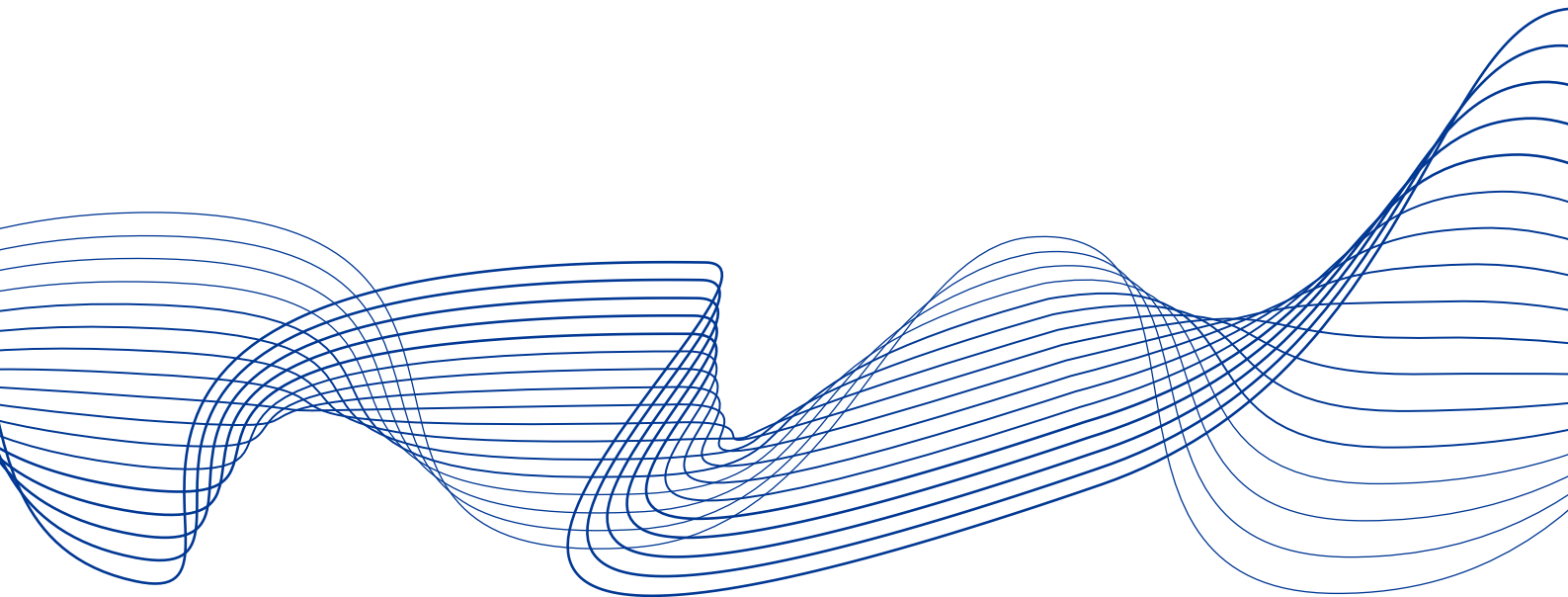


Compliance report

July 2023

Recommendation of the European
Systemic Risk Board of 7
December 2017 on liquidity and
leverage risks in investment funds
(ESRB/2017/6)



ESRB

European Systemic Risk Board

European System of Financial Supervision

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1 Introduction

This compliance report provides an assessment of the implementation of the Recommendation of the European Systemic Risk Board of 7 December 2017 on liquidity and leverage risks in investment funds (ESRB/2017/6) (hereinafter the “Recommendation”).

The Recommendation is addressed to the European Commission (Commission) and the European Securities and Markets Authority (ESMA). It aims to address systemic risks related to liquidity mismatches and the use of leverage in investment funds.

In accordance with Article 17 of the ESRB Regulation¹ and Section 2(3) of the Recommendation, the Commission was asked to deliver to the European Systemic Risk Board (ESRB) and the Council of the European Union a report on the implementation of Recommendations A, B and D by 31 December 2020. Bearing in mind the difficulties posed by the coronavirus (COVID-19) pandemic in meeting the deadlines set in the Recommendation and in order to allow the Commission’s services to reflect the content of the Recommendation in their legislative proposals, the deadline for submitting the report was postponed to 31 December 2021. The report was submitted to the ESRB Secretariat before this date.

Meanwhile, ESMA was asked to deliver to the ESRB, the Commission, the European Parliament and the EU Council a report on the implementation of Recommendation C and Sub-recommendations E(1), E(2) and E(3) by 30 June 2019. Under Sub-recommendation E(4), ESMA was asked to provide at least annually the information received by the national competent authorities (NCAs), starting on 31 December 2019. The report was submitted to the ESRB Secretariat on the due date. A compliance report on the implementation of Recommendations C and E was already published in September 2021 and is also integrated into this report for reasons of completeness.

The assessment of the report was carried out by an Assessment Team consisting of eight assessors, including one Chair, endorsed by the Advisory Technical Committee (ATC) of the ESRB (see Annex I of this compliance report). The Assessment Team followed the methodology provided in the “Handbook on the assessment of compliance with ESRB recommendations” of April 2016 (hereinafter the “Handbook”)².

Overall, the Assessment Team observed a significant level of compliance with the Recommendation while carrying out its assessment. The Commission proposed extensive amendments to Directive 2011/61/EU on Alternative Investment Fund Managers (hereinafter “Directive 2011/61/EU” or “the AIFMD”)³ and to Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in

¹ Regulation (EU) 1092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board (OJ L 331, 15.12.2010, p. 1).

² “Handbook on the assessment of compliance with ESRB recommendations”, ESRB, April 2016.

³ 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).



transferable securities (UCITS) (hereinafter “Directive 2009/65/EC” or the “UCITSD”)⁴ in order to incorporate a common Union legal framework governing the inclusion of additional liquidity management tools in the design of investment funds and to introduce regular data reporting requirements for UCITS and UCITS management companies, especially regarding liquidity risk and leverage. For its part, ESMA provided detailed and comprehensive guidelines on liquidity stress testing in UCITS and alternative investment funds (AIFs)⁵ and on Article 25 of Directive 2011/61/EU⁶, as well as guidance on the procedure for imposing leverage limits under Article 25 of Directive 2011/61/EU.

This compliance report is structured as follows. Part 1 provides a recap of the Recommendation’s policy objectives. Part 2 summarises the methodology set out in the Handbook, which (i) establishes the procedure for assessing compliance with ESRB Recommendations, and (ii) presents the implementation standards drafted by the Assessment Team and used to assess compliance by the addressees with the respective recommendations. Parts 3 and 4 consist of the respective assessments of the Commission’s and ESMA’s compliance with the Recommendation. Annex I lists the members of the Assessment Team, while Annex II contains the implementation standards. A list of abbreviations is provided at the end of the report.

⁴ 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).

⁵ “Guidelines on liquidity stress testing in UCITS and AIFs”, ESMA34-39-897, ESMA, 16 July 2020.

⁶ “Final Report. Guidelines on Article 25 of Directive 2011/61/EU”, ESMA34-32-552, ESMA, 17 December 2020.



2 Policy objectives

The Recommendation aims to address systemic risks related to liquidity mismatches and the use of leverage in investment funds. The investment fund sector has grown strongly over the past decade, both in the European Union and globally, so that investment funds now account for a greater overall component of securities markets.

However, there are concerns that increased financial intermediation by investment funds may result in any future financial crisis being amplified. Mismatches between the liquidity of open-ended investment funds' assets and their redemption profiles may result in fire sales being carried out to meet redemption requests in times of market stress.

Recommendation A is designed to address the risks that may arise when fund managers do not have adequate liquidity management tools in place such as redemption fees, redemption gates or the ability to temporarily suspend redemptions. In the absence of such tools, redemption pressures during times of declining asset prices could cause system-wide liquidity stress and exacerbate asset price falls, which could lead to risks to financial stability. The availability of a diverse set of liquidity management tools in all Member States would increase the capacity of fund managers to deal with redemption pressures when market liquidity becomes stressed. In addition, Recommendation A calls for further clarification on the suspension of redemptions by NCAs.

Recommendation B is designed to mitigate and prevent excessive liquidity mismatches in open-ended AIFs. Some open-ended AIFs hold a large proportion of their investments in inherently less liquid assets. This includes investment funds that invest in real estate, unlisted securities, loans and other alternative assets. There is a need for such investment funds to demonstrate to NCAs – during the approval process and/or after approval – that they can maintain their investment strategy under stressed market conditions.

Recommendation C is designed to promote coherent liquidity stress testing practices at the investment fund level. Stress tests are tools that help the fund manager identify the potential weaknesses of an investment strategy and assist in preparing an investment fund for a crisis. If used correctly as a risk management and decision-making tool, a stress test should reduce liquidity risk at the investment fund level and contribute to lowering liquidity risk at the financial system level. Guidance on fund managers' liquidity testing practices is expected to (i) reduce liquidity risk at both investment fund and system levels, and (ii) strengthen the ability of entities to manage liquidity in the best interests of investors, which includes avoiding surprises and the resulting emergency reactions during periods of unexpectedly high redemption pressure.

Recommendation D is designed to establish a harmonised UCITS reporting framework across the Union. Although many jurisdictions within the Union have reporting obligations for UCITS, reporting practices differ widely in terms of the reporting frequency, the UCITS covered and the data reported. The lack of a harmonised reporting framework prevents monitoring and a comprehensive assessment of the potential contribution of UCITS to risks to financial stability. A



harmonised UCITS reporting framework will also reduce existing reporting inefficiencies for both NCAs and the investment funds industry.

Recommendation E is designed to facilitate the implementation of Article 25 of Directive 2011/61/EU, which provides for a macroprudential tool that gives NCAs the power to impose limits on the level of leverage that an alternative investment fund manager (AIFM) is entitled to employ when this contributes to the build-up of systemic risk in the financial system.

There is a need to provide clarification on the use of this tool by developing a common approach to ensure that NCAs are able to use the tool in a harmonised manner. Therefore, guidance should be developed on a framework to assess leverage risks and on the design, calibration and implementation of leverage limits.

2.1 Content and structure

The Recommendation is structured into five recommendations (A, B, C, D and E).

Recommendation A – Liquidity management tools for redemption

The ESRB recommends that the Commission proposes that Union legislation incorporates a common Union legal framework governing the inclusion of additional liquidity management tools (a-LMTs) in the design of investment funds originating anywhere in the Union so that the decision on which a-LMTs to incorporate in the constitutional documents of or other pre-contractual information on investment funds is made individually by each entity responsible for management.

The Commission is recommended to propose that Union legislation includes further provisions specifying the NCAs' role when using their powers to suspend redemptions in situations where there are cross-border financial stability implications.

The Commission is recommended to propose that Union legislation sets out ESMA's general facilitation, advisory and coordination role in relation to the NCAs' powers to suspend redemptions in situations where there are cross-border financial stability implications, in line with Sub-recommendation A(2).

Recommendation B – Additional provisions to reduce the likelihood of excessive liquidity mismatches.

The Commission is recommended to propose that Union legislation includes measures to limit the extent to which the use of liquidity transformation in open-ended AIFs could contribute to the build-up of systemic risks or the risk of disorderly markets.

Recommendation C – Stress testing

In order to promote supervisory convergence, ESMA is recommended to develop guidance on the practice to be followed by managers for the stress testing of liquidity risk for individual AIFs and UCITS.

Recommendation D – UCITS reporting



The Commission is recommended to propose that Union legislation requires UCITS and UCITS management companies to regularly report data, especially regarding liquidity risk and leverage, to the competent authority, and to provide such data to the relevant NCA if it is not the competent authority for UCITS reporting purposes.

The Commission is recommended to propose that the data mentioned in Sub-recommendation D(1) is reported, within a reporting framework, at least on a quarterly basis by a sufficiently relevant proportion, from a financial stability perspective, of all UCITS and UCITS management companies. As a minimum, a sufficient subset of the data set should be reported annually by a representative proportion of all UCITS and UCITS management companies.

The Commission is recommended to propose that NCAs make the data mentioned in Sub-recommendation D(1) available to the NCAs of other relevant Member States, ESMA and the ESRB.

Recommendation E – Guidance on Article 25 of Directive 2011/61/EU

ESMA is recommended to give guidance on the framework to assess the extent to which the use of leverage within the AIF sector contributes to the build-up of systemic risk in the financial system.

ESMA is recommended to give guidance on the design, calibration and implementation of macroprudential leverage limits.

ESMA is recommended to give guidance on how NCAs should notify ESMA, the ESRB and other NCAs of their intention to implement macroprudential measures under Article 25(3) of Directive 2011/61/EU.

ESMA is recommended to use the information received from NCAs pursuant to Article 25(3) of Directive 2011/61/EU to benchmark and share knowledge with national macroprudential authorities and the ESRB, at least annually, on practices in relation to the use of leverage limits and the imposition of other restrictions on the management of AIFs.

2.2 Implementation

The Recommendation is intended to cover AIFs, AIFMs, UCITS and UCITS management companies. It also aims to avoid regulatory arbitrage and to take into consideration the principle of proportionality with regard to the objective and the content of each recommendation.

Annex I of the Recommendation further specifies the criteria that the Commission and ESMA are expected to comply with, as set out below.

For Recommendation A, the following compliance criteria are specified.

- **A(1) – Availability of additional liquidity management tools**

Union legislation should allow for a wide range of a-LMTs to be legally available at Union level while recognising that asset managers should bear the primary responsibility for activating and implementing a-LMTs and that some of the tools will not be suitable or necessary for all types of



open-ended funds. The a-LMTs should support open-ended AIFs and UCITS, as well as their managers, to manage requests for redemption appropriately and effectively at all times and especially in stressed market conditions.

The Commission's proposed changes to the relevant Union legislation should include obligations for:

- (a) AIFMs of open-ended AIFs and UCITS management companies to assess all available a-LMTs and specifically to assess which of them are suitable for the investment strategies of the funds they manage and should be included in their constitutional documents or other pre-contractual information in order to be exercised both in normal and in stressed market conditions and to provide investors with sufficient transparency in relation to such tools;
- (b) AIFMs of open-ended AIFs and UCITS management companies to include, as a minimum, the power to suspend redemptions, particularly in stressed market conditions, in the constitutional documents or other pre-contractual information of the funds they manage;
- (c) AIFMs of open-ended AIFs and UCITS management companies to ensure that the necessary operational capacity and contingency planning is available for the timely activation of any a-LMT which they may use;
- (d) AIFMs of open-ended AIFs and UCITS management companies to report to the NCAs on the implementation and use of a-LMTs in stressed market conditions;
- (e) ESMA, after taking into account the opinion of the ESRB in relation to macroprudential issues, to develop guidance on:
 - (i) definitions and characteristics of a-LMTs;
 - (ii) the criteria for the suitability assessment under point A(1)(a);
 - (iii) the transparency requirements for the a-LMTs established under point A(1)(a);
 - (iv) high-level principles on how the a-LMTs should be implemented in the fund's liquidity management process;
 - (v) how to assess and deal with potential unintended consequences when using a-LMTs;
 - (vi) the requirement to report to the NCAs under point A(1)(d); and
 - (vii) the level of transparency in relation to investors when a-LMTs are activated and during their use.

The guidance should take into account the necessary contingency planning that should apply in advance, as required under point A(1)(c), to enable such a-LMTs to be activated promptly and effectively.



- **A(2) — Further provisions on the NCAs' suspension of redemptions with cross-border financial stability implications**

The Commission's proposed changes to Union legislation should include:

- (a) clarification of the respective roles of the NCAs and cooperation between them with regard to suspending redemptions for cross-border financial stability purposes, where the AIF or UCITS is established in one Member State but has an AIFM or UCITS management company established in another Member State, i.e. cross-border implications;
- (b) an obligation for the NCAs, when exercising the powers to direct the suspension of redemptions for cross-border financial stability purposes, to notify other relevant NCAs, ESMA, and the ESRB, prior to exercising such powers.

- **A(3) — Further provisions on ESMA's role in relation to the NCAs suspending redemptions with cross-border financial stability implications**

The Commission's proposed changes to the relevant Union legislation should include an obligation for ESMA to ensure that it fulfils a general facilitation, advisory and coordination role in relation to the NCAs' powers to suspend redemptions where there are cross-border financial stability implications.

For Recommendation B, the following compliance criteria are specified.

The Commission's proposed changes to the relevant Union legislation should include the following.

- (a) Granting powers to ESMA to prepare and to update a list of inherently less liquid assets, on the basis of ESMA's own analysis, after taking into account the ESRB's opinions in relation to macroprudential issues and those of the European Banking Authority and the European Insurance and Occupational Pensions Authority in relation to cross-sectoral consistency issues. In compiling this list, ESMA should consider, as a minimum, real estate, unlisted securities, loans and other alternative assets that appear to be inherently less liquid. The analysis should take into account, inter alia, the time it would take to liquidate those assets under stressed market conditions.
- (b) A requirement for AIFMs of open-ended AIFs whose objective is to invest significantly in assets included in the list of inherently less liquid assets under point (a), to demonstrate to the NCAs their capacity to maintain their investment strategy under foreseeable market conditions. The assessment should include, inter alia, tailored redemption policies, the implementation of a-LMTs and/or internal limits of assets included in the list of inherently less liquid assets under point (a). Such internal limits, if used, should then be disclosed to the NCAs at the inception of the relevant funds and reported thereafter whenever these limits change. Disclosure to investors should also be implemented based on guidance to be developed by ESMA.
- (c) The discretion to impose transitional provisions for AIFMs of open-ended AIFs specifying the time allowed to comply with the legislation when assets are added to the list of



inherently less liquid assets under point (a), and when internal limits are breached, where useful, in order to avoid any unintended, harmful effects.

For Recommendation C, the following compliance criteria are specified.

The guidance issued on liquidity stress testing by ESMA should include, but not be limited to:

- (a) the design of liquidity stress testing scenarios;
- (b) the liquidity stress test policy, including internal use of liquidity stress test results;
- (c) considerations for the asset and liability sides of investment fund balance sheets; and
- (d) the timing and frequency for individual funds to conduct the liquidity stress tests.

Such guidance should be based on the stress testing requirements set out in Directive 2011/61/EU and how market participants carry out stress testing.

For Recommendation D, the following compliance criteria are specified.

• **D(1) – Reporting obligations for UCITS and UCITS management companies**

The Commission's proposed changes to the relevant Union legislation should include reporting obligations that cover both manager and fund-specific data while also reflecting the specificities of UCITS. The reported data should allow for sufficient monitoring of potential vulnerabilities that may contribute to systemic risk, and should cover, as a minimum:

- (a) the value of assets under management for all UCITS managed by a management company;
- (b) instruments traded and individual exposures;
- (c) investment strategy;
- (d) global exposure/leverage;
- (e) stress testing;
- (f) efficient portfolio management techniques;
- (g) counterparty risk/collateral;
- (h) liquidity risk;
- (i) credit risk; and
- (j) trading volumes.

