AIFMD II Comparison of Texts

The following draft chart represents a high-level comparison of certain key features of the Commission Proposal, the European Parliament Mandate, the Council Mandate and the final (unofficial) text. This information has been summarised for your convenience, is not intended to represent a definitive comparison of the texts and should not be relied upon or treated as a substitute for reading the texts.

Topic	Commission Proposal (25 November 2021)[1]	European Parliament Mandate (2 February 2023)[2]	Council Mandate[3] (21 June 2022)	Final (unofficial) Text[4] (6 November 2023)
		Loan Origination		
Definition of loan origination	N/A	"Loan origination" is broadly defined as the granting of any loan by an AIF as the original lender. Also proposes the definition of a "loan-originating AIF" as "an AIF whose principal activity is to originate loans and for which the notional value of its originated loans exceeds 60% of its net asset value".	"Loan origination" is broadly defined as the granting of any loan by an AIF as the original lender. "Loan-originating AIF" not a defined term.	"Loan origination" (or "originating a loan") is broadly defined as the granting of a loan by an AIF as the original lender (directly or indirectly). "Loan originating AIF" defined as an AIF (i) whose investment strategy is mainly to originate loans; or (ii) where the notional value of the AIF's originated loans represents at least 50% of its net asset value.
Permissibility of open-ended loan originating AIFs?	Yes, unless the notional value of an AIF's originated loans exceeds 60% of NAV (in which case it must be closed ended).	Yes, however the AIFM must be able to demonstrate to its competent authority that the AIF has a sound liquidity risk management system compatible with its redemption policy.	Yes, however the AIF's liquidity risk management system must be compatible with its investment strategy and redemption policy. ESMA will develop regulatory technical standards ("**RTS**") outlining the requirements for an open-ended loan origination AIF including, amongst other things, the selection and use of liquidity risk management tools and the redemption policy of the AIF.	Yes, however the AIFM must be able to demonstrate to its competent authority that the AIF's liquidity risk management system is compatible with the AIF's investment strategy and redemption policy. ESMA will develop RTS to determine the requirements with which a *loan-originating AIF (cf. all open-ended AIFs)* must comply in order to maintain an open-ended structure. Those requirements shall include a sound liquidity management system, the availability of liquid assets and stress testing, as well as an appropriate redemption policy. Those requirements shall also take due account of the underlying loan exposures, the average repayment time of the loans and the overall granularity and composition of the loan-originating AIF's portfolios.

[1] https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52021PC0721
[2] https://www.europarl.europa.eu/doceo/document/A-9-2023-0020_EN.html
[3] https://data.consilium.europa.eu/doc/document/ST-9768-2022-REV-1/en/pdf
[4] https://data.consilium.europa.eu/doc/document/ST-14932-2023-INIT/en/pdf

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Topic	Commission Proposal (25 November 2021)[1]	European Parliament Mandate (2 February 2023)[2]	Council Mandate[3] (21 June 2022)	Final (unofficial) Text[4] (6 November 2023)
Leverage limits	N/A	N/A	The leverage limit applicable to a loan originating AIF is 150% of NAV calculated according to the commitment methodology.	The leverage of a *loan-originating AIF* must represent no more than (i) 175%, where the AIF is open-ended, or (ii) 300% (in each case expressed as a ratio between exposure of the AIF and its NAV), where the AIF is closed-ended. Leverage shall be calculated according to the commitment methodology. However, borrowing arrangements which are fully covered by contractual capital commitments from investors in the loan-originating AIF shall not be considered to constitute exposure for the purposes of the calculation.
Shareholder loan exemption	N/A	The AIFM is exempted from a requirement to implement effective policies, procedures and processes for the granting of credit in respect of shareholder loans where such loans do not exceed in aggregate 150% of the capital of the AIF. "Shareholder loan" defined as a loan which is granted by an AIF to an undertaking in which it holds directly or indirectly at least 5 % of the capital or voting rights, where the loan cannot be sold to third-parties independently of the capital instruments held by the AIF in the same undertaking.	Member States may determine that no leverage limits shall apply to AIFs the lending activities of which solely consists in originating shareholder loans, where such shareholder loans do not exceed in aggregate 100% of the AIF's capital or are granted to real estate portfolio companies in which the AIF holds 100% of the capital or voting rights. "Shareholder loan" definition identical to European Parliament Mandate (the "**EP Mandate**"", which is summarised in column 3) definition, except refers to "an advance on current account" (c.f. "a loan").	*Loan-originating AIFs* whose lending activities consist solely of originating shareholder loans, provided that the notional value of those loans does not exceed in aggregate 150% of the AIF's capital, shall not be subject to: i) the leverage limits described in the row above; and ii) in respect of shareholder loans, the requirement to implement effective policies, procedures and processes for the granting of credit. "Shareholder loan" definition substantially identical to EP Mandate definition.

