of Directive 2009/65/EC are amended to simplify the disclosure obligations of AIFMs and management companies that manage or intend to manage UCITS or AIFs at the initiative of a third party. Instead of actively disclosing detailed information and evidence, the proposed change will now require AIFMs and management companies to disclose this relationship to the competent authorities of their home Member State at the time of authorisation and to be in a position to demonstrate to them upon request that they have taken all reasonable steps to identify, prevent, manage, monitor or, where applicable, disclose conflicts of interest.

Optimisation of the management passport for management companies and AIFMs

Articles 17(3) and 18(2) of Directive 2009/65/EC are amended to reduce to one month and 15 days respectively the time by which the competent authorities of the management company's home Member State should transmit to the competent authorities of the management company's host Member State the information as regards the intention of the management company to operate in the territory of the host Member State with or without the establishment of a branch. Similarly, Article 17(3) of Directive 2009/65/EC is amended to reduce to one month the time that the competent authorities of the management company's host Member State would have available to prepare for supervising the compliance of the management company with the rules under their responsibility. Both Articles are amended to clarify that the host Member State should not impose any additional requirements to the management companies operating in their territory.

Introduction of an EU depositary passport

Articles 21(5) of Directive 2011/61/EU and 23(1) of Directive 2009/65/EC are amended to establish an EU depositary passport, enabling AIFMs and UCITS to appoint a depositary located anywhere within the EU and allowing depositaries to offer their services on a cross-border basis. Such depositary passport will be applicable to depositaries that are authorised as credit institutions or investment firms and already benefit from an EU passport under Directive 2013/36/EU and Directive 2014/65/EU, respectively.

Adjustments to the UCITS investment limits

Article 56(2) of Directive 2009/65/EC is amended to increase the current 10% limit on debt securities issued by a single entity to 15% for UCITS investing in securitisations issued in accordance with Regulation (EU) 2017/2402, recognising their distinct characteristics and regulatory safeguards. In addition, Article 53(1) of Directive 2009/65/EC is amended to extend the 20% issuer limit currently applicable to index-tracking UCITS to UCITS that are managed by reference to an index that is recognised by ESMA.

Removal of the obligation to draw up a key investor information for UCITS

As UCITS management companies and investment companies managing UCITS that are marketed to retail investors are already required to draw up and make available to investors a key information document (KID) pursuant to Regulation (EU) No 1286/2014, Chapter IX, Section 3 of Directive 2009/65/EC that requires UCITS management companies to draw up a key investor information for investors is removed.

Transfer of rules on cross-border marketing into Regulation (EU) 2019/1156

Articles 30a, 31, 32 and 32a of Directive 2011/61/EU and Chapter XI of Directive 2009/65/EC governing the marketing of EU AIFs managed by EU AIFMs and of UCITS across the Union are deleted and moved to Regulation (EU) 2019/1156 of the European Parliament and of the Council of 20 June 2019 on facilitating cross-border distribution of collective investment undertakings[13]. In parallel, Articles 45 of Directive 2011/61/EU and 97(3), 98(3) and (4) and 108 of Directive 2009/65/EC are amended as regards the powers of the AIFM and UCITS host Member States vis-a-vis the AIFs and UCITS marketed in their territories and provisions related to such powers are deleted and moved to Regulation (EU) 2019/1156.

ESMA's supervisory powers

Directive 2011/61/EU and Directive 2009/65/EC are complemented to empower ESMA to identify and maintain a list of the largest asset management groups based on net asset values and cross-border operations and activities. It is further proposed to establish a supervisory framework whereby ESMA, in cooperation with the relevant competent authorities, carries out reviews at least annually to effectively identify and address divergent, duplicative, redundant, or deficient supervisory practices in specific cases, ultimately removing barriers to the operations of large asset management groups. The scope of the annual review concerns asset managers' operations, not investment funds, and is based on data already available with national competent authorities to ensure the avoidance of duplication of supervisory effort or data gathering. The AIFMD and UCITS Directive are further complemented to empower ESMA to identify and pursue actions to address diverging, duplicative, redundant and deficient supervisory actions hindering the operations of asset managers and depositaries pursuing their activity on a cross-border basis or providing services on a cross-border basis. In addition, the Directives are amended to grant ESMA the power to intervene when national authorities do not effectively apply Union rules or to directly suspend the cross-border activities of a fund manager or depositary in certain cases.

Finally, Directive 2009/65/EC is supplemented to clarify that competent authorities should be able to refer to ESMA any disagreements on assessments, actions, or omissions, which ESMA should settle in accordance with the powers conferred to it under Article 19 of Regulation (EU) No 1095/2010.

Article 3 – Amendments to MiFID II

Harmonisation of the rules applicable to trading venues

[13] Regulation (EU) 2019/1156 of the European Parliament and of the Council of 20 June 2019 on facilitating cross-border distribution of collective investment undertakings and amending Regulations (EU) No 345/2013, OJ L 188, 12.7.2019, pp. 55–66

Directive 2014/65/EU (MiFID II) is amended to transfer provisions applicable to the operation of trading venues to Regulation (EU) No 600/2014 (MiFIR). The transfer of these provisions further harmonises the rules applicable to trading venues in the Union.

Provisions governing the authorisation of regulated markets are transferred from Directive 2014/65/EU to Regulation (EU) No 600/2014, effectively removing them from Directive 2014/65/EU. However, since investment firms operating a Multilateral Trading Facility (MTF) or Organised Trading Facility (OTF) remain subject to the general authorisation requirements for investment firms under Directive 2014/65/EU, the relevant authorisation provisions for these entities remain in Directive 2014/65/EU. The proposal therefore deletes Articles 18 to 20 of Directive 2014/65/EU, Sections 3 and 4 of Title II, as well as Titles III and IV.