The Commission should propose, where appropriate, a harmonisation of overall reporting requirements on investment funds and their managers, particularly between the recommended UCITS reporting and the measures already implemented for reporting under Directive 2011/61/EU.



In this respect, the Commission should also take into account the reporting requirements under Regulation (EU) 2017/1131⁷. Such harmonisation should enable the use of existing reporting platforms, achieve synergies and avoid undue burdens on asset managers.

The Commission's changes to Union legislation should furthermore include a provision stating that if the NCA of the UCITS manager is different from the NCA of the UCITS itself, the UCITS manager must, upon request, also provide the reported information to the NCA of the UCITS.

- **D(2) — Frequency and coverage of reporting obligations for UCITS and UCITS management companies**

The Commission's proposed changes to Union legislation should include the following requirements:

- (a) the data mentioned in Recommendation D(1) is reported as a minimum on a quarterly basis to enable effective monitoring of financial stability risks while also addressing proportionality aspects in relation to the entities required to report;
- (b) the total assets under the management of the management company and the assets under management by individual UCITS funds should be taken into account when setting the scope for reporting, thus ensuring that a sufficient part of the industry will be covered by the reporting, in order to address risks to financial stability.

- **D(3) — Harmonised reporting and information sharing**

The Commission's proposed changes to Union legislation should include an obligation for the information mentioned in Recommendation D(1) to be made available to the NCAs of other relevant Member States, ESMA and the ESRB in order to ensure the harmonisation of UCITS data reporting with data sharing practices under Directive 2011/61/EU. In this context, the Commission should also take into account reporting requirements under Regulation (EU) 2017/1131.

For Recommendation E, the following compliance criteria are specified.

- **E(1) – Assessment of leverage-related systemic risk**

The guidance issued by ESMA should include:

- (a) a common minimum set of indicators to be taken into account by the NCAs during their assessment;
- (b) instructions to calculate the indicators referred to in point E(1)(a) based on reporting data under Article 24 of Directive 2011/61/EU; and
- (c) qualitative and, where feasible, quantitative descriptions of the interpretation of the indicators in the context of the assessment framework.

⁷ Regulation (EU) 2017/1131 of the European Parliament and of the Council of 14 June 2017 on money market funds (OJ L 169 30.6.2017, p. 8).



2. The common set of indicators referred to in point E(1)(a) should:

- (a) facilitate assessment of the level, source and different usages of leverage;
- (b) facilitate assessment of the level, source and different usages of leverage;
- (c) facilitate assessment of the main channels through which systemic risk may materialise, i.e. fire sales, direct spillovers to financial institutions, and the interruption of credit intermediation; and
- (d) be operable and sufficient for NCAs to inform ESMA, in connection with its advice under Article 25(6) of Directive 2011/61/EU and the principles laid down in Article 112 of Commission Delegated Regulation (EU) No 231/2013⁸, whether the conditions for imposing leverage limits or other restrictions on the management of AIFs have been met.

- **E(2) – Macroprudential leverage limits**

The guidance issued by ESMA should include the following.

- (a) A description of the various types of leverage limits, including an evaluation of their effectiveness and efficiency in mitigating excessive leverage.
- (b) A set of principles to be taken into account by the NCAs when calibrating leverage limits. As a minimum such principles should include all of the following: (i) a statement that provides for leverage limits to be based on the leverage measures set out in Directive 2011/61/EU; (ii) criteria for applying leverage limits; and (iii) principles regarding the periodic review of leverage limits.
- (c) A set of principles to be taken into account by the NCAs when considering the imposition of leverage limits, as a minimum covering all of the following: (i) principles for a balanced approach between rules-based versus discretionary limit setting; (ii) principles relating to the interaction with other policy measures; and (iii) principles for coordination among Union authorities.

- **E(3) – Notification procedure**

The guidance issued by ESMA should enable the NCAs to notify ESMA, the ESRB and other relevant NCAs. In particular, this guidance should include, but not be limited to, an efficient working procedure and templates for notification letters and reporting requirements as regards the NCAs' assessment of the need to implement macroprudential measures pursuant to Article 25(3) of Directive 2011/61/EU.

- **E(4) – Benchmarking**

ESMA should share, on an annual basis, with national macroprudential authorities and the ESRB:

⁸ Commission Delegated Regulation (EU) No 231/2013 of 19 December 2012 supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to exemptions, general operating conditions, depositaries, leverage, transparency and supervision (OJ L 083 22.3.2013, p. 1).



- (a) the results, if any, of its benchmarking exercise;
- (b) the practices, if any, in relation to the use of leverage limits and the imposition of other restrictions on the management of AIFs using information received from the NCAs pursuant to Article 25(3) of Directive 2011/61/EU.



3 Methodology

Article 17 of the ESRB Regulation entrusts the ESRB with monitoring the compliance of addressees with ESRB recommendations. To this effect, and pursuant to Article 20 of the ESRB Rules of Procedure⁹, the ESRB assesses the actions and justifications undertaken and communicated by the addressees of ESRB recommendations in accordance with the “act or explain” mechanism described in Article 17 of the ESRB Regulation, whereby the addressee of a recommendation can either (i) take action in response to a recommendation, or (ii) adequately justify any inaction. The ESRB thus analyses the information provided by addressees and assesses whether the action taken duly achieves the objective of the recommendation, or whether the justification provided for inaction is sufficient. This analysis results in a final compliance grade being assigned to each addressee, reflecting the level of implementation by the relevant addressee.

Addressees were given the opportunity to provide further explanations in the course of the assessment process. Using a communication channel established between the Assessment Team and the addressees, additional information relevant to the assessment process was provided during the remedial dialogue phase.

3.1 Grading methodology

In order to arrive at a single grade for each recommendation, a four-step grading methodology was employed in line with the ESRB Handbook. Such a methodology is necessary to ensure the full transparency of the single overall compliance grade and a high level of objectivity across the entire assessment process, while still allowing room for high-quality expert judgement, which can easily be identified and reviewed to understand the rationale behind the allocation of particular overall grades.

Step I – When assessing compliance with the Recommendation, the implementation of each recommendation was, in accordance with the established implementation standards, graded as either FC/LC/PC/MN/NC in the case of action, SE/IE in the case of inaction or N/A if the recommendation was not applicable.

The grading scale for action is as follows.

- **Fully compliant (FC):** an addressee complies entirely with the requirements.
- **Largely compliant (LC):** the requirements have been met almost entirely and only negligible requirements remain to be implemented.

⁹ Decision of the European Systemic Risk Board of 20 January 2011 adopting the Rules of Procedure of the European Systemic Risk Board (ESRB/2011/1) (OJ C 58, 24.2.2011, p. 4).



- **Partially compliant (PC)**: the most important requirements have been met; certain deficiencies affect the adequacy of the implementation, without resulting in a situation where the given recommendation has not been acted upon.
- **Materially non-compliant (MN)**: the requirements have only been fulfilled to a degree, resulting in a significant deficiency in the implementation.
- **Non-compliant (NC)**: almost none of the requirements have been met, even if steps have been taken towards implementation.

The grading scale for inaction is as follows.

- **Sufficiently explained (SE)**: a complete and well-reasoned explanation for the lack of implementation has been provided. If one or more of the recommendations are intended to address a particular systemic risk that does not affect a particular addressee, such justification/explanation may be considered sufficient.
- **Insufficiently explained (IE)**: the explanation given for the lack of implementation is not sufficient to justify the inaction.

Step II – Compliance grades for each recommendation were converted into a numerical grade (see Table 1). These numerical grades were then weighted and aggregated into a single numerical grade for each recommendation.

Table 1
Grading scale

Compliance grade	Numerical grade
Fully compliant (FC)	1
Largely compliant (LC)	0.75
Partially compliant (PC)	0.5
Materially non-compliant (MN)	0.25
Non-compliant (NC)	0
Sufficiently explained (SE)	1
Insufficiently explained (IE)	0

Step III – The numerical grades for each recommendation were then weighted and aggregated into a single numerical grade for the entire Recommendation.

Step IV – Finally, the overall compliance grade was determined by converting the single numerical grade for the entire Recommendation into a final grade for compliance using the conversion table below.



Table 2

Conversion table: compliance grades to numerical grades

Compliance grade	Numerical grade
Fully compliant (FC)	0.9-1
Largely compliant (LC)	0.65-<0.9
Partially compliant (PC)	0.4-<0.65
Materially non-compliant (MN)	0.15-<0.4
Non-compliant (NC)	0-<0.15

The level of compliance was then expressed in colour-coded form as illustrated below.

Table 3

Colour codes for levels of compliance

Positive grades	Mid-grade	Negative grades
Fully compliant (FC) – Actions taken fully implement the recommendation		Materially non-compliant (MN) – Actions taken only implement a small part of the recommendation
Largely compliant (LC) – Actions taken implement almost all of the recommendation	Partially compliant (PC) – Actions taken only implement part of the recommendation	Non-compliant (NC) – Actions taken are not in line with the nature of the recommendation
Inaction sufficiently explained (SE) – No actions were taken, but the addressee provided sufficient justification		Inaction insufficiently explained (IE) – No actions were taken and the addressee did not provide sufficient justification

3.2 Principle of fairness, consistency and transparency

While conducting the assessment, the Assessment Team analysed the content/substance of the actions taken by ESMA to assess the extent of its compliance with all of the elements of the Recommendation. To ensure a consistent and fair analysis, the Assessment Team created implementation standards against which the responses submitted by Commission and ESMA were assessed (see Annex II).

The deadline for the delivery of reports on the implementation of Recommendations A, B and D by the Commission was postponed to 31 December 2021, bearing in mind the difficulties posed by the COVID-19 pandemic in meeting the deadlines set by the ESRB Recommendations and in order to allow the Commission's services to reflect the content of the ESRB Recommendation in their legislative proposals. This was communicated to the Commission in a formal letter dated 13 April 2021. As indicated by the Commission's response to a formal letter from the ESRB Secretariat dated 17 December 2021, the assessment of compliance with



Recommendations A, B and D was carried out taking into consideration the Commission's Proposal for a Directive amending Directives 2011/61/EU and 2009/65/EC ¹⁰, published on 25 November 2021.

In the course of the assessment process, the Assessment Team established a communication channel with the Commission to enquire whether any additional information should be taken into account for the purposes of the assessment of compliance with Recommendations A, B and D. In line with the Commission's reply, the Assessment Team also considered the Impact Assessment Report accompanying the above-mentioned legislative proposal¹¹, published on the same date.

The establishment of the implementation standards for Recommendations C and E was based on the requirements of the ESMA guidelines on liquidity stress testing in UCITS and AIFs for Recommendation C and the following four key elements regarding the imposition of leverage limits for Recommendation E:

- **Sub-recommendation E(1)** – ESMA's guidance on the framework to assess leverage-related systemic risk;
- **Sub-recommendation E(2)** – ESMA's guidance on the design, calibration and implementation of macroprudential leverage limits;
- **Sub-recommendation E(3)** – ESMA's guidance on notification procedures;
- **Sub-recommendation E(4)** – sharing of ESMA benchmarking, on an annual basis, with national macroprudential authorities and the ESRB.

In this regard, the Assessment Team examined the guidance submitted by ESMA and the degree of compliance in relation to the intended guidance that should be provided on Recommendation C and Sub-Recommendations E(1), E(2), E(3) and E(4). The guidelines, guidance on procedure and recommendation letter were sent to the ESRB on 16 December 2020, except for the guidelines on liquidity stress testing in UCITS and AIFs, which were submitted on 16 July 2020, after the expiration of the deadline indicated in the Recommendation. In its grading, the Assessment Team decided not to take into account the delay in ESMA's compliance with the Recommendation.

When conducting the assessment, the Assessment Team also agreed not to take into account external sources in the grading of ESMA. Although only the information provided to the ESRB constituted the basis for the assessment, in cases where certain elements reported by ESMA required further clarification, this requirement was addressed to ESMA through correspondence.

¹⁰ Proposal for a Directive of the European Parliament and of the Council amending Directives 2011/61/EU and 2009/65/EC as regards delegation arrangements, liquidity risk management, supervisory reporting, provision of depositary and custody services and loan origination by alternative investment funds. Brussels, 25.11.2021, COM(2021) 721 FINAL.

¹¹ Impact Assessment Report Accompanying the Proposal for a Directive of the European Parliament and of the Council amending Directives 2011/61/EU and 2009/65/EC as regards delegation arrangements, liquidity risk management, supervisory reporting, provision of depositary and custody services and loan origination by alternative investment funds. Brussels, 25.11.2021, SWD(2021) 340 FINAL.



With respect to Sub-recommendation E(4) in particular, ESMA had already provided justification in its letter dated 16 December 2020 that it would share knowledge on the activation of leverage limits under Article 25(3) of the AIFMD with macroprudential authorities and the ESRB once it had received notification from NCAs and gained sufficient experience in this field.

However, the Assessment Team decided that a formal request in the form of a written communication should be sent to ESMA for more up-to-date information. In its response letter dated 3 May 2021, ESMA confirmed that it had not received any notification from NCAs on the activation of leverage limits under Article 25(3) of the AIFMD, because this tool had never been used by NCAs, and for that reason it had not notified macroprudential authorities or the ESRB. ESMA also informed the Assessment Team of its follow-up work with NCAs on the implementation of ESMA's guidance on leverage. The aim of this work is to share experience and achieve a consistent approach at a technical level. For this purpose, ESMA was preparing a template for NCAs to report the results of their risk assessment at least on an annual basis and whenever NCAs identify a risk relevant for financial stability. Based on this additional information, the Assessment Team confirmed that there was sufficient explanation and justification of why ESMA had not shared information on the use of leverage limits by NCAs.

3.3 Principle of proportionality

In line with EU law and in accordance with Section 2, point 2(1)(c) of the Recommendation, due regard should be paid to the principle of proportionality, taking into account the objective and the content of the Recommendation. Given this requirement to pay due regard to the principle of proportionality, the Assessment Team examined the extent to which ESMA's guidance consider the efficient utilisation of leverage limits by competent authorities monitoring funds that (i) are systemically important in terms of the size of their assets, or (ii) maintain a risk profile and engage in activities that are considered significant in terms of their contribution to overall systemic risk.

The Assessment Team decided to assess proportionality not as a stand-alone grade in the implementation standards but in conjunction with the assessment of each recommendation, on the grounds that ESMA had clearly and explicitly taken into account the principle of proportionality in complying with ESRB Recommendations C and E.

In its guidance, ESMA explicitly refers to the principle of proportionality on three occasions. First, the guidelines on Article 25 of Directive 2011/61/EU stress the need for competent authorities to evaluate the efficiency of leverage limits in mitigating excessive leverage by taking into consideration the proportionality of the leverage limits to the systemic risk posed by the use of leverage by the AIFM. These guidelines also state that "the option of calibrating the limits based on the fund profile and the efficiency of the limits in reducing the risk, should be more proportionate, limit the build-up of systemic risk and improve financial stability".

In addition, the guidelines on liquidity stress testing in UCITS and AIFs clearly stipulate that the decision on the granularity, depth of analysis and use of data is subject to necessity and proportionality. In this regard, managers should understand the potential risks associated with the



fund's investor base and be able to demonstrate that these risks are taken into consideration in the ongoing liquidity risk management of a fund as appropriate.

As regards the Commission's assessment, proportionality was not considered as a stand-alone grade in the implementation standards but was instead considered in the overall assessment of compliance with Recommendations A, B and D. The Impact Assessment Report accompanying the Commission's Proposal for a Directive amending Directives 2011/61/EU and 2009/65/EC explains how the options taken by the Commission explicitly or implicitly take into account the principle of proportionality.

In particular, the Impact Assessment Report describes how the proposed amendments to the risk and liquidity management rules established by Article 16 of the AIFMD respect the requirements of necessity and proportionality and do not go beyond what is necessary to achieve the specific and operational objective of the provision (i.e. to limit the risk that the liquidity profile of the AIF's investments might not align with its underlying obligations). According to the Impact Assessment Report, the amendments to Article 16 of the AIFMD are limited to those aspects that could not have been regulated by Member States individually.

3.4 Regulatory arbitrage

In accordance with Section 2, point 2(1)(b) of the Recommendation, regulatory arbitrage should be avoided. In view of this requirement, the Assessment Team examined whether the guidance provided by ESMA to the competent authorities acknowledged regulatory arbitrage as being one of the unintended consequences of certain practices and whether it made proposals that could contribute to the reduction of such arbitrage activities.

More specifically, the Assessment Team examined the extent to which the ESMA guidance reduce regulatory arbitrage, while ensuring that competent authorities consider a consistent level playing field for different types of AIFs with similar risk profiles. In addition, the Assessment Team observed whether ESMA's guidance is expected to ensure a greater convergence of supervision, regardless of the legal form of the entity.

The Assessment Team decided not to include regulatory arbitrage as a stand-alone grade in the implementation standards but instead considered whether it had been taken into account either explicitly or implicitly when providing an assessment for each of the recommendations.

Although no explicit reference was made by ESMA in the responses provided, the need to avoid regulatory arbitrage is implicitly acknowledged in ESMA's guidelines on Article 25 of Directive 2011/61/EU, which state how authorities should consider the interaction of AIFMs as well as the coordination role that ESMA assumes. The same guidelines outline the need for common practices in order to avoid cases where some Member States could adopt different rules, thus creating greater uncertainty over the effective use of the extensive information available to NCAs under Directive 2011/61/EU.

As regards the Commission's compliance with Recommendations A, B and D, the Assessment Team decided not to include regulatory arbitrage as a stand-alone grade in the



implementation standards, but instead considered whether the Commission had taken it into account either explicitly or implicitly when providing an assessment for each of the recommendations.

According to the Impact Assessment Report, the Commission's proposed amendments to the AIFMD and the UCITS Directive try to address the risks of regulatory arbitrage. These risks arise from the asymmetry between the existing instruments to mitigate potential systemic risks originating from different sectors of the financial system, as the macroprudential authorities' current scope of intervention is mainly focused on the banking sector. The lack of a harmonised EU framework can therefore create risks of regulatory arbitrage and also hinder the development of a level playing field among financial institutions.

The Assessment Team examined the extent to which the Commission's legislative proposals take into consideration potential risks of regulatory arbitrage. In its Impact Assessment Report, it clarifies that the introduction of a common legal framework governing the inclusion of LMTs in the design of investment funds would address the issue of market fragmentation that arises from these regulatory gaps, in line with Sub-recommendation A(1). The Commissions' proposals for addressing Sub-Recommendations A(2) and A(3) also help ensure harmonised supervisory practices across the Union. These proposals specifically concern NCAs' powers to suspend redemptions, the introduction of harmonised cooperation tools between NCAs regarding the suspension of redemptions for cross-border stability purposes and ESMA's enhanced role in fulfilling a general facilitation, advisory and coordination function regarding the use of these powers.



