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# CONTRÔLES SPOT

Summary of Spot inspections on the obligations incumbent on the depositaries of collective investments when entering into a relationship with and monitoring their client asset management companies

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## INTRODUCTION

In accordance with the supervision priorities of the Autorité des Marchés Financiers (hereinafter "the AMF"), a series of "SPOT" short thematic inspections<sup>1</sup> concerning the obligations incumbent on the depositaries of collective investments when entering into a relationship with and monitoring their client asset management companies (hereinafter "AMCs"),<sup>2</sup> were carried out in the period from January to April 2022. These inspections took place within the framework of the provisions introduced by Directive 2011/61/EU of 8 June 2011<sup>3</sup> (hereinafter the "AIFM Directive") and by Directive 2014/91/EU of 23 July 2014<sup>4</sup> (hereinafter the "UCITS V Directive"), supplemented respectively by Delegated Regulation (EU) 231/2013 of 19 December 2012<sup>5</sup> and Delegated Regulation (EU) 2016/438 of 17 December 2015.<sup>6</sup> The investigations covered a sample group of five investment service providers (hereinafter "ISPs")<sup>7</sup> and covered the period from 18 March 2018 to 31 December 2021. These inspections covered the functions of depositary both of undertakings for collective investment in transferable securities (hereinafter "UCITS") and of alternative investment funds (hereinafter "AIFs").

The main objective of this series of SPOT inspections was to check compliance of ISPs with the requirements applicable to the depositaries relating to the topic analysed. It should be specified that the topics examined were confined strictly to the entry into a relationship and monitoring of AMCs, without including the other obligations incumbent on the depositary and the due diligence carried out by the latter as part of the duties mentioned in Articles L. 214-10-5 and L. 214-24-8 of the Monetary and Financial Code (hereinafter "MFC") which were entrusted to it in accordance with Articles L. 214-10 and L. 214-24-4 of said Code. Particular attention was paid to: *i) the organisation and governance of the depositary's business, ii) the due diligence carried out for entering into a relationship with AMCs, iii) the due diligence carried out for the monitoring and supervision of said companies, iv) compliance with the requirements regarding conflicts of interest and independence, and v) the depositary's control system.* This review aims to analyse the arrangements established by each depositary in the sample group at the time of the inspections.

The provisions arising from the transposition of the UCITS V and AIFM directives stipulate various requirements concerning the depositaries of collective investments in order to guarantee a high level of investor protection. These directives and the delegated Regulations (EU) 231/2013 of 19 December 2012 and 2016/438 of 17 December 2015 require that the depositaries and AMCs enter into an agreement and establish monitoring obligations when appointing the depositary and throughout the relationship. The depositary must therefore implement sufficient and appropriate arrangements enabling it to obtain knowledge of and assess the organisation, operational procedures and controls established in the AMC. These arrangements are described in the requirements for these institutions in their capacity of depositary.

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<sup>1</sup> Supervision des Pratiques Opérationnelle et Thématique (operational and thematic supervision of practices).

<sup>2</sup> In the text of this review, the term "AMC" refers to both AIF managers and investment firms for UCITS.

<sup>3</sup> Transposed by Ordinance No. 2013-676 of 25 July 2013 and published on 27 July 2013. This transposition was supplemented by the official order of 8 August 2013 approving amendments to the General Regulation of the Autorité des Marchés Financiers.

<sup>4</sup> Transposed by Ordinance No. 2016-312 of 17 March 2016 and published on 18 March 2016. This transposition was supplemented by the official order of 6 April 2016 approving amendments to the General Regulation of the Autorité des Marchés Financiers.

<sup>5</sup> Effective from 22 July 2013 and amended by Delegated Regulation (EU) 2018/1618 of 12 July 2018 (effective from 1 April 2020).

<sup>6</sup> Effective from 13 October 2016 and amended by Delegated Regulation (EU) 2018/1619 of 12 July 2018 (effective from 1 April 2020).

<sup>7</sup> In the present case, the depositaries in the sample group are credit institutions. Other entities may act as depositaries of AIFs or UCITS.

Several years after the entry into force of the applicable requirements, the AMF observed that the compliance with the regulations by the ISPs in the sample group remains perfectible, with significant differences in the quality of the arrangements analysed.

This document is neither a position nor a recommendation. The practices identified as either “good” or “poor” highlight approaches identified during the inspections that may facilitate, or complicate, compliance with the regulations concerning the topic analysed.

## 1. CONTEXT AND SCOPE

### 1.1. PRESENTATION OF THE SAMPLE OF DEPOSITARIES INSPECTED

These SPOT inspections were carried out simultaneously at five credit institutions authorised to provide the related custody-account keeping service, which act as depositaries of UCITS and AIFs.

While all the ISPs in the sample group are depositaries of UCITS and AIFs, the number of deposited funds<sup>8</sup> and their valuation vary depending on the ISP in question. The criteria governing the choice of the selected institutions were, in particular, the desire to include ISPs representing a substantial market share, for which a failure of their procedures could have a systemic impact, as well as mid-size ISPs to diversify the sample group, while covering various types of funds to the exclusion of securitisation institutions.

### 1.2. TOPICS ADDRESSED AND METHODOLOGY USED

The following topics were addressed during these inspections:

- organisation and governance of the depositary business, in particular the requirements, organisation and reporting line of the departments involved in the system and the various committees established on this topic;
- the due diligence carried out when entering into a relationship with AMCs, in particular the prerequisite stages for acceptance of a new AMC and the establishment of a depositary agreement with the AMC;
- the due diligence carried out for monitoring and supervision of AMCs, in particular the checks conducted by "Depositary Control", assessment of the client AMCs and the problem response system;
- the diligence performed regarding conflicts of interest and independence prior to entering into a relationship and throughout the relationship, paying special attention to AMCs having a group link with the depositary; and
- the control system applicable to the topic inspected in the depositary firm.

For each depositary in the sample group, the inspection analysed in particular the existing procedures, the descriptions of the processes and tools used, the agreements governing relations with the AMCs and the nature of and formal presentation of controls related to the topic. Moreover, in order to assess the operational implementation of the arrangements mentioned above, the inspection task force established three AMC samples for each institution. It should be specified that the total number of AMCs selected for these three samples differs depending on the institutions due to the nature of their activity, as detailed below:<sup>9</sup>

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<sup>8</sup> The expression "deposited funds" designates funds for which the ISP has accepted the depositary function.

<sup>9</sup> For illustration, the selection covers all the client AMCs of ISP E.

Table 1: Sample size for each ISP<sup>10</sup>

	Sample 1	Sample 2	Sample 3	Total size
ISP A	5 AMCs	5 AMCs	6 AMCs	16 AMCs
ISP B	5 AMCs	5 AMCs	6 AMCs	16 AMCs
ISP C	5 AMCs	4 AMCs	6 AMCs	15 AMCs
ISP D	5 AMCs	5 AMCs	5 AMCs	15 AMCs
ISP E	1 AMCs	3 AMCs	3 AMCs	7 AMCs

The first sample concerns the due diligence carried out by the depositary when entering into a relationship (hereinafter "**sample 1**"). The second sample concerns the due diligence performed by the depositary regarding conflict of interest management and compliance with the independence rules (hereinafter "**sample 2**"). Lastly, the third sample refers to the due diligence performed by the depositary for monitoring and supervision of the business relationship (hereinafter "**sample 3**").

To select these AMCs, the inspection task force asked each of the five depositary ISPs in the sample group for a list of all its client AMCs, with precise details of certain criteria such as the date of entry into the relationship, the presence of complex and/or risky instruments, or else the existence of a group link with the depositary. When selection was possible (i.e. when the choice concerned more than five AMCs), the inspection task force adopted a risk-based approach in accordance with the aforementioned criteria. Thus, sample 3 included an AMC having a score considered by the ISPs as "unfavourable".

For each sample, the inspection task force asked the institution to submit various information. Tests were therefore performed primarily in order to:

- verify compliance with the various stages provided for by the depositaries' procedures before entering into a relationship, and their traceability;
- check on the signature of a depositary agreement with the AMCs;
- analyse any repercussions of entry into relationships and monitoring on the content of the existing procedures and on the control plan;
- check, where there is a group link with the depositary, that the composition of the AMC's management and supervisory bodies is obtained when entering into the relationship and throughout that relationship;
- identify the due diligence carried out regarding conflict of interest management and independence when entering into a relationship and throughout the relationship;
- analyse the due diligence carried out when monitoring the business relationship with each AMC, and its traceability;
- assess the scoring and/or evaluation record of each AMC;
- obtain the number of anomalies detected for each AMC, the reason for them and the follow-up action taken.

### 1.3. APPLICABLE REGULATIONS

In exercising its prerogatives, the inspection task force was supported by the following regulations:

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<sup>10</sup> Note that certain AMCs may have been selected for several samples in order to have an overall view.

#### **Organisation and governance of the depositary's business**

- ✓ **Article L. 214-9 of the MFC** relating to the common provisions for the UCITS, the AMC and the depositary;
- ✓ **Articles L. 214-10 and L. 214-10-1 of the MFC** concerning the depositary's conduct of business conditions;
- ✓ **Articles L. 214-24-3 to L. 214-24-7 of the MFC** concerning the general obligations incumbent on AIF depositaries;
- ✓ **Articles 323-6 and 323-26 of the AMF General Regulation (hereinafter "AMF GR")** concerning the obligation for the depositary to have a set of performance specifications, approved by the AMF for UCITS;
- ✓ **Articles 323-7 and 323-27 of the AMF GR** concerning the obligation for the depositary to have adequate resources, compliance and internal control systems, and organisational structures and procedures to conduct its business; and
- ✓ **Articles 323-8 and 323-28 of the AMF GR** concerning the obligation for the depositary to designate a person to take charge of the depositary function.