In addition, as the proposal further harmonises provisions relating to cross-border activities of trading venues under Regulation (EU) No 600/2014, Articles 34 and 35 of Directive 2014/65/EU are amended to clarify that those Articles do not apply to the provision of services by an investment firm operating an MTF or OTF through a branch or through the freedom to provide services.

Open access

Articles 36 to 38 of Directive 2014/65/EU provide for rules relating to the access to market infrastructure (CCPs, CSDs, trading venues) that are redundant, given access provisions already introduced in Regulation (EU) No 600/2014, Regulation (EU) No 909/2014 (CSDR) and Regulation (EU) No 648/2012 (EMIR). Those provisions on access in Directive 2014/65/EU are therefore to be deleted.

2025/0382 (COD)

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

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

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Economic and Social Committee[14],

Having regard to the opinion of the European Central Bank,

Acting in accordance with the ordinary legislative procedure,

Whereas:

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

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

(3) In the context of the political objective of simplifying financial services legislation and delivering more effective and efficient implementation of Union policies, the Commission, after having consulted the European Supervisory Authorities, AMLA,

[14] OJ C , , p. .

the Council and the European Parliament, sent a letter on 1 October 2025 deprioritising empowerments non-essential for the effective functioning of the Level 1 legislations. For those deprioritised empowerments where the Commission would be legally required to act ('shall + a date') legal clarity for stakeholders would be enhanced when the basic act is also amended.

(4) Directive 2009/65/EC of the European Parliament and of the Council[15] should be aligned with Directive 2011/61/EU of the European Parliament of the Council[16] with regard to the notification of material changes to the scope of authorisation. Undertakings for Collective Investment in Transferable Securities ('UCITS') and their management companies should therefore be required to notify the competent authorities of their home Member State before implementing any material changes to the conditions for initial authorisation and those authorities should be able, within a defined and extendable period, to oppose or restrict such changes.

(5) Directive 2009/65/EC and Directive 2011/61/EU do not recognise the notion of an asset management group and the hereto related synergies and risks. Currently, asset management groups that operate across the Union are required to maintain standalone human and technical resources at each group entity level and the delegation of functions to other entities within the same group is subject to the full scope of delegation requirements. To facilitate the operations of asset management groups in the Single Market, Directive 2009/65/EC and Directive 2011/61/EU should recognise the notion of an EU group of management companies and Alternative Investment Fund Managers ('AIFMs'), which should comprise all authorised management companies and AIFMs, as well as investment firms and credit institutions that are established in the Union and that are duly authorised under Directive 2014/65/EU of the European Parliament and of the Council[17] and Directive 2013/36/EU of the European Parliament and of the Council[18], respectively. To facilitate the sharing of group-wide resources and to avoid unnecessary duplication of resources across different EU entities within the group, it should be further specified that management companies and AIFMs should be able to utilise the human and technical resources of other entities within their EU group to conduct their business. Moreover, to reduce the regulatory burden of management companies and AIFMs that rely on other entities within their EU group to carry out their functions or services, those arrangements should no longer qualify as a delegation and should not be subject to the requirements on the delegation of functions, other than the requirement to duly inform the

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

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

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

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

competent authorities of the home Member State of the management company or AIFM that functions or services are performed by other entities within the EU group. To ensure that all entities within the same group operate under a common legal, regulatory, and supervisory framework, which is essential for maintaining a high level of investor protection and effective oversight, it should be further clarified that those rules will only benefit delegation arrangements and resource sharing between entities within the same group that are established in the Union and should apply regardless of whether the parent company of an EU group is located inside or outside the Union. The provisions of Directive 2009/65/EC and Directive 2011/61/EU as regards EU groups of management companies and AIFMs shall not affect the liability of management companies and AIFMs over the functions performed by other entities of the EU group or the prudential consolidation requirements for credit institutions and investment firms pursuant to Regulation (EU) No 575/2013.

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

(7) Each Member State currently draws up national rules of conduct and prudential rules with which management companies and AIFMs are required to comply, leading to diverging national rulebooks that hinder the development of a true Single Market for fund managers. To ensure a uniform application and a consistent implementation of the prudential rules and rules conduct for management companies and AIFMs across the Union, ESMA may develop guidelines to specify the content of those rules.

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

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

(10) To facilitate integration in view of achieving the full potential of the Single Market, complement the existing management and marketing passports for UCITS,

management companies and AIFMs and remove regulatory barriers that hinder the cross-border provision of depositary services, it is appropriate to introduce an EU depositary passport. Such depositary passport should remove the current restriction requiring the depositary to be established in the same Member State as the fund and will allow AIFMs and UCITS to appoint a depositary established anywhere in the Union. To better protect investors and mitigate financial stability risks, the depositary passport should be applicable only to depositaries that are authorised as credit institutions under Directive 2013/36/EU or as investment firms under Directive 2014/65/EU and which are subject to prudential requirements and supervision that already ensure consistent safeguards across Member States.

(11) To recognise the inherently diversified nature and regulatory requirements of securitisations and to allow greater flexibility for UCITS to invest in those products, it is necessary to increase the current 10% limit on debt securities issued by a single entity to 15% for UCITS investing in securitisations issued in accordance with Regulation (EU) 2017/2402.

(12) To create a level playing field between actively managed and passively managed UCITS that replicate the composition of an index and to ensure that management companies of actively managed UCITS are not forced to underweight or sell outperforming companies, it is appropriate to extend the 20% issuer limit currently applicable to index-tracking UCITS to UCITS that are managed by reference to an index that is recognised by ESMA.

