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REGULATORY SCRUTINY BOARD OPINION

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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EUROPEAN COMMISSION
Regulatory Scrutiny Board

Brussels,
RSB

Opinion

Title: Impact assessment / Alternative Investment Fund Managers – review of EU rules

Overall opinion: POSITIVE

(A) Policy context

The 2011 Directive on the Alternative Investment Fund Managers (AIFMD) covers the forms of investment funds not covered by the Directive on collective investment in transferable securities. These include hedge funds, private equity funds, real estate funds and a wide range of other types of institutional funds. The Directive's objective is to develop this part of the capital market by providing market stability and investor protection. It aims to mitigate systemic risks as well as strengthen high-level investor protection and market integration.

The AIFMD contains a review clause that mandates the Commission to assess the scope and functioning of this legal framework. The review concludes that the AIFMD has largely met its objectives but highlights specific areas of regulatory gaps and room for targeted improvements, which is the subject of this impact assessment.

(B) Summary of findings

The Board notes the useful additional information provided in advance of the meeting and commitments to make changes to the report.

The Board gives a positive opinion. The Board also considers that the report should further improve with respect to the following aspects:

(1) The report does not sufficiently explain the magnitude and the specificities of the problem, especially the systemic risks posed by loan originating funds and the problems evolving from fragmented existing national regulations.

(2) The report does not explore all relevant alternative options in a coherent manner. It is not clear why it only considers one option for loan originating funds, while alternative measures seem possible.

(C) What to improve

(1) The report should provide clearer explanations of the problems. In particular, it should

This opinion concerns a draft impact assessment which may differ from the final version.

provide evidence of the potential systemic risks posed by the growth of loan originating funds. It should explain the problems related to the existing fragmented national rules. It should also provide evidence of the problems related to limited supply of depository services in concentrated markets. It should explain why ‘smaller markets’ are not defined in the report. It should more clearly present the relative importance of the different problems.

(2) The report does not sufficiently explore all available options, in particular regarding the harmonisation for the requirements for loan originating funds. The rationale behind all credible alternative measures should be presented and it should be better explained why one option is preferred over another.

(3) The impact analysis should discuss the respective effects of harmonisation and risk-reduction measures. It should particularly clarify the impact on the financing cost for SMEs.

(4) The report should further elaborate the areas with simplification potential and provide quantification, where possible. It should consider the data gaps and include further monitoring metrics to ensure that data is available in the future.

The Board notes the estimated costs and benefits of the preferred option(s) in this initiative, as summarised in the attached quantification tables.

Some more technical comments have been sent directly to the author DG.

(D) Conclusion

The DG may proceed with the initiative.

The DG must take these recommendations into account before launching the interservice consultation.

Full title	Proposal for a Directive amending Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers
Reference number	PLAN/2019/6271
Submitted to RSB on	18/06/2021
Date of RSB meeting	14/07/2021

ANNEX – Quantification tables extracted from the draft impact assessment report

The following tables contain information on the costs and benefits of the initiative on which the Board has given its opinion, as presented above.

If the draft report has been revised in line with the Board's recommendations, the content of these tables may be different from those in the final version of the impact assessment report, as published by the Commission.

I. Overview of Benefits (total for all provisions) – Preferred Option		
Description	***Amount***	***Comments***
Direct benefits		
Increased availability of capital finance for SMEs across the Union.	No estimate available.	Funds will be able to provide loan origination services across the Union providing additional sources of finance for the real economy and SMEs, particularly those that may not be able to access traditional lending.
Loan originating funds can act as a shock absorber at times of market stress	No estimate available.	LOFs can continue to lend during times of market stress and liquidity shortages supporting the real economy when traditional lenders may be unable to do so. More stringent requirements around lending and portfolio management will mitigate risks that LOFs could pose to broader systemic stability.
AIFMs in smaller markets able to source depositary services across the border	Reducing costs for the depositaries: no need to take out another licence (a new depository licence costs between € 6,000 – € 9,200 depending on a Member State) and saving on annual supervisory fees (between € 4,400 – € 9,400 depending on a Member State). No estimate available as to the fees that could be saved by the AIFM.	The benefits for the depositaries are tangible in terms of cost savings. The AIFMs will benefit from a wider choice of service providers and more effective service provision (accessing packaged services). More competition is likely to bring the depositary services down in the Member States, which will permit sourcing depositary services
Clarifying delegation requirements and ESMA collecting information on a full delegation of investment or risk management to the third country entities.	No estimate available.	Investors would be better protected by the Union rules more clearly imposing minimum substance requirements for AIFMs and UCITS managers delegating their functions to third parties Legal certainty and level playing field for AIF and UCITS managers when they delegate functions to third parties.