#### **Due diligence carried out for entering into a relationship with AMCs**

- ✓ **Article 2 of Delegated Regulation (EU) 2016/438 of 17 December 2015** concerning the establishment of a contract evidencing the appointment of a depositary, containing a list of elements to be included (UCITS);
- ✓ **Article 83 of Delegated Regulation (EU) 231/2013 of 19 December 2012** concerning the establishment of a contract evidencing the appointment of a depositary, containing a list of elements to be included (AIFs);
- ✓ **Article 3 of Delegated Regulation (EU) 2016/438 of 17 December 2015** concerning the oversight duties incumbent on the depositary, notably the assessment of the risks associated with the nature, scale and complexity of the investment policy and strategy of the UCITS and with the organisation of the AMC;
- ✓ **Article 92 of Delegated Regulation (EU) 231/2013 of 19 December 2012** concerning the oversight duties incumbent on the depositary, notably the assessment of the risks associated with the nature, scale and complexity of the investment policy and strategy of the AIF and with the organisation of the management company;
- ✓ **Articles L. 214-10 and L. 214-24-4 of the MFC** relating to materialisation of the appointment of a single depositary by a written contract;
- ✓ **Articles 323-11 and 323-30 of the AMF GR** concerning the signature of a written agreement between the depositary and the AMC; and
- ✓ **Article 323-39 of the AMF GR** concerning in particular the obligation for the depositary to ensure compliance with the procedures for sharing information with the asset management company stipulated in the agreement referred to in Article 323-30 of the AMF GR.

#### **Due diligence carried out for monitoring and supervision of AMCs**

- ✓ **Article 3 of Delegated Regulation (EU) 2016/438 of 17 December 2015** concerning the oversight duties incumbent on the depositary, and in particular the establishment of a clear and comprehensive escalation procedure to deal with situations where potential discrepancies are detected (AIFs);
- ✓ **Articles 4 et seq. of Delegated Regulation (EU) 2016/438 of 17 December 2015** concerning, in particular, the duties regarding subscription and redemptions (AIFs);
- ✓ **Article 92 of Delegated Regulation (EU) 231/2013 of 19 December 2012** concerning the oversight duties incumbent on the depositary, and in particular the establishment of a clear and comprehensive escalation procedure to deal with situations where potential discrepancies are detected (UCITS);
- ✓ **Articles 93 et seq. of Delegated Regulation (EU) 231/2013 of 19 December 2012** concerning, in particular, the duties regarding subscription and redemptions (UCITS);
- ✓ **Articles 323-19 and 323-40 of the AMF GR** concerning the obligation for the depositary to establish a control plan.
- ✓ **Articles L. 214-24-8 and L. 214-10-5 of the MFC** concerning the verification by the depositary of the existence and implementation of appropriate procedures in its client AMCs; and
- ✓ **Articles 323-38 and 323-39 of the AMF GR** concerning said verification.

**Requirements regarding conflicts of interest and independence**

- ✓ **Article 21 of Delegated Regulation (EU) 2016/438 of 17 December 2015** concerning the requirements to be met where the depositary and an AMC have a common management body;
- ✓ **Article 23 of Delegated Regulation (EU) 2016/438 of 17 December 2015** concerning conflict of interest management where a link or a group link exists between the depositary and an AMC;
- ✓ **Article 24 of Delegated Regulation (EU) 2016/438 of 17 December 2015** concerning the independence of the management bodies and supervisory functions where a group link exists between the depositary and an AMC;
- ✓ **Articles L. 214-10-2 and L. 214-24-6 of the MFC** relating to the prevention of conflicts of interest between the depositary and an AMC; and
- ✓ **Articles L. 214-9 and L. 214-24-3 of the MFC** concerning, in particular, the depositary's duty to act in an honest, loyal, professional and independent manner.

**Control system**

- ✓ **Article L. 533-10 II 1° of the MFC** relating to the obligation for ISPs to establish rules and procedures enabling them to ensure compliance with the measures applicable to them;
- ✓ **Article 312-1 of the AMF GR** relating to the requirement for ISPs to implement the compliance arrangements provided for in Article 22 of Delegated Regulation 2017/565 of 25 April 2016 concerning in particular the requirement that they establish and maintain an effective compliance function which operates independently and the requirement that they monitor the adequacy and effectiveness of the measures put in place, and the actions taken to address any deficiencies; and
- ✓ **Articles 323-7 and 323-27 of the AMF GR** concerning the obligation for the depositary to have adequate resources, a compliance system, and organisational structures and procedures to conduct its business.

In addition to the elements mentioned above, it should be specified that the AMF has published two documents on the inspected topic.<sup>11</sup>

## 2. OBSERVATIONS AND ANALYSES

The depositary activity is an oligopolistic business characterised by the existence of a limited number of main actors. As a reminder, the three leading depositaries account for more than 90% of the valuation of deposited UCITS and AIF funds. Since there is very keen competition in the sector of activity of asset management funds admitted to trading on a regulated market, the mid-size depositaries are positioned rather on funds holding unlisted assets (notably private equity and real estate funds). The nature of the business therefore differs depending on the ISPs in the sample group.

It should be noted that the topic of this inspection has strong interactions with the financial security system, which can be explained by the implementation of generic due diligence related to the AMCs' "client" status. Aspects relating to this system will be excluded from the present review, however.

Moreover, the inspection task force noted differences in the robustness of the procedural corpus of the institutions in the sample group. The frequency and quality of the due diligence carried out by the ISPs in the sample group vary. However, it was more difficult for the institutions to perform these controls during the health crisis.

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<sup>11</sup> Cf. *AMF Instruction DOC-2016-01 - "Authorisation procedure for investment firms acting as a UCITS depositary - Review procedure for the performance specifications of other UCITS and AIF depositaries"* (updated in May 2021) and *"Guide for implementing UCITS V requirements for depositaries"* (November 2018).

In addition to this problem there are sometimes difficulties due to AMCs' reluctance to forward the requested documents, preferring to make them available in their offices. The main reasons put forward by the AMCs relate to the confidentiality of the information. The content of the provisions in the depositary agreement template thus provide a wealth of information on how to approach the relationship between depositaries and AMCs.

In case of problems, the use of the escalation system appeared to be very uneven between the ISPs in the sample group. These differences can be explained by a variable degree of maturity of the system but also by the desire of some depositaries to give priority to preservation of the quality of the relationship with their client AMCs.

More generally, the inspection task force noted shortcomings in application of the regulations for most of the ISPs in the sample group concerning compliance with the rules relating to prevention of conflicts of interest and the rules on independence and the checks performed by permanent second-level control on the topic.

## 2.1. ORGANISATION AND GOVERNANCE OF THE DEPOSITARY'S BUSINESS

### 2.1.1. Validation and updating of the performance specifications

The five ISPs established performance specifications, approved for UCITS by the AMF Board, between July 2017 and February 2018.<sup>12</sup> Only one of them subsequently made material changes, leading to a further approval by the AMF. Of the other ISPs, three nevertheless updated this document one or more times. For the last ISP, the performance specifications had not been updated although the systems established had changed and although the updating of this document is mentioned in the institution's action plan; this constitutes a poor practice.<sup>13</sup>

Lastly, it is noted that three ISPs have established a predefined frequency for updating the performance specifications (once a year, every two years or every five years), which constitutes a good practice.

**Good practice:**

- Defining a frequency for revision of the performance specifications (three ISPs).

**Poor practice:**

- Not having updated the amendments in the performance specifications despite the evolution, even if not substantial, of the devices set up by the depositary (one ISP).

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<sup>12</sup> As mentioned above, the depositaries in the sample group are credit institutions. Note that the AMF must approve the programme of operations of UCITS depositaries when they are investment firms.

<sup>13</sup> Note that only material changes in the performance specifications have to be approved by the AMF, in accordance with the applicable legislative and regulatory provisions.



### 2.1.2. Organisation and personnel

The inspection task force noted differences between ISPs in the sample group in their organisation and number of personnel. The ISPs have appointed a person in charge of the depositary function and a person in charge of depositary control. Note that the Depositary Control department is independent of the Compliance function.<sup>14</sup> For four ISPs, Depositary Control reports directly or indirectly to the person in charge of the depositary function. The inspection task force noted that in the fifth ISP Depositary Control does not report to the person in charge of the depositary function but to the institution's Chief Risk Officer, which is not in compliance with the reminder given by the AMF in its guide of November 2018 and in this sense constitutes a poor practice.<sup>15</sup> Depositary control is part of the duties of the depositary business and should therefore be accountable to the depositary function.

The personnel working for the depositary's business vary considerably depending on the institutions in the sample group and number between 75 and several hundred employees. Comparing the number of full-time personnel with the valuation of the funds (UCITS and AIFs), the ratios obtained are as follows (in increasing order): 1; 1.4; 3; 7.5 and 11.8. In the first case this means that one employee is needed for each billion euros deposited.<sup>16</sup> Moreover, comparing the number of full-time personnel with the number of funds (UCITS and AIFs), the ratios obtained are as follows (in increasing order): 0.1; 0.3; 0.6; 0.7 and 2.1. In the last case this means that two employees are assigned to the monitoring of a fund.<sup>17</sup> In the depositary function, the personnel working in the area of the entry into relationships and monitoring of AMCs range between two and 80 full-time equivalents for four ISPs. The fifth ISP was unable to single out these personnel because of their distribution among several business units and because of its organisation. Lastly, the inspection task force noted, for three ISPs, the existence of a team dedicated to management of the relationship with AMCs for the depositary business (outside the sales teams).

**Poor practice:**

- Not placing the Depositary Control department under the responsibility of the "depositary function" department (one ISP).

### 2.1.3. Committees and tools

The ISPs in the sample group have set up various committees related to the topic of entry into a relationship and the monitoring of AMCs, which constitutes a good practice. Differences were observed by the inspection task force regarding their number (from two to five committees) and their nature. As an illustration, the main purposes of these committees are the annual assessment of AMCs, problem monitoring and legal supervision of the contractual coverage of client AMCs. There are also committee meetings organised between the depositary and the AMCs to perform monitoring of the relationship, complementing, for example, the discussions held as part of monitoring of the AMCs. Lastly, three ISPs have one or more committee(s) dedicated to the acceptance of a new AMC (see below).

Regarding the tools, four ISPs have two or three tools used for varied tasks such as recording the sheets of the depositary function acceptance committees, sending documents to the AMCs and documentation management.

<sup>14</sup> Cf. "Guide for implementing UCITS V requirements for depositaries" (November 2018) concerning the distinction between these various "departments".

<sup>15</sup> Cf. "Guide for implementing UCITS V requirements for depositaries", November 2018: "The person(s) in charge of the depositary control (who perform(s) first-level controls) must be placed under the responsibility of the depositary function as this task is one of the functions of the depositary" (page 10).

<sup>16</sup> Note that these ratios were worked out based on the figures for 2021.

<sup>17</sup> Note that these ratios were worked out based on the figures for 2021.

Note that two ISPs have deployed a specific tool for the depositary business in order to centrally manage the information collected regarding the AMCs, to improve the traceability of the measures initiated and to facilitate its management. The absence of deployment of such a tool for the other three ISPs in the sample group constitutes a poor practice.