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

(14) To enhance the efficiency of large asset management groups in structuring their operations and remove barriers to their cross-border activity, it is essential to establish a permanent supervisory framework whereby ESMA, in cooperation with the relevant competent authorities, carries out reviews of the largest asset management groups at least on an annual basis to effectively identify and address divergent, duplicative, redundant, or deficient supervisory practices in specific cases. Such annual reviews should be confined to the analysis of data, information and documentation already available to ESMA and national competent authorities through existing reporting channels. This review should aim to remove any obstacle to the functioning of the Single Market for large asset management groups and facilitate their cross-border operations. This framework should therefore not be understood as a mandate for ESMA to develop new group level risk models or new supervisory approaches that do not already derive from Directive 2009/65/EC and Directive 2011/61/EU but instead as an arrangement to enhance supervisory efficiencies for groups of management companies and AIFMs. The scope of this review should be confined to the requirements applicable to management companies and AIFMs within EU groups and is therefore not intended to include any requirements on authorisation or supervision of the investment funds that are managed by those management companies and AIFMs. It is also appropriate and proportional to concentrate these efforts on the largest asset management groups in the EU, where operational and supervisory synergies can be achieved most effectively. ESMA should identify these groups based

on the significant size of their market presence and impact within the Union, as measured by their net asset values and the extent of their cross-border operations and activities.

(15) In order to ensure that the costs incurred by ESMA in carrying out the reviews of large EU groups of management companies and AIFMs are borne by those entities that benefit from an enhanced supervisory coordination, ESMA should charge those groups proportionate fees. Such fees should cover the reasonable costs related to the preparation, conduct and follow-up of the reviews. These reviews will involve significant analytical and coordination work, including the collection and consolidation of group-level data, the assessment of supervisory approaches across several Member States and sectors, and the formulation of recommendations to ensure consistent and effective supervision within the Union. Charging fees for those reviews is justified as this ensures that entities benefiting from a harmonised, predictable and streamlined supervisory environment contribute fairly to the costs of its delivery.

(16) To ensure the effective functioning of the Single Market for investment funds, asset managers and depositaries and remove supervisory obstacles that impede the cross-border exercise of passporting rights, ESMA should be empowered to detect and address instances of divergent, duplicative, redundant or deficient supervisory practices that hinder the operations of asset managers and depositaries in the Single Market or instances where those undertakings operate on a cross-border basis without complying with EU law. In those cases, ESMA should implement an escalation process, starting with engaging with national authorities and stakeholders, fostering greater convergence between them, and, where necessary, making use of its coordination and intervention powers, so that unjustified restrictions on cross-border activities or cases of non-compliance with EU law are remedied in a timely and efficient manner. For the same reasons, it is necessary to ensure that, if those problems persist despite this escalation process, ESMA should then exercise its powers to launch breach of Union law procedures in accordance with Article 17 of Regulation (EU) No 1095/2010, to suspend the right of undertakings to provide services on a cross-border basis in accordance with Article 17aaa of Regulation (EU) No 1095/2010, to arrange binding mediation in accordance with article 19 of Regulation (EU) No 1095/2010 or to organise collaboration platforms in accordance with Article 19a of Regulation (EU) No 1095/2010, where appropriate, in order to effectively remedy those problems.

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

(18) To reduce unnecessary regulatory burdens for UCITS management companies and investment companies, it is appropriate to remove the obligation to draw up a key investor information. Indeed, UCITS management companies and investment companies managing UCITS that are marketed to retail investors are already required to prepare and make available to investors a key information document in accordance with Regulation (EU) No 1286/2014.

(19) Regulation (EU) No 600/2014 of the European Union and the Council lays down harmonised rules on the authorisation and operation of trading venues. Most of those

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

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

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

(22) To ensure appropriate funding for ESMA it is necessary to lay down that ESMA should be financed 50 % from Union funds and 50 % through contributions from Member States, made in accordance with the weighting of votes set out in Article 3(3) of the Protocol (No 36) on transitional provisions for the new tasks envisaged for ESMA by this Directive that are not fee funded.

(23) Although Directive 2009/65/EC and Directive 2011/61/EU have introduced harmonised rules for the authorisation of UCITS, management companies and AIFMs, as well as for the information to be submitted to national competent authorities, divergent national practices in the authorisation process continue to persist. These inconsistencies complicate cross-border operations and hinder the functioning of the management passport. In order to ensure consistent harmonisation in the authorisation of UCITS, management companies and AIFMs, power should be delegated to the Commission to adopt, by means of delegated acts in accordance with Article 290 of the Treaty on the Functioning of the European Union, regulatory technical standards developed by ESMA in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council[19]. Those regulatory technical standards should specify the details of the information to be provided to the competent authorities as part of the application for authorisation of UCITS,

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

management companies and AIFMs and the methods and arrangements for their delivery. To standardise the authorisation process, those regulatory technical standards should also establish templates, data standards, formats and instructions for the provision of that information. Furthermore, to ensure a consistent application of the provisions related to the information to be notified by investment firms providing investment services or performing investment activities through the freedom to provide services, the Commission should be empowered to adopt, in accordance with Article 290 TFEU and Articles 10 to 14 of Regulation (EU) No 1095/2010, regulatory technical standards developed by ESMA.