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Topic	Commission Proposal (25 November 2021)[1]	European Parliament Mandate (2 February 2023)[2]	Council Mandate[3] (21 June 2022)	Final (unofficial) Text[4] (6 November 2023)
Single borrower concentration limit	The concentration limit for a loan originated for a single borrower is 20% of the AIF's capital where the borrower is a financial undertaking or a collective investment undertaking.	Identical to the Commission Proposal (the "**Commission Proposal**", which is summarised in column 2).	The concentration limit of 20% relates to **loans** (cf. a loan) originated to a single borrower. To calculate this, the AIFM should combine the loans originated by, or for or on behalf of, the AIF. Reference to collective investment undertaking narrowed to AIF and UCITS.	An AIFM shall ensure that when an AIF it manages originates loans, the notional value of the loans originated to any single borrower by that AIF does not exceed in aggregate 20% of the capital of the AIF where the borrower is a 'financial undertaking', an AIF or a UCITS.
Prohibition on lending to related parties	AIFMs and their staff are prohibited from receiving loans originating from AIFs they manage. The position is the same for the depositary and its staff and the AIFM's delegate and its staff.	The position is the same as the Commission Proposal, however entities within the same group as the AIFM are specified as also being subject to this prohibition. Prohibition also extended to delegates of the depositary.	Substantially the same as the EP Mandate.	An AIF shall not grant loans to (a) the AIFM or the staff of that AIFM; (b) its depositary and its delegates; (c) a delegate of the AIFM and the staff of that entity; (d) an entity within the same group as the AIFM (except where that entity is a financial undertaking that exclusively finances borrowers that do not fall within (a)-(c)).
Prohibition on originate to distribute strategy	No explicit prohibition on originate-to-distribute, however loans originated by AIFs are required to be subject to risk retention requirements to avoid situations in which loans are originated with the sole purpose of selling them.	There is a prohibition on AIFMs managing AIFs which have an investment strategy under which loans are originated with the sole purpose of selling them.	Originate-to-distribute is specifically referenced as an investment strategy that should not be pursued by AIFs and AIFMs should ensure they only manage AIFs whose strategy is not to originate loans with the sole purpose of transferring such loans or exposures to third parties.	Prohibition on managing AIFs that originate loans with the sole purpose of selling them to third parties ('originate-to-distribute strategy'), regardless of whether those AIFs are *loan-originating AIFs*.

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Topic	Commission Proposal (25 November 2021)[1]	European Parliament Mandate (2 February 2023)[2]	Council Mandate[3] (21 June 2022)	Final (unofficial) Text[4] (6 November 2023)
Retention requirement	The AIF should retain, on an ongoing basis, 5% of the notional value of the loans it has originated and sold on the secondary market. Derogation for loans purchased on the secondary market.	The AIF should retain, on an ongoing basis **and until maturity**, 5% of the notional value of the loans it has originated and sold on the secondary market. Derogation for loans purchased on the secondary market, where the sale is necessary so as to avoid an unintentional breach of the AIF's investment or diversification rules, the disposal is necessary as a result of EU sanctions, or in order to redeem investors as part of the wind down of the AIF.	The AIF should retain, f**or a period of two years or until maturity, whichever is shorter**, 5% of the notional value of the loans it has originated (including loans original for or on its behalf) and sold. Similar derogations to the EP Mandate.	The AIF should retain 5% of the notional value of each loan it has originated and subsequently transferred to third parties, until (a) maturity (for those loans whose maturity is up to eight years) or regardless maturity for consumer loans, and (b) for a period of at least eight years for other loans. Derogations apply where (a) the AIF sells assets in order to make redemptions as part of the liquidation of the AIF, (b) the disposal is necessary to ensure compliance with specified regulations, (c) the sale of the loan is necessary to implement the investment strategy of the AIF, in the best interests of the AIF's investors, and (d) the sale of the loan is due to a deterioration in the risk associated with the loan (with the purchaser being informed of such deterioration at the time of purchase).
Application to SPVs	N/A	N/A	Loans originated by or loan exposure gained through any special purpose vehicle which originates loans for or on behalf of the AIF are explicitly included in calculations, limitation and prohibitions.	Definition of "loan origination" also includes loans granted indirectly through a third party or special purpose vehicle, which originates a loan for or on behalf of the AIF, or for or on behalf of AIFM in respect of the AIF, where the AIFM or AIF is involved in structuring the loan, or defining or pre-agreeing its characteristics, prior to gaining exposure to the loan.