Lastly, the five institutions have developed a procedural corpus for entering into a relationship and monitoring the AMCs. These aspects will be discussed in the subsequent sections.

**Good practice:**

- Having specific committees for the topic inspected (assessment of AMCs, handling anomalies, legal supervision of the contractual coverage of the AMCs, etc.) (five ISPs).

**Poor practice:**

- Not deploying a tool governing the depositary business as a whole, ranging from the centralised management of information relating to the AMCs to record-keeping of the due diligence carried out on these AMCs or monitoring of the anomalies recorded, in order to improve the traceability of the measures initiated and facilitate its management (three ISPs).

## 2.2. DUE DILIGENCE CARRIED OUT FOR ENTERING INTO A RELATIONSHIP WITH AN AMC

Firstly, it should be remembered that while the discussions in this review are confined to the process of validation of a new entry into a relationship, the procedures established by the ISPs make the signature of a depositary agreement conditional on the prior validation of the deposited fund or funds.<sup>18</sup>

Articles L. 214-10 and L. 214-24-4 of the MFC introduce the obligation to appoint a single depositary. This appointment shall be materialised by a written contract, the content of which is defined in Article 2 of Delegated Regulation (EU) 2016/438 and Article 83 of Delegated Regulation (EU) 231/2013. In this context, Article 323-39 of the AMF GR provides that "[...] *The depositary also ensures compliance with the procedures for sharing information with the [AMC], stipulated in the agreement referred to in Article 323-30*".<sup>19</sup> At the time of its nomination, the depositary must assess the risks related to the nature, size and complexity of the CIU's investment strategy and policy and to the AMC's organisation. On the basis of this assessment, the depositary shall design supervision procedures and perform ex-post checks and verifications concerning the processes and procedures which are the responsibility of the AMC, in accordance with Article 3 of Delegated Regulation (EU) 2016/438 and Article 92 of Delegated Regulation (EU) 231/2013.

The inspection task force analysed the arrangements deployed by the ISPs in the sample group when entering into a relationship with AMCs. Note that, for one of these ISPs, only an analysis of the theoretical arrangements was performed due to the absence of entry into a relationship during the period under review (see above).

<sup>18</sup> Note that one of the ISPs in the sample group is peculiar in that the agreement for entry into a relationship leads to the signature of the depositary agreement, before considering acceptance of the depositary function for a fund.

<sup>19</sup> See also Articles 323-11 and 323-30 of the AMF GR concerning the agreements signed between the AMCs and the depositaries.

### 2.2.1. Management of the preliminary stages for entry into a relationship with an AMC

Firstly, the five ISPs have a procedural corpus governing the entry into a relationship with AMCs. For two of them, this procedural corpus is specific to this stage, while for the remaining three ISPs it is common with the arrangements adopted for monitoring the business relationship. Note that only one ISP has recorded in its procedures the applicable conditions for entering into a relationship in a pandemic situation, while stipulating the due diligence to be performed at a later stage. These conditions consist mainly of authorising the holding of meetings at a distance. Not recording such details in their procedures constitutes a poor practice for the other four ISPs in the sample group.

The various milestones in the process of entry into a relationship with AMCs vary depending on the ISP, in both their nature and their number. When they are of the same nature, the timing differs depending on the ISP.

The inspection task force noted in the samples numerous discrepancies between the due diligence carried out and the procedures provided for by the institutions in the sample group, testifying to an approximate application of their arrangements. These discrepancies are due in particular to the absence of implementation or defects in traceability of one or more of the aforementioned stages.

The stages described below are confined to the actions taken by the depositary function or even, more precisely, by Depositary Control, thus excluding the due diligence performed by the sales teams beforehand. However, it should be specified that other stakeholders are involved in the arrangements for entry into a relationship, such as Compliance, the risk and legal teams and the back office.

**Poor practice:**

- Not recording in the procedures the flexibility measures permitted in a pandemic situation while stipulating the due diligence to be performed at a later stage (four ISPs).

#### 2.2.1.1. Organisation of an interview and/or an audit with the AMC

The ISPs in the sample group organise an interview, on-site or at a distance, at the start of the process of entry into a relationship with an AMC. For three ISPs, this interview generally takes place after an initial phase of analysis and collection of documentation, whereas for two ISPs it occurs at the very start of the process.

The main objective is to meet the managers and/or compliance and internal control officers of the AMCs in order to establish an initial contact and understand their plans and organisation. One ISP organises an on-site audit in the case of an AMC undergoing formation in order to ensure that there are the necessary technical and human resources to perform its asset management business. This interview is carried out between acceptance of the AMC by the committee (see below) and presentation of the first fund. In the case of an existing AMC, only one information visit on-site is planned with a significant time lag (one or two years following the setting up of the first fund depending on their type). Conversely, providing for a visit or an interview ahead of or at the same time as the date of entry into a relationship with all AMCs constitutes a good practice for the other four ISPs in the sample group.

Regarding the practical conditions, it was noted that these interviews mostly took place at a distance in a situation of health crisis. However, only one institution provides explicitly for carrying out an in-person interview in its procedure. The reverse therefore constitutes a poor practice for the other four ISPs.

In the course of its analysis of sample 1, the inspection task force noted, for one ISP, an absence of traceability of the interview for entry into a relationship. Therefore, documenting the initial discussions held with AMCs constitutes a good practice for the other four ISPs. For another ISP, only one AMC was visited on-site before entering into a relationship, contrary to the institution's internal procedures.

**Good practices:**

- Providing a short time frame between the date of entering into a relationship and the date of the visit in the AMC's offices or an interview (four ISPs).
- Documenting the initial discussions held with AMCs (four ISPs).

**Poor practice:**

- Not choosing to hold a meeting in the AMC's offices before entering into a relationship to ensure, in particular, that there are sufficient technical and human resources (four ISPs).

*2.2.1.2. Obtaining knowledge of the client*

All the ISPs in the sample group have arrangements for obtaining information relating to the AMCs in order to assess them and express an opinion regarding the possibility of entering into a relationship, organised around two approaches, namely the completion of a questionnaire or a work programme and obtaining documents from the AMCs. The objectives are numerous, aiming in particular at assessing the AMC's organisation (including its control environment), its human and technical resources, its accounting management and the compliance of its systems, and to check its capacity for providing the elements necessary for the tasks of depositary.

Regarding the questionnaires, for two ISPs they are completed by the depositaries based on the information collected (interview and documents). One of these ISPs includes an analysis of the conformity of the information obtained in the interview with that included in the programme of operations of the AMC in question. The reverse constitutes a poor practice. For the other three ISPs, these questionnaires are completed by the AMCs. Note that, for two ISPs, the questionnaire used when entering into a relationship is specific to this stage and is less detailed than that used for monitoring the relationship. Lastly, four ISPs have not defined a frequency for reviewing the template of the questionnaire for entry into a relationship distributed to AMCs, which likewise constitutes a poor practice.

Regarding the lists of documents sent to AMCs, they comprise, on the one hand, documents specific to the AMCs, such as the articles of association, organisation charts, "K-Bis" (company register), auditors' reports and internal control plans and, on the other hand, AMC procedures to be received by the depositaries (*see Annexes 1 and 2*). Note that three ISPs list in their template of the questionnaire for entry into a relationship the documents requested of the AMC in accordance with Know Your Client, which ensures harmonisation of the requests for the various AMCs and allows monitoring of receipt of the exhaustive list of these documents; in this sense it constitutes a good practice.

Know Your Client is not performed at the same time depending on the institution. For four ISPs, the questionnaire must be completed prior to validation of the entry into a relationship, while for one ISP the questionnaire is filled in once the entry into a relationship has been validated in a committee. Note, however, that for one of the aforementioned ISPs, the questionnaire for entry into a relationship is completed only if an agreement in principle is given beforehand.

For another of the four ISPs mentioned above, acceptance of the AMC may take place before receiving all the required documents. Assessment of the documentation is thus performed at various stages, i.e. before and after the acceptance committee meeting, and the decision may come with reservations. Note, however, that the depositary agreement is signed only after receiving and analysing all the required documents. Otherwise, the absence of an assessment of the risks associated with the nature, scale and complexity of the investment strategy of the fund and with the organisation of the AMC before the start of the depositary business could constitute an infringement of the regulations, in light of Article 3 of Delegated Regulation (EU) 2016/438 and Article 92 of Delegated Regulation (EU) 231/2013.

The inspection task force noted that this stage was generally complied with in the case of sample 1. However, divergences were noted, notably with regard to the planned timing. In particular, for one ISP, certain AMC acceptances took place before finalisation of the depositary's analysis, contrary to what is stated in its procedure. For another ISP, the depth of analysis appeared "shallow" in 2018 but was strengthened in 2019 by the adoption of due diligence for entry into a relationship.

**Regulatory reminder:**

- Compliance with Article 3 of Delegated Regulation (EU) 2016/438 and Article 92 of Delegated Regulation (EU) 231/2013 implies receipt and analysis of all the documents necessary for assessment of the risks associated with the nature, scale and complexity of the investment strategy and policy of the fund and with the organisation of the AMC before validation of the entry into a relationship.

**Good practice:**

- Listing directly in the template of the questionnaire for entry into a relationship the documents requested of the AMC in accordance with Know Your Client (three ISPs).

**Poor practices:**

- Not determining a precise frequency for regular review of the template of the questionnaire for entry into a relationship by the depositary (four ISPs).
- Not providing for an analysis of the conformity of the information obtained in the interview with that included in the programme of operations of the AMC (four ISPs).

*2.2.1.3. Analysis of the depositary and decision*

In accordance with the procedures of the ISPs in the sample group, the start of the depositary business requires a formal validation of the depositary function. Depositary Control, or the teams in charge of the entry into a relationship with an AMC in the depositary function, must give a decision on entry into the relationship. This validation therefore takes place following a process of gathering the opinions of several departments involved.

The channel for obtaining the depositary's agreement is variable and may take the form of "sheets" or dedicated committees. Accordingly, the inspection task force noted that three ISPs organise one or more committees to validate the entry into a relationship with an AMC. However, these committees are not involved at the same stages in their arrangements:

- Two ISPs organise two "preliminary committees", each at different stages of entry into a relationship, permitting initial filtering of the AMCs. For one of them, the first committee is intrinsic to Depositary Control, while for the other ISP, this committee consists of the sales teams;
- The third ISP organises a single committee for acceptance of the depositary function; and
- One of the aforementioned ISPs limits the participants in the acceptance committee to the depositary function, while for the other two ISPs, other departments are invited, such as Compliance or the sales and product teams for one of them.