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

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

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

HAVE ADOPTED THIS DIRECTIVE:

Article 1
Amendments to Directive 2009/65/EC

Directive 2009/65/EC is amended as follows:

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

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

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

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

‘(n) “transferable securities” means transferable securities as defined in Article 4(44) of Directive 2014/65/EU of the European Parliament and of the Council[20];’;

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

'(r) domestic merger' means a merger between UCITS established in the same Member State where at least one of the involved UCITS has been notified pursuant to Article 17c Regulation (EU) 2019/1156 of the European Parliament and of the Council[21];’;

(c) the following points (v) to (x) are added:

‘(v) ‘EU group of a management company and AIFM means in relation to a given management company or AIFM, a group as defined in Article 2, point (11) of Directive 2013/34/EU of the European Parliament and the Council[22] that consists of any of the following:

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

(b) managers of alternative investment funds, as defined in Article 4(1), point (b) of Directive 2011/61/EU of the European Parliament and of the Council[23] that are established in the Union, and which are authorised in accordance with that Directive;

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

(d) credit institutions as defined in Article 2(1), point (b) of Directive 2013/36/EU of the European Parliament and of the Council[24] that are established in the Union, and which are authorised in accordance with that Directive.;

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

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

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

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

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

(w) ‘SFT’ means security financing transaction as defined in Article 3, point (11) of Regulation (EU) 2015/2365 of the European Parliament and of the Council[25];

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

(3) Article 5 is amended as follows:

(a) paragraph 6 is replaced by the following:

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

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

(b) paragraph 8 is replaced by the following:

‘8. In order to ensure consistent harmonisation of this Article the European Supervisory Authority (European Securities and Markets Authority) (hereinafter 'ESMA'), established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council[26], shall develop draft regulatory technical standards, specifying:

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

(b) the procedures and timelines to be followed as part of the application for authorisation of a UCITS, in accordance with this Article;

(c) the methods and arrangements for delivery of the information to be provided

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

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

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

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

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

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

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

(5) Article 7 is amended as follows:

(a) paragraph 1 is amended as follows:

(1) the first subparagraph is amended as follows:

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

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

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

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

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

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

(d) second subparagraph is replaced by the following:

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

(2) the following paragraph 1a is inserted:

'1a. 'By way of derogation from paragraph 1, point (e), Member States shall not require a management company to provide to the competent authorities of its home Member State the information referred to in paragraph 1, point (e), where that management company relies on one or more entities that belong to its EU group for the performance of the functions referred to in Annex II or the services referred to in Article 6(3).

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

(3) paragraph 6 is replaced by the following:

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

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

(b) the procedures and timelines to be followed as part of the application for authorisation of the management company or investment company;

(c) the methods and arrangements for delivery of the information to be provided.

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

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

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

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

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

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

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

(7) Article 12 is amended as follows:

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

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

(b) paragraph 3 is replaced by the following:

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

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

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

In order to ensure a uniform application of the prudential rules for management companies and to ensure a consistent implementation across Member States, ESMA may adopt guidelines to specify the content of those rules.’;

(8) Article 13 is amended as follows:

(a) paragraph 2 is amended as follows:

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

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

‘By way of derogation from paragraph 1, where a management company relies on an entity within its EU group for the performance of the functions referred to in Annex II or the services referred to in Article 6(3), such arrangement shall not be considered as a delegation subject to the requirements set out in paragraph 1, where all of the following conditions are fulfilled:

(a) the entity belongs to the EU group of the management company;

(b) the management company has notified the competent authorities of its home Member State of the fact that it relies on another entity within its EU group to perform its functions or services;

(c) the entity has been duly authorised to perform those functions or services on behalf of the management company.’;

(9) Article 14 is amended as follows:

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

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

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

‘In order to ensure a uniform application of the rules of conduct referred to in paragraph 1 and to ensure a consistent implementation across Member States, ESMA may adopt guidelines, to specify the content of those rules.’;

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

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

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

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

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

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

(12) Article 17 is amended as follows:

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

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

(b) paragraph 4 is replaced by the following:

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

(c) paragraph 6 is replaced by the following:

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

(d) the following paragraph 7a is inserted:

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

(13) Article 18 is amended as follows:

(a) paragraph 2 is replaced by the following:

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

that information to the competent authorities of the management company's host Member State;';

(b) the following paragraph 2a is inserted:

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

(c) paragraph 3 is replaced by the following:

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

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

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

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

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

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

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

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

(16) in Article 23(1), the following subparagraph is added:

'By way of derogation from the first subparagraph, the depositary may have its registered office or be established in a Member State other than the UCITS home Member State, to the extent that it falls into the category referred to in paragraph 2, point (b) and has been duly authorised to provide services in other Member States pursuant to Directive 2013/36/EU.';

(17) Article 29 is amended as follows:

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

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

(b) paragraphs 5 and 6 are deleted;

(18) Article 31 is amended as follows:

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

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

(b) the following paragraph is added:

'2. In order to ensure a uniform application of the prudential rules for investment companies and to ensure a consistent implementation across Member States, ESMA may adopt guidelines to further to specify the content of the rules referred to in paragraph 1.';

(19) Article 39 is amended as follows:

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

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

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

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

(c) paragraph 6 is replaced by the following:

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

(20) Article 43 is amended as follows:

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

(b) paragraph 4 is replaced by the following:

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

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

'2. Without prejudice to paragraph 1, for mergers between UCITS and by way of derogation from Article 84(1), Member States shall ensure that the competent authorities may require or allow the temporary suspension of the subscription, repurchase or redemption of units provided that such suspension is justified for the protection of the unit-holders.';

(22) Article 51 is amended as follows:

(a) paragraph 2 is replaced by the following:

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

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

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

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

(23) Article 52 is amended as follows:

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

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

(b) paragraph 3 is replaced by the following:

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

(c) paragraph 4 is replaced by the following:

‘4. Member States shall ensure that the 5 % limit laid down in paragraph 1, first subparagraph is raised to 25 %, where bonds were issued before 8 July 2022 and met the requirements set out in this paragraph as applicable on the date of their issue, or where bonds fall under the definition of covered bonds as defined in Article 3, point (1) of Directive (EU) 2019/2162 of the European Parliament and of the Council[27]’;

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

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

(24) in Article 53, paragraph 1 is replaced by the following:

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

‘Without prejudice to the limits laid down in Article 56, Member States shall ensure that the limits laid down in Article 52 are raised to 20 % for investment in shares or debt securities issued by the same body when, according to the fund rules or