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Topic	Commission Proposal (25 November 2021)[1]	European Parliament Mandate (2 February 2023)[2]	Council Mandate[3] (21 June 2022)	Final (unofficial) Text[4] (6 November 2023)
Intention to create a European loan origination framework	The recitals note that the intention is for common rules to be laid down to establish an efficient internal market for loan-originating AIFs to enable them to originate loans in all Member States and access finance by EU companies.	The recitals note that the intention is for common rules to be laid down to establish an efficient internal market for loan-originating AIFs to enable them to originate loans in all Member States and access finance by EU companies. "Diverging national regulatory approaches" are blamed for hindering this.	The recitals note that the intention is for common rules to be laid down to establish an efficient internal market for loan-originating AIFs to enable them to originate loans in all Member States and access finance by EU companies. The recitals further provide that Member States should not be prevented from setting national product frameworks. Where Member States' domestic rules are more restrictive, it is explicitly noted that those should apply to AIFs established in the Member State.	The recitals note that the intention is for common rules to be laid down to establish an efficient internal market for loan-originating AIFs to enable them to originate loans in all Member States and access finance by EU companies. The recitals further provide that Member States should not be prevented from setting national product frameworks. However, unlike the Council's final compromise text (the "**Council Mandate**", which is summarised in column 4), such domestic rules need not limited in their application to AIFs established in that Member State.
Grandfathering / Transitional Provisions	N/A	The grandfathering period is 5 years from the date of entry into force. AIFMs may continue to manage AIFs that originate loans that have been constituted before the date of entry into force of the new directive may continue to manage such AIF without complying with the specific requirement for loan originating AIFs to be closed-ended, until 5 years from the date of entry into force. AIFs constituted before the date of entry into force of the new directive which do not raise capital after 5 years shall be deemed to comply with the rules.	The grandfathering period is 5 years from the date of adoption of the directive. AIFMs may continue to manage loan originating AIFs that have been constituted before the date of adoption of the new directive without complying with substantially all of the requirements for loan originating AIFs summarised herein until 5 years from the date of adoption of the directive. However, loan-originating AIFs that have been constituted before the date of adoption of the directive and that do not raise capital after such date shall be deemed to comply with such rules.	The grandfathering period is 5 years from the date of entry into force of the directive (cf. when it begins to apply). AIFMs may continue to manage AIFs that originate loans and AIFs that have been constituted before the date of entry into force of the directive shall be deemed to comply with the single borrower concentration limit, the leverage limits and the requirement for an open-ended AIF to demonstrate liquidity robustness. However, in respect of such grandfathered AIFs and until 5 years after the date of entry into force of the directive, where the notional value of the loan is above the single borrower concentration limit, or the leverage is above the leverage limit, the AIFM may not increase that value or leverage, and where the value or leverage is below the limits the AIFM may not increase the value or limits above the limits.