Note that one of these ISPs limits in time the period of validity of the decision for acceptance of entry into a relationship with an AMC. In general, the absence of definition of such a limit by the other ISPs in the sample group constitutes a poor practice.

In addition to analysis of the organisation and procedures of an AMC, the criteria governing the acceptance of a new AMC, as outlined in the performance specifications and/or the procedural corpus of the ISPs, are varied and can be grouped under four to six main points for each ISP. A distinction can be made between, on the one hand, criteria relating to the AMC and, on the other hand, those relating to the fund management plan. As an illustration, some criteria concern the characteristics of the AMC, such as growth forecasts, identification of the delegates with whom the depositary could be interfaced or the choice of statutory auditors. As regards the criteria inherent in the fund management plan, these may concern, in particular, the acceptance of pricing by the AMC, the institution's capacity for performing the duties of depositary or the absence of prohibitive conflicts of interest.

In the course of analysis of sample 1, the inspection task force noted divergences in application of the institutions' procedures. For example, a chronological divergence was noted between finalisation of the analysis and the start of the depositary business for one ISP. For another ISP, it was noted that entry into a relationship could be validated without any reservation despite a failure to receive the questionnaire for entry into a relationship (see above). Note, however, that a detailed analysis had been performed by the depositaries concerned.

For another ISP, an absence of traceability of acceptance of the depositary function was noted for certain selected AMCs, together with a lack of reliability of the information concerning the date of their entry into a relationship. **Specifically, this institution was indeed unable to retrieve the date of entering into a relationship with the client AMCs, but merely the date of their last passage before the committee. Moreover, this last item of information proved to be unavailable for the oldest entries into a relationship (18.2% of AMCs) and the most recent ones (19.4% of AMCs). Furthermore, it is not possible to certify the reliability of the information provided for the remaining 62.4%, because the inspection task force noted the presence of inconsistent dates for four of the five AMCs constituting sample 1, thereby not complying with the provisions of Articles 323-7 and 323-27 of the AMF GR.**

In addition, for the five ISPs in the sample group, the entries into a relationship performed during the inspected period resulted in no change in the procedures or the control plan.

Lastly, several refusals of entry into a relationship were issued each year by four ISPs in the sample group. The reasons vary and may be attributed to the AMC, such as refusal of the pricing proposition or the choice to work with another depositary, or to the depositaries themselves, such as operational complexity or insufficient responsiveness of the AMC. On the depositary side, these refusals were issued precisely by Depositary Control, the sales teams or Compliance. It was also apparent that, for one ISP, some refusals were not traced between 2018 and 2021. Therefore, documenting all the refusals of entry into a relationship constitutes a good practice for the other three ISPs in the sample group.

**Regulatory reminder:**

- Compliance with Articles 323-7 and 323-27 of the AMF GR implies that the depositary be able to retrieve the precise date of entry into a relationship with client AMCs in order to constantly have adequate resources, organisational structures and procedures to conduct its business.

**Good practice:**

- Documenting all the refusals of entry into a relationship made by the sales teams (three ISPs).

**Poor practice:**

- Not limiting in time the period of validity of the decision for acceptance of entry into a relationship with an AMC (four ISPs).

### 2.2.2. Establishment of a depositary agreement

Firstly, the establishment of a depositary agreement is governed by a specific procedure for two ISPs, which constitutes a good practice. The other three ISPs govern this stage in a common procedure with the due diligence carried out when entering into a relationship.

For all the ISPs in the sample group, the template of the depositary agreement is built based on the AFG-AFTI marketplace template. This template is supplemented by additional provisions which are more or less detailed depending on the institution. The inspection task force noted that the five ISPs have established "minimum standard" provisions regarding the arrangements for monitoring the relationship in relation to the marketplace template, four of which describe in detail the due diligence carried out during monitoring of the AMCs by the depositary (see below). Two ISPs have specific agreements according to the legal structure of the funds or the sector concerned. For example, an agreement is signed with each fund having a legal personality or each AMC with the list of deposited funds attached as an annex,<sup>20</sup> in accordance with Article 83(5) of Delegated Regulation (EU) 231/2013 and Article 2(4) of Delegated Regulation (EU) 2016/438. Two ISPs also have "accessory" contracts such as service agreements.

The inspection task force analysed the latest agreement template established by each institution in order to ensure compliance with Article 2 of Delegated Regulation (EU) 2016/438 (UCITS) and Article 83 of Delegated Regulation (EU) 231/2013 (AIFs). **It was found, firstly, that one ISP had not updated its agreement with an AMC since the entry into force of the aforementioned delegated Regulations. Also, this ISP used an agreement template not containing all the required information, such as the arrangements made for the prevention of money laundering and the financing of terrorism, and information concerning the cash accounts opened in the name of the AMCs, contrary to the regulatory provisions in the aforementioned articles, in articles L. 214-10 and L. 214-24-4 of the MFC and in Article 323-30 of the AMF GR.**

Moreover, the analysis of sample 1 revealed discrepancies regarding the timing of signature of the depositary agreements. In particular, it was observed that signature of the depositary agreement by one AMC took place prior to acceptance of the depositary function for one ISP, contrary to its procedures.

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<sup>20</sup> Note that this updating is not required for each new fund but can be performed annually, for example.

Moreover, for one ISP, **some agreements were signed without ever planning to fill in the list of funds covered, which is not in compliance with the regulatory provisions of Article 2(4) of Delegated Regulation (EU) 2016/438 and Article 83(5) of Delegated Regulation (EU) 231/2013, and with Article 323-30 of the AMF GR.**

**Regulatory reminders:**

- Compliance with Article 2 of Delegated Regulation (EU) 2016/438 and Article 83 of Delegated Regulation (EU) 231/2013, and with Articles L. 214-10 and L. 214-24-4 of the MFC and Article 323-30 of the AMF GR requires updating of the depositary agreement entered into with an AMC before the entry into force of delegated Regulations (EU) 2016/438 and (EU) 231/2013, and the use of an agreement template describing in detail all the elements required by said documents.
- Compliance with Article 2(4) of Delegated Regulation (EU) 2016/438 and Article 83(5) of Delegated Regulation (EU) 231/2013 and with Article 323-30 of the AMF GR requires listing exhaustively the common funds managed by the AMC to which the depositary agreement applies and providing for completion of the list of funds covered.

**Good practice:**

- Deploying a specific procedure relating to the establishment of a depositary agreement identifying the precise formalities to be performed when entering into a relationship (two ISPs).

### 2.3. DUE DILIGENCE CARRIED OUT FOR MONITORING AND SUPERVISION OF AMCS

Article 3 of Delegated Regulation (EU) 2016/438 and Article 92 of Delegated Regulation (EU) 231/2013 make oversight duties incumbent on the depositary, and in particular the establishment of a "clear and comprehensive" escalation procedure to deal with situations where potential discrepancies or deviations are detected.

It should be specified that the arrangements described for each institution are common to all their client AMCs, although a risk-based approach could lead to further due diligence being conducted.

#### 2.3.1. Arrangements relating to due diligence carried out for monitoring of AMCs

Firstly, the due diligence is governed by specific monitoring procedures for two ISPs and in common procedures for entry into a relationship for three other ISPs (see above). The inspection task force noted that the quantity and nature of the due diligence performed differ depending on the ISP. Note that all this due diligence is not included in the depositary control plan and is therefore sometimes provided for only by procedures.



**Table 2 - Presentation of the due diligence carried out by the ISPs for monitoring**

	Annual updating of Know Your Client documentation			Regular visits to the AMC			Regular scoring of the AMC	Writing an annual report on each AMC		
	Updating the questionnaire on entry into a relationship	Obtaining Know Your Client documents	Completion of a due diligence questionnaire	Visit or annual interview on-site	Inspection on-site	Regular committee meetings with each AMC		Check on documents (audit, study, etc.)	Writing an annual report on each AMC	Drawing up a summary sheet on each AMC
ISP A	X	X	-	-	-	-	X	X (regular)	-	-
ISP B	X	X	X	X (at least once a year)	-	-	X	X	-	-
ISP C	X	X	-	X	X (optional)	-	X	-	X	X
ISP D	X	X	-	X (possibly at a distance)	-	X	X	X	-	-
ISP E	-	X	X	X	-	-	-	X	X	-

Like for the process of entry into a relationship, the inspection noted a perfectible application of the due diligence provided for by the ISPs' internal procedures, with numerous divergences due to the absence of implementation of a stage, or of traceability. Two ISPs have monitoring tables or risk indicators designed to manage progress in the due diligence carried out by the depositary. Note that one of the aforementioned ISPs has implemented a tool dedicated to the management of its business, allowing information retrieval in particular. Moreover, the five ISPs provide for verifications on the AMCs performed on the "four eyes principle", notably by the formation of pairs (one ISP) or by validation of the assessment by an experienced colleague, which constitute good practices.

The inspection task force also analysed the arrangements provided for in the depositary agreement templates signed with the AMCs (see above).<sup>21</sup> This showed that the five ISPs organise a system for obtaining the information necessary to perform the depositary tasks and provide for the possibility for it to access the necessary information for a regular review on-site or on documents. No ISP in the sample group explicitly addresses the possibility of a refusal by the AMC concerning access to the documents or its offices, which constitutes a poor practice. Conversely, a system for obtaining the information necessary to perform the tasks of the AMC exists at all the ISPs in a more or less detailed manner, sometimes as part of a system for mutual exchange of information. Note that four ISPs have included specific explanations, describing in detail the methods for monitoring the relationship, which constitutes a good practice. These arrangements appeared to be explained in greater detail than those contained in the marketplace template. As an illustration, one of the ISPs in the sample group explicitly mentions the completion of a questionnaire by the AMCs, the performance of an assessment and a visit on-site or else the possibility of carrying out an inspection in the company's offices in the event of anomalies.

In addition, one ISP has established a specific procedure so that the AMC may assess the depositary's performance against its duties, over and above the arrangements provided for in the depositary agreement. The reverse constitutes a poor practice for the other four ISPs in the sample group.

**Good practices:**

- Using the agreement template defined by AFG-AFTI, while giving more details concerning monitoring of the business relationship, in particular by adding explanations detailing the due diligence carried out by the depositary (four ISPs).
- Having monitoring tables or risk indicators in order to manage progress in the due diligence carried out by the depositary in the course of monitoring the relationship (two ISPs).
- Providing for verification by the "four eyes principle" of the due diligence and assessments carried out on the AMCs in the course of monitoring (due diligence carried out in pairs, validation of the assessment by an experienced colleague, etc.) (five ISPs).

