

Amendments to the Alternative Investment Fund Managers Directive (AIFMD) and to the Directive relating to undertakings for collective investment in transferable securities (UCITSD)

2021/0376(COD) - 25/11/2021 - Legislative proposal

PURPOSE : to amend the Alternative Investment Funds Manager Directive (AIFMD – Directive 2011/61/EU) and the Directive relating to undertakings for collective investment in transferable securities (UCITSD – Directive 2009/65/EC).

PROPOSED ACT: Directive of the European Parliament and of the Council.

ROLE OF THE EUROPEAN PARLIAMENT: the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with the Council.

BACKGROUND: the Alternative Investment Funds Manager Directive (AIFMD) was first adopted in 2011 to establish a regulatory framework covering the activities of the Alternative Investments Fund (AIF) sector. It was designed as part of the policy response to the global financial crisis with a view to increasing the regulation and supervision of the financial industry.

The Commission reviewed the application of the scope of the AIFMD and considered that a number of issues highlighted in the AIFMD review are equally relevant for the activities of UCITS. Consequently, this legislative proposal aims to address these issues by amending AIFMD and UCITSD to better align their requirements.

The proposals to amend the European investment fund legislation are in line with the Commission's plan for a CMU adopted on 24 September 2020. The aim of CMU is to enable capital to flow across the EU to the benefit of consumers, investors and companies, regardless of their location. The Covid-19 crisis has made it more urgent to deliver on CMU as market-based financing is essential for the European economy's recovery and the return to long-term growth.

While in principle the AIFMD framework works well, some targeted changes are needed to better integrate the market for alternative investment funds, ensure investor protection and better monitor risks to financial stability posed by Alternative Investment Funds.

The proposed legislative changes would support fund market integration.

CONTENT: this proposal seeks to review the Alternative Investment Fund Managers Directive (AIFMD) by **enhancing the efficiency and integration** of the Alternative Investment Funds market. It harmonises the rules related to funds that give loans to companies. In addition, the proposed amendments to AIFMD and UCITS Directive aim to better protect investor interests by ensuring that the investment fund managers, which delegate their functions to third parties, adhere to the same high standards applicable across the Union.

In particular, the proposal lays down the following measures:

Common rules on loan-originating funds

The proposal introduces common minimal rules regarding direct lending by alternative investment funds (AIFs) to companies. These rules will allow loan-originating funds to operate cross-border and ensure that they can be an alternative source of funding for companies in addition to bank lending. At the same time the proposed rules will address potential risks related to this type of lending.

Efficiency of reporting to the supervisory authorities

The proposal aims to improve access to relevant data collection for both national and EU authorities and remove inefficient reporting duplications that may exist under other pieces of the European and national legislation.

Harmonised Liquidity Management Tools (LMT)

Currently, the AIFMD and UCITSD do not provide for a minimum harmonised set of LMTs. The proposal harmonises the set of liquidity management tools to better facilitate liquidity risk management by managers of open-ended alternative investment funds, in line with recommendations by the European Systemic Risk Board (ESRB) and the European Securities and Markets Authority (ESMA).

Improved availability of depositaries in concentrated markets

The proposal aims to address the lack of a competitive supply of depositary services in concentrated markets by enabling competent authorities to permit AIFMs or AIFs to procure depositary services located in other Member States. Opening up the possibility to appoint a depositary in another Member State should be accompanied by increased supervision.

Smooth functioning of the custody chain

The Central Securities Depositaries appearing in the custody chain will be regarded as delegates of the depositary. This enables the depositaries to obtain the necessary information on portfolio movements and to perform their oversight duties where the fund's assets are kept by a Central Securities Depositary.

Ensuring the protection of investor interests in case of delegation

The proposal provides improved clarity on the rules on delegation and ensures that fund managers adhere to high standards applicable across the EU when they make use of delegation. The proposal seeks to achieve a coherent approach to delegation activities by European investment fund managers and supervisors.

In order to develop a reliable overview of the delegation activities in the EU, the European Securities and Markets Authority (ESMA) will receive data on delegation and conduct peer reviews.