[5] Currently expected to be in H2 2024

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		Delegation and Substance		
Substance	The two persons, meeting the conditions set out in Article 8(1)(c) AIFMD, conducting the business of the AIFM must be: (i) employed full-time or committed full-time to the conduct of the business of the AIFM; and (ii) resident in the EU.	Provides that the two senior manager requirement could be satisfied by either full time equivalent employees or by full time employees.	Identical to the Commission Proposal but clarifies: 1) that the two senior manager requirement is the minimum requirement and the particular circumstances may mean that additional human resources are required; and 2) the requirement can only be satisfied by persons employed full-time by the AIFM or, if merely committed full-time to the conduct of the business of the AIFM, the persons must be members/executive members of the governing body of the AIFM.	Substantially similar to Council Mandate.
Extension in scope of delegation notification and Annex I functions subject to such notification	AIFMs are required to notify their home state regulator of their intention to delegate *any of the functions listed in Annex I* (itself expanded to include originating loans and servicing securitisation special purpose entities, in the 'Other' section) or of *any of the services referred to in Article 6(4),* prior to delegation becoming effective.	Identical to the Commission Proposal except that the extension to Annex I includes, in addition to originating loans and servicing securitisation special purpose entities, the management of JVs and mandates in respect of immovable property.	Identical to the Commission Proposal except that it is clarifies that only originating loans on behalf of the AIF falls within Annex I.	Identical to Council Mandate.

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Reporting regarding delegation	N/A	As part of Article 24 AIFMD periodic reporting to relevant regulators, AIFMs are required to provide information on delegation arrangements concerning portfolio or risk management, including: 1) name, identification information and jurisdiction of delegate; 2) human and technical resources employed by/committed to the delegate for performing the delegated services; 3) human and technical resources employed by/committed to monitoring delegate; 4) similar information to the above in respect of sub-delegates; 5) date and conclusion of delegation and sub-delegation arrangements; 6) confirmation that the AIFM has due diligence processes in place in respect of the delegate 7) information on the function delegated, whether the delegation is full or partial and the date of related contracts	As part of Article 24 AIFMD periodic reporting to relevant regulators, AIFMs are required to provide information on delegation arrangements concerning portfolio or risk management, including: 1) name, identification and jurisdiction of delegate, whether the AIFM has close links to the delegate and the regulatory status of the delegate; 2) the amount and percentage of the AIF's assets which are subject to delegation arrangements re portfolio management 3) the number of full-time/FTE human resources employed to monitor delegation arrangements; 4) description of periodic due diligence processes in place in respect of the delegate 5) similar information to the above in respect of sub-delegates; 6) commencement and expiry dates of delegation and sub-delegation arrangements 7) list and description of activities concerning risk and portfolio management functions which are delegated Note that the Council Mandate seeks quantitative reporting in respect of assets impacted by portfolio management delegation (c.f. qualitative information under EP Mandate) and a description of periodic diligence processes for monitoring delegates (c.f. a confirmation requirement under EP Mandate).	Substantially similar to Council Mandate, but extended further to include the number of full-time personnel performing portfolio management and risk management. Quantitative approach maintained.

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Responsibility for third party distributors	N/A	Where the marketing function is performed by one or several distributors acting on their own behalf in accordance with MiFID II or through insurance products, this would not constitute a delegation of AIFM functions for the purposes of Article 20 AIFMD.	Identical to EP Mandate	Substantially similar to EP Mandate
NED requirement for AIFs marketed to retail investors	N/A	An AIFM managing an AIF marketed to retail investors must ensure that at least one member of its governing body is a non-executive director, independent in character and judgement and with sufficient expertise and experience. The AIFM should determine whether the individual has relationships or circumstances which are likely to affect their judgement. Note that in the recitals, the requirement to have such a non-executive director is expressed to apply more broadly to all AIFMs with no qualification regarding retail marketing of the AIFs they manage.	N/A	AIFMs managing AIFs marketed to retail investors are encouraged (but not required) to appoint at least one independent or non-executive director as a member of their governing body. ESMA mandated, in its review of AIFMD II, to consider the appropriateness of requiring this.

