

Draft Proposals for AIFMD: ECON Committee, ECOFIN, European Commission

The European Commission proposed a Directive on Alternative Investment Fund Managers (AIFMD) in April 2009. The original objectives of introducing the proposal were:

- To allow regulators to identify and tackle problems associated with perceived systemic risk emanating from the activities of Alternative Investment Fund Managers (AIFMs).
- To provide more protection to investors in AIFs (Alternative Investment Funds).

The European Parliament's Economic and Monetary Affairs Committee (ECON Committee) and the Economic and Financial Affairs Council (ECOFIN – composed of the economics and finance ministers of the member states) voted on 17 and 18 May 2010 on their respective drafts of the AIFM Directive.

The two drafts have many common points but they also have some key issues that remain to be settled. This will be negotiated in “trilogies” to occur between the Commission, the Parliament and the Council in order to agree on the final version of AIFM Directive.

Timeline: AIFMD key dates

Date	Action
30 April 2009	Commission's proposal transmitted to Council
19 October 2009	ECB delivered opinion on proposal
23 November 2009	Draft Report released by the ECON Committee
11 March 2010	Examined by Working Party on Financial Services: deadlock on scope and optional exemptions, depositories, 3 rd country issues
28 April 2010	Legal Affairs Committee (JURI) voted. There appears to be potential divergence between ECON and JURI on several issues.
17 May 2010	ECON Committee votes
18 May 2010	Meeting of finance ministers
June 2010	Planned vote by entire parliament on AIFMD
July 2010	Final adoption by Plenary
2012	Implementation

The ICFR has prepared a comparative table, based on a variety of news sources and documents published online, to look at similarities and differences between the three proposals (Commission, ECON Committee and ECOFIN). Our aim is to provide a useful overview of the direction of negotiations.

Comparison of key provisions being proposed in AIFMD by Commission, ECON Committee and ECOFIN

Commission	ECON Committee (Parliament)	ECOFIN (Council of the EU)
<u>Third Country Issues</u>		
<p>System based on equivalence: In order to qualify for an EU wide passport third country's legal systems must be in line with the system set out in the AIFMD.</p> <p>BUT, third country fund managers would have to wait for a period of 3 years before being able to obtain an EU wide passport.</p>	<p>Different approach from Commission.</p> <p>Third country fund managers would have to comply with directive's requirements to be able to market funds in the EU.</p> <p>Third country financial supervisors would be required to act as agents to European Securities and Markets Authority (ESMA) in the supervision of that manager.</p> <p>Third country funds would be allowed to market in the EU under the condition that their home country standards are efficient enough to tackle issues such as money laundering and terrorist financing, in addition to being able to host EU funds in their own territory. Sharing of information relating to</p>	<p>Deletion of equivalence regime.</p> <p>Disagreement with the idea of a single license / EU wide-passport for third country funds to carry out business in the EU.</p> <p>Third country fund managers would be able to market funds in the EU on the condition that there is sufficient information for both authorities and investors.</p>

	taxation and monitoring of activities of AIFs has to be agreed on between third country and Member States in which marketing is to take place.	
<u>Authorisation</u>		
AIFMs are required to get authorisation from Member States` authorities (where their head office is based). Once this authorisation process is approved, this then applies to all EU countries.	As per Gauzès Report (2009): If a manager is authorised under the UCITS directive, then this directly implies that the manager will be authorised under the AIFM directive, conditional upon complying with any additional requirements for the new authorisation with AIFMD.	Same as Commission`s proposal: Fund managers would be required to obtain authorisation from their home authority, after which the authorisation will apply to all EU states.
<u>Exemptions</u>		
Exemptions would be provided to the following: AIFMs with assets under management below EUR 100 million (if they use leverage) or with assets under management below EUR 500 million (if they don`t use leverage) would be exempted from the directive. AIFMs domiciled in the EU but which only manage AIFs not marketed in the EU. UCITS, credit institutions, certain pension funds, insurance companies, and supranational institutions such as World Bank, International Monetary Fund and European Central Bank.	There is no “one-size-fits-all” approach - different levels of regulation are applied to different types of funds. Exemptions will be provided to the following: Private equity funds and AIFMs regarded as non-systemically important will be able to avoid part of the implementation of AIFMD. Banks and pension funds investing their own money will avoid AIFMD in full.	Exemptions would be provided to the following: AIFMs with assets under management below EUR 100 million (if they use leverage) or with assets under management below EUR 500 million (if they don`t use leverage) would be exempted from the directive. However, minimum registration and reporting requirements would still apply.