4 Commission assessment report

4.1 Recommendation A: inclusion of liquidity management tools for redemption in the design of investment funds

The ESRB recommended that the Commission propose the inclusion of a diverse set of liquidity management tools in the Union legislation by 31 December 2020.

4.1.1 Sub-recommendation A(1): availability of additional liquidity management tools

In accordance with the specific compliance criteria for Sub-recommendation A(1), the Commission's proposed changes to the relevant Union legislation should include the following.

Obligations for AIFMs of open-ended AIFs and UCITS management companies to assess all available a-LMTs and specifically to assess which of them are suitable for the investment strategies of the funds they manage and should be included in their constitutional documents or other pre-contractual information in order to be exercised both in normal and in stressed market conditions and to provide investors with sufficient transparency in relation to such tools: (FC)

The Commission proposes an amendment to Article 16 of the AIFMD stating that “[a]fter assessing the suitability in relation to the pursued investment strategy, the liquidity profile and the redemption policy, an AIFM that manages an open-ended AIF shall select at least one¹² appropriate liquidity management tool from the list set out in Annex V, points 2 to 413, for possible use in the interest of the AIF's investors”. Information on these tools “shall be included in the fund rules or the instruments of incorporation of the AIFM”.

As regards UCITS, the Commission proposes to insert a new Article 18a into the UCITSD, stating that “Member States shall ensure that at least the liquidity management tools set out in Annex IIA are available to UCITS”, and that “[a]fter assessing the suitability in relation to the pursued investment strategy, the liquidity profile and the redemption policy, a management company shall select at least one appropriate liquidity management tool from the list set out in Annex IIA, points 2 to 414, and include in the fund rules or the instruments of incorporation of the investment company for possible use in the interest of the UCITS' investors”.

¹² In its Impact Assessment Report (Annex 6, pp. 93-101), the Commission stated that it preferred this option, instead of requiring managers of open-ended funds to include a minimum set of several predetermined LMTs in the funds' constitutional documents. According to the Commission, this latter option would have limited the degree of managers' flexibility in designing their products and would have increased the risk of moral hazard among fund managers.

¹³ Concerning redemption gates, notice periods and redemption fees.

¹⁴ Concerning redemption gates, notice periods and redemption fees.



Obligations for AIFMs of open-ended AIFs and UCITS management companies to include, as a minimum, the power to suspend redemptions, particularly in stressed market conditions, in the constitutional documents or other pre-contractual information of the funds they manage: (LC)

The above-mentioned amendments to Article 16 of the AIFMD also envisage that the temporary suspension in the first subparagraph may only be provided for in exceptional cases where circumstances so require and where suspension is justified having regard to the interests of the AIF investors.

Meanwhile, the Commission proposes to replace Article 84(2) of the UCITSD with a new paragraph 2 stating that “a UCITS may, in the interest of its unit-holders, temporarily suspend the redemption of its units or activate other tools in accordance with Article 18a(2)”¹⁵. It is worth noting that the proposed amendment does not mention the inclusion in the fund documentation of the power to suspend.

It is then clarified that the temporary suspension “shall be provided for only in exceptional cases where circumstances so require and where suspension is justified having regard to the interests of the unit-holders”. Finally, the Commission proposes to clarify in Schedule A of Annex I, point 1.13 the procedures and conditions for the repurchase or redemption of units, and to clarify the circumstances in which repurchase or redemption may be suspended or other LMTs may be activated or deactivated.

Obligations for AIFMs of open-ended AIFs and UCITS management companies to ensure that the necessary operational capacity and contingency planning is available for the timely activation of any a-LMT which they may use: (FC)

Similar provisions (paragraph 2b in Article 16 of the AIFMD and Article 18a in the UCITSD) are inserted stating that managers “shall implement detailed policies and procedures for the activation and deactivation of any selected liquidity management tool and the operational and administrative arrangements for the use of such tool”.

Obligations for AIFMs of open-ended AIFs and UCITS management companies to report to the NCAs on the implementation and use of a-LMTs in stressed market conditions: (FC)

According to the proposed paragraph 2d in Article 16 of the AIFMD, “[a]n AIFM shall, without delay, notify the competent authorities of its home Member State when activating or deactivating a liquidity management tool”; similarly, the amended Article 84(3) of the UCITSD states that “[t]he UCITS shall notify, without delay, the competent authorities of their home Member State and the competent authorities of all Member States in which it markets its units, when activating or deactivating a liquidity management tool”.

Obligations for ESMA, after taking into account the opinion of the ESRB in relation to macroprudential issues, to develop guidance on:

¹⁵ The current version of Article 84(2) states that “a UCITS may, in accordance with the applicable national law, the fund rules or the instruments of incorporation of the investment company, temporarily suspend the repurchase or redemption of its units”.



- (i) definitions and characteristics of a-LMTs;
- (ii) the criteria for the suitability assessment under point A(1)(a);
- (iii) the transparency requirements for the a-LMTs established under point A(1)(a);
- (iv) high-level principles on how the a-LMTs should be implemented in the fund's liquidity management process;
- (v) how to assess and deal with potential unintended consequences when using a-LMTs;
- (vi) the requirement to report to the NCAs under point A(1)(d);
- (vii) the level of transparency in relation to investors when a-LMTs are activated and during their use.

The guidance should take into account the necessary contingency planning that should apply in advance, as required under point A(1)(c), to enable such a-LMTs to be activated promptly and effectively: (LC)

Regarding point (i), the proposed Article 16(2f) of the AIFMD states that “ESMA shall develop draft regulatory technical standards to specify the characteristics of the liquidity management tools set out in Annex V”, while for UCITS the same provision is included in the proposed Article 18a(3) of the UCITSD.

As for points (ii) and (iii), the proposed Article 16(2g) of the AIFMD states that “ESMA shall develop draft regulatory technical standards on criteria for the selection and use of suitable liquidity management tools by the AIFMs for liquidity risk management, including appropriate disclosures to investors”. For UCITS, the newly inserted Article 18a(4) of the UCITSD states that “ESMA shall develop draft regulatory technical standards on criteria for the selection and use of suitable liquidity management tools by the management companies for liquidity risk management, including appropriate disclosures to investors”.

However, the guidance to be developed by ESMA both for AIFs and UCITS does not explicitly mention the items described in points (iv) to (vi), nor does it take into account the necessary contingency planning.

The Commission is thus assessed as largely compliant with Sub-recommendation A(1).

4.1.2 Sub-recommendation A(2): further provisions on NCAs' suspension of redemptions with cross-border financial stability implications

In accordance with the specific compliance criteria for Sub-recommendation A(2), the Commission's proposed changes to the relevant Union legislation should include:



- (a) clarification of the respective roles of the NCAs and cooperation between them with regard to suspending redemptions for cross-border financial stability purposes, where the AIF or UCITS is established in one Member State but has an AIFM or UCITS management company established in another Member State, i.e. cross-border implications;
- (b) an obligation for the NCAs, when exercising the powers to direct the suspension of redemptions for cross-border financial stability purposes, to notify other relevant NCAs, ESMA, and the ESRB, prior to exercising such powers.

For AIFs, according to the proposed paragraph 5a amending Article 50 of the AIFMD, “the competent authorities of the home Member State of an AIFM shall notify the competent authorities of the host Member State of the AIFM, ESMA and the ESRB prior to exercising powers pursuant to Article 46(2), point (j) [power of the competent authorities to require the suspension of the issue, repurchase or redemption of units in the interest of the unit-holders or of the public] or Article 47(4), point (d) [of the AIFMD]”.

The subsequent proposed paragraph 5b allows the competent authority of the host Member State of an AIFM to request the “home” authority to “exercise powers laid down in Article 46(2), point (j) or Article 47(4), point (d) [of the AIFMD], specifying the reasons for the request and notifying ESMA and the ESRB thereof”. Finally, the proposed paragraph 5c provides that “[w]here the competent authority of the home Member State of the AIFM does not agree with the request referred to in paragraph 5b, it shall inform the competent authority of the host Member State of the AIFM, ESMA and the ESRB thereof, stating its reasons”¹⁶.

As for UCITS, according to the proposed paragraph 3a amending Article 84 of the UCITS Directive, “[t]he competent authorities of the UCITS home Member State shall notify the competent authorities of all Member States in which the UCITS markets its units, as well as ESMA and the ESRB, prior to exercising powers pursuant to paragraph 2, point (b)”. The subsequent proposed paragraph 3b allows the competent authority of the Member States in which a UCITS markets its units to request the “home” authority to “exercise powers laid down in paragraph 2, point (b), specifying the reasons for the request and notifying ESMA and the ESRB thereof”. Finally, the proposed paragraph 3c provides that “[w]here the competent authority of the UCITS home Member State does not agree with the request referred to in paragraph 3b, it shall inform the requesting competent authority, ESMA and the ESRB thereof, stating the reasons for the disagreement”¹⁷.

In addition, the proposed paragraph 3 of Article 98 of the UCITS Directive states that the competent authority of the UCITS host Member State may request the “home” authority to “exercise, without delay, powers laid down in paragraph 2 specifying the reasons for its request and notifying ESMA and, if there are potential risks to the stability and integrity of the financial system, the ESRB thereof”.

¹⁶ The subsequent proposed paragraphs (5d to 5g and 7) are aimed at clarifying ESMA’s role in relation to the actions taken by NCAs; see Sub-recommendation A(3).

¹⁷ The subsequent proposed paragraphs (3d to 3f) are aimed at clarifying ESMA’s role in relation to the actions taken by NCAs; see Sub-recommendation A(3).



The competent authority of the UCITS home Member State shall, without delay, inform the competent authority of the UCITS host Member State, ESMA and, if there are potential risks to the stability and integrity of the financial system, the ESRB of the powers exercised and its findings”.

The subsequent proposed paragraph 4 addresses the role of ESMA in relation to “specific cases, which have cross-border implications, concern investor protection issues or pose risks to the financial stability”.

The Commission is thus assessed as fully compliant with Sub-recommendation A(2), although the procedure does not clearly mention “cross-border financial stability purposes” as the “trigger” that activates the exercise of powers by the authorities.

4.1.3 Sub-recommendation A(3): further provisions on ESMA's role in relation to the NCAs suspending redemptions with cross-border financial stability implications

In accordance with the specific compliance criteria for Sub-recommendation A(3), the Commission’s proposed changes to the relevant Union legislation should include the following.

An obligation for ESMA to ensure that it fulfils a general facilitation, advisory and coordination role in relation to the NCA’s powers to suspend redemptions where there are cross-border financial stability implications: (FC)

The relevant provisions for the changes in Union legislation are set out in Article 1(19)(b) and (c) and in Article(2)(8) and (9) of the Commission’s Proposal for a Directive amending Directives 2011/61/EU and 2009/65/EC.

The above-mentioned provisions include several reporting obligations that the relevant NCAs must fulfil towards ESMA regarding the activation/deactivation of the suspension of redemptions and of its cross-border implications, such as notifications from the NCA of the home Member State of the AIFM/UCITS whenever it exercises its powers to activate the suspension of redemptions.

ESMA must also be notified by the host Member State whenever it asks the NCA of the home Member State to exercise such powers, as well as when the NCA of the home Member State disagrees with such a request. In those instances, ESMA must issue an opinion to the NCA of the home Member State of the AIFM or UCITS on exercising its power to ask an AIFM or UCITS to suspend redemptions. If the NCA does not comply with ESMA’s opinion, it must inform ESMA, stating the reasons for the non-compliance.

As a general principle, ESMA may ask the NCA to submit explanations to ESMA in relation to specific cases which have cross-border implications, concern investor protection issues or pose risks to financial stability.

Finally, ESMA must develop draft regulatory technical standards indicating the situations in which the NCAs may exercise the power to require the AIFM or UCITS to activate suspension of redemption and in which situations they may put forward requests to the NCA of the home Member State of the AIFM or UCITS.



The comprehensive reporting obligations that NCAs must fulfil towards ESMA provide ESMA with a full picture of current cases dealing with requests for activation of the suspension of redemptions and of its cross-border financial stability implications. This, in connection with ESMA's general right to request that an NCA present a case before ESMA where that case has cross-border implications and may affect investor protection or financial stability, enables ESMA to improve supervisory cooperation (Recital 27 of the Commission's Proposal for a Directive amending Directives 2011/61/EU and 2009/65/EC).

The regulatory standards to be drafted by ESMA will also serve to ensure a better understanding of the process for exercising the power to request activation of the suspension of redemptions, and will thus also help to facilitate this process.

ESMA's obligation to issue an opinion in the case of a disagreement among the relevant NCAs in terms of exercising the power to request activation of the suspension of redemptions strengthens ESMA's advisory role in this context.

The Commission is thus assessed as fully compliant with Sub-recommendation A(3). The overall assessment of compliance with the implementation of Recommendation A for the Commission is fully compliant (FC). The results are presented in the colour-coded Table 4.1.

Table 4.1

Compliance grades for the Commission for Recommendation A.

Addressees	Overall grade	Sub-rec. A(1)	Sub-rec. A(2)	Sub-rec. A(3)
European Commission	FC	LC	FC	FC

4.2 Recommendation B: additional provisions to reduce the likelihood of excessive liquidity mismatches

The ESRB recommended that the Commission propose the inclusion of measures designed to mitigate and prevent excessive liquidity mismatches in open-ended AIFs in the Union legislation by 31 December 2020.

In accordance with the specific compliance criteria for Recommendation B, the Commission's proposed changes to the relevant Union legislation should include the following.

- (a) **Granting powers to ESMA to prepare and to update a list of inherently less liquid assets, on the basis of ESMA's own analysis, after taking into account the ESRB's opinions in relation to macroprudential issues and those of the European Banking Authority and the European Insurance and Occupational Pensions Authority in relation to cross-sectoral consistency issues. In compiling this list, ESMA should consider, as a minimum, real estate, unlisted securities, loans and other alternative assets that appear to be inherently less liquid. The analysis should**



take into account, inter alia, the time it would take to liquidate those assets under stressed market conditions: (SE)

- (b) A requirement for AIFMs of open-ended AIFs whose objective is to invest significantly in assets included in the list of inherently less liquid assets under point (a), to demonstrate to the NCAs their capacity to maintain their investment strategy under foreseeable market conditions. The assessment should include, inter alia, tailored redemption policies, the implementation of a-LMTs and/or internal limits of assets included in the list of inherently less liquid assets under point (a). Such internal limits, if used, should then be disclosed to the NCAs at the inception of the relevant funds and reported thereafter whenever these limits change. Disclosure to investors should also be implemented based on guidance to be developed by ESMA: (SE)
- (c) The discretion to impose transitional provisions for AIFMs of open-ended AIFs specifying the time allowed to comply with the legislation when assets are added to the list of inherently less liquid assets under point (a), and when internal limits are breached, where useful, in order to avoid any unintended, harmful effects: (SE)

The Commission's Proposal for a Directive amending Directives 2011/61/EU and 2009/65/EC does not include any of the above-mentioned compliance criteria.

However, in its Impact Assessment Report dated 25 November 2021, the Commission sufficiently explains why it did not propose any change to the relevant Union legislation in this respect.

In the Commission's view, as far as investment in less liquid assets by open-ended AIFs is concerned, the crucial issue is whether the portfolio composition matches the AIF's redemption policy. The Commission considers that the AIFMD already requires AIFs to have redemption policies that are consistent with the liquidity profile of their investment strategy and to conduct regular stress tests under both normal and exceptional liquidity conditions, thus already addressing the need for tailored redemption policies that are resilient to foreseeable market conditions.

Moreover, in the Commission's view, proposed changes to the relevant Union legislation, namely those in paragraphs 2b, 2c and 2d of Article 16 of the AIFMD, already provide for AIFs to have sufficient access to liquidity management tools, as well as providing for an obligation to notify NCAs of their use. In addition, Annex V introduces a degree of minimum harmonisation of LMTs in the Union.

The Commission also considers that empirical work is necessary to determine when liquidity mismatches may be excessive. According to the Commission, the liquidity of an asset depends on several factors (namely asset-specific factors as well as market and more macroeconomic factors), and the impact of these factors on the liquidity of an asset can change over time. These considerations were regarded by the Commission as practical difficulties hindering the preparation of a list of inherently less liquid assets.



Additionally, the Commission highlights other actions undertaken by ESMA to bring further supervisory convergence and clarity on the issue of liquidity stress testing in investment funds, namely the issuance of the guidelines on liquidity stress testing in UCITS and AIFs¹⁸.

The Commission is thus assessed as sufficiently explained (SE) with regard to Recommendation B, as presented in the colour-coded Table 4.2.

Table 4.2

Compliance grade for the Commission for Recommendation B.

Addressees	Recommendation B
European Commission	SE

4.3 Recommendation D: UCITS reporting

The ESRB recommended that the Commission propose the inclusion of measures designed to reduce the existing reporting inefficiencies for UCITS in the Union legislation by 31 December 2020.

The assessment is based on the content of the Proposal for a Directive amending Directives 2011/61 and 2009/65 put forward by the Commission. Recitals 46 to 48 of the Proposal address supervisory reporting obligations with the aim of supporting market monitoring by the authorities, standardising the supervisory reporting process and ensuring consistent harmonisation¹⁹.

4.3.1 Sub-recommendation D(1): regular data reporting regarding potential systemic risk

The ESRB recommended that the Commission propose changes to the relevant Union legislation to include reporting obligations that should allow for sufficient monitoring of potential vulnerabilities that may contribute to systemic risk. Detailed reporting requirements on a minimum set of indicators covering assets and liabilities facilitating a comprehensive assessment of the potential contribution to financial/systemic risk of UCITS was recommended.

The Commission proposes to amend the UCITSD by inserting a new Article 20a stating that (i) “[a] management company shall regularly report to the competent authorities of its home Member State

¹⁸ “**Final Report. Guidelines on liquidity stress testing in UCITS and AIFS**”, ESMA34-39-882, ESMA, 2 September 2019. These guidelines implement one of the ESRB’s recommendations calling for greater convergence across the EU on how NCAs supervise the use of this liquidity management tool.

¹⁹ In the Explanatory Memorandum, the Commission highlights that the proposal “aims to improve the relevant data collection and remove inefficient reporting duplications that may exist under other pieces of the European and national legislation in line with the wider strategy on supervisory data, as announced in the Digital Finance Strategy” (p. 2). It then also specifies that “[d]ata reported by AIFMs and UCITS would be part of an integrated data collection system that would deliver accurate, comparable, and timely data to European and national supervisory authorities, while minimising the aggregate reporting costs and burden for all parties” (p. 4).



on the markets and instruments in which it trades on behalf of the UCITS it manages”, and that (ii) “ESMA shall develop draft regulatory technical standards specifying the details to be reported”.

