

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

2021/0376(COD) - 07/02/2024 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 576 votes to 40, with 19 abstentions, a legislative resolution on the proposal for a directive of the European Parliament and of the Council amending Directives 2011/61/EU and 2009/65/EC as regards delegation arrangements, liquidity risk management, supervisory reporting, provision of depositary and custody services and loan origination by alternative investment funds.

As a reminder, the proposed Directive reviews the alternative investment fund managers directive (AIFMD), which governs managers of hedge funds, private equity funds, private debt funds, real estate funds and other alternative investment funds in the Union. It also modernises the rules in the framework for undertakings for collective investment in transferable securities (UCITS),

Parliament's position adopted at first reading under the ordinary legislative procedure should amend the proposal as follows:

The main changes are aimed at: (i) improving the integration of asset management markets in Europe and modernising the framework governing key regulatory aspects; (ii) improving the availability of EU framework liquidity management tools for funds providing loans; (iii) strengthening the rules applicable to delegation by portfolio managers to third parties.

The changes include the following aspects:

- the amended Directive clarifies that AIFMs and UCITS management companies are allowed to perform for the benefit of third parties the same functions and activities that they already perform in relation to the AIFs and UCITS they manage, provided that any potential conflict of interest created by the provision of that function or activity to third parties is appropriately managed;
- an AIFM should provide the competent authorities with information about the human and technical resources that it employs to carry out its functions and, where applicable, to supervise its delegates. At least two natural persons who, on a full-time basis, either are employed by the AIFM or are executive members or members of the governing body of the AIFM, and who are domiciled, in the sense of having their habitual residence, in the Union, should be appointed to conduct the business of the AIFM;
- AIFMs managing AIFs marketed to retail investors and UCITS management companies and investment companies should be encouraged to appoint as a member of their governing body or management body at least one independent or non-executive director, where possible under national law or under the industry standards of the home Member State of the AIFM, UCITS management company or investment company, in order to protect the interests of the AIFs and UCITS and of the investors in the AIFs that the AIFM manages or in the UCITS;
- AIFMs should regularly provide competent authorities with information on delegation arrangements which involve the delegation of collective or discretionary portfolio management functions or of risk management functions. AIFMs should therefore, in respect of each AIF they manage, report information

on the delegates, a list and description of the delegated activities, the amount and percentage of the assets of the managed AIFs that are subject to delegation arrangements concerning the portfolio management function, a description of how the AIFM oversees, monitors and controls the delegate, information on the sub-delegation arrangements and the date of commencement and expiry of the delegation and sub-delegation arrangements;

- Directive 2011/61/EU should recognise the right of AIFs to originate loans. It is necessary to address the potential micro-prudential and macro-prudential risks that loan origination by AIFs could pose and spread to the broader financial system. The rules applicable to AIFMs managing AIFs which originate loans should be harmonised to improve risk management across the financial market and increase transparency for investors;

- for overriding reasons of public interest, Member States should be able to prohibit loan origination by AIFs to consumers in their territory;

- AIFMs that manage AIFs that engage in loan origination, regardless of whether those AIFs meet the definition of loan-originating AIFs, should have effective policies, procedures and processes for the granting of loans. They should also implement effective policies, procedures and processes for assessing credit risk and administering and monitoring their credit portfolio where the AIFs that they manage engage in loan origination, including where those AIFs gain exposure to loans through third parties;

- to ensure the stability and integrity of the financial system and to introduce proportionate safeguards, loan-originating AIFs should be subject to a leverage limit that varies depending on whether they are of an open-ended or closed-ended type. It should however be possible for loan-originating AIFs to operate as open-ended provided that certain requirements are fulfilled, including a liquidity management system that minimises liquidity mismatches, ensures the fair treatment of investors and is under the supervision of the competent authorities of the home Member State of the AIFM;

- to avert moral hazard and maintain the general credit quality of loans originated by AIFs, such loans should be subject to risk retention requirements when transferred to third parties;

- to enable AIFMs of open-ended AIFs established in any Member State to deal with redemption pressures under stressed market conditions, AIFMs should be required to select and include in the AIF rules or instruments of incorporation at least two liquidity management tools from the harmonised list set out in Directive 2011/61/EU. Those liquidity management tools should be appropriate to the investment strategy, the liquidity profile and the redemption policy of the AIF. AIFMs should activate such liquidity management tools where necessary to safeguard the interests of the AIF's investors;

- to strengthen investor protection, it should be specified that the use of redemption in kind is not suitable for retail investors and should therefore only be activated to meet redemption requests of professional investors;

- management companies should regularly provide competent authorities with information on delegation arrangements which involve the delegation of collective or discretionary portfolio management functions or of risk management functions;

- Member States should therefore require AIFMs and UCITS management companies to act honestly and fairly as regards the fees and costs charged to investors.