<sup>21</sup> The indications presented are based on analysis of the depositary agreement templates and are not necessarily a guide to regulations on these aspects in any internal procedures.

**Poo practices:**

- Not addressing explicitly in the depositary agreement the possibility of a refusal by the AMC concerning access to the documents or its offices in the depositary agreement (five ISPs).
- Not establishing specific procedures, in addition to the arrangements provided for in the body of the depositary agreement, to ensure that the AMC is authorised to assess the depositary's performance against its duties (four ISPs).

*2.3.1.1. Annual updating of Know Your Client documentation*

All the ISPs in the sample group provide for updating the knowledge of their client AMCs by collecting information and/or documents. Firstly, the institutions require the annual sending of Know Your Client documents. Three ISPs have established a file dedicated to monitoring the receipt of these documents, which constitutes a good practice. Note that one of these ISPs plans to append the depositary agreement to the list of documents to be sent. The reverse constitutes a poor practice for the other four ISPs in the sample group.

Secondly, three ISPs perform regular updating of the questionnaire for entry into a relationship. More precisely, and barring the occurrence of a significant event, the frequency is three-yearly for one ISP and each year for the other two ISPs. Therefore, not defining an excessively long interval between updates constitutes a good practice for the aforementioned two ISPs. The last two ISPs require the completion each year of a questionnaire different from that used for entry into the relationship.

In practice, in the course of its analysis of sample 3, the inspection task force noted that one ISP had not complied with the updating frequency for certain questionnaires for entry into a relationship as provided for in its procedures. Note, however, that the observed divergence is at most one year.

**Good practices:**

- Providing for updating of the questionnaire for entry into a relationship at least once a year, even if there is no significant event (two of the three ISPs concerned).
- Establishing a log file of receipt of the documents requested of the AMCs (three ISPs).

**Poor practice:**

- Not providing for the formal establishment of an annex to the depositary agreement listing specifically the documents exchanged between the depositary and the AMC (four ISPs).

*2.3.1.2. Regular visits to the AMC*

The purpose of the regular visits is to improve the depositary's knowledge of the AMC and facilitate monitoring of the relationship notably in order to identify changes that have occurred or to monitor detected anomalies.

In practice, four ISPs<sup>22</sup> have established interviews in the offices of the AMC or by videoconference at a frequency that varies depending on the scale and complexity of the AMC (at least once a year), which constitutes a good practice. Note that for two of these ISPs, the frequency is variable and the interval may therefore be shortened in accordance with a risk-based approach, which also constitutes a good practice. Also, it was noted that the health crisis made it more complex to hold meetings in the offices of the AMCs. For example, one of the four ISPs indicated

<sup>22</sup> Note that for one of these ISPs, these interviews are optional.

explicitly in its procedures that a videoconference discussion could replace an interview in the offices of the AMC. However, it should be specified that two ISPs do not formally define the content of the exchanges resulting from the interviews, which constitutes a poor practice.

One ISP also provides for the possibility of carrying out inspections on-site for certain AMCs, based on the findings of the questionnaire for entry into a relationship, the control plan and their scores. This possibility constitutes a good practice.

**Good practices:**

- Holding a meeting at least once a year for all the client AMCs (four ISPs).
- Providing for regular committee meetings with each AMC at a variable frequency, depending on the scale and complexity of the AMC (two ISPs).
- Providing for the possibility of conducting an additional inspection, complementing the annual visit, depending on the findings of the questionnaire, the control plan and the scores of the AMC (two ISPs).

**Poor practice:**

- Not documenting the content of the exchanges based on the interviews held with the AMCs (two ISPs).

*2.3.1.3. Document-based monitoring*

Two ISPs perform more complete checks on documents than in the case of mere regular updating of the information on AMCs in order to check that the risks are controlled by these AMCs. The conditions of these checks constitute a good practice.

A first ISP plans to perform regular checks on documents in the form of an audit and studies<sup>23</sup> regarding each AMC at least every three years, in accordance with a control plan established each year by a risk-based approach. The topics are varied and, as an illustration, may concern the entry into a relationship and Know Your Client updating. In the case of analysis of sample 3, the inspection task force nevertheless observed that the defined frequency was not complied with for all the AMCs in question.

A second ISP provides for the annual completion of thematic questionnaires by the AMCs, in accordance with a control plan likewise established by a risk-based approach. The subject of these checks corresponds to a precise subject identified in the regulatory news or to difficulties detected during monitoring of the AMCs.

Certain ISPs in the sample group mentioned reluctance on the part of the AMCs to forward the documents requested in the course of their monitoring; the AMCs preferred a meeting in their offices for reasons related to data privacy. While making a visit to the AMC's offices fulfils the regulatory requirements (*see Articles 2 and 3 of Delegated Regulation (EU) 2016/438 and Articles 83 and 92 of Delegated Regulation (EU) 231/2013*), it is nevertheless important that the depositary should be able to obtain knowledge of and analyse the elements necessary for the accomplishment of its tasks, without limiting its information to a mere projection in a meeting.

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<sup>23</sup> The "audits" take the form of supervision of a defined topic at an AMC while the "studies" are cross-cutting and concern all the AMCs concerned by the topic analysed.

**Good practice:**

- Performing thematic due diligence on the subjects defined by a risk-based approach concerning all or part of the client AMCs, in addition to the due diligence carried out by default on all client AMCs (two ISPs).

*2.3.1.4. Regular scoring of the AMC*

Four ISPs in the sample group perform scoring each year, in accordance with criteria predefined by the depositaries. Three of these ISPs carry out this stage after performing the other due diligence planned on the AMCs, since the score factors in its results.

The number of criteria taken into consideration for scoring varies depending on the ISP. An average is taken between the scores assigned to a large number of criteria, often broken down into sub-criteria. Note that one of the ISPs in the sample group weights the score according to the importance of the topics assessed. The reverse constitutes a poor practice for the other ISPs in the sample group.

These criteria include considerations related to the funds and the AMCs and are presented in dedicated matrix charts for the four ISPs concerned. As an illustration, they concern, in particular, risk scoring faced with the control system, the quality of documentation and exchanges with the AMCs, anomalies recorded and the responsiveness of the AMCs. Defining a detailed matrix chart making it possible to establish a score for AMCs, based on a large number of criteria, constitutes a good practice.

Regarding the score assigned, these ISPs assign a quantified result which is more or less substantial. The four ISPs present the scores in an Excel file. For one of them, scoring of all the AMCs is performed on the same day during a dedicated committee meeting; a specific report is also drafted by the depositary function.

Note that the four ISPs expect the score to have repercussions on monitoring of the AMC, particularly with regard to the prioritisation of certain specific due diligence (audits) and/or the planning of visits for the following year. Lastly, two of the aforementioned ISPs provide for the definition of additional measures where the score is below a predefined threshold, which constitutes a good practice. This may involve, respectively, a presentation of the AMCs concerned in a Risk and Compliance Committee, awareness raising for service providers and delegates, or initiation of the escalation procedure. More generally, one of these ISPs provides explicitly for the possibility of invalidating continuation of the business relationship in a specialised committee in the event of significant developments or an unfavourable score. The reverse therefore constitutes a poor practice.

The last ISP, for its part, produces an "assessment" of the AMC based on expert evaluation and not a score relying on statistical data. A qualitative approach is adopted with the indication "*satisfactory, could be better, unsatisfactory*" in light of the quality of the data and exchanges with third parties, the level of results and the risk level.

In the course of its analysis of sample 3, the inspection task force selected for each ISP in the sample group one AMC having a score considered by the ISPs as "risky" or "poor" by comparison with the scores of the other AMCs in order to assess the implementation of any additional due diligence as provided for by the internal procedures. However, the latter was not observed in practice. Monitoring and supervision of the AMCs led to no change in the existing procedures and control plan.

**Good practices:**

- Defining a detailed matrix chart to establish a score for AMCs, broken down according to a large number of criteria (four ISPs).
- Providing for the implementation of additional due diligence in the case of a score lower than a predefined threshold, such as the organisation of visits, carrying out specific tasks or raising the awareness of service providers and delegates regarding potential difficulties (two ISPs).

**Poor practices:**

- Not providing for the possibility of invalidating continuation of the business relationship in a specialised committee in the event of significant developments or an unfavourable score (four ISPs).
- Not weighting the score according to the importance of the topics assessed (three ISPs out of the four concerned).

*2.3.1.5. Writing an annual report on each AMC*

It was noted that two ISPs in the sample group copy in reports written by Depositary Control, for each client AMC, the due diligence carried out each year in the course of monitoring and express an assessment of the organisation, resources, procedures and control environment of the AMC. As a reminder, the performance of such due diligence at an annual frequency concerns merely the monitoring performed on the AMCs (and their procedures) and not the funds, for which a shorter interval would be required between these operations. Moreover, another ISP in the sample group formally records the results of its annual due diligence in a report. Two of the three ISPs mentioned above send to the AMCs each year a document outlining the due diligence carried out, which constitutes a good practice.

In addition, one of the ISPs in the sample group has established a tool dedicated to the performance of monitoring by Depositary Control, recording the various formalised reports.

**Good practice:**

- Sending client AMCs an annual report on each of them, containing the findings of the regular interviews and the Know Your Client updating campaign (two ISPs).

*2.3.2. Escalation procedure*

The institutions in the sample group have established a procedure for a graduated response where divergences or irregularities are detected in the course of their supervisory duties, in accordance with Article 3 of Delegated Regulation (EU) 2016/438 and Article 92 of Delegated Regulation (EU) 231/2013. The name of this system varies depending on the ISPs in the sample group, which refer to an "alert" system (two ISPs), a "problem response" system (three ISPs) or else an "escalation" system (one ISP mentioned above).<sup>24</sup> Note that the subsequent discussion is confined to problems noted regarding the AMCs and not the funds managed by them.

Regarding the general problem response system, the inspection task force identified five main findings. It was found that the entry of data concerning AMC anomalies is triggered manually for all the ISPs in the sample group. These anomalies are detected in particular by the due diligence carried out by Depositary Control. They may also

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<sup>24</sup> These terms will be employed without distinction in this review.

be expressed formally by the teams in charge of entering into a relationship with AMCs. Also, three ISPs use a tool to centrally manage and monitor the anomalies recorded, which constitutes a good practice. In addition, three ISPs have established committees involved in problem monitoring (two ISPs) and/or informing the management bodies in the case of a problem associated with the maximum level (two ISPs, including one of the aforementioned ISPs), which also constitutes a good practice.