It should be noted that while this new reporting obligation concerns UCITS markets and instruments, it does not cover all recommended indicators, nor does it provide detailed reporting requirements, namely those under Regulation (EU) 2017/1131. Instead, the Commission proposes to mandate ESMA to develop regulatory technical standards. Article 20a is part of broader action on supervisory reporting obligations proposed by the Commission (see Recital 46)²⁰.

The Commission is thus assessed as partially compliant (PC) with Sub-recommendation D(1).

4.3.2 Sub-recommendation D(2): frequency and coverage of reporting obligations

Sub-recommendation D(2) sets out in detail the frequency and coverage of the reporting obligations mentioned in Sub-recommendation D(1). The data mentioned in Recommendation D(1) is expected to be reported at least quarterly by a sufficiently relevant proportion of all UCITS and UCITS management companies and at least yearly by a representative proportion.

The Commission proposes to amend the UCITSD by inserting a new Article 20a stating that “ESMA shall develop draft regulatory technical standards specifying the details to be reported” (paragraph 2) and that “ESMA shall develop draft implementing technical standards specifying the format and data standards [and] the reporting frequency and timing” (paragraph 3).

However, the Commission’s Proposal for a Directive amending Directives 2011/61/EU and 2009/65/EC does not mention that different reporting frequencies can be applied for the sufficiently relevant proportion and the representative proportion of all UCITS and UCITS management companies when setting the scope for reporting, with the aim of ensuring that a sufficient part of the industry will be covered.

For the purpose of assessing compliance with Recommendation D, the Commission was asked to share any additional information to be taken into account. Regarding Sub-recommendation D(2), the Commission explained that the details were intentionally delegated to “Level 2” measures, as the optimal reporting frequency depends on the exact content of the reports required on UCITS and AIFs, that will only be determined in Level 2 regulation.

The Commission is thus assessed as partially compliant (PC) with Sub-recommendation D(2).

²⁰ The subsequent proposed Article 20b mandates ESMA to submit, in cooperation with the ECB, other ESAs and relevant NCAs, a report to the Commission for the development of an integrated supervisory data collection. The main goals of the report are (i) to reduce areas of duplication and inconsistencies between the reporting frameworks in the asset management sector and other parts of the financial industry, and (ii) to improve data standardisation and promote the sharing of data already reported at Union or national level.



4.3.3 Sub-recommendation D(3): harmonised reporting and information sharing

The ESRB recommended that the Commission propose that NCAs make the data mentioned in Sub-recommendation D(1) available to the NCAs of other Member States, ESMA and the ESRB.

In accordance with Sub-recommendation D(3), the Commission's proposed changes to the relevant Union legislation should include the following.

An obligation for the information mentioned in Sub-recommendation D(1) to be made available to NCAs of other relevant Member States, ESMA and the ESRB in order to ensure the harmonisation of UCITS data reporting with data sharing practices under Directive 2011/61/EU and also taking into account reporting requirements under Regulation (EU) 2017/1131: (PC)

Neither the Commission's Proposal for a Directive amending Directives 2011/61/EU and 2009/65/EC nor the Impact Assessment Report, both published on 25 November 2021, includes any provision on the sharing of UCITS data with NCAs of other relevant Member States, ESMA and the ESRB. There is also no explanation for not considering this recommendation.

For this reason, the Assessment Team established a communication channel with the Commission to receive additional information in this regard. With respect to Sub-recommendation D(3), the Commission pointed out that the proposal put forward by the EU Council in June 2022²¹ introduces ESMA and ESRB as recipients of the data transmitted under Article 20a. In its response, the Commission expressed its intention not to object to the EU Council's proposal during the trilogues²². The Commission added that Articles 101, 105 and 109 of the UCITSD already provide a legal basis for data exchanges among NCAs.

The Commission points to the fact that Articles 101, 105 and 109 of the UCITSD already provide a legal basis for data exchanges among NCAs, although this does not constitute a legal obligation, as required by the Sub-recommendation. Moreover, the intention shown at this stage by the Commission not to object to the EU Council's position on the proposed amendments to the UCITSD and the AIFMD should be taken into account. Although this proposed amendment to the legal text was not put forward by the Commission, the intention to support it might contribute to the achievement of the objectives of Sub-recommendation D(3).

The Commission is thus assessed as partially compliant with Sub-recommendation D(3).

The overall assessment of compliance with the implementation of Recommendation D for the Commission is partially compliant (PC). The results are presented in the colour-coded Table 4.3.

²¹ **Proposal for a Directive of the European Parliament and of the Council amending Directives 2011/61/EU and 2009/65/EC as regards delegation arrangements, liquidity risk management, supervisory reporting, provision of depositary and custody services and loan origination by alternative investment funds. Brussels, 21 June 2022. 2021/0377 (COD).**

²² Trilogues are informal tripartite meetings on legislative proposals between representatives of the Parliament, the Council and the Commission.



Table 4.3

Compliance grades for the Commission for Recommendation D.

Addressees	Overall grade	Sub.-red. D(1)	Sub.-red. D(2)	Sub.-red. D(3)
European Commission	PC	PC	PC	PC

4.4 Overall assessment

The overall assessment of compliance with the implementation of recommendations A, B and D for the Commission is largely compliant (LC). The results are presented in the colour-coded Table 4.4.

Table 4.4

Overall compliance grades for the Commission for Recommendations A, B and D.

Addressee	Overall grade	Rec. A	Rec. B	Rec. D
European Commission	LC	FC	SE	PC



5 ESMA assessment report

5.1 Recommendation C: guidance on liquidity stress testing

The ESRB recommended that ESMA deliver guidance on liquidity stress testing in investment funds by 30 June 2019. ESMA published a consultation paper on the draft guidelines on 5 February 2019.²³ The consultation closed on 1 April 2019. The final report containing the final set of guidelines on liquidity stress testing in UCITS and AIFs was published on 2 September 2019. The guidelines were published on 16 July 2020 and became applicable from 30 September 2020 onwards.

In its guidelines on liquidity stress testing in UCITS and AIFs, ESMA provides detailed and comprehensive instructions on the practice to be followed by managers for the stress testing of liquidity risk for individual AIFs and UCITS. ESMA opts for a principles-based approach given the wide variety of fund structures, allowing managers more flexibility. ESMA clarifies that the guidelines apply to exchange-traded funds that are UCITS or AIFs, leveraged closed-ended AIFs and money market funds, without prejudice to the specific provisions.

These guidelines comply with the following criteria outlined in the Recommendation.

(a) The design of liquidity stress testing scenarios: (FC)

ESMA advises the use of different types of stress testing (hypothetical and historical scenarios and, where appropriate, reverse stress testing) and gives guidance on how these scenarios should be designed (Section V.1.8 of the guidelines). In addition, ESMA provides advice on how to deal with limitations on data availability (Section V.1.9 of the guidelines).

(b) The liquidity stress testing policy, including internal use of liquidity stress test results: (FC)

ESMA elaborates on the liquidity stress testing policy that should be adopted within the UCITS and AIF risk management process. It lists a minimum set of aspects that should be addressed by the policy and advises that the liquidity stress testing should be periodically reviewed and adapted where necessary (Section V.1.4 of the guidelines).

ESMA also points out that liquidity stress testing should be embedded into the fund's risk management framework supporting liquidity management and should take into account the separation of functions and conflicts of interest (Section V.1.3 of the guidelines).

In addition, ESMA gives guidance on the use of liquidity stress testing outcomes (Section V.1.6 of the guidelines).

²³ "Consultation on draft guidelines on liquidity stress test for investment funds", ESMA34-39-784, 5 February 2019 to 1 April 2019.



(c) Considerations for the asset and liability sides of investment fund balance sheets: (FC)

In its guidelines, ESMA makes reference to the stress testing of both the assets and liabilities of the investment fund in order to determine the effect on the fund's liquidity.

ESMA advises that liquidity stress testing should enable a manager to assess the time and cost necessary to liquidate assets, and whether or not such an activity would be permissible for the fund (taking into account, for example, the fund's investment policy) (Section V.1.11 of the guidelines).

In terms of fund liabilities, ESMA advises that not only redemptions but also other potential sources of liquidity risk emanating from the liabilities side of the fund's balance sheet should be subject to liquidity stress testing. In this respect, ESMA also gives examples of factors related to investors' behaviour and redemption requests (Section V.1.12 of the guidelines). In addition, ESMA provides examples of factors related to different types of liabilities that may also affect liquidity risk, such as derivatives, securities financing transactions or credit payments (Section V.1.13 of the guidelines).

(d) The timing and frequency for individual funds to conduct the liquidity stress tests: (FC)

In its guidelines, ESMA elaborates on the frequency of liquidity stress testing. It advises that liquidity stress testing should be carried out at least annually and, where appropriate, employed at all stages of a fund's lifecycle. As a rule, ESMA recommends employing quarterly or more frequent liquidity stress testing, depending on the fund's characteristics (Section V.1.5 of the guidelines).

(e) Compliance with the stress testing requirements set out in Directive 2011/61/EU and how market participants carry out stress testing: (FC)

In its guidelines, ESMA additionally refers to the requirements for liquidity stress testing set out in Directive 2011/61/EU. It also conducted a consultation in which it took into account comments by market participants on how they carry out stress testing (see footnote 25).

(f) Additional criteria that are considered in the guidelines: (FC)

ESMA recommends a proportionate application of the guidelines, which should be adapted to the nature, scale and complexity of the funds (Part I of the guidelines ("Scope"), paragraph 7). In addition to the aspects mentioned above, ESMA makes some general remarks on the concept of liquidity stress testing. ESMA gives an overview of what to consider in general when designing liquidity stress testing models and underlines their importance to understanding liquidity risks (Sections V.1.1 and V.1.2 of the guidelines).

ESMA advises that liquidity stress testing should also be considered during product development (Section V.1.10 of the guidelines).

ESMA elaborates on how funds investing in less liquid assets are exposed to distinct risks emanating from both assets and liabilities compared with funds investing in more liquid assets. In particular, paragraph 63 of the guidelines highlights the importance of liquidity stress testing in cases of low probability/high-impact scenarios, where price uncertainty can affect the liquidity profile of the funds. Paragraph 66 highlights the need for funds to also incorporate liquidity risks



related to funds' indirect exposure to less liquid assets into their liquidity stress testing models, for example for funds of funds investing in other funds' shares (Section V.1.14 of the guidelines).

ESMA also advises that managers should combine the results of the liquidity stress testing appropriately to determine the overall effect on fund liquidity, after separately stress testing the assets and liabilities of the fund balance sheet (Section V.1.15 of the guidelines).

Furthermore, ESMA advises that managers should not only perform liquidity stress testing for each fund but should also aggregate stress testing across the funds they manage (Sections V.1.7 and V.1.16 of the guidelines).

Finally, as well as providing guidance for managers, ESMA also sets out guidelines applicable to depositaries and gives guidance on interaction with NCAs (Sections V.2 and V.3 of the guidelines).

ESMA is thus assessed as fully compliant (FC) with Recommendation C, as presented in the colour-coded Table 5.1.

Table 5.1

Compliance grade for ESMA for Recommendation C.

Addressees	Recommendation C
ESMA	FC

5.2 Recommendation E: guidance on Article 25 of Directive 2011/61/EU

The ESRB recommended that ESMA deliver guidance to facilitate the implementation of Article 25 of Directive 2011/61/EU, which provides for a macroprudential tool to limit leverage in AIFs. In particular, the ESRB recommended that ESMA develop a common approach to ensure that NCAs are able to use the tool in a harmonised manner. It also recommended that ESMA develop guidance on a framework to assess leverage risks and on the design, calibration and implementation of leverage limits. As mentioned above, ESMA delivered the final report on guidelines on Article 25 of Directive 2011/61/EU in December 2020.

These guidelines comply with the recommendations as follows.

5.2.1 Sub-recommendation E(1): assessment of leverage-related systemic risk

In accordance with the specific compliance criteria for the assessment of leverage-related systemic risk set out in the Recommendation, the guidance issued by ESMA should include the following.



(a) The definition of a common minimum set of indicators to be taken into account by the NCAs during their assessment: (FC)

The ESMA guidelines provide a framework ensuring that NCAs take a consistent approach towards assessing systemic risk arising from leverage,²⁴ and a set of indicators is provided in the ESMA final report for this purpose (Tables 1 and 2, pages 24-25). The framework is based on a two-step approach that is closely aligned with the International Organization of Securities Commissions leverage framework. In Step 1, NCAs identify those funds that may pose financial stability risks by looking at the level, source and different usages of leverage, captured by the size of the funds in terms of assets under management or in terms of substantial use of leverage. This is calculated on the basis of the AIFMD commitment method or the leverage indicators provided by ESMA in Table 1 of its guidelines (gross leverage, commitment leverage, adjusted leverage, financial leverage).

In Step 2, competent authorities should evaluate potential leverage-related systemic risks to financial stability posed by the funds identified under Step 1 and include in their assessment at least the risks included in Step 2. Indicators to be used for Step 2 are provided by ESMA in Table 2 of its guidelines and cover the following risks: risk of market impact, risk of fire sales, risk of direct spillover to financial institutions and risk of interruption in direct credit intermediation.

These indicators, read in combination with the leverage measures, should help NCAs assess whether the leveraged AIF would potentially entail systemic risk to the financial sector.²⁵ They are aimed at identifying the various channels of risk propagation through which systemic risk may materialise, in line with the ESRB Recommendation. Competent authorities should use their risk assessment, in combination with a qualitative assessment where necessary, to select the AIFs for which it is appropriate to set a leverage limit.

(b) Instructions to calculate the indicators referred to in Sub-recommendation E(1)(a) based on reporting data under Article 24 of Directive 2011/61/EU: (FC)

The indicators included in Tables 1 and 2 of the ESMA guidelines are calculated using the AIFMD data received according to the reporting frequency set out in Article 110 of Commission Delegated Regulation (EU) No 231/2013 (also called the “AIFMD Level 2 Regulation”). ESMA provides a description of all the indicators as well as the scope and the data source for calculating them in Tables 1 and 2.

(c) Qualitative and, where feasible, quantitative descriptions of the interpretation of the indicators in the context of the assessment framework: (LC)

Annex II of the ESMA guidelines provides case studies for illustrative purposes to provide competent authorities with guidance on what to consider when deciding to impose leverage limits

²⁴ Economic rationale for ESRB Recommendation E(1), pages 40-42 of the Recommendation: “The international nature of the AIF sector calls for a more coordinated approach to the assessment of leverage-related systemic risk and potential mitigating measures.”

²⁵ Economic rationale for ESRB Sub-recommendation E(1), pages 40-42 of the Recommendation: “ESMA should provide guidance on an assessment framework that is operable. [...] As a guiding principle indicators should only be part of the framework when they make it significantly easier to assess the contribution of investment funds and the AIF sector as a whole to leverage-related systemic risks. [...] ESMA’s guidance on the assessment framework should provide a sufficient basis for NCAs to explain their decision to take macroprudential policy measures.”



on an AIFM managing AIFs that pose risks to financial stability, based on the risk assessment performed using the two-step framework proposed by ESMA in its guidelines (pages 24-27).

Annex II of the Recommendation states the following regarding Sub-recommendation E(1) (page 40):

“To support a harmonised use of the indicators, ESMA is also advised to give guidance relating to the interpretation of the indicators. ESMA is currently in the process of building an EU-level dataset which will include all data reported to NCAs under Directive 2011/61/EU at national level. Once it is available, this dataset should allow ESMA to develop quantitative perspectives on the interpretation of the indicators within the assessment framework, e.g. by examining basic summary statistics on individual indicators such as the mean, median, minimum and maximum reported values, and the distribution of reported values.”

The Assessment Team acknowledges that Annex II of ESMA’s guidelines on Article 25 of Directive 2011/61/EU provides case studies to which competent authorities should pay attention when deciding to impose leverage limits on AIFMs managing AIFs that pose risks for financial stability. The Assessment Team also understands that there are different types of investment funds and investment strategies, so that a “one-size-fits-all” interpretation of the indicators may not work. However, ESMA should have developed more detailed guidelines on how to interpret the indicators or should have provided quantitative descriptions of the indicators wherever possible. If it had not been feasible to develop these guidelines or provide these quantitative descriptions, ESMA should have given reasons.

ESMA is thus assessed as fully compliant (FC) with Sub-recommendation E(1).

5.2.2 Sub-recommendation E(2): macroprudential leverage limits

As mentioned in Part 3, Annex II of the ESMA guidelines on Article 25 of Directive 2011/61/EU provides case studies for illustrative purposes to guide competent authorities on what they should consider when deciding to impose leverage limits on AIFMs managing AIFs that pose risks to financial stability, based on the investment fund type/profile and risk to be addressed. The ESMA guidelines indicate that when setting the appropriate level of leverage limits, NCAs should evaluate (i) their effectiveness in addressing the risks of market impact, fire sales, spillovers to financial counterparties and disruptions of credit intermediation, and (ii) their efficiency in mitigating excessive leverage. Paragraphs 21 and 22 of the guidelines set out the items that NCAs should take into account when making these evaluations (pages 27 and 28).

Annex II of the ESMA guidelines states (on page 18): “The calibration of leverage limits should be based on an assessment on whether the application of leverage limits would effectively limit the contribution of the leveraged fund(s) to the build-up of systemic risk.

When setting the appropriate level of leverage limits, NCAs should take into account their effectiveness in addressing the risk of market impact, fire sales, spillovers to financial counterparties, and disruptions of credit intermediation. In order to do so, NCAs should assess the likely impact of these measures on the risks:



NCAAs should pay particular attention on how leverage can contribute to procyclicality, especially in times of economic cycle downturn or increase in market volatility.

If leverage limits are not efficient or not sufficient, NCAs should consider imposing other restrictions on the management of the AIFs.”

The economic rationale accompanying ESRB Sub-recommendation E(2) (Annex II of the Recommendation, pages 45-47) states the following.

Leverage limits for AIFs may be deemed effective if they address the risk of (i) fire sales, (ii) spillovers to financial counterparties, and (iii) disruptions of credit intermediation. A “one-size-fits-all” limit might be simple to implement but could have major unintended consequences, such as making some business models unviable, significantly reducing the sector’s ability to absorb market shocks, or shifting activities to other, less regulated parts of the financial sector.

Leverage limits based on investment fund type and/or profile may be a useful instrument for NCAs in the short to medium term, enabling them to target those investment funds that contribute most to systemic risk.

