











Procedure file

Basic information	
<p>COD - Ordinary legislative procedure (ex-codecision procedure) 2021/0376(COD) Directive</p>	Procedure completed
<p>Amendments to the Alternative Investment Fund Managers Directive (AIFMD) and to the Directive relating to undertakings for collective investment in transferable securities (UCITS)</p> <p>Amending Directive 2009/65 2008/0153(COD) Amending Directive 2011/61 2009/0064(COD)</p> <p>Subject 2.50.03 Securities and financial markets, stock exchange, CIUTS, investments 2.50.08 Financial services, financial reporting and auditing 2.50.10 Financial supervision</p> <p>Legislative priorities Joint Declaration 2022 Joint Declaration 2021 Joint Declaration 2023-24</p>	

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	<p> Economic and Monetary Affairs</p>	<p> BENJUMEA BENJUMEA Isabel</p> <p>Shadow rapporteur</p> <p> TANG Paul</p> <p> KELLEHER Billy</p> <p> PEKSA Mikuláš</p> <p> JURZYCA Eugen</p> <p> BECK Gunnar</p> <p> GUSMÃO José</p>	02/12/2021
Council of the European Union	Committee for opinion	Rapporteur for opinion	Appointed
	<p> Legal Affairs</p>	The committee decided not to give an opinion.	

Key events

25/11/2021	Legislative proposal published	COM(2021)0721	Summary
14/02/2022	Committee referral announced in Parliament, 1st reading		
24/01/2023	Vote in committee, 1st reading		
24/01/2023	Committee decision to open interinstitutional negotiations with report adopted in committee		
02/02/2023	Committee report tabled for plenary, 1st reading	A9-0020/2023	Summary
13/02/2023	Committee decision to enter into interinstitutional negotiations announced in plenary (Rule 71)		
15/02/2023	Committee decision to enter into interinstitutional negotiations confirmed by plenary (Rule 71)		
28/11/2023	Approval in committee of the text agreed at 1st reading interinstitutional negotiations	PE756.128 GEDA/A/(2023)006457	
06/02/2024	Debate in Parliament		
07/02/2024	Results of vote in Parliament		
07/02/2024	Decision by Parliament, 1st reading	T9-0064/2024	Summary
26/02/2024	Act adopted by Council after Parliament's 1st reading		
13/03/2024	Final act signed		
26/03/2024	Final act published in Official Journal		

Technical information

Procedure reference	2021/0376(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Directive
	Amending Directive 2009/65 2008/0153(COD) Amending Directive 2011/61 2009/0064(COD)
Legal basis	Treaty on the Functioning of the EU TFEU 053-p1
Other legal basis	Rules of Procedure EP 159
Stage reached in procedure	Procedure completed
Committee dossier	ECON/9/07807

Documentation gateway

Legislative proposal	COM(2021)0721	25/11/2021	EC	Summary
Document attached to the procedure	SEC(2021)0570	25/11/2021	EC	
Document attached to the procedure	SWD(2021)0340	25/11/2021	EC	
Document attached to the procedure	SWD(2021)0341	25/11/2021	EC	
Committee draft report	PE732.549	16/05/2022	EP	
Amendments tabled in committee	PE732.892	04/07/2022	EP	
Amendments tabled in committee	PE734.353	04/07/2022	EP	
European Central Bank: opinion, guideline, report	CON/2022/0026 OJ C 379 03.10.2022, p. 0001	03/10/2022	ECB	
Committee report tabled for plenary, 1st reading/single reading	A9-0020/2023	02/02/2023	EP	Summary
Coreper letter confirming interinstitutional agreement	GEDA/A/(2023)006457	09/11/2023	CSL	
Text agreed during interinstitutional negotiations	PE756.128	09/11/2023	EP	
Text adopted by Parliament, 1st reading/single reading	T9-0064/2024	07/02/2024	EP	Summary
Draft final act	00067/2023/LEX	13/03/2024	CSL	
Commission response to text adopted in plenary	SP(2024)196	30/04/2024	EC	

Additional information

Research document	Briefing	20/06/2022
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Final act

Directive 2024/927 OJ OJ L 26.03.2024
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Amendments to the Alternative Investment Fund Managers Directive (AIFMD) and to the Directive relating to undertakings for collective investment in transferable securities (UCITSD)

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 Commissions 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 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.