Regarding the various component stages of this system, the ISPs in the sample group have defined between four and seven levels.<sup>25</sup> While the number and nature of the levels differ, the inspection task force noted the existence of similarities, notably regarding the recipients of the information. The details of the contact persons informed are as follows:

**Table 3:** Presentation of the various stages governing the graduated response (escalation) process

	Level 1	Level 2	Level 3	Level 4	Level 5	Level 6	Level 7
ISP A	Request for rectification	Request for rectification (reminder)	Order to rectify	Order to rectify (reminder)	Formal rectification notice	Informing auditors	Informing the AMF
ISP B	Informing or reminding CICO	Alert to senior managers of the AMC	Informing auditors of the CIU	Reporting to the AMF			
ISP C	Request to CICO for rectification	Formal notice to the CICO and senior management	Informing auditors of the CIU	Informing supervisory authorities			
ISP D	Reporting to the contact persons nominated by the AMC	Reporting to the CICO	Reporting to managers of the AMC	Organisation of a tripartite meeting with the depositary, the AMC and the auditors	Formal notice to managers of the AMC	Reporting to the AMF, possibly with legal action for dismissal of the managers	
ISP E	Request to the middle office for rectification	Request to the middle office for rectification (reminder)	Order to the CICO to rectify	Order to the CICO to rectify (reminder)	Formal notice to the chairman of the AMC to rectify		

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The deadlines and methods governing switching between the various levels vary depending on the ISP. Three ISPs have defined a deadline for each level. Moreover, one ISP has not stipulated a deadline for the last two levels (pragmatic assessment by the person in charge of Depositary Control). This lack of a definition of the deadline governing each stage could constitute an infringement of the regulations in light of the provisions of Article 3(3) of Delegated Regulation (EU) 2016/438 and Article 92(3) of Delegated Regulation (EU) 231/2013. The last ISP plans for the escalation procedure to be triggered two months after a staff member of Depositary Control has sent an email asking for evidence to be provided of application of the expressed recommendations. After that, it is incumbent on the Depositary Control personnel to decide on the level of the anomaly and indicate a monitoring date. **The inspection task force noted, therefore, that the escalation procedure implemented by this ISP contains no objective criteria governing the level of the escalation (and its recipients) nor the time limit governing switching to the next stage for the anomalies detected in an AMC, which could be analysed as an infringement of the aforementioned provisions.**

The inspection task force noted certain special features for three ISPs in the sample group. In addition to the definition of levels, two ISPs classify the anomalies by "type" (three possibilities depending on their nature and their capacity for remediation) or by "criticality" (four thresholds). This twofold approach makes it possible to establish variable deadlines before switching to the next stage and/or threshold. This precise graduation constitutes a good practice. Moreover, in addition to reporting continuously to the AMCs, these two ISPs send the detected anomalies to each of them regularly, at least once each quarter in one case and each year for the other

<sup>25</sup> Four levels (one ISP), five levels (two ISPs), six levels (one ISP) and seven levels (one ISP). Note that for ISP D, level "1" is not eligible for the escalation process.

<sup>26</sup> Only the recipients of the anomaly are mentioned and not the escalation personnel cced. Note that ISP A does not specify the escalation recipients in its procedures but only in the file of nominated contact persons.

one, which constitutes a good practice. Lastly, while all the ISPs plan as a last resort to inform the statutory auditors and the AMF, one of them does not include this stage in the levels of the system but plans to implement it if the last-level anomalies persist. In practice, the main anomalies identified in the AMCs concern shortcomings in sending the Know Your Client documents, the absence of procedures or the inadequacy of the AMC's resources.

In the course of analysis of sample 3, the inspection task force noted the inadequacy of the monitoring performed by two ISPs as part of the problem response process due, in particular, to failure to comply with the deadlines governing switching to the next stage, which could constitute an infringement of the regulations.

Lastly, at one ISP it was noted that no anomaly has been dealt with by escalation despite the numerous anomalies concerning identical AMCs during several successive years (absence of documents required for the AMC's dossier or absence of replies from the AMC) due to their "level 1" criticality, making them ineligible for the escalation process (see above). This poor definition of the criteria governing escalation levels could also constitute an infringement of the regulations.

**Regulatory reminders:**

- Compliance with Article 3(3) of Delegated Regulation (EU) 2016/438 and Article 92(3) of Delegated Regulation (EU) 231/2013 implies the definition of objective criteria governing the escalation level (and its recipients) and of deadlines governing switching to each subsequent stage for anomalies detected concerning an AMC in the course of the escalation procedure.
- Compliance with the aforementioned articles implies complying with the deadlines governing switching to the next stage as provided for in the procedures relating to the escalation system.
- Compliance with the aforementioned articles implies using the escalation system sufficiently for significant and persistent anomalies concerning AMCs, notably thanks to a good definition of the criteria governing escalation levels.

**Good practices:**

- Classifying each anomaly according to a twofold approach (level of the escalation system and nature or criticality of the alert) allowing more precise graduation according to predefined deadlines (two ISPs).
- Monitoring anomalies in a dedicated tool, in particular exceeding deadlines (three ISPs).
- Regularly sending to AMCs a summary of the anomalies detected (two ISPs).
- Establishing committees involved in the monitoring of anomalies and/or providing for informing the management bodies (three ISPs).

## 2.4. DUE DILIGENCE CARRIED OUT REGARDING CONFLICT OF INTEREST MANAGEMENT AND COMPLIANCE WITH INDEPENDENCE RULES

The depositaries shall comply with the requirements regarding conflict of interest management. Articles L. 214-10-2 and L. 214-24-6 of the MFC stipulate in particular that "*the depositary may not perform activities concerning [the UCITS][the AIF] or the asset management company acting on its own account, which would be liable to create conflicts of interest between [the UCITS] [the AIF], the unitholders or shareholders of said [UCITS] [AIF], the asset management company and the depositary itself, unless the depositary has separated, on the functional and hierarchic levels, the performance of its depositary tasks and its other tasks and the potential conflicts of interest have been appropriately identified, managed, monitored and revealed to the unitholders or shareholders of [the UCITS] [the AIF].*" Moreover, additional provisions regarding independence apply to UCITS depositaries, in

particular Articles 21, 23 and 24 of Delegated Regulation (EU) 2016/438, which stipulate requirements i) regarding common management, ii) in the case of a "link" or a group link and iii) regarding the independence of the management bodies and supervisory functions in the case of a group link.

The inspection task force generally noted the inadequacy or even absence of due diligence performed by the depositaries for AMCs having a group link. Thus, a regulatory infringement was formally expressed for all the ISPs in the sample group.

#### 2.4.1. Arrangements for prevention and management of conflicts of interest

The ISPs in the sample group have established a procedural corpus dedicated to the prevention and management of potential conflicts of interest and a conflict of interest map and register. Two ISPs also publish a document summarising these arrangements on their website, which constitutes a good practice.

The inspection task force noted that, strictly speaking, only one ISP mentions in its conflict of interest map the situation resulting from the commercial relationship between the depositary and the AMC, particularly when the weight of the relationship is significant compared with the other clients: the depositary must indeed monitor its client AMCs. Conversely, this absence of indications for the other ISPs in the sample group constitutes a poor practice. However, it was observed that the five ISPs identified potential conflicts of interest relating to the depositary activity. This concerns, in particular, failure to comply with the requirements of independence for AMCs having a group link with the depositary and conflicts that could emerge between the various activities carried out by the depositary's parent group (e.g. fund administration or financing services). Note that, during the period under review, no ISP recorded a conflict of interest on the topic concerned.

##### **Good practice:**

- Publishing a summary document summarising the arrangements for prevention and management of conflicts of interest on the institution's website (two ISPs).

##### **Poor practice:**

- Not listing explicitly in the conflict of interest map the situation resulting from the commercial relationship between the depositary and the AMC, particularly when the weight of the relationship is significant compared with the other clients (four ISPs).

#### 2.4.2. Due diligence carried out when entering into a relationship with an AMC and monitoring the business relationship

Firstly, it is specified that the inspection task force focused its analysis on the due diligence carried out when entering into a relationship with an AMC and during its monitoring regarding conflicts of interest relating to the depositary business and also concerning compliance with the rules on independence laid down by Delegated Regulation (EU) 2016/438. Note that these provisions apply only to AMCs managing UCITS.

The inspection task force thus noted that three ISPs make a distinction between the due diligence carried out when entering into a relationship and that performed during monitoring of the relationship. For these three ISPs, the verifications consist of ensuring that there are no conflicts of interest between the AMCs and the depositary when entering into a relationship. This is materialised by an indication in the depositary function acceptance form (two ISPs) and/or by checking documents with an analysis involving Compliance (two ISPs including one of the



aforementioned ISPs). Generally, due diligence is carried out by the depositary function (three ISPs), Compliance (one ISP) or both (one ISP).