For leverage limits to be efficient, the instrument should be simple, and unintended consequences should be contained, i.e. leverage limits should be robust to gaming and arbitrage by market participants. Leverage limits should also be proportional to the systemic risk posed by the investment fund’s use of leverage to ensure that the sector remains able to provide valuable services to the economy. For instance, investment funds should still be able to employ diverse and active strategies which could act as shock absorbers during market stress. Authorities should conduct a risk analysis based on data gathered pursuant to Directive 2011/61/EU and the risk indicators from a common risk assessment framework.

In accordance with the specific compliance criteria for the macroprudential leverage limits set out in the Recommendation, the guidance issued by ESMA should include the following.

(a) A description of the various types of leverage limits, including an evaluation of their effectiveness and efficiency in mitigating excessive leverage: (LC)

In order to assess compliance with this recommendation, the Assessment Team considered the ESRB’s economic rationale for effectiveness and efficiency, along with the content of the ESMA guidelines.

ESMA mentions different types of measures (for example cyclical limits and continuous leverage limits) but does not evaluate in detail their effectiveness and efficiency. In paragraphs 21 and 22 (pages 27-28) of its guidelines, ESMA states which items NCAs should take into account when evaluating the effectiveness and efficiency of leverage limits (for example, when risks are directly related to the size of leverage, imposing leverage limits should be aimed at reducing the size of the risks or the proportionality of the leverage limits to the systemic risk posed by the use of leverage by the AIFM). However, ESMA could also have evaluated various design options for leverage limits in terms of effectiveness and efficiency, as set out in Table 5 of the Sub-recommendation, or it could have elaborated more on the advantages and disadvantages of the different types of



leverage limits (such as cyclical limits or constant leverage limits), as set out in the Sub-recommendation E(2), which states:

“A ‘one-size-fits-all’ limit might be simple to implement but could have major unintended consequences. [...] Leverage limits based on investment fund type and/or profile may be a useful instrument for NCAs in the short to medium term. [...] In the longer term, cyclical leverage could also be explored. [...] For the short to medium term a cyclical approach would not be feasible, however, as this would require a measure for the financial cycle and an indicator for a fund’s contribution, which would add an additional layer of complexity to this measure.”

(b) A set of principles to be taken into account by the NCAs when calibrating leverage limits: (FC)

As a minimum, such principles should include all of the following:

- (i) a statement that provides for leverage limits to be based on the leverage measures set out in Directive 2011/61/EU;
- (ii) criteria for applying leverage limits;
- (iii) principles regarding the periodic review of leverage limits.

The ESMA guidelines indicate that NCAs should consider the following when imposing leverage limits for (i) and (ii):

- risks posed by AIFs according to their type (hedge funds, private equity, real estate, fund of funds or any other relevant type) and risk profile as defined by the risk assessment performed in accordance with paragraph 12;
- risks posed by common exposures.

In its guidelines, ESMA provides the following guidance on how competent authorities should implement leverage limits, both in terms of timing and phasing in and out (paragraph 20, page 27 of the ESMA guidelines):

- “a) where competent authorities impose continuous leverage limits to an AIF or a group of AIFs posing a threat to financial stability, the limits should be maintained for as long as the risks posed by the AIF or the group of AIFs do not decrease;
- b) when competent authorities impose temporary leverage limits to limit the build-up of risk, including any procyclical behaviour from an AIF or a group of AIFs, such as when the AIF contributes to excessive credit growth or the formation of excessive asset prices, the limits should be released when the change in market conditions or AIF’s behaviour stops being procyclical;
- c) competent authorities should implement leverage limits progressively (“the phased-in period”) to avoid procyclicality, especially if imposing limits in a procyclical way could trigger the risk they intend to mitigate; and



d) competent authorities should take into account the possibility to apply cyclical limits to dampen the build-up and materialisation of risks in the upswing and downswing phases of the financial cycle.”

(c) A set of principles to be taken into account by the NCAs when considering the imposition of leverage limits: (FC)

The set of principles should cover all of the following.

- (i) Principles for a balanced approach between rules-based versus discretionary limit setting.

Where competent authorities determine that a group of AIFs of the same type and similar risk profiles may collectively pose leverage-related systemic risks, they should apply leverage limits in a similar or identical manner to all AIFs in that group of AIFs (paragraph 19, page 27 of the ESMA guidelines).

Competent authorities should take into consideration the robustness of leverage limits to gaming and arbitrage, in particular: (i) where competent authorities determine that an AIF may pose leverage-related systemic risks, the same limits should be considered for different types of AIFs but with similar risk profiles, as defined by the risk assessment, in order to avoid a situation where an AIFM declares a different type of AIF to avoid leverage limits; and (ii) the complexity of the calibration (paragraph 22, page 28 of the ESMA guidelines).

- (ii) Principles relating to the interaction with other policy measures.

When risks are partially related to size, but imposing limits may not reduce risks in the same proportion because AIFs can adjust their strategy to maintain the same level of risk, competent authorities should consider imposing other restrictions on the management of the AIFs (for example, restrictions on the investment policy, redemption policy or risk policy) (paragraph 21, page 27 of the ESMA guidelines).

- (iii) Principles for coordination among Union authorities.

Competent authorities should communicate the results of their risk assessment to ESMA at least on an annual basis and any time they identify a risk relevant for financial stability. Competent authorities should inform other EU competent authorities where the operations or arrangements made by the AIFM in other EU jurisdictions may pose risks relevant to financial stability and the integrity of the financial system (paragraph 17, page 24 of the ESMA guidelines).

ESMA is thus assessed as fully compliant (FC) with Sub-recommendation E(2).

5.2.3 Sub-recommendation E(3): notification procedure

ESMA's guidance on notifications are set out in detail in the document entitled “Procedure for imposing leverage limits under Article 25 of the Alternative Investment Fund Managers Directive”



(ESMA34-32-700). The term “notification” is also mentioned in the other documents but only once. Therefore, the assessment of compliance was based only on the above-mentioned document.

In accordance with the specific compliance criteria for the notification procedure set out in the Recommendation, the guidance issued by ESMA should include the following.

(a) An efficient working procedure: (FC)

ESMA has developed a working procedure that is operational, practical, and easy to understand and use, and that at the same time is efficient and adequate.

In addition, ESMA has developed a working procedure that minimises delays and increases flexibility. After the obligation to notify ESMA, the “timely” process is ensured by “the exchange of views between ESMA and ESRB and other relevant authorities through teleconferences” (page 3 of the ESMA guidance), which ensures the ability of the NCA to act in a timely manner. Even if the competent authority intends not to comply with ESMA’s advice, there is a procedure for “notice of explanation” (page 4 of the ESMA guidance) whereby the competent authority can provide its reasoning for non-compliance.

In essence, competent authorities have to make sure that they follow the notification procedure to ESMA, whereas they could do so in a timely manner with the imposition of measures.

(b) Template for notification letters: (FC)

The template for notification letters, entitled “Template for the notification of imposing limits on leverage employed by AIFMs under Article 25(3) of the AIFMD”, is explicitly and thoroughly addressed in Annex I of the procedure for imposing leverage limits under Article 25 of the Alternative Investment Funds Directive. It is structured into the following parts: (A) Identification of the competent authority, (B) Nature of the proposed measure, (C) Description of the precise nature of the restriction, (D) Justification and legal basis, (E) Member State affected, and (F) Additional information.

(c) Template for reporting requirements as regards the NCAs’ assessment of the need to implement macroprudential measures pursuant to Article 25(3) of Directive 2011/61/EU: (FC)

The template for NCAs’ assessment, entitled “Template for advice of the European Securities and Markets Authority of DD MM YYYY on [a] proposed or taken measure[s] by [competent authority] under Article 25 of Directive 2011/61/EU”, is explicitly and thoroughly addressed in Annex II of the procedure for imposing leverage limits under Article 25 of Directive 2011/61/EU. It is structured into the following parts: (I.) Legal basis, (II.) Background, (III.) On the adverse events or developments, (IV.) On the appropriateness of the measure[s], and (V.) On the duration of measures.

(d) Regulatory arbitrage and proportionality: (FC)

On page 28 of the guidelines on Article 25 of Directive 2011/61/EU, it is stated that competent authorities should take regulatory arbitrage and proportionality into account when evaluating the efficiency of leverage limits in mitigating excessive leverage. Explicit reference to the notification procedure is not made. However, regulatory arbitrage is implicitly acknowledged for notification, as



the procedure for imposing leverage limits under Article 25 of the Alternative Investment Funds Directive states how authorities should take into account the interaction of AIFMs (page 5) as well as setting out the coordination role assumed by ESMA (page 1). In essence, an efficient notification procedure helps authorities to choose effective leverage limits and avoid regulatory arbitrage and leakages. Although proportionality is not mentioned explicitly, the Assessment Team found no evidence that ESMA acted in a disproportionate manner. The notification procedures strike the right balance between maximising the scope of and potential gains from increased risk monitoring and the potential costs generated by the new reporting requirements. ESMA's advice in the notification template should address the requirement that "measures are appropriate to address the concerns relating to the stability and integrity of the financial system" (page 9).

ESMA is thus assessed as fully compliant (FC) with Sub-recommendation E(3).

5.2.4 Sub-recommendation E(4): benchmarking

With respect to Sub-recommendation E(4), ESMA indicated in its reply letter of 16 December 2020 that it would share knowledge with macroprudential authorities and the ESRB on practices in relation to the use of leverage limits and the imposition of other restrictions once it had received any notification under Article 25(3) of the AIFMD and gained sufficient experience in this field (see Section 2.2 above). Initially, ESMA reported that it had not received any notification under Article 25(3) from a competent authority to date, because this tool had never been used by NCAs, and had therefore not been able to start the benchmarking exercise yet.

Nevertheless, ESMA followed the approach of providing guidelines, namely those on Article 25 of Directive 2011/61/EU. In this regard, ESMA demonstrated its facilitation and coordination role in trying to ensure that a consistent approach is taken by NCAs in relation to the proposed measures.

As such, ESMA's compliance with Sub-recommendation E(4) has been assessed as sufficiently explained considering the following specific compliance criteria.

For reasons of completeness, it is mentioned here that on 3 November 2022 the Central Bank of Ireland notified ESMA and informed the ESRB about the intention to impose leverage limits under Article 25(3) of the AIFMD. On 23 November 2022, ESMA issued its advice supporting the proposed measure²⁶ and, in March 2023, ESMA reported on the use of leverage limits to the ATC.

(a) The results, if any, of ESMA's benchmarking exercise: (SE)

No results of any benchmarking exercise were available during the relevant reporting period.

(b) The practices, if any, in relation to the use of leverage limits: (SE)

No practices have been during the relevant reporting period. ESMA's final report on the guidelines on Article 25 of Directive 2011/61/EU includes the NCAs' responses in relation to leverage limits. For instance, on pages 11 and 12 of the final report, ESMA stresses that "if NCAs have to impose

²⁶ Advice of the European Securities and Markets Authority of 23 November 2022 on a proposed measure by the Central Bank of Ireland under Article 25 of Directive 2011/61/EU, ESMA50-164-6745.



leverage limits because of a threat to financial stability, it is very likely that the threat would stem from several AIFs and not from a single AIF". However, according to ESMA, "this does not mean that leverage limits should be automatically the same for all AIFs of the group and ESMA expects NCAs to adopt leverage limits that are tailored to the characteristics of each AIF that collectively create a risk for the stability of financial markets".

(c) The practices, if any, in relation to the imposition of other restrictions on the management of AIFs using information received from the NCAs pursuant to Article 25(3) of Directive 2011/61/EU: (SE)

The guidelines on Article 25 of Directive 2011/61/EU outline (on page 28) other restrictions that could be imposed on AIFMs by NCAs, stating that "when risks are partially related to size, but imposing limits may not reduce risks in the same proportion because AIFs can adjust their strategy to maintain the same level of risk, competent authorities should consider imposing other restrictions on the management of the AIFs (for example, restrictions on the investment policy, redemption policy or risk policy)" and that "when risks are partially related to size, but imposing limits may not reduce risks in the same proportion because AIFs can adjust their strategy to maintain the same level of risk, competent authorities should impose other restrictions on the management of the AIF, at least until the end of the phased-in period".

(d) Regulatory arbitrage and proportionality: (SE)

On page 28 of the guidelines on Article 25 of Directive 2011/61/EU, it is stated that NCAs should take regulatory arbitrage and proportionality into account when evaluating the efficiency of leverage limits in mitigating excessive leverage. It is also implicitly assumed that regulatory arbitrage should be avoided, with the guidelines outlining that, alongside the benefits, there is also a need for common practices in order to avoid a situation where some Member States adopt different rules, thus creating greater uncertainty in the effective use of the extensive information available to NCAs under Directive 2011/61/EU (pages 14, 17 and 18).

Finally, regarding proportionality, the Assessment Team found no evidence that ESMA acted in a disproportionate manner. It is stated in the guidelines on Article 25 of Directive 2011/61/EU that the option of calibrating the limits based on the fund profile and the efficiency of the limits in reducing the risk should be more proportionate, limit the build-up of systemic risk and improve financial stability. The proposal to allow other restrictions to be imposed on the management acknowledges the risks of unintended effects during the phase-in period (page 18).

ESMA is thus assessed as sufficiently explained (SE) with regard to Sub-recommendation E(4). The assessment of compliance with the implementation of Recommendation E for ESMA gives an overall grade of fully compliant (FC) and the results are presented in the colour-coded Table 5.2.



Table 5.2

Compliance grades for ESMA for Recommendation E.

Addressee	Overall grade	Sub-rec. E(1)	Sub-rec. E(2)	Sub-rec. E(3)	Sub-rec. E(4)
ESMA	FC	FC	FC	FC	SE

5.3 Overall assessment

The overall assessment of compliance with the implementation of Recommendations C and E for ESMA is fully compliant (FC). The results are presented in the colour-coded Table 5.3.

Table 5.3

Overall compliance grades for ESMA for Recommendations C and E.

Addressee	Overall grade	Rec. C	Rec. E
ESMA	FC	FC	FC



6 Conclusions

The Recommendation is made up of five recommendations (A, B, C, D and E), three of which are addressed to the Commission (A, B and D) and two of which are addressed to ESMA (C and E). The overall assessment for Recommendation A (liquidity management tools for redemption), Recommendation B (additional provisions to reduce the likelihood of excessive liquidity mismatches) and Recommendation D (UCITS reporting) shows a significant degree of compliance.

With regard to Recommendation A (liquidity management tools for redemption), the Commission was graded as fully compliant. This grade is an overall result, as the Assessment Team concluded that the Commission was largely compliant with Sub-recommendation A(1), fully compliant with Sub-recommendation A(2) and fully compliant with Sub-recommendation A(3).

Sub-recommendation A(1) concerns the availability of additional liquidity management tools and requires the Commission's amendments to the relevant Union legislation to include obligations for AIFMs of open-ended AIFs and UCITS management companies to include in their constitutional documents or other pre-contractual information, such as fund rules or instruments of incorporation, specific liquidity management tools suitable for the investment strategy of the funds they manage, powers to suspend redemptions in stressed market conditions, provisions to ensure that the necessary operational capacity and contingency planning is available to allow the timely activation of any a-LMT and reporting obligations towards NCAs on the implementation and use of a-LMTs in stressed market conditions.

Additionally, Sub-recommendation A(1) requires the Commission to include in its proposed amendments to the relevant Union legislation an obligation for ESMA to develop guidance on several aspects of liquidity management tools related to their suitability, their implementation, the assessment of their adequacy, reporting requirements towards NCAs and transparency requirements towards investors. The guidance was required to take into account the necessary contingency planning by AIFMs and UCITS management companies, in order to enable the prompt and effective application of liquidity management tools.

The Assessment Team judged that the specific compliance criteria had been fully met by the Commissions' proposed amendments to Directives 2011/61/EU and 2009/65/EC, with the exception of two that the Commission had met almost entirely, but not fully. The first of these criteria is related to the obligation for AIFMs of open-ended AIFs and UCITS management companies to include the power to suspend redemptions in the constitutional documents or other pre-contractual information of the funds they manage. The Commission's proposed amendments to Directive 2009/65/EC do not mention the inclusion in the fund documentation of the power to suspend redemptions. Additionally, the amendments clarify that the temporary suspension "shall be provided for only in exceptional cases where circumstances so require and where suspension is justified having regard to the interests of the unit-holders". For this reason, the Commission was assessed as being largely compliant with this specific criterion.



The second criterion relates to the obligation for ESMA to develop guidance on liquidity management tools.

The Commission's proposed amendments to Directives 2011/61/EU and 2009/65/EC state that ESMA must develop draft regulatory technical standards to specify the characteristics of the liquidity management tools set out in Annex V and Annex IIA respectively, which harmonise the minimum list of liquidity management tools that should be available anywhere in the EU. However, according to the Commission's Proposal for a Directive amending Directives 2011/61/EU and 2009/65/EC, the guidance to be developed by ESMA both for AIFs and UCITS does not explicitly mention some of the required items related to implementation, assessment of adequacy, reporting requirements towards NCAs or transparency requirements towards investors, nor does it take into account contingency planning. For this reason, the Commission was assessed as being largely compliant with this specific criterion.

Sub-recommendation A(2) requires the Commission to propose changes to the relevant Union legislation that include provisions clarifying the NCAs' role and cooperation between them with regard to the suspension of redemptions with cross-border financial stability implications

where the AIF or UCITS is established in one Member State but has an AIFM or UCITS management company established in another Member State. The Commission's proposed changes should also include an obligation to notify other relevant NCAs, ESMA, and the ESRB, prior to exercising such powers. The Commission's proposed amendments to Directives 2011/61/EU and 2009/65/EC include provisions on these powers and cooperation tools. Although the procedure does not clearly mention "cross-border financial stability purposes" as the "trigger" that activates the exercise of powers by the authorities, the Assessment Team considered that the Commission fully addressed this Sub-recommendation.

According to Sub-recommendation A(3), the Commission's proposed changes to the relevant Union legislation should include an obligation for ESMA to ensure that it fulfils a general facilitation, advisory and coordination role

in relation to the NCA's powers to suspend redemptions where there are cross-border financial stability implications. The Commission's proposed amendments to Directives 2011/61/EU and 2009/65/EC include several reporting obligations for relevant NCAs towards ESMA regarding the activation/deactivation of suspension of redemptions and its cross-border implications. They also include provisions stating that ESMA must issue an opinion to the NCA of the home Member State of the AIFM/UCITS on exercising its power to suspend redemptions, and that ESMA may request the NCA to submit explanations to ESMA in relation to specific cases. Finally, the proposed amendments mandate ESMA to develop draft regulatory technical standards on the situations in which NCAs may exercise powers to suspend redemptions.

With regard to Recommendation B (additional provisions to reduce the likelihood of excessive liquidity mismatches), the Commission was graded as sufficiently explained.