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

The Committee on Economic and Monetary Affairs adopted the report by Isabel BENJUMEA BENJUMEA (EPP, ES) 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.

The committee responsible recommended that the European Parliament's position adopted at first reading under the ordinary legislative procedure should amend the proposal as follows:

Concept of professional investor

Members include the definition of professional investor to mean an investor which is considered to be a professional client or may, on request, be treated as a professional client within the meaning of Annex II to Directive 2014/65/EC.

Application for authorisation

The report proposed that Member States should require that alternative investment fund managers applying for an authorisation should provide additional information relating to the AIFM to the competent authorities of its home Member State such as, inter alia:

- the legal name and relevant legal identifier of the AIFM, the AIF and its investment strategy as well as of each delegate, its jurisdiction of establishment and, where relevant, its supervisory authority;
- a brief description of the delegated risk and portfolio management functions, including whether each such delegation amounts to a partial or full delegation;

An AIFM should report to the competent authority any material changes that may affect the scope of the authorisation by that authority and in particular any modification on the arrangements of the delegation and sub-delegation to third parties provided at the time of authorisation.

AIFs marketed to retail investors

Members added the obligation for an AIFM managing an AIF marketed to retail investors to ensure that at least one member of its governing body is a non-executive director who is independent in character and judgment and has sufficient expertise and experience to be able to make judgments on whether the AIFM is managing AIFs in the best interest of investors. Such a non-executive director should contribute to ensuring that the AIFM complies with the requirements regarding conflicts of interests and acting in the best interests of the AIFs and their investors.

Conflicts of interest

Where an AIFM intends to manage an AIF on behalf of a third-party, including but not limited to under a mandate or under a delegation, and where the third-party is to have significant control over the AIFs design, distribution and management, the AIFM should employ heightened scrutiny of the potential for conflicts of interest. AIFMs engaging in such a relationship should submit detailed explanations and evidence to the competent authorities of their home Member State. In particular, they should specify how they prevent systematic conflicts of interest or any other material conflicts of interest arising from the relationship, how any existing or potential conflicts are effectively managed in the best interest of investors and how this is clearly and comprehensively disclosed to investors.

Undue costs

For the purpose of fair treatment amongst investors, the report states that ESMA should submit a report to the Parliament and the Council (i) assessing the costs charged by AIFMs to investors in UCITS, and the reasons for costs levels and differences between them, (ii) proposing criteria for assessing whether the level of such costs is appropriate, in particular when compared to the level of costs in other jurisdictions worldwide; (ii) proposing, if needed, options for action by competent authorities or by legislators in respect of inappropriate or undue levels of such costs. Such a report should be submitted 18 months following the entry into force of the directive.

Risk management

Members provide that AIFMs managing loan origination AIFs but also AIFs acquiring loans should have effective policies, procedures and processes for assessing credit risk and administering and monitoring their credit portfolios, except if such loans are shareholder loans that do not exceed in aggregate 150% of the capital of the AIF.

EU depositary

The home Member State of an AIF may entitle its national competent authorities to allow, following a case-by-case assessment, institutions and established in another Member State to be appointed as a depositary, provided that the following conditions are fulfilled:

- the competent authorities must have received a motivated request by the AIFM which should demonstrate the lack of the relevant depositary services able to meet the needs of the AIF having regard to its operational strategy; and
- the national depositary market of the home Member State of the AIF should fulfil at least one of the following conditions: (i) such market consists of fewer than 7 depositaries providing depositary services to EU AIFs and managed by an EU AIFMs and where no depositary has AIF assets under custody which exceed EUR 1 billion or the equivalent in any other currency (such threshold shall excluded depositaries; or (ii) the aggregate amount in such market of assets safekept on behalf of EU AIFs and managed by an EU AIFMs does not exceed the amount of EUR 60 billion or the equivalent in any other currency.

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

The Committee on Economic and Monetary Affairs adopted the report by Isabel BENJUMEA BENJUMEA (EPP, ES) 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.