As regards monitoring of the AMCs, the inspection task force detected differences relating to the volume and nature of the due diligence carried out by the depositaries. They can be summarised as follows:

**Table 4:** Due diligence carried out by the depositary in the course of AMC monitoring regarding conflict of interest management and compliance with independence rules

	Annual receipt of an attestation of independence of AMCs		Checks performed by the depositary		Annual receipt of AMCs' conflict of interest policy		Annual receipt of AMCs' conflict of interest map and register	
	For AMCs without a group link	For AMCs having a group link	For AMCs without a group link	For AMCs having a group link	For AMCs without a group link	For AMCs having a group link	For AMCs without a group link	For AMCs having a group link
ISP A	X (selected AMCs)		X	X	-	-	-	-
ISP B	X	X	-	-	-	-	-	-
ISP C	X	X	-	-	X	X	-	-
ISP D	-	-	X (annual)	X (annual)	-	-	X	X
ISP E	-	-	-	X (regular)	X	X	X	X

The inspection task force noted that three ISPs receive an attestation of independence filled in by the AMCs as follows:

- Two ISPs do this each year for all the AMCs managing UCITS, whether they have a group link with the depositary or not. This due diligence is performed by the personnel of the depositary function. The AMCs must certify there, on the one hand, that there is no common management with the depositary and, on the other hand, the independence of their management body and their supervisory body relative to the depositary. These ISPs have provided for arrangements to be implemented if an AMC indicated that it did not comply with these requirements. **However, these two ISPs do not perform checks on compliance with the rules on independence and the absence of a common management apart from merely receiving an attestation of independence, or do not sufficiently trace the due diligence carried out, so that they could not ensure compliance with the rules on independence referred to in Articles 21 and 24 of Delegated Regulation (EU) 2016/438, particularly in the case of AMCs with a group link.** Moreover, in the course of its analysis of sample 2, the inspection task force noted that several attestations of independence were not received for certain AMCs in the case of one of these ISPs for 2018 (60%) or were partially completed in 2021.<sup>27</sup> **In not obtaining an annual attestation of independence for all the client AMCs, the arrangements of this ISP could not ensure compliance with Article 21 mentioned above;** and
- The third ISP has this attestation filled in by only a selection of AMCs in the course of a dedicated compliance check. Note that this check was established only from 2020 and that the attestation template appears deficient in that it aims mainly to attest compliance with the "*provisions of Articles 21 to 24 of Delegated Regulation (EU) 2016/438 [...]*", without any other details. **For this ISP, performing due diligence, incomplete moreover, for only a small proportion of AMCs and only from 2020, did not make it possible to ensure compliance with the aforementioned articles.**

Moreover, it was noted that certain ISPs performed checks strictly speaking on the topic of conflicts of interest and compliance with the rules on independence as follows:

<sup>27</sup> This attestation concerned an AMC having a group link with the depositary.

- One ISP performs checks every year on the AMCs having a group link in order to check that there are no conflicts of interest, particularly with regard to common management and independence of the management bodies and supervisory functions of the depositary and the AMCs. However, apart from their lack of traceability, **these checks are not exhaustive because they do not include verification, in the case of a group link, that at least one-third of the members of the supervisory bodies of the AMC and the depositary or two people, whichever is least, are independent, as stipulated in Article 24(1), b) of Delegated Regulation (EU) 2016/438;**
- Another ISP performed a check in 2018 in order to verify compliance with the rules on independence for one of the two client AMCs having a group link with the institution, **without updating this check even though the depositary's managers have changed since it was performed. Moreover, no check was made on the second AMC having a group link with the depositary. This ISP would therefore not ensure compliance with Articles 21 and 24 of Delegated Regulation (EU) 2016/438;** and
- A last ISP performed two compliance checks in 2019 and 2021 on compliance with the rules on independence for AMCs having a group link. These consisted of verification of several check points. As an illustration, the ISP sent an annual message to all of its employees in order to find out if any office was possibly held by an employee in an AMC.

Moreover, several institutions provide for receiving the policies for prevention and management of conflicts of interest from client AMCs (two ISPs) and/or their conflict of interest map and register (two ISPs including one of the ISPs mentioned above). In the course of analysis of sample 2, it was nevertheless noted that one ISP has not performed this due diligence every year for all the selected AMCs.

On the basis of sample 2, the inspection task force requested disclosure of the governance structure and the composition of the management and supervisory bodies of the depositaries and the AMCs where there was a group link. It was noted that one ISP was able to provide this information for the selected AMCs only for the year 2020. **For this ISP, not being able to provide documents relating to the governance structure and the composition of the management and supervisory bodies of the AMCs having a group link with sufficient regularity apparently underlines an insufficient level of control, infringing the aforementioned articles.**

**Regulatory reminders:**

- The depositaries must monitor compliance with Article 21 of Delegated Regulation (EU) 2016/438, notably by obtaining an attestation of independence completed each year for all the client AMCs.
- Compliance with Articles 21 and 24 of the aforementioned Regulation implies that checks be made sufficiently regularly on compliance with the rules on independence and on the absence of a common management particularly in the case of AMCs with a group link, apart from merely receiving an attestation of independence filled in and signed by the AMCs.
- Compliance with the aforementioned articles implies traceability of the due diligence carried out regarding independence and conflict of interest management and/or verification, for AMCs having a group link, of their compliance with the rules on independence when the management body does not take charge of the supervisory functions in the respective companies.
- Compliance with the aforementioned articles requires being able to submit the documents relating to the governance structure and the composition of the management and supervisory bodies of AMCs having a group link.

## 2.5. CONTROL SYSTEM

Article 312-1 of the AMF GR provides that *"To ensure compliance with all of the professional obligations referred to in II of Article L. 621-15 of the [MFC], the [ISP] shall implement the compliance policy and the procedures relative to the responsibilities of the management body laid down in Articles 22 and 25 of Delegated Regulation 2017/565 [...]"*. Regarding this, Article 22(1) of Delegated Regulation (EU) 2017/565 stipulates that *"Investment firms shall establish, implement and maintain adequate policies and procedures designed to detect any risk of failure by the firm to comply with its obligations under Directive 2014/65/EU, as well as the associated risks, and put in place adequate measures and procedures designed to minimise such risk and to enable the competent authorities to exercise their powers effectively under that Directive [...]"*. Article L. 533-10 II 1° of the MFC stipulates, for its part, that ISPs [...] *shall establish rules and procedures enabling them to ensure compliance with the provisions applicable to them [...]*. Lastly, Articles 323-7 and 323-27 of the AMF GR stipulate that *"The depositary shall constantly have adequate resources [...], compliance and internal control systems, and organisational structures and procedures to conduct its business"*.

The depositaries must therefore establish a compliance system designed to constantly ensure compliance with their obligations when entering into a relationship with their client AMCs and during their monitoring. The AMCs being considered by the depositaries as clients are therefore subject to additional obligations, e.g. with regard to financial security.<sup>28</sup> However, the compliance system cannot be based on this type of monitoring without including sufficiently robust "second-level" checks on the topic analysed.

This review is not intended to present exhaustively the due diligence carried out for monitoring of AMCs that the staff were able to note during their work, and therefore excludes monitoring concerning the deposited funds and overall monitoring carried out on all clients. For each control, the inspection task force requested the results, the audit trails and any sequels regarding the last two operations. Insufficient coverage of the scope of operation by the second-level control was noted, with the formal expression of a regulatory infringement for four ISPs.

### 2.5.1. First-level controls

Firstly, it should be remembered that the controls performed by "Depositary Control" in compliance with the depositary control plan cannot replace controls performed by first-level permanent control. In other words, depositary control is an operational activity, which must itself undergo supervision. The inspection task force did not note such confusion in practice among the ISPs in the sample group.

While the ISPs in the sample group have established first-level controls covering the main risks suggested by the topic, their formal presentation appears insufficient in some cases.

Specifically, it was found that only three ISPs included these controls in a specific first-level control plan. For these ISPs, between three and 20 control points have been defined on the topic analysed. The verifications concern contractual coverage, Know Your Client, the control plan regarding AMCs and problem monitoring. In contrast, for the other two ISPs, this is rather an additional stage of validation of the actions taken by the Depositary Control personnel. Moreover, for two ISPs, the inspection task force noted that the first-level controls are not covered by a control sheet describing in detail the due diligence to be performed and are not traced in a dedicated document,

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<sup>28</sup> This means, in particular, due diligence established in order to comply with the requirements laid down regarding anti-money laundering and combating the financing of terrorism.

this traceability shortcoming being exacerbated by the absence of comments associated with the score assigned for one of the aforementioned ISPs. The absence of formal presentation of a control sheet describing the due diligence carried out by first-level control and the absence of definition of a score chart or else an explanation of the score assigned could constitute an infringement of the regulations, in light of Article 22 of Delegated Regulation (EU) 2017/565, Article L. 533-10 II 1° of the MFC and Articles 312-1, 323-7 and 323-27 of the AMF GR.

For four ISPs, the implementation of controls is devolved to the person in charge of the operational personnel. For two of them, a control unit belonging to the business line also takes part depending on the controls. For the fifth ISP, the controls are incumbent on a controller reporting to the depositary function.

The frequency of performance of the controls appeared variable depending on the control points. The two ISPs which do not centrally manage controls in a control plan carry out their verifications on an ongoing basis.

Regarding the results, two ISPs have defined a system for scoring the controls carried out by first-level permanent control. Accordingly, for three ISPs, it was noted that there was no definition of a precise scoring chart to evaluate the controls performed and no formal presentation of comments designed to explain the score assigned to them. One ISP draws up and records standardised and documented control reports in a dedicated tool. The reverse constitutes a poor practice for the other four ISPs. For another ISP, the results of the controls are presented in the form of risk indicators in a specific document.

**Regulatory reminder:**

- Compliance with Articles 312-1, 323-7 and 323-27 of the AMF GR, with Article 22 of Delegated Regulation (EU) 2017/565 and with Article L. 533-10 II 1° of the MFC implies the formal presentation of a control sheet describing the due diligence carried out by first-level control, the definition of a score chart and an explanation of the score assigned to the controls.

**Poor practice:**

- Not using a specific tool for the management of risks inherent in the business conducted in order to manage the control system, carry out controls and monitor the related actions so as to facilitate their supervision (four ISPs).

### 2.5.2. Second-level controls

Firstly, most ISPs in the sample group have identified extensively controls concerning the topic inspected, considering the due diligence relating to financial security, client protection, inducements and gifts, or again monitoring of the deposited funds. However, the AMF inspection task force confined its analysis to verifications related to the subject of this review.<sup>29</sup>

The entire sample group has established second-level controls. However, the inspection task force noted that these controls do not always cover the main risks suggested by the topic. The personnel in charge of performing them vary depending on the ISP. They may be employees reporting to Compliance, Risk, Permanent Control or Internal Control of the group to which the ISP belongs.

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<sup>29</sup> The number of controls corresponds to only those controls considered relevant by the inspection task force.

It was found that these controls are mostly performed at a frequency of once a year. It should be specified that one ISP performs certain controls every two years or does not comply with the annual frequency associated with other controls. **Observation of an insufficient frequency in performing second-level controls means that the ISP cannot constantly verify the compliance of its business, contrary to the provisions of Article 22 of Delegated Regulation (EU) 2017/565, Article L. 533-10 II 1° of the MFC and Articles 312-1, 323-7 and 323-27 of the AMF GR.** Each ISP has defined between one and eight control points on the topic analysed. However, the scope covered varies depending on the institution:

- One ISP has provided for no control on monitoring of the AMCs. The controls relating to entry into a relationship consist in particular of verifying or "re-doing" the verifications carried out on the first level. However, these controls, rolled out in 2020, cover a broad scope, because they concern all entries into a relationship with a new client and not merely AMCs;
- A second ISP reserved most of its controls for the topic of conflicts of interest, with its due diligence on entry into and monitoring of the relationship being limited to verification of the updating and deployment of the depositary control plan. This ISP considered that the opinion provided by Compliance when entering into a relationship constituted a "second-level" control. However, the inspection task force gave a reminder that this verification, not included in the dedicated control plan, corresponds only to the formal expression of a compliance opinion;
- A third ISP has provided only for an annual control related to the field of anti-money laundering, which included certain check points relating to entry into a relationship and monitoring of AMCs.<sup>30</sup> This ISP based its results on the pre-existing observations made during first-level controls;
- A fourth ISP, meanwhile, covers the subjects of entry into a relationship and monitoring; and
- A last ISP has not deployed a control relating to entry into a relationship, this circumstance being explained by the absence of a new relationship during the period under review.