The Commission's proposed amendments to Directives 2011/61/EU and 2009/65/EC do not include granting powers to ESMA to prepare and to update a list of inherently less liquid assets or a requirement for AIFMs of open-ended AIFs whose objective is to invest significantly in assets included in such a list to demonstrate to the NCAs their capacity to maintain their investment strategy under foreseeable market conditions. They also do not grant ESMA the discretion to impose transitional provisions for AIFMs of open-ended AIFs specifying the time allowed to comply with the legislation when assets are added to the list of inherently less liquid assets or when internal



limits are breached. Nevertheless, the Commission pointed out practical difficulties hindering the preparation of a list of inherently less liquid assets, as it understood that sufficient empirical work had not been done in this regard. Additionally, it highlighted that current AIFMD provisions already contain requirements for AIFs to have redemption policies that are consistent with the liquidity profile of their investment strategy and to conduct regular stress tests. The Commission also highlighted actions taken by ESMA to promote supervisory convergence regarding liquidity stress testing in investment funds. In light of these considerations, the Commission's inaction was considered sufficiently explained.

With regard to Recommendation D (UCITS reporting), the Commission was graded as partially compliant. This grade is an overall result, as the Assessment Team concluded that the Commission was partially compliant with Sub-recommendation D(1), partially compliant with Sub-recommendation D(2) and partially compliant with Sub-recommendation D(3).

Sub-recommendation D(1) requires the Commission to propose amendments to Union legislation that include detailed reporting requirements for UCITS covering a minimum of ten indicators on both the assets and liabilities sides, thus allowing for a comprehensive assessment of the potential contribution to financial/systemic risk of UCITS. However, the Commission's proposed amendments simply introduce a reporting obligation that concerns the markets and instruments in which UCITS trade. Therefore, the obligation does not cover all recommended indicators. Additionally, the reporting requirements were not considered to be detailed. Instead, the Commission proposes to mandate ESMA to develop regulatory technical standards and to submit, in cooperation with the European Central Bank (ECB), other European supervisory authorities (ESAs) and relevant NCAs, a report to the Commission for the development of an integrated supervisory data collection.

Sub-recommendation D(2) on the frequency and coverage of the UCITS reporting obligations requires the data mentioned in Sub-recommendation D(1) to be reported at least quarterly by a sufficiently relevant proportion and at least yearly by a representative proportion of all UCITS and UCITS management companies.

The Commission proposes to amend Directive 2009/65/EC by inserting a new Article 20a stating that ESMA must develop (i) draft regulatory technical standards specifying the details to be reported, and (ii) draft implementing technical standards specifying the format and data standards, and the reporting frequency and timing. However, the Commission's Proposal for a Directive amending Directives 2011/61/EU and 2009/65/EC does not mention that different reporting frequencies can be applied for the sufficiently relevant proportion and the representative proportion of all UCITS and UCITS management companies when setting the scope for reporting, with the aim of ensuring that a sufficient part of the industry will be covered.

For the purpose of assessing compliance with Recommendation D, the Commission was asked to share any additional information to be taken into account in the context of a remedial dialogue phase. Regarding Sub-recommendation D(2), the Commission explained that the details were intentionally delegated to Level 2 measures, as the optimal reporting frequency depends on the exact content of the reporting required on UCITS and AIFs, which will only be determined in Level 2 regulation.



Regarding Sub-recommendation D(3), the Commission was required to propose an obligation for NCAs to make the data mentioned in Sub-recommendation D(1) available to the NCAs of other Member States, ESMA and the ESRB in order to ensure the harmonisation of UCITS data reporting with data sharing practices under Directive 2011/61/EU. In this context, the Commission should also take into account reporting requirements under Regulation (EU) 2017/1131. The Commission's proposed amendments to Directives 2011/61/EU and 2009/65/EC do not include any provision on the sharing of UCITS data with NCAs of other relevant Member States, ESMA and the ESRB. In the context of the remedial dialogue phase, the Commission expressed its intention not to object to the EU Council's proposal to introduce ESMA and ESRB as recipients of the data transmitted under Article 20a during the trilogues. This intention was taken into account, because although the proposed amendment to the legal text was not put forward by the Commission, the intention to support it contributes to the achievement of the objectives of Sub-recommendation D(3).

The overall assessment for Recommendation C (stress testing) and Recommendation E (guidance on Article 25 of Directive 2011/61/EU) shows a significantly high degree of compliance. In its guidelines on liquidity stress testing in UCITS and AIFs, ESMA provides detailed and comprehensive guidance on the practices to be followed by managers for the stress testing of liquidity risks for AIFs and UCITS. Its guidelines on Article 25 of Directive 2011/61/EU provide clear guidance on the assessment of leverage-related systemic risk and on macroprudential leverage limits. In addition, ESMA has developed useful guidance on the notification procedure for imposing leverage limits under Article 25 of Directive 2011/61/EU, via the use of a specific template.

With regard to Recommendation C (stress testing), ESMA was graded as fully compliant.

This is because ESMA's guidelines on liquidity stress testing in UCITS and AIFs deal with the design of liquidity stress testing scenarios and liquidity stress testing policies. They also take into consideration the assets and liabilities sides of investment funds' balance sheets, as well as the timing and frequency of individual funds' liquidity stress tests, in line with the ESRB Recommendation. ESMA also considered additional aspects that go beyond the ESRB Recommendation, such as combining asset and liability stress testing, aggregating liquidity stress testing across funds and taking into account risks arising from less liquid assets.

With regard to Recommendation E (guidance on Article 25 of Directive 2011/61/EU), which is divided into the four Sub-recommendations E(1), E(2), E(3) and E(4), the Assessment Team assigned a grade of fully compliant for Sub-recommendations E(1), E(2) and E(3). The Assessment Team judged that the requirements included in Sub-recommendations E(1), E(2) and E(3) had been completely fulfilled by ESMA, except for two requirements that ESMA had met almost entirely but not fully. The first requirement concerns Sub-recommendation E(1)(c), for which the ESRB required that ESMA's guidance on the assessment of leverage-related systemic risk should also include qualitative and, where feasible, quantitative descriptions of the interpretation of the indicators in the context of the assessment framework. The Assessment Team understands that there are different types of investment funds and investment strategies, so that a "one-size-fits-all" interpretation of the indicators may not work. However, ESMA should have developed more detailed guidelines on how to interpret the indicators or should have provided quantitative descriptions of the indicators wherever possible. If it had not been feasible to develop these guidelines or provide these quantitative descriptions, ESMA should have given reasons.



The second requirement concerns Sub-recommendation E(2)(a), for which the ESRB asked ESMA to include a description of the various types of leverage limits, including an evaluation of their effectiveness and efficiency in mitigating excessive leverage. The Assessment Team understands that ESMA elaborated on different types of leverage limits in its guidelines on Article 25 of Directive 2011/61/EU, but neither the effectiveness nor the efficiency of these different types of limits are evaluated in detail.

For Sub-recommendation E(4), ESMA was assigned a grade of sufficiently explained. Sub-recommendation E(4) requires ESMA to share, on an annual basis, any results of its benchmarking exercise and any practices in relation to the use of leverage limits received from NCAs pursuant to Article 25(3) of Directive 2011/61/EU. ESMA explained that it had not received any notification under Article 25(3) from a competent authority to date, because this tool had never been used by NCAs, and it had therefore not yet been able to start the benchmarking exercise.

For reasons of completeness, it is mentioned here that on 3 November 2022 the Central Bank of Ireland notified ESMA and informed the ESRB about the intention to impose leverage limits under Article 25(3) of the AIFMD. On 23 November 2022, ESMA issued its advice supporting the proposed measure²⁷ and, in March 2023, ESMA reported on the use of leverage limits to the ATC.

²⁷ Advice of the European Securities and Markets Authority of 23 November 2022 on a proposed measure by the Central Bank of Ireland under Article 25 of Directive 2011/61/EU, ESMA50-164-6745.



Annex I: Composition of the Assessment Team

(approved by the ATC via Written Procedure ATC/WP/2021/005)

Chairperson	Institution
Jaga Gänßler	Bundesanstalt für Finanzdienstleistungsaufsicht

Assessment Team	Institution
Mario Cappabianca	Banca d'Italia
Thomas Garcia	Banque de France
Konstantinos Kannelopoulos	Bank of Greece
Jens Lorenz	Bundesanstalt für Finanzdienstleistungsaufsicht
Charles O'Donnell	European Central Bank
Marloes Van Rijsbergen	European Commission
Cristina Vespro	European Commission
Hannes Wilke	Deutsche Bundesbank

Secretariat	
Camille Graciani	ESRB Secretariat
Dorota Okseniuk	ESRB Secretariat
Jari Friebe	ESRB Secretariat
Aleksandra Granat	ESRB Secretariat
Federico Pistelli	ESRB Secretariat
Ridha Sahli	ESRB Secretariat
Stamatis Vasilakos	ESRB Secretariat
Maria Luísa Rodrigues	ESRB Secretariat



Annex II: Implementation standards for Recommendation ESRB/2017/6

The standards below have been used to ensure consistent and equal treatment of addressees.

Sub-recommendation A(1) (availability of additional liquidity management tools)

FC The Commission proposes that Union legislation incorporates a common Union legal framework governing the inclusion of additional liquidity management tools (a-LMTs) in the design of investment funds originating anywhere in the Union so that the decision on which a-LMTs to incorporate in the constitutional documents of or other pre-contractual information on investment funds is made individually by each entity responsible for management. The Commission's proposals include the following obligations for:

- alternative investment fund managers (AIFMs) of open-ended AIFs and UCITS management companies to assess all available a-LMTs and specifically to assess which of them are suitable for the investment strategies of the funds they manage and should be included in their constitutional documents or other pre-contractual information in order to be exercised both in normal and in stressed market conditions and to provide investors with sufficient transparency in relation to such tools;
- AIFMs of open-ended AIFs and UCITS management companies to include, as a minimum, the power to suspend redemptions, particularly in stressed market conditions, in the constitutional documents or other pre-contractual information of the funds they manage;
- AIFMs of open-ended AIFs and UCITS management companies to ensure that the necessary operational capacity and contingency planning is available for the timely activation of any a-LMT which they may use;
- AIFMs of open-ended AIFs and UCITS management companies to report to the national competent authorities (NCAs) on the implementation and use of a-LMTs in stressed market conditions.

LC The Commission proposes that Union legislation incorporates a common Union legal framework governing the inclusion of additional liquidity management tools (a-LMTs) in the design of investment funds originating anywhere in the Union so that the decision on which a-LMTs to incorporate in the constitutional documents of or other pre-contractual information on investment funds is made individually by each entity responsible for management. The Commission's proposals include almost all of the following obligations for:

- alternative investment fund managers (AIFMs) of open-ended AIFs and UCITS management companies to assess all available a-LMTs and specifically to assess which of them are suitable for the investment strategies of the funds they manage and should be included in their constitutional documents or other pre-contractual information in order to be



exercised both in normal and in stressed market conditions and to provide investors with sufficient transparency in relation to such tools;

- AIFMs of open-ended AIFs and UCITS management companies to include, as a minimum, the power to suspend redemptions, particularly in stressed market conditions, in the constitutional documents or other pre-contractual information of the funds they manage;
- AIFMs of open-ended AIFs and UCITS management companies to ensure that the necessary operational capacity and contingency planning is available for the timely activation of any a-LMT which they may use;
- AIFMs of open-ended AIFs and UCITS management companies to report to the national competent authorities (NCAs) on the implementation and use of a-LMTs in stressed market conditions;
- the European Securities and Markets Authority (ESMA), after taking into account the opinion of the European Systemic Risk Board (ESRB) in relation to macroprudential issues, to develop guidance on:
 - (i) definitions and characteristics of a-LMTs;
 - (ii) the criteria for the suitability assessment under point A(1)(a);
 - (iii) the transparency requirements for the a-LMTs established under point A(1)(a);
 - (iv) high-level principles on how the a-LMTs should be implemented in the fund's liquidity management process;
 - (v) how to assess and deal with potential unintended consequences when using a-LMTs;
 - (vi) the requirement to report to the NCAs under point A(1)(d); and
 - (vii) the level of transparency in relation to investors when a-LMTs are activated and during their use.

SE: N/A.

PC: The Commission proposes that Union legislation incorporates a common Union legal framework governing the inclusion of additional liquidity management tools (a-LMTs) in the design of investment funds originating anywhere in the Union so that the decision on which a-LMTs to incorporate in the constitutional documents of or other pre-contractual information on investment funds is made individually by each entity responsible for management. The Commission's proposals include only some of the following obligations for:

- alternative investment fund managers (AIFMs) of open-ended AIFs and UCITS management companies to assess all available a-LMTs and specifically to assess which of them are suitable for the investment strategies of the funds they manage and should be



included in their constitutional documents or other pre-contractual information in order to be exercised both in normal and in stressed market conditions and to provide investors with sufficient transparency in relation to such tools;

- AIFMs of open-ended AIFs and UCITS management companies to include, as a minimum, the power to suspend redemptions, particularly in stressed market conditions, in the constitutional documents or other pre-contractual information of the funds they manage;
- AIFMs of open-ended AIFs and UCITS management companies to ensure that the necessary operational capacity and contingency planning is available for the timely activation of any a-LMT which they may use;
- AIFMs of open-ended AIFs and UCITS management companies to report to the national competent authorities (NCAs) on the implementation and use of a-LMTs in stressed market conditions;
- the European Securities and Markets Authority (ESMA), after taking into account the opinion of the European Systemic Risk Board (ESRB) in relation to macroprudential issues, to develop guidance on:
 - (i) definitions and characteristics of a-LMTs;
 - (ii) the criteria for the suitability assessment under point A(1)(a);
 - (iii) the transparency requirements for the a-LMTs established under point A(1)(a);
 - (iv) high-level principles on how the a-LMTs should be implemented in the fund's liquidity management process;
 - (v) how to assess and deal with potential unintended consequences when using a-LMTs;
 - (vi) the requirement to report to the NCAs under point A(1)(d); and
 - (vii) the level of transparency in relation to investors when a-LMTs are activated and during their use.
- **MN:** The Commission is recommended to propose that Union legislation incorporates a common Union legal framework governing the inclusion of additional liquidity management tools (a-LMTs) in the design of investment funds originating anywhere in the Union so that the decision on which a-LMTs to incorporate in the constitutional documents of or other pre-contractual information on investment funds is made individually by each entity responsible for management. The Commission's proposals fail to include most of the following obligations for:
- alternative investment fund managers (AIFMs) of open-ended AIFs and UCITS management companies to assess all available a-LMTs and specifically to assess which of them are suitable for the investment strategies of the funds they manage and should be



included in their constitutional documents or other pre-contractual information in order to be exercised both in normal and in stressed market conditions and to provide investors with sufficient transparency in relation to such tools;

- AIFMs of open-ended AIFs and UCITS management companies to include, as a minimum, the power to suspend redemptions, particularly in stressed market conditions, in the constitutional documents or other pre-contractual information of the funds they manage;
- AIFMs of open-ended AIFs and UCITS management companies to ensure that the necessary operational capacity and contingency planning is available for the timely activation of any a-LMT which they may use;
- AIFMs of open-ended AIFs and UCITS management companies to report to the national competent authorities (NCAs) on the implementation and use of a-LMTs in stressed market conditions;
- the European Securities and Markets Authority (ESMA), after taking into account the opinion of the European Systemic Risk Board (ESRB) in relation to macroprudential issues, to develop guidance on:
 - (i) definitions and characteristics of a-LMTs;
 - (ii) the criteria for the suitability assessment under point A(1)(a);
 - (iii) the transparency requirements for the a-LMTs established under point A(1)(a);
 - (iv) high-level principles on how the a-LMTs should be implemented in the fund's liquidity management process;
 - (v) how to assess and deal with potential unintended consequences when using a-LMTs;
 - (vi) the requirement to report to the NCAs under point A(1)(d); and
 - (vii) the level of transparency in relation to investors when a-LMTs are activated and during their use.
- **NC:** The Commission proposes that Union legislation incorporates a common Union legal framework governing the inclusion of additional liquidity management tools (a-LMTs) in the design of investment funds originating anywhere in the Union so that the decision on which a-LMTs to incorporate in the constitutional documents of or other pre-contractual information on investment funds is made individually by each entity responsible for management. The Commission's proposals include hardly any or none of the following obligations for:
- alternative investment fund managers (AIFMs) of open-ended AIFs and UCITS management companies to assess all available a-LMTs and specifically to assess which of them are suitable for the investment strategies of the funds they manage and should be



included in their constitutional documents or other pre-contractual information in order to be exercised both in normal and in stressed market conditions and to provide investors with sufficient transparency in relation to such tools;

- AIFMs of open-ended AIFs and UCITS management companies to include, as a minimum, the power to suspend redemptions, particularly in stressed market conditions, in the constitutional documents or other pre-contractual information of the funds they manage;
- AIFMs of open-ended AIFs and UCITS management companies to ensure that the necessary operational capacity and contingency planning is available for the timely activation of any a-LMT which they may use;
- AIFMs of open-ended AIFs and UCITS management companies to report to the national competent authorities (NCAs) on the implementation and use of a-LMTs in stressed market conditions;
- the European Securities and Markets Authority (ESMA), after taking into account the opinion of the European Systemic Risk Board (ESRB) in relation to macroprudential issues, to develop guidance on:
 - (i) definitions and characteristics of a-LMTs;
 - (ii) the criteria for the suitability assessment under point A(1)(a);
 - (iii) the transparency requirements for the a-LMTs established under point A(1)(a);
 - (iv) high-level principles on how the a-LMTs should be implemented in the fund's liquidity management process;
 - (v) how to assess and deal with potential unintended consequences when using a-LMTs;
 - (vi) the requirement to report to the NCAs under point A(1)(d); and
 - (vii) the level of transparency in relation to investors when a-LMTs are activated and during their use.

IE: N/A.

Sub-recommendation A(2) (further provisions on the NCAs' suspension of redemptions with cross-border financial stability implications)

FC: The Commission proposes that Union legislation includes further provisions specifying the NCA's role when using their powers to suspend redemptions in situations where there are cross-border financial stability implications. The Commission's proposed changes include the following aspects:



- clarification of the respective roles of the NCAs and cooperation between them with regard to suspending redemptions for cross-border financial stability purposes, where the AIF or UCITS is established in one Member State but has an AIFM or UCITS management company established in another Member State, i.e. cross-border implications;
- an obligation for the NCAs, when exercising the powers to direct the suspension of redemptions for cross-border financial stability purposes, to notify other relevant NCAs, ESMA, and the ESRB, prior to exercising such powers.