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		Extension to Transparency Requirements		
Article 23 pre-investment disclosures	The following additional information is required to be provided to investors on a pre-contractual basis under Article 23 AIFMD: 1) the possibility and conditions for using the liquidity management tools selected in accordance with Article 16(2b) (see "*Liquidity Management Tools*" below) 2) a list of costs in respect of the operation of an AIF that will be borne by the AIFM or its affiliates	Identical to Commission Proposal except that: 1) it is clarified that all costs and expenses linked to the administration of a loan are to be disclosed; and 2) only the costs borne by the AIFM, and not also its affiliates, in respect of the operation of an AIF are to be disclosed	Updates the Commission Proposal to the effect that: 1) the requirement is to disclose 'the possibility and conditions' for using liquidity management tools, rather than a description thereof, which is arguably the case under the Commission Proposal and EP Mandate; and 2) the list of costs to be disclosed in connection with the operation of an AIF are those that will be borne *by the AIF* in respect of the AIFM or its affiliates	Substantially similar to Council Mandate, except that costs disclosure revised to cover fees, charges and expenses that are borne by the AIFM in connection with the operation of the AIF and that will be directly or indirectly allocated to the AIF.
Article 23 periodic disclosures	The following additional information is required to be provided to investors on a periodic basis under Article 23 AIFMD: 1) originated loan portfolio 2) on a quarterly basis, all costs that were directly or indirectly charged/allocated to an AIF or its investments 3) on a quarterly basis, any holding entities established in relation to an AIF's investments by the AIFM (or its staff or affiliates)	Updates the Commission Proposal to the effect that: 1) it is clarified that AIFMs must disclose the composition of originated loans 2) disclosure regarding costs charged to an AIF: a. is required on an annual basis, rather than quarterly under the Commission Proposal b. only encompasses costs charged (not also allocated) to the AIF (not also to its investments) 3) disclosure regarding holding entities established is required on an annual basis, rather than quarterly under the Commission Proposal, and only encompasses entities established by the AIFM, not its staff or affiliates	Identical to the Commission Proposal except that: 1) disclosure regarding costs charged/ allocated to an AIF or its investments are required on an annual basis 2) disclosure regarding holding entities established in relation to an AIF's investments is required on an annual basis, rather than quarterly under the Commission Proposal	Identical to the Commission Proposal except that: 1) requirement to disclose the originated loan portfolio tweaked to refer to "the composition of the" originated loan portfolio (consistent with the EP Mandate) 2) Costs disclosure revised to cover all fees, charges and expenses that were directly or indirectly *borne by investors*. Disclosure to be made annually; and 3) Holding entities disclosure required on an annual basis

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Annex IV reporting	The information which an AIFM is required to report to relevant competent authorities is updated such that an AIFM must now report *all exposures* of each of the AIFs it manages, rather than principal exposures/ most important concentrations only, as was the case under AIFMD I.	Identical to Commission Proposal except that it is clarified that an AIFM is also now required to report relevant economic and accounting information.	The Council Mandate updates the Commission Proposal such that: 1) it is clarified that information must be provided in respect of each AIF managed by an AIFM 2) AIFMs must report on both exposures and holdings of each AIF 3) Data reported must include identifiers allowing assets, AIFs and AIFM to be connected to other supervisory or publicly available data sources	Substantially similar to Council Mandate.
	N/A	The specific heads of information AIFMs are required to report on in respect of EU AIFs managed and AIFs marketed in the EU are updated such that: 1) AIFMs are no longer required to report on the main categories of assets in which an AIF is invested 2) AIFMs must report on the total amount of leverage employed by an AIF 3) AIFMs must report information on delegation arrangements (see '*Delegation and Substance – Reporting regarding delegation*' in this table)	The specific heads of information AIFMs are required to report on in respect of EU AIFs managed and AIFs marketed in the EU are updated such that: 1) Whereas AIFMD currently requires the AIFM report on the current risk profile of the AIF and the risk management systems employed by the AIFM to manage the market risk, liquidity risk, counterparty risk and other risks including operational risk, the Council reduces this to reporting on the current risk profile of the AIF 2) AIFMs must report information on delegation arrangements (see *Delegation and Substance – Reporting regarding delegation*' in this table) 3) AIFMs must provide a list of EEA states in which the AIF is actually marketed by the AIFM or a distributor acting on behalf of the AIFM	The specific heads of information AIFMs are required to report on in respect of EU AIFs managed and AIFs marketed in the EU are updated such that: 1) Whereas AIFMD currently requires the AIFM report on the current risk profile of the AIF and the risk management systems employed by the AIFM to manage the market risk, liquidity risk, counterparty risk and other risks including operational risk, the final text deletes reference to reporting on risk management systems. Adds total amount of leverage employed by the AIF. 2) AIFMs must report on the total amount of leverage employed by an AIF 3) AIFMs must report information on delegation arrangements (see '*Delegation and Substance – Reporting regarding delegation*' in this table) 4) AIFMs must provide a list of EEA states in which the AIF is actually marketed by the AIFM or a distributor acting on behalf of the AIFM