		Policy makers will be better equipped to take future decisions in relation to delegation regime by having a more information on the practical use of delegation by t fund managers.
Harmonising the availability of LMTs across the Union and requiring the managers of open-ended funds chose at least one LMT that could be activated in times of stress.	Cost indication for changing contractual and pre-contractual documents, prospectuses in particular, could be up to € 40 000 per product/service. However, because of regulatory changes or other reasons, these documents are normally revised at least every year anyway.	Managers will be better equipped to deal with liquidity pressures in times of stress. Investor interests will be better protected by preserving investment value in times of stress.
More granular reporting of data on AIFs and UCITS.	No cost impact before the next step.	In line with the supervisory data strategy preparing the ground for supervisor access of more granular data for market monitoring.
Indirect benefits		
Loan originating funds able to scale-up and market cross-border	No estimate available.	The ability of loan originating funds to scale up and operate on a cross border basis will increase the availability of finance for SMEs and other commercial entities in Europe particularly in MS where this activity is not currently authorised.
AIFMs in smaller markets able to source depositary services across the border	No estimate available.	Better access and more competitive pricing of depositary services may facilitate growth of the smaller investment fund markets.
CSDs subject to the AIFMD and UCITSD rules when they hold in custody funds' assets, whereas ex-ante due diligence requirements for the depositary are waved	No estimate available.	Investor would be better protected as with the information flow from the CSDs to the depositaries the latter will be able to carry out their oversight duties properly.

(1) Estimates are relative to the baseline for the preferred option as a whole (i.e. the impact of individual actions/obligations of the preferred option are aggregated together); (2) Please indicate which stakeholder group is the main recipient of the benefit in the comment section;(3) For reductions in regulatory costs, please describe details as to how the saving arises (e.g. reductions in compliance costs, administrative costs, regulatory charges, enforcement costs, etc.; see section 6 of the attached guidance).

II. Overview of costs – Preferred option			
	Investors	Fund Managers	Supervisory Authorities

		One-off	Recurrent	One-off	Recurrent	One-off	Recurrent
AIFMs managing LOF	Direct costs	No cost impact	No cost impact	No cost impact	Increased compliance costs due to additional requirements for loan origination, reporting and disclosure	No cost impact	May incur additional costs related to additional reporting requirements.
	Indirect costs	No cost impact	No cost impact	No cost impact	May allow funds to scale up faster and provide loan origination across the Union. Increased availability of sources of finance for SMEs	No cost impact	No cost impact
Facilitating cross-border sourcing of depositary services	Direct costs	No cost impact	No cost impact	No cost impact	Reduced cost of accessing depositary services	No cost impact	May incur additional supervisory costs related to cross border provision of services
	Indirect costs	No cost impact	No cost impact	No cost impact	May allow funds to scale up faster and provide loan origination across the Union. Increased availability of sources of finance for SMEs	No cost impact	No cost impact
	Direct costs	No cost impact	No cost impact	No cost impact	Reduced cost of	No cost impact	No cost impact

Harmonising availability of LMTs					accessing depositary services		
	Indirect costs	No cost impact	No cost impact	No cost impact	No cost impact	No cost impact	No cost impact
More granular reporting	Direct costs	No cost impact	No cost impact	No cost impact	May lead to a slight increase in administration costs to provide more detailed reporting	No cost impact	May incur additional costs to receive and process additional reporting data
	Indirect costs	No cost impact	No cost impact	No cost impact	No cost impact	No cost impact	No cost impact
Delegation	Direct costs	No cost impact	No cost impact	No cost impact	Some fund managers may have to adjust their organisational structure or delegation arrangements to comply	No cost impact	No cost impact
	Indirect costs	No cost impact	Some funds may increase fees due to costs from additional substance reqs	No cost impact	No cost impact	No cost impact	No cost impact

(1) Estimates to be provided with respect to the baseline; (2) costs are provided for each identifiable action/obligation of the preferred option otherwise for all retained options when no preferred option is specified; (3) If relevant and available, please present information on costs according to the standard typology of costs (compliance costs, regulatory charges, hassle costs, administrative costs, enforcement costs, indirect costs; see section 6 of the attached guidance).