LC: The Commission proposes that Union legislation includes further provisions specifying the NCA's role when using their powers to suspend redemptions in situations where there are cross-border financial stability implications. The Commission's proposed changes include almost all of the following aspects:

- clarification of the respective roles of the NCAs and cooperation between them with regard to suspending redemptions for cross-border financial stability purposes, where the AIF or UCITS is established in one Member State but has an AIFM or UCITS management company established in another Member State, i.e. cross-border implications;
- an obligation for the NCAs, when exercising the powers to direct the suspension of redemptions for cross-border financial stability purposes, to notify other relevant NCAs, ESMA, and the ESRB, prior to exercising such powers.

SE: N/A

PC: The Commission proposes that Union legislation includes further provisions specifying the NCA's role when using their powers to suspend redemptions in situations where there are cross-border financial stability implications. The Commission's proposed changes include only some of the following aspects:

- clarification of the respective roles of the NCAs and cooperation between them with regard to suspending redemptions for cross-border financial stability purposes, where the AIF or UCITS is established in one Member State but has an AIFM or UCITS management company established in another Member State, i.e. cross-border implications;
- an obligation for the NCAs, when exercising the powers to direct the suspension of redemptions for cross-border financial stability purposes, to notify other relevant NCAs, ESMA, and the ESRB, prior to exercising such powers.

MN: The Commission proposes that Union legislation includes further provisions specifying the NCA's role when using their powers to suspend redemptions in situations where there are cross-border financial stability implications. The Commission's proposed changes fail to include most of the following aspects:



clarification of the respective roles of the NCAs and cooperation between them with regard to suspending redemptions for cross-border financial stability purposes, where the AIF or UCITS is established in one Member State but has an AIFM or UCITS management company established in another Member State, i.e. cross-border implications;

an obligation for the NCAs, when exercising the powers to direct the suspension of redemptions for cross-border financial stability purposes, to notify other relevant NCAs, ESMA, and the ESRB, prior to exercising such powers.

NC: The Commission proposes that Union legislation includes further provisions specifying the NCA's role when using their powers to suspend redemptions in situations where there are cross-border financial stability implications. The Commission's proposed changes hardly include any or none of the following aspects:

- clarification of the respective roles of the NCAs and cooperation between them with regard to suspending redemptions for cross-border financial stability purposes, where the AIF or UCITS is established in one Member State but has an AIFM or UCITS management company established in another Member State, i.e. cross-border implications;
- an obligation for the NCAs, when exercising the powers to direct the suspension of redemptions for cross-border financial stability purposes, to notify other relevant NCAs, ESMA, and the ESRB, prior to exercising such powers.

IE: N/A.

Sub-recommendation A(3) (further provisions on ESMA's role in relation to the NCAs suspending redemptions with cross-border financial stability implications)

FC: The Commission's proposed changes to the relevant Union legislation include an obligation for ESMA to ensure that it fulfils a general facilitation, advisory and coordination role in relation to the NCAs' powers to suspend redemptions where there are cross-border financial stability implications.

LC: The Commission's proposed changes to the relevant Union legislation ensure to a large extent that there's an obligation for ESMA that it fulfils a general facilitation, advisory and coordination role in relation to the NCAs' powers to suspend redemptions where there are cross-border financial stability implications.

SE: N/A

PC: The Commission's proposed changes to the relevant Union legislation ensure only partially an obligation for ESMA that it fulfils a general facilitation, advisory and coordination role in



relation to the NCAs' powers to suspend redemptions where there are cross-border financial stability implications.

MN: The Commission's proposed changes to the relevant Union legislation ensure only to a small extent an obligation for ESMA that it fulfils a general facilitation, advisory and coordination role in relation to the NCAs' powers to suspend redemptions where there are cross-border financial stability implications.

NC: The Commission's proposed changes to the relevant Union legislation do not include an obligation for ESMA to ensure that it fulfils a general facilitation, advisory and coordination role in relation to the NCAs' powers to suspend redemptions where there are cross-border financial stability implications.

IE: N/A.

Recommendation B (additional provisions to reduce the likelihood of excessive liquidity mismatches)

FC: The Commission's proposed changes to the relevant Union legislation include the following points.

- granting powers to ESMA to prepare and to update a list of inherently less liquid assets, on the basis of ESMA's own analysis, after taking into account the ESRB's opinions in relation to macroprudential issues and those of the European Banking Authority and the European Insurance and Occupational Pensions Authority in relation to cross-sectoral consistency issues. In compiling this list, ESMA should consider, as a minimum, real estate, unlisted securities, loans and other alternative assets that appear to be inherently less liquid. The analysis should take into account, inter alia, the time it would take to liquidate those assets under stressed market conditions.
- a requirement for AIFMs of open-ended AIFs whose objective is to invest significantly in assets included in the list of inherently less liquid assets under point B(a), to demonstrate to the NCAs their capacity to maintain their investment strategy under foreseeable market conditions. The assessment should include, inter alia, tailored redemption policies, the implementation of a-LMTs and/or internal limits of assets included in the list of inherently less liquid assets under point B(a). Such internal limits, if used, should then be disclosed to the NCAs at the inception of the relevant funds and reported thereafter whenever these limits change. Disclosure to investors should also be implemented based on guidance to be developed by ESMA.
- the discretion to impose transitional provisions for AIFMs of open-ended AIFs specifying the time allowed to comply with the legislation when assets are added to the list of



inherently less liquid assets under point B(a), and when internal limits are breached, where useful, in order to avoid any unintended, harmful effects.

LC: The Commission's proposed changes to the relevant Union legislation include most of the following points.

- granting powers to ESMA to prepare and to update a list of inherently less liquid assets, on the basis of ESMA's own analysis, after taking into account the ESRB's opinions in relation to macroprudential issues and those of the European Banking Authority and the European Insurance and Occupational Pensions Authority in relation to cross-sectoral consistency issues. In compiling this list, ESMA should consider, as a minimum, real estate, unlisted securities, loans and other alternative assets that appear to be inherently less liquid. The analysis should take into account, inter alia, the time it would take to liquidate those assets under stressed market conditions.
- a requirement for AIFMs of open-ended AIFs whose objective is to invest significantly in assets included in the list of inherently less liquid assets under point B(a), to demonstrate to the NCAs their capacity to maintain their investment strategy under foreseeable market conditions. The assessment should include, inter alia, tailored redemption policies, the implementation of a-LMTs and/or internal limits of assets included in the list of inherently less liquid assets under point B(a). Such internal limits, if used, should then be disclosed to the NCAs at the inception of the relevant funds and reported thereafter whenever these limits change. Disclosure to investors should also be implemented based on guidance to be developed by ESMA.
- the discretion to impose transitional provisions for AIFMs of open-ended AIFs specifying the time allowed to comply with the legislation when assets are added to the list of inherently less liquid assets under point B(a), and when internal limits are breached, where useful, in order to avoid any unintended, harmful effects.

SE: The Commission's proposed changes to the relevant Union legislation do not include the points below but the Commission provides sufficient explanation for its inaction.

- granting powers to ESMA to prepare and to update a list of inherently less liquid assets, on the basis of ESMA's own analysis, after taking into account the ESRB's opinions in relation to macroprudential issues and those of the European Banking Authority and the European Insurance and Occupational Pensions Authority in relation to cross-sectoral consistency issues. In compiling this list, ESMA should consider, as a minimum, real estate, unlisted securities, loans and other alternative assets that appear to be inherently less liquid. The analysis should take into account, inter alia, the time it would take to liquidate those assets under stressed market conditions.
- a requirement for AIFMs of open-ended AIFs whose objective is to invest significantly in assets included in the list of inherently less liquid assets under point B(a), to demonstrate to the NCAs their capacity to maintain their investment strategy under foreseeable market conditions. The assessment should include, inter alia, tailored redemption policies, the



implementation of a-LMTs and/or internal limits of assets included in the list of inherently less liquid assets under point B(a). Such internal limits, if used, should then be disclosed to the NCAs at the inception of the relevant funds and reported thereafter whenever these limits change. Disclosure to investors should also be implemented based on guidance to be developed by ESMA.

- the discretion to impose transitional provisions for AIFMs of open-ended AIFs specifying the time allowed to comply with the legislation when assets are added to the list of inherently less liquid assets under point B(a), and when internal limits are breached, where useful, in order to avoid any unintended, harmful effects.

PC: The Commission's proposed changes to the relevant Union legislation include some of the following points.

- granting powers to ESMA to prepare and to update a list of inherently less liquid assets, on the basis of ESMA's own analysis, after taking into account the ESRB's opinions in relation to macroprudential issues and those of the European Banking Authority and the European Insurance and Occupational Pensions Authority in relation to cross-sectoral consistency issues. In compiling this list, ESMA should consider, as a minimum, real estate, unlisted securities, loans and other alternative assets that appear to be inherently less liquid. The analysis should take into account, inter alia, the time it would take to liquidate those assets under stressed market conditions.
- a requirement for AIFMs of open-ended AIFs whose objective is to invest significantly in assets included in the list of inherently less liquid assets under point B(a), to demonstrate to the NCAs their capacity to maintain their investment strategy under foreseeable market conditions. The assessment should include, inter alia, tailored redemption policies, the implementation of a-LMTs and/or internal limits of assets included in the list of inherently less liquid assets under point B(a). Such internal limits, if used, should then be disclosed to the NCAs at the inception of the relevant funds and reported thereafter whenever these limits change. Disclosure to investors should also be implemented based on guidance to be developed by ESMA.
- the discretion to impose transitional provisions for AIFMs of open-ended AIFs specifying the time allowed to comply with the legislation when assets are added to the list of inherently less liquid assets under point B(a), and when internal limits are breached, where useful, in order to avoid any unintended, harmful effects.

MN: The Commission's proposed changes to the relevant Union legislation fail to include most of the following points.

- granting powers to ESMA to prepare and to update a list of inherently less liquid assets, on the basis of ESMA's own analysis, after taking into account the ESRB's opinions in relation to macroprudential issues and those of the European Banking Authority and the European Insurance and Occupational Pensions Authority in relation to cross-sectoral consistency issues. In compiling this list, ESMA should consider, as a minimum, real estate, unlisted



securities, loans and other alternative assets that appear to be inherently less liquid. The analysis should take into account, inter alia, the time it would take to liquidate those assets under stressed market conditions.

- a requirement for AIFMs of open-ended AIFs whose objective is to invest significantly in assets included in the list of inherently less liquid assets under point B(a), to demonstrate to the NCAs their capacity to maintain their investment strategy under foreseeable market conditions. The assessment should include, inter alia, tailored redemption policies, the implementation of a-LMTs and/or internal limits of assets included in the list of inherently less liquid assets under point B(a). Such internal limits, if used, should then be disclosed to the NCAs at the inception of the relevant funds and reported thereafter whenever these limits change. Disclosure to investors should also be implemented based on guidance to be developed by ESMA.
- the discretion to impose transitional provisions for AIFMs of open-ended AIFs specifying the time allowed to comply with the legislation when assets are added to the list of inherently less liquid assets under point B(a), and when internal limits are breached, where useful, in order to avoid any unintended, harmful effects.

NC: The Commission's proposed changes to the relevant Union legislation include hardly any or none of the following points.

- granting powers to ESMA to prepare and to update a list of inherently less liquid assets, on the basis of ESMA's own analysis, after taking into account the ESRB's opinions in relation to macroprudential issues and those of the European Banking Authority and the European Insurance and Occupational Pensions Authority in relation to cross-sectoral consistency issues. In compiling this list, ESMA should consider, as a minimum, real estate, unlisted securities, loans and other alternative assets that appear to be inherently less liquid. The analysis should take into account, inter alia, the time it would take to liquidate those assets under stressed market conditions.
- a requirement for AIFMs of open-ended AIFs whose objective is to invest significantly in assets included in the list of inherently less liquid assets under point B(a), to demonstrate to the NCAs their capacity to maintain their investment strategy under foreseeable market conditions. The assessment should include, inter alia, tailored redemption policies, the implementation of a-LMTs and/or internal limits of assets included in the list of inherently less liquid assets under point B(a). Such internal limits, if used, should then be disclosed to the NCAs at the inception of the relevant funds and reported thereafter whenever these limits change. Disclosure to investors should also be implemented based on guidance to be developed by ESMA.
- the discretion to impose transitional provisions for AIFMs of open-ended AIFs specifying the time allowed to comply with the legislation when assets are added to the list of inherently less liquid assets under point B(a), and when internal limits are breached, where useful, in order to avoid any unintended, harmful effects.



IE: The Commission's proposed changes to the relevant Union legislation do not include the points below and the Commission provides insufficient explanation for its inaction.

- granting powers to ESMA to prepare and to update a list of inherently less liquid assets, on the basis of ESMA's own analysis, after taking into account the ESRB's opinions in relation to macroprudential issues and those of the European Banking Authority and the European Insurance and Occupational Pensions Authority in relation to cross-sectoral consistency issues. In compiling this list, ESMA should consider, as a minimum, real estate, unlisted securities, loans and other alternative assets that appear to be inherently less liquid. The analysis should take into account, inter alia, the time it would take to liquidate those assets under stressed market conditions.
- a requirement for AIFMs of open-ended AIFs whose objective is to invest significantly in assets included in the list of inherently less liquid assets under point B(a), to demonstrate to the NCAs their capacity to maintain their investment strategy under foreseeable market conditions. The assessment should include, inter alia, tailored redemption policies, the implementation of a-LMTs and/or internal limits of assets included in the list of inherently less liquid assets under point B(a). Such internal limits, if used, should then be disclosed to the NCAs at the inception of the relevant funds and reported thereafter whenever these limits change. Disclosure to investors should also be implemented based on guidance to be developed by ESMA.
- the discretion to impose transitional provisions for AIFMs of open-ended AIFs specifying the time allowed to comply with the legislation when assets are added to the list of inherently less liquid assets under point B(a), and when internal limits are breached, where useful, in order to avoid any unintended, harmful effects.

Recommendation C (stress testing)

FC: ESMA's guidelines on liquidity stress testing in UCITS and AIFs include, but are not limited to:

- the design of liquidity stress testing scenarios;
- the liquidity stress test policy, including internal use of liquidity stress test results;
- considerations for the asset and liability sides of investment fund balance sheets;
- the timing and frequency for individual funds to conduct the liquidity stress tests;
- compliance with the stress testing requirements set out in Directive 2011/61/EU and how market participants carry out stress testing.



LC: ESMA's guidelines on liquidity stress testing in UCITS and AIFs are limited to:

- the design of liquidity stress testing scenarios;
- the liquidity stress test policy, including internal use of liquidity stress test results;
- considerations for the asset and liability sides of investment fund balance sheets;
- the timing and frequency for individual funds to conduct the liquidity stress tests;
- compliance with the stress testing requirements set out in Directive 2011/61/EU and how market participants carry out stress testing.

SE: N/A

PC: ESMA's guidelines on liquidity stress testing in UCITS and AIFs include most of the following aspects:

- the design of liquidity stress testing scenarios;
- the liquidity stress test policy, including internal use of liquidity stress test results;
- considerations for the asset and liability sides of investment fund balance sheets;
- the timing and frequency for individual funds to conduct the liquidity stress tests;
- compliance with the stress testing requirements set out in Directive 2011/61/EU and how market participants carry out stress testing.

MN: ESMA's guidelines on liquidity stress testing in UCITS and AIFs only include some of the following aspects:

- the design of liquidity stress testing scenarios;
- the liquidity stress test policy, including internal use of liquidity stress test results;
- considerations for the asset and liability sides of investment fund balance sheets;
- the timing and frequency for individual funds to conduct the liquidity stress tests;
- compliance with the stress testing requirements set out in Directive 2011/61/EU and how market participants carry out stress testing.



NC: ESMA's guidelines on liquidity stress testing in UCITS and AIFs hardly include any of the following aspects:

- the design of liquidity stress testing scenarios;
- the liquidity stress test policy, including internal use of liquidity stress test results;
- considerations for the asset and liability sides of investment fund balance sheets;
- the timing and frequency for individual funds to conduct the liquidity stress tests;
- compliance with the stress testing requirements set out in Directive 2011/61/EU and how market participants carry out stress testing.

IE: N/A

Sub-recommendation D(1) (requirement for UCITS and UCITS management companies to regularly report data, especially regarding liquidity risk and leverage, to the competent authority)

FC: The Commission's proposed changes to the relevant Union legislation includes reporting obligations that cover both manager and fund-specific data while also reflecting the specificities of UCITS. The reported data allows for sufficient monitoring of potential vulnerabilities that may contribute to systemic risk, and covers, as a minimum:

- (a) the value of assets under management for all UCITS managed by a management company;
- (b) instruments traded and individual exposures; (c) investment strategy;
- (d) global exposure/leverage;
- (e) stress testing; (f) efficient portfolio management techniques;
- (g) counterparty risk/collateral; (h) liquidity risk;
- (i) credit risk; and
- (j) trading volumes.

The Commission proposes, where appropriate, a harmonisation of overall reporting requirements on investment funds and their managers, particularly between the recommended UCITS reporting and the measures already implemented for reporting under Directive 2011/61/EU and this harmonisation enables the use of existing reporting platforms, achieve synergies and avoid undue burdens on asset managers.



The Commission's changes to Union legislation furthermore includes a provision stating that if the NCA of the UCITS manager is different from the NCA of the UCITS itself, the UCITS manager must, upon request, also provide the reported information to the NCA of the UCITS.

LC: The Commission's proposed changes to the relevant Union legislation include reporting obligations that cover both manager and fund-specific data while also reflecting the specificities of UCITS. The reported data allows for sufficient monitoring of potential vulnerabilities that may contribute to systemic risk, and covers most of the following points:

- (a) the value of assets under management for all UCITS managed by a management company;
- (b) instruments traded and individual exposures; (c) investment strategy;
- (d) global exposure/leverage;
- (e) stress testing; (f) efficient portfolio management techniques;
- (g) counterparty risk/collateral; (h) liquidity risk;
- (i) credit risk; and
- (j) trading volumes.

The Commission proposes, where appropriate, a harmonisation of overall reporting requirements on investment funds and their managers, particularly between the recommended UCITS reporting and the measures already implemented for reporting under Directive 2011/61/EU and this harmonisation enables the use of existing reporting platforms, achieve synergies and avoid undue burdens on asset managers.

The Commission's changes to Union legislation furthermore includes a provision stating that if the NCA of the UCITS manager is different from the NCA of the UCITS itself, the UCITS manager must, upon request, also provide the reported information to the NCA of the UCITS.

SE: N/A

PC: The Commission's proposed changes to the relevant Union legislation include reporting obligations that cover both manager and fund-specific data while also reflecting the specificities of UCITS. The reported data partially allows for sufficient monitoring of potential vulnerabilities that may contribute to systemic risk, and only covers some of the following points:

- (a) the value of assets under management for all UCITS managed by a management company;
- (b) instruments traded and individual exposures; (c) investment strategy;
- (d) global exposure/leverage;



- (e) stress testing; (f) efficient portfolio management techniques;
- (g) counterparty risk/collateral; (h) liquidity risk;
- (i) credit risk; and
- (j) trading volumes.