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

instruments of incorporation, the aim of the UCITS' investment policy is to replicate the composition of a certain stock or debt securities index, or where the UCITS is managed by reference to an index, and this index is recognised by ESMA, on the following basis:';

(b) the following subparagraph is added:

'From [Please insert date = 18 months after the entry into force of this Directive] ESMA shall publish and keep up-to-date on its website a list of recognised indices referred to in the first subparagraph.';

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

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

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

(26) Article 55 is amended as follows:

(a) paragraph 1 is replaced by the following:

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

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

'Where a UCITS has acquired units of another UCITS or other collective investment undertakings, Member States shall not allow that those assets are combined for the purposes of the limits laid down in Article 52.';

(27) Article 56 is amended as follows:

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

'By way of derogation from the first subparagraph, point (b), a UCITS may acquire no more than 15% of the securitisations issued in accordance with Regulation (EU) 2017/2402 by a single issuing body.';

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

'The limits referred to in paragraphs 1 and 2 shall not apply to the following:';

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

'While ensuring observance of the principle of risk spreading, competent authorities shall allow recently authorised UCITS to derogate from Articles 52 to 55 for six months following the date for their authorisation.';

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

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

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

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

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

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

(32) Article 64 is amended as follows:

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

(b) paragraph 2 is replaced by the following:

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

(33) Article 69 is amended as follows:

(a) paragraph 2 is replaced by the following:

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

(b) paragraph 4 is replaced by the following:

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

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

‘2. Where a UCITS invests principally in any category of assets referred to in Article 50 other than transferable securities or money market instruments, or where a UCITS replicates a stock or debt securities index or is managed by reference to an index in accordance with Article 53, its prospectus and, where necessary, marketing communications shall contain a prominent statement drawing attention to the investment policy of the UCITS and its focus on those investments.’;

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

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

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

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

'From 10 January 2028, Member States shall ensure that, when making public any information referred to in Articles 68(1) of this Directive, management companies and investment companies submit that information at the same time to the collection body referred to in paragraph 3 of this Article for the purpose of making it accessible on the European single access point (ESAP) established under Regulation (EU) 2023/2859 of the European Parliament and of the Council[28].';

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

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

(39) Article 84 is amended as follows:

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

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

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

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

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

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

(40) Chapter XI is deleted;

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

'3. The competent authorities of the UCITS home Member State shall be competent to supervise that UCITS including, where relevant, pursuant to Article 19 of this Directive. However, the competent authorities of the UCITS host Member State shall be competent to supervise the UCITS in the fields referred to in Article 14a of Regulation (EU) 2019/1156.';

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

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

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

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

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

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

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

(46) Article 108 is amended as follows:

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

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

(b) paragraph 2 is replaced by the following:

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

(c) paragraphs 4 and 5 are deleted;

(d) paragraph 6 is replaced by the following:

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

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

'Article 110b

ESMA review of large EU groups of management companies and AIFMs

1. By [please insert date = 12 months from entry into force] ESMA shall identify each EU group of management companies and AIFMs that meets all of the following conditions:

(a) the aggregate EU-wide net asset values of management companies and AIFMs within the group are above EUR 300 billion;

(b) the management companies and AIFMs within the group are established in more than one Member States, or those management companies and AIFMs manage or market UCITS and AIFs in more than one Member State.

ESMA shall publish a list of the EU groups of management companies and AIFMs identified in accordance with the first subparagraph and shall update that list every three years.

2. For the purposes of paragraph 1, first subparagraph, point (a), aggregate EU wide assets under management shall include EU assets under management within the scope of this Directive or of Directive 2011/61/EU.

3. ESMA shall, in cooperation with the competent authorities of the home Member States of the management companies and, where relevant, the competent authorities of the home Member States of the AIFMs that are part of the EU group, carry out at least annually a review of each EU group identified pursuant to paragraph 1.

During the review referred to in the first subparagraph, ESMA shall assess the supervisory approaches in the application of the requirements of this Directive and of Directive 2011/61/EU that are taken by the competent authorities of the management companies and, where relevant, AIFMs within each EU group. For the purpose of that review, ESMA shall use a methodology that ensures comparability and consistency of those supervisory approaches.

4. The review referred to in paragraph 3 shall, in particular, assess the supervisory approaches regarding each EU group's:

(a) organisational structure and governance arrangements;

(b) resources and their allocation inside and outside the EU group, including the functions of the persons effectively conducting the business of the management companies and, where relevant, AIFMs, within the EU group;

(c) risk management systems.

5. For the purposes of the review referred to in paragraph 3, ESMA shall compile and consolidate at group level:

(a) all data relevant to the review that are already available to it or to competent authorities;

(b) the programmes of activities of the management companies and, where relevant, AIFMs within the EU group.

6. Following each review, as referred to in paragraph 3, ESMA shall, after having consulted the competent authorities of the home Member States of the management companies and, where relevant, those of the home Member States of the AIFMs within the EU group, conclude on whether it identified any diverging, duplicative, redundant or deficient supervisory approaches.

ESMA shall include the findings referred to in the first subparagraph in a review report, issued by the Executive Board which shall be addressed to the competent authorities of the home Member States of the management companies and, where relevant, those of the home Member States of the AIFMs within the EU group.

7. Where during the review referred to in paragraph 3, ESMA identifies areas that require supervisory action, its Executive board shall issue a recommendation for corrective actions to the competent authorities concerned that is to be implemented within a reasonable time, not exceeding one year.

ESMA shall also inform the competent authorities of the management companies' host Member States and, where relevant, those of the host Member States of the AIFMs of its findings, including any recommendation for corrective actions that it has issued pursuant to the first subparagraph.

8. Where the competent authorities of the home Member States of the management companies and, where relevant, AIFMs within the EU group do not follow the recommendation issued pursuant to paragraph 7, ESMA shall act in accordance with the powers conferred on it under Articles 17, 17aa or 19 of Regulation (EU) No 1095/2010.

