

Alternative Investment Fund Managers

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OPINION OF THE EUROPEAN CENTRAL BANK on a proposal for a Directive of the European Parliament and of the Council on Alternative Investment Fund Managers and amending Directives 2004/39/EC and 2009/.../EC.

The ECB supports the intention to provide a harmonised regulatory and supervisory framework for the activities of alternative investment fund managers (AIFMs) in the European Union. It urges the Commission of the European Communities to continue the dialogue with its international partners, in particular the United States, to ensure a globally coherent regulatory and supervisory framework.

The ECB makes the following remarks:

- all central banks should be expressly excluded from the scope of the proposed directive;
- except for the AIFM's management of its own assets, requirements under the proposed directive should be coherently applied to AIFMs, credit institutions and insurance companies;
- the proposed directive does not specify 'fit and proper' criteria and minimum experience requirements for an AIFM's senior managers and executives. For level playing field reasons, the ECB suggests inserting provisions to this effect in the proposed directive;
- certain provisions in the proposed directive (for example, those related to short selling, securitisation and the acquisition of a controlling influence in companies) are intended to regulate horizontal issues that concern all market participants, and not just AIFMs. The ECB would suggest considering instead introducing such provisions only by means of legislation that maintains the level playing field among various market participants, for instance by inserting such provisions in existing EU legislation applicable across sectors;
- the ECB suggests that an in-depth analysis should be undertaken in order to focus reporting obligations on data that can reasonably be expected to be relevant for monitoring financial stability, to ensure the consistency of data reporting obligations with the legal framework that will establish the European Systemic Risk Board (ESRB) and the European System of Financial Supervisors (ESFS), and to enable these bodies to obtain supervisory information necessary and appropriate to fulfil their respective tasks. While the focused reporting obligations that result from this analysis should be reflected in the proposed directive, further specification would also be possible through comitology;
- due consideration could also be given to aligning certain requirements to report to the competent authorities with those of Regulation ECB/2007/8 of 27 July 2007 concerning statistics on the assets and liabilities of investment funds. Alignment with these reporting requirements and the use of a standardised reporting template for all AIFs covered by the proposed directive would contribute to EU-wide systemic risk assessment;
- the definition of 'leverage' under the proposed directive does not, however, include specific leverage ratio concepts. The ECB is concerned that, without additional clarifications inserted into the text of the proposed directive, it may be difficult to implement the proposed definition. The ECB expects that the ESRB and the ESFS will be consulted on implementing measures to be adopted in this area, including on possible measures refining the concept of 'leverage';
- the ECB acknowledges that leverage can create important risks for financial stability. Owing to their investment flexibility, AIFMs can play an important role in supporting financial market liquidity, thereby contributing to effective financial market functioning and price discovery. Maintaining this role calls for balanced and appropriately risk-adjusted leverage limits applicable to AIFs that take their full risk profile into account while not excessively hindering their investment flexibility.