<u>Leverage</u>		
<p>The use of a leverage cap for AIFM.</p> <p>With a further aim to create an additional leverage cap in exceptional circumstances.</p>	<p>AIFMs should be given the authority to set leverage caps for the funds that they manage.</p> <p>National authorities would be required to monitor these limits and ensure they are risk efficient and suitable.</p> <p>ESMA would be given the authority to correct these limits if necessary.</p>	<p>The authority to set leverage limits would be limited to “competent” authorities who would ensure the overall stability of the financial system.</p> <p>AIFMs would be required to set leverage limits and also disclose aggregate leverage and main sources of leverage.</p>
<u>Disclosure to Regulators</u>		
<p>AIFMs will be required to report to the relevant authorities on aspects such as markets and instruments in which they trade, exposures, performance data and the level of risk.</p>	<p>AIFMs will have to report on aggregate leverage, fees charged and the amounts paid to the AIFM. In addition to this AIFMs will also have to provide performance data of the AIF including the valuation of assets.</p> <p>Additional reporting may have to be provided to ESMA in exceptional circumstances.</p>	<p>AIFMs will be required to regularly report on markets and instruments in which basis the principal markets and instruments in which they trade, exposures and the level of risk.</p>

Sources:

- Commission`s proposal for AIFMD:
[http://www.europarl.europa.eu/meetdocs/2009_2014/documents/com/com_com\(2009\)0207_/com_com\(2009\)0207_en.pdf](http://www.europarl.europa.eu/meetdocs/2009_2014/documents/com/com_com(2009)0207_/com_com(2009)0207_en.pdf)
- Article from Europa NU: http://www.europa-nu.nl/id/vifaa0igu7z1/nieuws/leden_van_het_europees_parlement_vragen?ctx=vhsjd8w6pdvc&s0e=vhdubxdwqrzw
- ECOFIN statement on AIFMD:
http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ecofin/114493.pdf
- Sharon Bowles MEP (2009); AIFM Working Paper
- ECON Committee, Gauzès Report:
http://www.europarl.europa.eu/meetdocs/2009_2014/documents/econ/pr/796/796533/796533en.pdf

Below is a list of additional issues still under discussion:

Supervisory Powers:

- What responsibility in supervising hedge funds should European Securities and Markets Authority (ESMA)¹ have? Given that the new supervisory architecture has not passed yet, what role should there be for ESMA and European Systemic Risk Board (ESRB)? To what extent will key decisions be left to be resolved unilaterally by the Commission after the Directive has passed? Are we going to witness a shift of decision-making and supervisory powers of nationally based funds to the European level?

Third Country Issues:

- Will EU-based investors be able to invest in funds outside the EU which do not comply with the new rules? What are the exact conditions under which non-EU funds can market to investors within the EU? What impact might this have on funds investing in the emerging markets?

Remuneration Rules:

- There is still uncertainty regarding the remuneration rules. Are these rules going to be guidelines or more detailed constraints?

Leverage:

- Should there be an EU-wide leverage cap? Who should set such a cap: Commission, ESMA or ESRB?

Information and Reporting Requirements:

- In addition to AIFM having to report regularly to competent authorities, new rules would also require AIFM to inform investors on the performance of the AIF they manage. How often should reports be published and what exactly should be included? Revealing too much information with a potential for the others to see what the strategies of the specific AIFMs are can have adverse effects on the AIFs' bottom-line.

¹ ESMA is part of a newly proposed supervisory architecture framework in the EU.

Useful Links:

- Commission`s proposal for AIFMD:
[http://www.europarl.europa.eu/meetdocs/2009_2014/documents/com/com_com\(2009\)0207_/com_com\(2009\)0207_en.pdf](http://www.europarl.europa.eu/meetdocs/2009_2014/documents/com/com_com(2009)0207_/com_com(2009)0207_en.pdf)
- Article summarising ECON Committee`s conclusions: http://www.europa-nu.nl/id/vifaa0igu7z1/nieuws/leden_van_het_europees_parlement_vragen?ctx=vhsjd8w6pdvc&s0e=vhdubxdwqrzw
- ECOFIN statement on AIFM Directive:
http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ecofin/114493.pdf
- Working document on the proposal for AIFMD, ECON Committee:
http://www.europarl.europa.eu/meetdocs/2009_2014/documents/econ/dt/791/791043/791043en.pdf
- Speech by Dan Waters, FSA:
http://www.fsa.gov.uk/pages/Library/Communication/Speeches/2010/0225_dw.shtml
- ECON Committee, Gauzès Report:
http://www.europarl.europa.eu/meetdocs/2009_2014/documents/econ/pr/796/796533/796533en.pdf