Article 110c

Powers of ESMA to address cross-border issues

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

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

Where, pursuant to the first subparagraph, ESMA identifies existing or potential cross-border issues it shall propose corrective actions to the relevant competent authorities for their removal.

3. Where, despite of the corrective actions referred to in paragraph 2 or because the relevant competent authorities fail to implement those corrective actions, the issues identified pursuant to paragraph 2 persist, ESMA shall, without undue delay exercise at least one of the powers conferred on it under Articles 17, 17aaa, 19 or 19a of Regulation (EU) No 1095/2010 in the following cases:

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

(b) the competent authorities of the UCITS home Member State prevent or intend to prevent the appointment of a depositary established in another Member State as referred to in Article 23(1), or impose requirements on such appointment that are not compliant with this Directive;

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

The obligation to exercise at least one of the powers referred to in the first subparagraph shall be without prejudice to ESMA’s capacity to use any of the powers conferred on it under Regulation (EU) No 1095/2010 outside the procedure laid down in this Article.

4. Notwithstanding the actions referred to in paragraph 3, ESMA may suspend the ability of a management company or depositary to carry out any functions and to provide any services within the territory of another Member State where one of the following conditions are fulfilled:

(a) the competent authorities or stakeholders concerned fail to implement a decision, opinion, recommendation or action adopted or required by ESMA in accordance with paragraph 3 or an opinion issued by the Commission, in accordance with Article 17(4) of Regulation (EU) No 1095/2010;

(b) ESMA has concluded that a management company or a depositary that carries out its functions or offers services on a cross-border basis no longer fulfil the requirements of this Directive.

Before suspending a management company or a depositary from carrying out any functions or from providing any services on a cross-border basis as referred to in the first subparagraph, ESMA shall send its draft findings to the management company or the depositary concerned and to the competent authorities of the home Member State of the management company or of the depositary. The competent authorities concerned may submit to ESMA a reasoned statement within 30 calendar days of the receipt of the draft findings.

ESMA shall promptly notify the management company or the depositary of the suspension of the ability to carry out any functions or provide any services on a cross-border basis. The suspension may start at the date of notification and shall start no later than 30 calendar days following that notification.

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

Article 110d

Dispute settlement

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

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

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

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

Article 2

Amendments to Directive 2011/61/EU

Directive 2011/61/EU is amended as follows:

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

(a) point (aea) is deleted;

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

‘(av) ‘EU group of an AIFM and management company means, in relation to a given AIFM or management company, a group as defined in Article 2, point (11) of Directive 2013/34/EU of the European Parliament and the Council[29] that consists of any of the following:

(a) management companies, as defined in Article 2(1), point (b) of Directive 2009/65/EC of the European Parliament and the Council[30] that are established in the Union, and which are authorised in accordance with that Directive;

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

(c) investment firms, as defined in Article 4(1), point (1) of Directive 2014/65/EU of the European Parliament and the Council[31] that are established in the Union, and which are authorised in accordance with that Directive;

(d) credit institutions as defined in Article 2(1), point (b) of Directive 2013/36/EU of the European Parliament and the Council[32] that are established in the Union, and which are authorised in accordance with that Directive;

(aw) ‘UCITS management company’ means a management company as defined in Article 2(1)(c) of Directive 2009/65/EC.’

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

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

(3) Article 7 is amended as follows:

(a) the following paragraph 2a is inserted:

‘2a. By way of derogation from paragraph 2, point (e), Member States shall not require an AIFM to provide to the competent authorities of its home Member State the information referred to in paragraph 2, point (e), where that AIFM relies on one or more entities that

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29 [32] Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19, ELI: http://data.europa.eu/eli/dir/2013/34/oj).

30 [33] Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ L 302, 17.11.2009, pp. 32–96 1, ELI: https://eur-lex.europa.eu/eli/dir/2009/65/oj/eng).

31 [34] Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (recast) Text with EEA relevance (OJ L 173, 12.6.2014, p. 349, ELI: http://data.europa.eu/eli/dir/2014/65/oj).

32 Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, pp. 338–436, ELI: https://eur-lex.europa.eu/eli/dir/2013/36/oj/eng)

belong to its EU group for the performance of the functions referred to in Annex I or the services referred to in Article 6(4).

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

(b) the following paragraph 6 is are inserted:

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

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

(b) the procedures and timelines to be followed as part of the application for authorisation of the AIFM;

(c) the methods and arrangements for delivery of the information to be provided

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

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

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

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

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

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

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

(6) Article 12 is amended as follows:

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

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

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

‘In order to ensure a uniform application of the rules of conduct referred to in paragraph 1 and to ensure a consistent implementation across Member States, ESMA may adopt guidelines, to specify the content of those rules.’;

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

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

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

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

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

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

(9) Article 18 is amended as follows:

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

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

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

‘In order to ensure a uniform application of the prudential rules for AIFMs and to ensure a consistent implementation across Member States, ESMA may adopt guidelines to specify the content of those rules.’;

(10) Article 20 is amended as follows:

(a) paragraph 3 is replaced by the following:

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

(b) in paragraph 6a the following subparagraph is added:

‘By way of derogation from paragraph 1, where an AIFM relies on an entity within its EU group for the performance of the functions referred to in Annex I or the services referred to in

Article 6(4), such arrangement shall not be considered as a delegation subject to the requirements set out in paragraph 1, where all of the following conditions are fulfilled:

(a) the entity belongs to the EU group of the AIFM;

(b) the AIFM has notified the competent authorities of its home Member State of the fact that it relies on another entity within its EU group to perform its functions or services;

(c) the entity has been duly authorised to perform those functions or services on behalf of the AIFM.';

