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COMMISSION STAFF WORKING DOCUMENT
EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT REPORT

Accompanying 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

{COM(2021) 721 final} - {SEC(2021) 570 final} - {SWD(2021) 340 final}

Executive Summary Sheet

Impact assessment on 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 and Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on undertakings for collective investment in transferable securities

A. Need for action

Why? What is the problem being addressed?

Based on the conclusions of the Commission report and on stakeholder feedback from the public consultation on the functioning of the AIFMD, the Directive has had a mostly positive impact in creating an internal market for AIFs, allowing more effective supervisory oversight and transparency of fund activities and thus improving investor protection. At the same time, the report and consultation highlighted a number of areas where targeted improvements could be made to further improve the Directive's effectiveness and address areas where supervisory authorities differ in their interpretations of the legal text. Monitoring and managing the risks to financial stability could be improved, in particular, in relation to new developments in or in some cases underdevelopment of Europe's AIF market, including direct lending by investment funds. Finally, where investment managers outsource their functions to third parties, national interpretation and application of AIFMD and UCITSD delegation rules differ, thus raising concerns about investor protection in the European Union. These gaps may lead to spillover risks to the broader financial system but also limit the ability of supervisory authorities to identify and mitigate emerging risks to the financial system.

What is this initiative expected to achieve?

This initiative's main objective is to improve the effectiveness and legal functioning of the AIFMD in line with its primary objectives of investor protection, reducing the risks posed by AIFs to overall financial stability and furthering AIF market integration.

What is the value added of action at the EU level?

The objectives of the AIFMD to improve the market integration of AIFs, ensure overall financial stability and uniform investor protection rules cannot be achieved by the Member States individually. These market-wide effects can only be achieved by taking measures at EU level. In accordance with the principles of subsidiarity and proportionality, the AIFMD does not go beyond what is necessary to achieve its objectives, as set forth when the AIFMD was first introduced.

B. Solutions

What legislative and non-legislative policy options have been considered? Is there a preferred choice or not? Why?

To achieve the objectives mentioned above, this initiative explores a range of policy options and identifies preferred choices in the following areas: (i) introduce harmonised rules for AIFMs managing funds active in the direct lending space (LOFs); (ii) improve the supply of depositary services in smaller markets; (iii) clarify further the requirements for fund managers delegating certain functions to third parties; (iv) improve the level of data gathered through regulatory reporting; (v) harmonise the availability of liquidity management tools (LMTs) across the Union; and (vi) include central securities depositories (CSDs) in the custody chain to ensure that depositaries can fulfil their duties and safeguard the protection of investors.

Theoretically, the European Securities and Markets Authority (ESMA) could have been asked to continue supervisory convergence. However, it was realised that deliberations in this respect have been exhausted without sufficient progress and that common standards having normative force are needed.

Who supports which option?

*Many public authorities in the EU are in favour of harmonising **requirements for LOFs**. The majority of the public authorities responding to the public consultation supported the proposition to clarify **AIFMD and UCITSD delegation rules**. There is broad support among private and public sector stakeholders to harmonise **LMTs**. The majority of the stakeholders (approximately 70%) and ESMA, in its opinion, support bringing **CSDs** into the custody chain. In their response to the public consultation, public authorities from Member States with smaller depositary markets said they supported the retained option to empower NCAs to permit sourcing **depositary services** across the border. A majority of stakeholders would prefer an incremental approach to potential*

changes to the **supervisory reporting requirements** for AIFMs and UCITS.

C. Impacts of the preferred option

What are the benefits of the preferred option (if any, otherwise main ones)? Maximum 12 lines

The proposal is designed to introduce targeted amendments to address the issues highlighted in the evaluation of making the AIFMD legal framework more efficient and effective. A harmonised regulatory framework for AIFMs managing loan-originating funds will allow these funds to operate in new markets and scale up in size, providing the real economy with a source of alternative financing. Greater access to LMTs and NCAs that can activate a more nuanced LMT will improve financial stability and protect investors. With more comprehensive regulatory reporting data, it will be possible to better monitor the build-up of risk in the system. The options for cross-border access of depositary services and levelling the playing field for LOFs are designed to increase supply and competition in this area and make the EU AIF market more efficient. Further clarifying the rules on delegation will ensure that investors are protected against the potential abuse of delegation arrangements. Bringing CSDs into the custody chain would ensure a high level of investor protection that depositaries are meant to safeguard.

What are the costs of the preferred option (if any, otherwise main ones)?

The proposal should not have significant economic, social or environmental costs. It should not lead to AIFMs incurring significant additional operating costs, and some of the measures may lead to cost reductions through increased competition and efficiencies. Any additional costs will be outweighed by the benefits to investor protection and overall financial stability.

How will businesses, SMEs and micro-enterprises be affected?

The proposal should benefit businesses, including SMEs, by harmonising the requirements for AIFMs managing loan-originating AIFs. This will allow these funds to originate credit across the European Union, providing a much needed source of alternative financing for SMEs, particularly SMEs that may find it difficult or costly to secure credit from traditional lenders.

Will there be significant impacts on national budgets and administrations?

No significant impact on national budgets and administrations is expected until the second phase of the revision of supervisory reporting requirements.

Will there be other significant impacts?

This review will not have any negative economic, environmental or social impact nor will it have any negative impact on fundamental rights. A liberated ability by AIFs to provide credit in a sustainable manner would increase available funding for the real economy and in particular for SMEs, which often struggle to secure credit from the banks. A vibrant, yet orderly, private debt market will be key in advancing the European Union's transition to a more sustainable future.

D. Follow up

When will the policy be reviewed?

It would be appropriate to start reviewing the AIFMD in 5 years after the amendments to the legal framework enter into force. The review should analyse the functioning of the LOF market and its risks to financial stability and the functioning of the depositary market, and it should identify delegation practices. It would have to be analysed whether introducing a broader range of LMTs and increasing the granularity of data contributed to the stability of the financial system.