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The European Commission publishes level 2 measures for UCITS V

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On 18 December 2015 the European Council published the European Commission's proposal for a Commission Delegated Regulation ("**proposed Delegated Regulation**") supplementing Directive 2009/65/EC with regard to obligations of depositaries. The long-awaited so-called level 2 measures for Directive 2014/91/EU of 23 July 2014 as regards depositary functions, remuneration policies and sanctions ("**Directive UCITS V**") will provide for the following:

- minimum requirements for the written agreement between the management company or the investment company and the depositary (Article 2);
- obligations on the depositary relating to oversight duties, cash monitoring, safekeeping duties, due diligence when selecting and appointing third parties, segregation and insolvency protection of UCITS assets (Articles 3 to 17);
- the conditions and circumstances in which financial instruments held in custody are considered to be lost and how the depositary can discharge its liability (Articles 18 and 19);
- independence requirements for management companies, investment companies and depositaries (Articles 20 to 24).

The European Parliament and the European Council each now have three months to review and provide their comments, if any, on the proposed Delegated Regulation. As a consequence, the UCITS depositary industry will be confronted with a certain period of legal uncertainty, *i.e.* a period during which Directive UCITS V (to be implemented by 18 March 2016) will be applicable while the necessary guidance by the proposed Delegated Regulation will still be subject to further comments by the European legislator. In addition, once final and published, the Commission Delegated Regulation will only apply after a six month period after the entry into force of the Regulation. In the meantime, the proposed Delegated Regulation is a very welcome document that will help the depositaries and the UCITS fund industry to prepare for the new regime.

The proposed Delegated Regulation in its English version may be [downloaded here](#).

We remain at your disposal for any further questions.

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