(11) Article 21 is amended as follows:

(a) paragraph 3 is amended as follows:

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

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

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

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

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

(b) in paragraph 5 the following subparagraph is added:

'By way of derogation from the first subparagraph, point (a), an AIFM may appoint for an AIF it manages a depositary that has its registered office or is established in a Member State other than the home Member State of the AIF, provided that the depositary falls into one of the categories referred to in paragraph 3, points (a) and (b) and has been duly authorised to provide services in other Member States pursuant to Directive 2013/36/EU or Article 6(3) of Directive 2014/65/EU, respectively.';

(c) paragraph 5a is deleted;

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

'The annual report shall contain the following:';

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

'The additional information to be included in the annual report of the non-listed company or the AIF, in accordance with paragraph 1, shall include a fair review of the development of the

non-listed company's business representing the situation at the end of the period covered by the annual report. The report shall also give an indication of:';

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

'**RIGHTS OF EU AIFMs TO MANAGE EU AIFs IN THE UNION**';

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

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

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

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

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

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

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

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

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

(20) Article 45 is amended as follows:

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

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

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

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

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

(c) paragraph 4 is replaced by the following:

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

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

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

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

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

‘Article 47a

ESMA review of large EU groups of AIFMs and management companies

1. By [please insert date = 12 months from entry into force] ESMA shall identify each EU group of AIFMs and management companies that meets all of the following conditions:

(a) the aggregate EU-wide net asset values of AIFMs and management companies within the group are above EUR 300 billion;

(b) the AIFMs and management companies within the group are established in more than one Member States, or those AIFMs and management companies manage or market AIFs and UCITS in more than one Member State.

ESMA shall publish a list of the EU groups of AIFMs and management companies identified in accordance with the first subparagraph and shall update that list every three years.

2. For the purposes of paragraph 1, first subparagraph, point (a), aggregate EU wide assets under management shall include EU assets under management within the scope of this Directive or of Directive 2009/65/EC.

3. ESMA shall, in cooperation with the competent authorities of the home Member States of the AIFMs and, where relevant, the competent authorities of the home Member States of the management companies that are part of the EU group, carry out at least annually a review of each EU group identified pursuant to paragraph 1.

During the review referred to in the first subparagraph, ESMA shall assess the supervisory approaches in the application of the requirements of this Directive and of Directive 2009/65/EC that are taken by the competent authorities of the AIFMs and, where relevant, management companies within each EU group. For the purpose of that review, ESMA shall use a methodology that ensures comparability and consistency of those supervisory approaches.

4. The review referred to in paragraph 3 shall, in particular, assess the supervisory approaches regarding each EU group's:

(a) organisational structure and governance arrangements;

(b) resources and their allocation inside and outside the EU group, including the functions of the persons effectively conducting the business of the AIFMs and, where relevant, management companies, within the EU group;

(c) risk management systems.

5. For the purposes of the review referred to in paragraph 3, ESMA shall compile and consolidate at group level:

(a) all data relevant to the review that are already available to it or to competent authorities;

(b) the programmes of activities of the AIFMs and, where relevant, management companies within the EU group.

6. Following each review, as referred to in paragraph 3, ESMA shall, after having consulted the competent authorities of the home Member States of the AIFMs and, where relevant, those of the home Member States of the management companies within the EU group, conclude on whether it identified any diverging, duplicative, redundant or deficient supervisory approaches.

ESMA shall include the findings referred to in the first subparagraph in a review report, issued by the Executive Board which shall be addressed to the competent authorities of the home Member States of the AIFMs and, where relevant, those of the home Member States of the management companies within the EU group.

7. Where during the review referred to in paragraph 3, ESMA identifies areas that require supervisory action, its Executive board shall issue a recommendation for corrective actions to the competent authorities concerned that is to be implemented within a reasonable time, not exceeding one year.

ESMA shall also inform the competent authorities of the host Member States of the AIFMs and, where relevant, those of the host Member States of the management companies of its findings, including any recommendation for corrective actions that it has issued pursuant to the first subparagraph.

8. Where the competent authorities of the home Member States of the AIFMs and, where relevant, management companies within the EU group do not follow the recommendation

issued pursuant to paragraph 7, ESMA shall act in accordance with the powers conferred on it under Articles 17, 17aa or 19 of Regulation (EU) No 1095/2010.

Article 47b

Powers of ESMA to address cross-border issues

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

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

Where, pursuant to the first subparagraph, ESMA identifies existing or potential cross-border issues it shall propose corrective actions to the relevant competent authorities for their removal.

3. Where, despite of the corrective actions referred to in paragraph 2 or because the relevant competent authorities fail to implement them, the issues identified pursuant to paragraph 2 persist, ESMA shall without undue delay exercise at least one of the powers conferred on it under Articles 17, 17aaa, 19 or 19aa of Regulation (EU) No 1095/2010 at least in the following cases:

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

(b) the competent authorities of the home Member State of the AIFM or those of the home Member State of the AIF prevent or intend to prevent the appointment of a depositary established in another Member State as referred to in Article 21(5), or impose requirements on such appointment that are not compliant with this Directive;

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

The obligation to exercise at least one of the powers referred to in the first subparagraph shall be without prejudice to ESMA's capacity to use any of the powers conferred on it under Regulation (EU) No 1095/2010 outside the procedure laid down in this Article.

4. Notwithstanding the actions referred to in paragraph 3, ESMA may suspend the ability of an AIFM or depositary to carry out any functions and to provide any services within the territory of another Member State where one of the following conditions are fulfilled:

(a) the competent authorities or stakeholders concerned fail to implement a decision, opinion, recommendation or action adopted or required by ESMA in accordance with paragraph 3 or an opinion issued by the Commission, in accordance with Article 17(4) of Regulation (EU) No 1095/2010;

(b) ESMA has concluded that an AIFM or a depositary that carries out its functions or offers services on a cross-border basis no longer fulfil the requirements of this Directive.