The Commission proposes, where appropriate, a harmonisation of overall reporting requirements on investment funds and their managers, particularly between the recommended UCITS reporting and the measures already implemented for reporting under Directive 2011/61/EU and this harmonisation enables the use of existing reporting platforms, achieve synergies and avoid undue burdens on asset managers.

The Commission's changes to Union legislation furthermore includes a provision stating that if the NCA of the UCITS manager is different from the NCA of the UCITS itself, the UCITS manager must, upon request, also provide the reported information to the NCA of the UCITS.

MN: The Commission's proposed changes to the relevant Union legislation include reporting obligations that cover both manager and fund-specific data while also reflecting the specificities of UCITS. However, the reported data does not allow for sufficient monitoring of potential vulnerabilities that may contribute to systemic risk, and fails to cover most of the following points:

- (a) the value of assets under management for all UCITS managed by a management company;
- (b) instruments traded and individual exposures; (c) investment strategy;
- (d) global exposure/leverage;
- (e) stress testing; (f) efficient portfolio management techniques;
- (g) counterparty risk/collateral; (h) liquidity risk;
- (i) credit risk; and
- (j) trading volumes.

The Commission does not propose, where appropriate, a harmonisation of overall reporting requirements on investment funds and their managers, particularly between the recommended UCITS reporting and the measures already implemented for reporting under Directive 2011/61/EU.

NC: The Commission's proposed changes to the relevant Union legislation do not include reporting obligations that cover both manager and fund-specific data while also reflecting the specificities of UCITS.



IE: N/A

Sub-recommendation D(2) (reporting frequency of data mentioned in Sub-recommendation D(1) of at least a quarterly basis)

FC: The Commission's proposed changes to Union legislation include the following requirements:

- (a) the data mentioned in Sub-recommendation D(1) is reported as a minimum on a quarterly basis to enable effective monitoring of financial stability risks while also addressing proportionality aspects in relation to the entities required to report;
- (b) the total assets under the management of the management company and the assets under management by individual UCITS funds should be taken into account when setting the scope for reporting, thus ensuring that a sufficient part of the industry will be covered by the reporting, in order to address risks to financial stability.

LC: The Commission's proposed changes to Union legislation include to a large extent the following requirements:

- (a) the data mentioned in Sub-recommendation D(1) is reported as a minimum on a quarterly basis to enable effective monitoring of financial stability risks while also addressing proportionality aspects in relation to the entities required to report;
- (b) the total assets under the management of the management company and the assets under management by individual UCITS funds should be taken into account when setting the scope for reporting, thus ensuring that a sufficient part of the industry will be covered by the reporting, in order to address risks to financial stability.

SE: N/A

PC: The Commission's proposed changes to Union legislation partially include the following requirements:

- (a) the data mentioned in Sub-recommendation D(1) is reported as a minimum on a quarterly basis to enable effective monitoring of financial stability risks while also addressing proportionality aspects in relation to the entities required to report;
- (b) the total assets under the management of the management company and the assets under management by individual UCITS funds should be taken into account when setting the scope for reporting, thus ensuring that a sufficient part of the industry will be covered by the reporting, in order to address risks to financial stability.



MN: The Commission's proposed changes to Union legislation include hardly any of the following requirements:

- (a) the data mentioned in Sub-recommendation D(1) is reported as a minimum on a quarterly basis to enable effective monitoring of financial stability risks while also addressing proportionality aspects in relation to the entities required to report;
- (b) the total assets under the management of the management company and the assets under management by individual UCITS funds should be taken into account when setting the scope for reporting, thus ensuring that a sufficient part of the industry will be covered by the reporting, in order to address risks to financial stability.

NC: The Commission's proposed changes to Union legislation do not include any of the following requirements:

- (a) the data mentioned in Sub-recommendation D(1) is reported as a minimum on a quarterly basis to enable effective monitoring of financial stability risks while also addressing proportionality aspects in relation to the entities required to report;
- (b) the total assets under the management of the management company and the assets under management by individual UCITS funds should be taken into account when setting the scope for reporting, thus ensuring that a sufficient part of the industry will be covered by the reporting, in order to address risks to financial stability.

IE: N/A

Sub-recommendation D(3) (availability of data mentioned in Recommendation D(1) to NCAs of other relevant Member States, ESMA and the ESRB)

FC: The Commission's proposed changes to Union legislation include the obligation for the information mentioned in Sub-recommendation D(1) to be made available to the NCAs of other relevant Member States, ESMA and the ESRB in order to ensure the harmonisation of UCITS data reporting with data sharing practices under Directive 2011/61/EU. For its proposals, the Commission took into account reporting requirements under Regulation (EU) 2017/1131.

LC: The Commission's proposed changes to Union legislation ensure to a large extent the obligation for the information mentioned in Sub-recommendation D(1) to be made available to the NCAs of other relevant Member States, ESMA and the ESRB in order to ensure the harmonisation of UCITS data reporting with data sharing practices under Directive 2011/61/EU. For its proposals, the Commission largely took into account the majority of reporting requirements under Regulation (EU) 2017/1131.



SE: N/A

PC: The Commission's proposed changes to Union legislation ensure only partially the obligation for the information mentioned in Sub-recommendation D(1) to be made available to the NCAs of other relevant Member States, ESMA and the ESRB in order to ensure the harmonisation of UCITS data reporting with data sharing practices under Directive 2011/61/EU. For its proposals, the Commission partially took into account reporting requirements under Regulation (EU) 2017/1131.

MN: The Commission's proposed changes to Union legislation ensure only to a small extent the obligation for the information mentioned in Sub-recommendation D(1) to be made available to the NCAs of other relevant Member States, ESMA and the ESRB in order to ensure the harmonisation of UCITS data reporting with data sharing practices under Directive 2011/61/EU. For its proposals, the Commission hardly took into account reporting requirements under Regulation (EU) 2017/1131.

NC: The Commission's proposed changes to Union legislation do not include the obligation for the information mentioned in Sub-recommendation D(1) to be made available to the NCAs of other relevant Member States, ESMA and the ESRB in order to ensure the harmonisation of UCITS data reporting with data sharing practices under Directive 2011/61/EU.

IE: N/A.

Sub-recommendation E(1) (guidance on Article 25 of Directive 2011/61/EU)

FC: ESMA's guidance on the framework to assess leverage-related systemic risk includes the following aspects.

- a common minimum set of indicators to be taken into account by the NCAs during their assessment. These indicators should: (1) facilitate assessment of the level, source and different usages of leverage; (2) facilitate assessment of the main channels through which systemic risk may materialise, i.e. fire sales, direct spillovers to financial institutions, and the interruption of credit intermediation; and (3) be operable and sufficient for NCAs to inform ESMA, in connection with its advice under Article 25(6) of Directive 2011/61/EU and the principles laid down in Article 112 of Commission Delegated Regulation (EU) No 231/2013, whether the conditions for imposing leverage limits or other restrictions on the management of AIFs have been met.
- instructions to calculate the above indicators based on reporting data under Article 24 of Directive 2011/61/EU.



- qualitative and, where feasible, quantitative descriptions of the interpretation of the indicators in the context of the assessment framework.

LC: ESMA's guidance on the framework to assess leverage-related systemic risk includes the following aspects but with some limitations.

- a common minimum set of indicators to be taken into account by the NCAs during their assessment. These indicators should: (1) facilitate assessment of the level, source and different usages of leverage; (2) facilitate assessment of the main channels through which systemic risk may materialise, i.e. fire sales, direct spillovers to financial institutions, and the interruption of credit intermediation; and (3) be operable and sufficient for NCAs to inform ESMA, in connection with its advice under Article 25(6) of Directive 2011/61/EU and the principles laid down in Article 112 of Commission Delegated Regulation (EU) No 231/2013, whether the conditions for imposing leverage limits or other restrictions on the management of AIFs have been met.
- instructions to calculate the indicators based on reporting data under Article 24 of Directive 2011/61/EU.
- qualitative and, where feasible, quantitative descriptions of the interpretation of the indicators in the context of the assessment framework.

SE: N/A

PC: ESMA's guidance on the framework to assess leverage-related systemic risk fails to include some of the following aspects.

- a common minimum set of indicators to be taken into account by the NCAs during their assessment. These indicators should: (1) facilitate assessment of the level, source and different usages of leverage; (2) facilitate assessment of the main channels through which systemic risk may materialise, i.e. fire sales, direct spillovers to financial institutions, and the interruption of credit intermediation; and (3) be operable and sufficient for NCAs to inform ESMA, in connection with its advice under Article 25(6) of Directive 2011/61/EU and the principles laid down in Article 112 of Commission Delegated Regulation (EU) No 231/2013, whether the conditions for imposing leverage limits or other restrictions on the management of AIFs have been met.
- instructions to calculate the indicators based on reporting data under Article 24 of Directive 2011/61/EU.
- qualitative and, where feasible, quantitative descriptions of the interpretation of the indicators in the context of the assessment framework.



MN: ESMA's guidance on the framework to assess leverage-related systemic risk only includes some of the following aspects.

- a common minimum set of indicators to be taken into account by the NCAs during their assessment. These indicators should: (1) facilitate assessment of the level, source and different usages of leverage; (2) facilitate assessment of the main channels through which systemic risk may materialise, i.e. fire sales, direct spillovers to financial institutions, and the interruption of credit intermediation; and (3) be operable and sufficient for NCAs to inform ESMA, in connection with its advice under Article 25(6) of Directive 2011/61/EU and the principles laid down in Article 112 of Commission Delegated Regulation (EU) No 231/2013, whether the conditions for imposing leverage limits or other restrictions on the management of AIFs have been met.
- instructions to calculate the indicators referred to in point E(1)(a) based on reporting data under Article 24 of Directive 2011/61/EU.
- qualitative and, where feasible, quantitative descriptions of the interpretation of the indicators in the context of the assessment framework.

NC: ESMA's guidance on the framework to assess leverage-related systemic risk includes hardly any or none of the following aspects.

- a common minimum set of indicators to be taken into account by the NCAs during their assessment. These indicators should: (1) facilitate assessment of the level, source and different usages of leverage; (2) facilitate assessment of the main channels through which systemic risk may materialise, i.e. fire sales, direct spillovers to financial institutions, and the interruption of credit intermediation; and (3) be operable and sufficient for NCAs to inform ESMA, in connection with its advice under Article 25(6) of Directive 2011/61/EU and the principles laid down in Article 112 of Commission Delegated Regulation (EU) No 231/2013, whether the conditions for imposing leverage limits or other restrictions on the management of AIFs have been met.
- instructions to calculate the indicators referred to in point E(1)(a) based on reporting data under Article 24 of Directive 2011/61/EU.
- qualitative and, where feasible, quantitative descriptions of the interpretation of the indicators in the context of the assessment framework.

IE: N/A



Sub-recommendation E(2) (guidance on Article 25 of Directive 2011/61/EU)

FC: ESMA's guidance on the design, calibration and implementation of macroprudential leverage limits includes the following aspects.

- a description of the various types of leverage limits, including an evaluation of their effectiveness and efficiency in mitigating excessive leverage.
- a set of principles to be taken into account by the NCAs when calibrating leverage limits. As a minimum such principles should include all of the following: (i) a statement that provides for leverage limits to be based on the leverage measures set out in Directive 2011/61/EU; (ii) criteria for applying leverage limits; and (iii) principles regarding the periodic review of leverage limits.
- a set of principles to be taken into account by the NCAs when considering the imposition of leverage limits, as a minimum covering all of the following: (i) principles for a balanced approach between rules-based versus discretionary limit setting; (ii) principles relating to the interaction with other policy measures; and (iii) principles for coordination among Union authorities.

LC: ESMA's guidance on the design, calibration and implementation of macroprudential leverage limits includes almost all of the following aspects.

- a description of the various types of leverage limits, including an evaluation of their effectiveness and efficiency in mitigating excessive leverage.
- a set of principles to be taken into account by the NCAs when calibrating leverage limits. As a minimum such principles should include all of the following: (i) a statement that provides for leverage limits to be based on the leverage measures set out in Directive 2011/61/EU; (ii) criteria for applying leverage limits; and (iii) principles regarding the periodic review of leverage limits.
- a set of principles to be taken into account by the NCAs when considering the imposition of leverage limits, as a minimum covering all of the following: (i) principles for a balanced approach between rules-based versus discretionary limit setting; (ii) principles relating to the interaction with other policy measures; and (iii) principles for coordination among Union authorities.

SE: N/A

PC: ESMA's guidance on the design, calibration and implementation of macroprudential leverage limits includes most of the following aspects.

- a description of the various types of leverage limits, including an evaluation of their effectiveness and efficiency in mitigating excessive leverage.



- a set of principles to be taken into account by the NCAs when calibrating leverage limits. As a minimum such principles should include all of the following: (i) a statement that provides for leverage limits to be based on the leverage measures set out in Directive 2011/61/EU; (ii) criteria for applying leverage limits; and (iii) principles regarding the periodic review of leverage limits.
- a set of principles to be taken into account by the NCAs when considering the imposition of leverage limits, as a minimum covering all of the following: (i) principles for a balanced approach between rules-based versus discretionary limit setting; (ii) principles relating to the interaction with other policy measures; and (iii) principles for coordination among Union authorities.

MN: ESMA's guidance on the design, calibration and implementation of macroprudential leverage limits only includes some of the following aspects.

- a description of the various types of leverage limits, including an evaluation of their effectiveness and efficiency in mitigating excessive leverage.
- a set of principles to be taken into account by the NCAs when calibrating leverage limits. As a minimum such principles should include all of the following: (i) a statement that provides for leverage limits to be based on the leverage measures set out in Directive 2011/61/EU; (ii) criteria for applying leverage limits; and (iii) principles regarding the periodic review of leverage limits.
- a set of principles to be taken into account by the NCAs when considering the imposition of leverage limits, as a minimum covering all of the following: (i) principles for a balanced approach between rules-based versus discretionary limit setting; (ii) principles relating to the interaction with other policy measures; and (iii) principles for coordination among Union authorities.

NC: ESMA's guidance on the design, calibration and implementation of macroprudential leverage limits includes hardly any or none of the following aspects.

- a description of the various types of leverage limits, including an evaluation of their effectiveness and efficiency in mitigating excessive leverage.
- a set of principles to be taken into account by the NCAs when calibrating leverage limits. As a minimum such principles should include all of the following: (i) a statement that provides for leverage limits to be based on the leverage measures set out in Directive 2011/61/EU; (ii) criteria for applying leverage limits; and (iii) principles regarding the periodic review of leverage limits.
- a set of principles to be taken into account by the NCAs when considering the imposition of leverage limits, as a minimum covering all of the following: (i) principles for a balanced approach between rules-based versus discretionary limit setting; (ii) principles relating to



the interaction with other policy measures; and (iii) principles for coordination among Union authorities.

IE: N/A

Sub-recommendation E(3) (guidance on Article 25 of Directive 2011/61/EU)

FC: ESMA's guidance on notification procedures includes, but is not limited to:

- an efficient working procedure;
- a template for notification letters;
- a template for reporting requirements as regards the NCAs' assessment of the need to implement macroprudential measures pursuant to Article 25(3) of Directive 2011/61/EU.

LC: ESMA's guidance on notification procedures is limited to:

- an efficient working procedure;
- a template for notification letters;
- a template for reporting requirements as regards the NCAs' assessment of the need to implement macroprudential measures pursuant to Article 25(3) of Directive 2011/61/EU.

SE: N/A

PC: ESMA's guidance on notification procedures includes most of the following aspects:

- an efficient working procedure;
- a template for notification letters;
- a template for reporting requirements as regards the NCAs' assessment of the need to implement macroprudential measures pursuant to Article 25(3) of Directive 2011/61/EU.



MN: ESMA's guidance on notification procedures includes some of the following aspects:

- an efficient working procedure;
- a template for notification letters;
- a template for reporting requirements as regards the NCAs' assessment of the need to implement macroprudential measures pursuant to Article 25(3) of Directive 2011/61/EU.

NC: ESMA's guidance on notification procedures includes hardly any of the following aspects:

- an efficient working procedure;
- a template for notification letters;
- a template for reporting requirements as regards the NCAs' assessment of the need to implement macroprudential measures pursuant to Article 25(3) of Directive 2011/61/EU.

IE: N/A

Sub-recommendation E(4) (guidance on Article 25 of Directive 2011/61/EU)

FC: ESMA shares, on an annual basis, with national macroprudential authorities and the ESRB the following information:

- the results, if any, of its benchmarking exercise;
- the practices, if any, in relation to the use of leverage limits;
- the practices, if any, in relation to the imposition of other restrictions on the management of AIFs using information received from the NCAs pursuant to Article 25(3) of Directive 2011/61/EU.

LC: ESMA shares, on an annual basis, with national macroprudential authorities and the ESRB almost all of the following information:

- the results, if any, of its benchmarking exercise;
- the practices, if any, in relation to the use of leverage limits;
- the practices, if any, in relation to the imposition of other restrictions on the management of AIFs using information received from the NCAs pursuant to Article 25(3) of Directive 2011/61/EU.



SE: ESMA does not share, on an annual basis, with national macroprudential and the ESRB any of the information below, but provides sufficient justification for inaction:

- the results, if any, of its benchmarking exercise;
- the practices, if any, in relation to the use of leverage limits;
- the practices, if any, in relation to the imposition of other restrictions on the management of AIFs using the information received from the NCAs pursuant to Article 25(3) of Directive 2011/61/EU.

PC: ESMA shares, on an annual basis, with national macroprudential authorities and the ESRB most of the following information:

- the results, if any, of its benchmarking exercise;
- the practices, if any, in relation to the use of leverage limits;
- the practices, if any, in relation to the imposition of other restrictions on the management of AIFs using the information received from the NCAs pursuant to Article 25(3) of Directive 2011/61/EU.

MN: ESMA shares, on an annual basis, with national macroprudential authorities and the ESRB some of the following information:

- the results, if any, of its benchmarking exercise;
- the practices, if any, in relation to the use of leverage limits;
- the practices, if any, in relation to the imposition of other restrictions on the management of AIFs using the information received from the NCAs pursuant to Article 25(3) of Directive 2011/61/EU.

NC: ESMA shares, on an annual basis, with national macroprudential authorities and the ESRB hardly any or none of the following information:

- the results, if any, of its benchmarking exercise;
- the practices, if any, in relation to the use of leverage limits;
- the practices, if any, in relation to the imposition of other restrictions on the management of AIFs using the information received from the NCAs pursuant to Article 25(3) of Directive 2011/61/EU.

IE: N/A



Imprint and acknowledgements

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For specific terminology please refer to the [ESRB glossary](#) (available in English only).

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