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Application for authorisation

The report proposed that Member States should require that alternative investment fund managers applying for an authorisation should provide additional information relating to the AIFM to the competent authorities of its home Member State such as, inter alia:

- the legal name and relevant legal identifier of the AIFM, the AIF and its investment strategy as well as of each delegate, its jurisdiction of establishment and, where relevant, its supervisory authority;
- a brief description of the delegated risk and portfolio management functions, including whether each such delegation amounts to a partial or full delegation;

An AIFM should report to the competent authority any material changes that may affect the scope of the authorisation by that authority and in particular any modification on the arrangements of the delegation and sub-delegation to third parties provided at the time of authorisation.

AIFs marketed to retail investors

Members added the obligation for an AIFM managing an AIF marketed to retail investors to ensure that at least one member of its governing body is a non-executive director who is independent in character and judgment and has sufficient expertise and experience to be able to make judgments on whether the AIFM is managing AIFs in the best interest of investors. Such a non-executive director should contribute to ensuring that the AIFM complies with the requirements regarding conflicts of interests and acting in the best interests of the AIFs and their investors.

Conflicts of interest

Where an AIFM intends to manage an AIF on behalf of a third-party, including but not limited to under a mandate or under a delegation, and where the third-party is to have significant control over the AIF's design, distribution and management, the AIFM should employ heightened scrutiny of the potential for conflicts of interest. AIFMs engaging in such a relationship should submit detailed explanations and evidence to the competent authorities of their home Member State. In particular, they should specify how they prevent systematic conflicts of interest or any

other material conflicts of interest arising from the relationship, how any existing or potential conflicts are effectively managed in the best interest of investors and how this is clearly and comprehensively disclosed to investors.

Undue costs

For the purpose of fair treatment amongst investors, the report states that ESMA should submit a report to the Parliament and the Council (i) assessing the costs charged by AIFMs to investors in UCITS, and the reasons for costs levels and differences between them, (ii) proposing criteria for assessing whether the level of such costs is appropriate, in particular when compared to the level of costs in other jurisdictions worldwide; (ii) proposing, if needed, options for action by competent authorities or by legislators in respect of inappropriate or undue levels of such costs. Such a report should be submitted 18 months following the entry into force of the directive.

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The home Member State of an AIF may entitle its national competent authorities to allow, following a case-by-case assessment, institutions and established in another Member State to be appointed as a depositary, provided that the following conditions are fulfilled:

- the competent authorities must have received a motivated request by the AIFM which should demonstrate the lack of the relevant depositary services able to meet the needs of the AIF having regard to its operational strategy; and
- the national depositary market of the home Member State of the AIF should fulfil at least one of the following conditions: (i) such market consists of fewer than 7 depositaries providing depositary services to EU AIFs and managed by an EU AIFMs and where no depositary has AIF assets under custody which exceed EUR 1 billion or the equivalent in any other currency (such threshold shall excluded depositaries; or (ii) the aggregate amount in such market of assets safekept on behalf of EU AIFs and managed by an EU AIFMs does not exceed the amount of EUR 60 billion or the equivalent in any other currency.

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

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 (AIFM), 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 AIFs 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.

Transparency				
BENJUMEA BENJUMEA Isabel	Rapporteur	ECON	16/05/2023	Permanent Representation of France
BENJUMEA BENJUMEA Isabel	Rapporteur	ECON	05/05/2023	AIMA
BENJUMEA BENJUMEA Isabel	Rapporteur	ECON	03/05/2023	CNMV
BENJUMEA BENJUMEA Isabel	Rapporteur	ECON	27/04/2023	DG Fisma
BENJUMEA BENJUMEA Isabel	Rapporteur	ECON	24/04/2023	Invesco Management SA
BENJUMEA BENJUMEA Isabel	Rapporteur	ECON	21/04/2023	ICI Global
BENJUMEA BENJUMEA Isabel	Rapporteur	ECON	20/04/2023	Two Sigma Investments, LP
BENJUMEA BENJUMEA Isabel	Rapporteur	ECON	03/04/2023	CNMV
KELLEHER Billy	Shadow rapporteur	ECON	28/02/2023	Irish Funds Industry Association CLG
BENJUMEA BENJUMEA Isabel	Rapporteur	ECON	31/01/2023	Permanent Representation of Sweden to the EU
ANGEL Marc	Member	17/05/2022	Hume Brophy Two Sigma Investments, LP	
ANGEL Marc	Member	26/04/2022	Association Luxembourgeoise des Fonds d'Investissement	