Before suspending an AIFM or a depositary from carrying out any functions or from providing any services on a cross-border basis as referred to in the first subparagraph, ESMA shall send its draft findings to the AIFM or the depositary concerned and to the competent authorities of the home Member State of the AIFM or of the depositary. The competent authorities concerned may submit to ESMA a reasoned statement within 30 calendar days of the receipt of the draft findings.

ESMA shall promptly notify the AIFM or the depositary of the suspension of the ability to carry out any functions or provide any services on a cross-border basis. The suspension may start at the date of notification and shall start no later than 30 calendar days following that notification.

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

(22) Article 50 is amended as follows:

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

'5g. Where an AIFM has appointed for an AIF it manages a depositary established in a Member State other than the Member State of the AIF, in accordance with the second subparagraph of Article 21(5), and where the competent authorities of the home Member State of an AIF or, where the AIF is not regulated, the competent authorities of the home Member State of the AIFM that manages the AIF, have reasonable grounds to suspect that acts contrary to this Directive are being or have been carried out by a depositary not subject to the supervision of those competent authorities, those competent authorities shall without delay notify ESMA and the competent authorities of the depositary concerned thereof in as specific a manner as possible. The recipient competent authorities shall take appropriate action and shall inform ESMA and the notifying competent authorities of the outcome of that action. This paragraph shall be without prejudice to the competences of the notifying competent authorities.

(b) the following paragraph 5i is inserted:

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

(c) paragraph 7 is replaced by the following:

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

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

(24) Article 55 is replaced by the following:

'Article 55
Dispute settlement

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

(25) Article 60 is replaced by the following:

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

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

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

Article 3
Amendments to Directive 2014/65/EU

Directive 2014/65/EU is amended as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) point 18 is replaced by the following:

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

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

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

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

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

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

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

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

(e) point 30 is replaced by the following:

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

(f) point 38 is replaced by the following:

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

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

‘(55) ‘home Member State’ means:

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

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

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

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

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

(4) Article 8 is replaced by the following:

‘Article 8
Withdrawal of authorisations

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

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

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

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

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

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

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

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

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

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

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

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

(7) Articles 18 to 20 are deleted;

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

‘Member States shall ensure that the competent authorities, where ESMA is not in charge of authorisation and supervision of the activities of investment firms pursuant to Article 38fa of Regulation (EU) No 600/2014, monitor those activities so as to

assess compliance with the operating conditions provided for in this Directive. Member States shall ensure that the appropriate measures are in place to enable the competent authorities to obtain the information needed to assess the compliance of investment firms with those obligations.';

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

(10) Article 34 is amended as follows:

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

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

(b) paragraphs 6 and 7 are deleted;

(c) paragraph 8 is replaced by the following:

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

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

(d) paragraph 9 is replaced by the following:

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

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.';

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

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

(12) Articles 36 to 38 are deleted;

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

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

(14) Title III is deleted;

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

'TITLE IV
POSITION LIMITS IN COMMODITY DERIVATIVES AND REPORTING';

(16) Article 57 is amended as follows:

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

‘**Position limits in commodity derivatives**’;

(b) paragraph 8 is deleted;

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

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

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

(d) the following paragraph 15 is added:

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

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

(17) Article 58 is amended as follows:

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

‘**Position reporting by market participants**’;

(b) paragraph 1 is deleted;

(c) paragraph 4 is replaced by the following:

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

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

(b) other positions.’;

(d) paragraph 5 is replaced by the following:

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

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

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

(e) paragraphs 6 and 7 are deleted;

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

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

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

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

(a) with regard to this Directive:

(i) Article 8, point (b);

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

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

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

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

(vi) Article 21(1);

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(vi) Article 2h(1);

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

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

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

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

(xi) Article 2m;

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

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

(xiv) Article 2q(5);

(xv) Article 2r(1);

(xvi)Article 2s(1);

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

(xviii) Article 2v;

(xix) Article 2w;

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

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

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

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

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

(xxv) Article 5;

(xxvi) Article 6;

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

(xxviii)Article 8(1);

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

(xxx) Article 8b;

(xxxi) Article 10;

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

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

(xxxiv) Article 12(1);

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

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

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

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

(xxxix) Article 17a(1);

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

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

(xlii) Article 22(2);

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

(xliv) Article 22b(1);

(xlv) Article 22c(1);

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

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

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

(xlix) Article 27(1);

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

(li) Article 28(1);

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

(liii) Article 30(1);

(liv) Article 31(3);

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

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

(lvii) Article 34c;

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

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

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

(lxi) Article 39a;

(lxii) Articles 40, 41 and 42.

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

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

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

(20) Article 79 is amended as follows:

(a) paragraph 2 is deleted;

(b) paragraph 8 is deleted;

(21) Article 86 is amended as follows:

(a) paragraph 3 is deleted;

(b) paragraph 4 is replaced by the following:

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

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

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

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

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

(b) be accompanied by the following metadata:

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

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

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

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

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

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

3. By 9 January 2030, for the purpose of making the information referred to in Article 27(3) of this Directive accessible on ESAP, Member States shall

designate at least one collection body as defined in Article 2, point (2), of Regulation (EU) 2023/2859 and notify ESMA thereof.

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

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

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

(b) be accompanied by the following metadata:

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

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

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

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

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

That information shall comply with the following requirements:

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

(b) be accompanied by the following metadata:

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

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

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

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

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

(23) Article 89 is amended as follows:

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

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

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

(b) paragraph 5 is replaced by the following:

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

Article 4
Transposition

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

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

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

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

Article 5
Entry into force

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

Article 6

Addressees

This Directive is addressed to the Member States.

Done at Brussels,

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