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Extension to Article 6(4) Services				
Scope	Article 6(4) AIFMD services to be extended to include benchmark administration in accordance with Regulation 2016/1011 and credit servicing in accordance with Directive 2021/2167.	Identical to the Commission Proposal.	Broadly the same as the Commission Proposal, save for the clarification that when carrying out either of these activities the AIFM should be subject to the relevant regulation and directive.	Identical to Council Mandate.
Delegation	Clarification that the rules on delegation shall apply equally to Annex I AIFM services and to Article 6(4) "ancillary services".	Identical to the Commission Proposal.	Broadly the same as the Commission Proposal.	Same as Council Mandate
Cross-border Depositary Services				
Ability to appoint Depositary in another Member State	Where there is a limited supply of depositary services, competent authorities should allow appointment of depositaries in another Member State, whilst the Commission considers whether to propose measures to integrate the depositary market.	Broadly the same as the Commission Proposal, save for clarification that it shall be Member States approving appointment of depositaries in another Member State on a case by case basis, and specifying the considerations the Commission should look at potential benefits and risks in assessing the introduction of a depositary passport.	Clarification that Member States' assessment should be based on the lack of relevant depositary services in the jurisdiction of the AIF and given the investment strategy of that AIF and that this should not replicate a depositary passport.	Substantially similar to Council Mandate.

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Conditions for a competent authority to approve cross-border appointment	N/A	The competent authorities of an AIF may, after a case by case assessment, allow appointment of a depositary in another Member State if (i) They receive a "motivated request" by the AIFM demonstrating the lack of relevant depositary services; and (ii) The national depositary market of the home Member State fulfils at least one of the following: a. < 7 depositaries, none of which has assets in safekeeping exceeding 1bn EUR b. aggregate amounts in safekeeping in the market do not exceed 60bn EUR	Broadly the same as the EP Mandate save that: (i) the threshold for aggregate amounts in safekeeping is reduced from 60bn EUR to 30bn EUR. (ii) Clarification that the assessment is carried out on a case by case basis, even where the criteria are fulfilled. (iii) Clarification that where the appointment is allowed, ESMA shall be notified.	Similar to Council Mandate except the national depositary market is gauged exclusively by the aggregate amount of assets in safekeeping being less than 50bn EUR. The number of depositaries providing services in that market is no longer a relevant criterion.
	Commission to consider the appropriateness of a depositary passport.	Commission to consider the "effectiveness and the impact on financial stability" of a depositary passport.	Commission to consider "functioning and appropriateness of the power of competent authorities to allow appointment of a depositary in another Member State"	Commission to consider "functioning of the derogation allowing the appointment of a depositary in another Member State … and the potential benefits and risks, including the impact on investor protection, on financial stability, on supervisory efficiency and on the availability of market choices, of amending the scope of that derogation…"

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		Third party AIFM rules		
	N/A	Third party AIFMs shall employ heightened scrutiny of the potential conflicts of interests arising from these arrangements and submit detailed explanations and evidence to their national competent authorities of how they prevent conflicts of interest arising, and how conflicts are effectively managed in the best interest of investors and disclosed to them.	N/A	Similar to EP Mandate, but softened slightly, e.g. limited to "reasonable steps". Expressly acknowledges that conflicts may not be capable of prevention and contemplates that conflicts may be identified, managed, monitored and, where applicable, disclosed in the alternative.
	N/A	ESMA shall develop RTS to specify the types of third party AIFM relationships and conflicts of interest as referred to in the row above, as well as the criteria to be used by the relevant competent authorities to assess whether third party AIFMs comply with their obligations outlined in the row above.	N/A	Rather than being mandated to develop RTS, ESMA is mandated to produce a report to the Commission on the appropriateness of the requirements applicable to AIFMs managing AIFs on behalf of third parties and the need for additional safeguards.
		Liquidity Management Tools		
Mandatory liquidity management tools	An AIFM that manages an open-ended AIF shall select at least one appropriate liquidity management tool from a prescribed list including, in summary: (1) Suspension of redemptions and subscriptions (2) Redemption gates (3) Notice periods (4) Redemption fees (5) Swing pricing (6) Anti-dilution levy (7) Redemptions in kind (8) Side pockets	An AIFM that manages an open-ended AIF shall select at least two appropriate liquidity management tool from a prescribed list similar to that of the Commission (except redemption gates may only be partial and redemption fees must be pre-determined)	Generally the same as EP Mandate, except for slight differences in detail in the list of liquidity management tools that may be used.	Substantially similar to the Council Mandate except for slight differences in detail in the list of liquidity management tools that may be used.