**For the first three ISPs mentioned above, the second-level control system appeared insufficient with regard to the scope of the controls, contrary to Articles 312-1, 323-7 and 323-27 of the AMF GR, Article 22 of Delegated Regulation (EU) 2017/565 and Article L. 533-10 II 1° of the MFC.**

Concerning the conditions of performance of the controls, one of the ISPs in the sample group provides for no procedure or control sheet describing in detail the due diligence carried out by Compliance. **For this ISP, the second-level control system appeared insufficient with regard to its formal presentation and/or the methodology employed, contrary to the provisions mentioned above.**

All the ISPs in the sample group have defined a scoring system for the controls, with the definition of corrective measures above a scoring level. One of the ISPs confers a degree of priority to the corrective measures arising from the controls. These factors constitute a good practice. Also, two ISPs in the sample group enter the results of the controls in a dedicated tool. Moreover, the results of the controls were considered "unsatisfactory" by three ISPs in the sample group, which reflects the need to increase coverage of the scope analysed. For one of the aforementioned ISPs, which did not carry out an interview with all the client AMCs and had a low rate of updating of the questionnaires in 2019, an improvement in the arrangements for management of the risks of depositary control over the AMCs was noted in 2020. Lastly, the entire sample group has established reporting of results to the management bodies (circulation of a control note, monthly reports or committee meetings).

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<sup>30</sup> In particular, the handling of entries into a relationship in accordance with the dedicated procedure, the performance of an annual control on monitoring of AMCs and the existence of an on-site control on a sample.

**Regulatory reminders:**

- Compliance with Article 22 of Delegated Regulation (EU) 2017/565, with Article L. 533-10 II 1° of the MFC and with Articles 312-1, 323-7 and 323-27 of the AMF GR requires the definition of a sufficient frequency of performance of controls carried out by second-level permanent control to enable the ISP to verify constantly the compliance of its business.
- Compliance with the aforementioned articles requires the establishment of a sufficient second-level permanent control system with regard to the formal presentation and/or methodology employed and the scope of the controls.

**Good practice:**

- Providing for corrective measures for controls performed by second-level permanent control above a scoring level (five ISPs), according to a level of priority (one of the aforementioned ISPs).

**Annex 1 - List of documents requested of AMCs by the ISP when entering into a relationship and during monitoring<sup>31</sup>**

List of documents to be received	ISP A	ISP B	ISP C	ISP D	ISP E
Detailed organisation chart	X	X	X	X	X
Articles of association	X	X	X	X	X
"K-Bis" (company register)	X	X	X	X	X
Shareholders	-	X		X	X
List of ultimate beneficial owners	-	-	-	-	X
Authorisations or programme of operations	X	X	X	X	X
AMF authorisation letter					X
Annual control plan	X	X	X	X	X
Any business relationships with the ISP that could result in conflicts (management positions, etc.)	-	-	-	X	-
Composition of the management and supervisory bodies		X		X	
Managers' CV	X	X	X	X	X
Managers' national ID card	-	-	X	X	
Name of senior managers	-	X	-	-	-
Management report for the financial year	X	-	-	-	-
Recent annual financial statements incl. auditors' reports	X	X	X	X	X
CICO report	X	X	-	X	X
CICO's CV	-	X	-	-	-
Risk Manager's CV	-	X	-	-	-
Conflict of interest map	X	X	-	-	X
Code of Ethics	X	X	X	-	X
Extraction of annual disclosure sheets/annual control reports	-	X	X	-	X
AMC internal control report	-	-	X	-	-
List of existing procedures	-	X	X	-	X
FATCA status	-	-	X	-	X
List of authorised signatories (proxies)	-	-	X	-	-
List of contact details of the AMC's key personnel	-	-	X	-	-

<sup>31</sup> Note that a box has been checked when the deliverable is explicitly mentioned in the list of documents to be submitted when entering into a relationship. In other words, the absence of a check mark does not necessarily mean that the ISP does not collect the deliverable in question.

**Annex 2 - List of procedures requested of AMC's by the ISP when entering into a relationship and during monitoring<sup>32</sup>**

List of procedures to be received	ISP A	ISP B	ISP C	ISP D	ISP E
Conflict of interest management	X	X	X	X	X
Monitoring of delegates and service providers	X	X	-	X	-
Supervision of own funds	-	-	-	X	-
Anti-money laundering and combating the financing of terrorism	X	X	X	X	X
Business continuity plan	-	-	X	X	X
Compensation and inducements in the AMC	-	X	-	X	-
Risk management	X	-	X	X	-
Monitoring of CIU ratios	-	X	X	X	X
Valuation of CIU assets	-	-	X	X	-
Consistency check on valuation	-	X	-	-	-
Establishing and checking net asset value	-	X	-	X	X
Validation of net asset value with the accounting manager	-	X	X	-	-
Monitoring and control of the CIU's distributable amount/partial payments by the accounting manager	-	X	-	-	-
Liability control	-	X	-	X	-
Treatment of forced exchange rates	-	X	-	-	X
Escalation procedure and problem handling	-	X	X	-	X
Order execution (placing, pre-allocation, matching, etc.)	-	X	X	-	X
Supervision of order settlement and delivery	-	X	-	-	-
Pricing policy	X	X	-	-	-
Liquidity stress test arrangements	X	X	-	-	-
Voting rights	-	X	X	-	X
Market abuse	-	X	X	-	X
Selection of intermediaries and monitoring of best execution	-	X	-	-	X
Monitoring of personal transactions	-	X	X	-	X
Monitoring of orders concerned by late trading	-	X	X	-	X
Management of NAV incidents	-	X	-	-	X
Regulatory Watch	-	X	-	-	X
Reporting arrangements/procedure for major holding notifications	-	X	-	-	-
Copy of external certification if applicable (e.g. ISAE 34.02)	-	X	-	-	-
Delegation contracts if applicable (administrative management, internal control, accounting mngmt, etc.)	-	X	X	-	X
Copy of the agreement signed with the clearing house if applicable	-	X	-	-	-
Copy of the agreement signed with the prime broker if applicable	-	X	-	-	-
Copy of the agreement signed with the collateral manager if applicable	-	X	-	-	-
Copy of the agreement signed with the securities lending and borrowing dealer if applicable	-	X	-	-	-
Copy of the agreement signed with the loans administrator if applicable	-	X	-	-	-
Copy of the agreement signed with a third-party banker with which there are cash accounts	-	X	-	-	-
Data recording and retention	-	X	X	-	-
Investment fund acquisition procedure if applicable	-	X	-	-	-
Investment procedure	-	X	X	-	-
Procedure concerning the selection and evaluation of financial intermediaries	-	X	X	-	-
Procedure for updating the list of ISDA framework agreements and reporting to Depository (OTC products)	-	X	-	-	-
Asset disposal procedure, including transfers between funds of the same AMC	-	X	-	-	-
Procedure for complying with the min. and/or max. number of CIU unitholders/shareholders/associates	-	X	X	-	-
Procedure for complying with the minimum amount of assets of a CIU	-	X	X	-	-
Procedure for checking the eligibility of subscribers to CIUs reserved for certain investors	-	X	X	-	-
Procedure to ensure centralising authority compliance with prospectus subscription/redemption conditions	-	X	-	-	-
Procedure for monitoring funds having gates or swing pricing arrangements or any other arrangement designed to regulate funds' subscription and redemption transactions	-	X	-	-	-
Procedure for ensuring the liquidity of CIUs in the interest of the remaining unitholders/shareholders/associates in the event of massive redemptions	-	X	X	-	-
Procedure for reconciling and monitoring the number of units in circulation between the valuer, the issuer account-keeper and/or the custody account-keeper	-	X	X	-	-
Procedure for establishing clearance reconciliation and tracking statements	-	-	X	-	-
Procedure for monitoring and control of suspense accounts	-	X	X	-	-
Procedure for revision of the regulatory documentation of CIUs, and reporting to the depository	-	X	-	-	-
Procedure for the dissemination of information to unitholders/shareholders/associates	-	X	X	-	-
Procedure for monitoring the corporate life of FCPE funds	-	X	-	-	-
Procedure for monitoring leveraged CIUs	-	X	-	-	-
Procedure for calculating leverage	-	-	X	-	-
Procedure for monitoring the auditors' annual reports for CIUs for which reservations have been expressed	-	X	-	-	-
Procedure for monitoring the collateral given and/or received by the CIU	-	X	-	-	-
Procedure for investment with the inclusion of ESG criteria if applicable	-	X	X	-	-
Level-two control sheet/report on portfolio compliance in light of SRI eligibility criteria	-	X	-	-	-
Transparency Code for SRI funds open to the public if applicable	-	X	-	-	-
Shareholder engagement policy or statement	-	X	-	-	-
One or more non-financial report(s) sent to investors regularly	-	X	-	-	-
Procedure established for pre-allocation of orders	-	X	-	-	-
Procedure established for monitoring market timing practices (sensitivity of the net asset value to the booking of transactions)	-	X	X	-	-
Rental management procedure if applicable	-	X	-	-	-
Procedure for monitoring investment rules concerning quotas	-	-	X	-	-
Procedure for monitoring investment rules concerning calculation of total risk	-	-	X	-	-
Procedure for valuation of over-the-counter financial contracts	-	-	X	-	-
Specific appointment procedure for the outside appraiser's expert	-	-	X	-	-
Loan granting procedure if applicable	-	X	X	-	-
Procedure for informing the CICO	-	-	X	-	-

<sup>32</sup> Note that a box has been checked when the deliverable is explicitly mentioned in the list of documents to be submitted when entering into a relationship. In other words, the absence of a check mark does not necessarily mean that the ISP does not collect the deliverable in question.