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Redemptions in kind	None	None	Redemptions in kind generally only permissible in the case of redemptions by professional investors and if the redemption in kind corresponds to a pro rata share of the assets held by the AIF.	Identical to Council Mandate.
Temporary suspension	An AIFM that manages an open-ended AIF may temporarily suspend the repurchase or redemption of the AIF units or activate other liquidity management tools selected from the list set out in Annex V, points 2 to 4 (above) in exceptional cases where the circumstances so require and where suspension is justified having regard to the interests of the AIF investors.	Generally the same as the Commission Proposal except applies to liquidity management tools 2 to 8 (above)..	Generally the same as Commission Proposal except applies to liquidity management tools 2 to 8 (above), the activation and deactivation of such tools, and in the case of point 8 it is specified that side pockets can only be activated in situations where the AIFM cannot ensure the fair and accurate valuation of some assets or where some assets have become non-tradable.	Generally the same as the Council Mandate, except not limited to situations where the AIFM cannot ensure the fair and accurate valuation of some assets or where some assets have become non-tradable - need instead to be justified having regard to the interests of the AIF investors.
Notification to competent authorities	AIFM to notify, without delay, its competent authority when activating or deactivating a liquidity management tool.	AIFM to notify, without delay, its competent authority of the activation or deactivation of liquidity management tools when the activation or deactivation of such tool is not in the ordinary course of business as envisaged in the fund documentation (except in the case of points 1, 2 and 8, to which different conditions apply).	Notification obligation applies only to points 1, 2 and 8. The activation or deactivation of side pockets (point 8) to be notified in advance. Member States permitted to require notice of the activation of other liquidity management tools.	Similar to EP Mandate. Notification obligation applies only to point 1, point 8 (in advance), or when activating or deactivating any other liquidity management tool that is not in the ordinary course of business.

AIFMD II Comparison of Texts

Topic	Commission Proposal (25 November 2021)[1]	European Parliament Mandate (2 February 2023)[2]	Council Mandate[3] (21 June 2022)	Final (unofficial) Text[4] (6 November 2023)
Compulsory activation	In the interests of investors, competent authorities are empowered to require the AIFM to suspending redemptions or subscriptions or activating gates, where investor protection or financial stability risks necessitate this requirement.	Similar to the Commission Proposal except clarified that this is expected to be in exceptional circumstances and after consulting the AIFM, where there are reasonable and balanced investor protection or financial stability risks which necessitate this requirement.	N/A	Similar to EP Mandate, but competent authorities limited to suspending redemptions and subscriptions only, and may not activate suspension gates.
		Marketing in the EU by a non-EU AIFM		
Conditions for marketing under Article 42	Whereas Article 42(1)(c) requires that the third country where the non-EU AIFM or the non-EU AIF is established is not listed as a Non-Cooperative Country and Territory by FATF (which list is no longer maintained, but is read to mean the FATF's list of 'high-risk and non-cooperative jurisdictions'), the Commission Proposal replaces this criterion with a reference to a high-risk third country pursuant to Article 9(2) of Directive (EU) 2015/849 (i.e. the EU AML blacklist).	Same as Commission Proposal except stipulates that the assessment should be made at the time the Member State allows the AIF to be marketed.	Same as Commission Proposal.	Same as Commission Proposal.

Attorney advertising. Prior results do not guarantee a similar outcome.