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THE EUROPEAN UNION**

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NOTE

from:	Presidency
to:	Delegations
Subject:	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 - Compromise proposals by the Presidency

Delegations will find attached compromise proposals by the Presidency with regard to the above-mentioned Commission proposal. Changes compared to the Commission proposal are indicated in track changes.

Encl.:

2009/0064 (COD)

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/~~...~~65/EC**

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 47(2) thereof,

[...]

Whereas:

[...]

- (3) Recent difficulties in financial markets have underlined that many AIFM strategies are vulnerable to some or several important risks in relation to investors, other market participants and markets. In order to provide comprehensive and common arrangements for supervision, it is necessary to establish a framework capable of addressing those risks taking into account the diverse range of investment strategies and techniques employed by AIFM. Consequently, this Directive should apply to AIFM managing ~~and marketing~~ all types of funds which are not covered by Directive 2009/.../65/EC on the coordination of laws, regulations and administrative provisions relating to the undertakings for collective investment in transferable securities (UCITS) (recast)⁹, irrespective of the legal or contractual manner in which the AIFM is entrusted with this responsibility. AIFM should not be entitled to manage UCITS within the meaning of Directive 2009/.../65/EC on the basis of authorisation under this Directive.

[...]

- (5) The scope of this Directive should be confined to the management of ~~collective investment undertakings~~ AIF of both the open-ended and the closed-ended type, irrespective of their legal form, whether self-managed or not and whether listed or not, which raise capital from a number of investors, with a view to investing it in a portfolio of assets in accordance with a defined investment policy for the benefit of those investors.

⁹ OJ L [...], [...], p. [...].

- (5a) This Directive should not apply to managers of non-pooled investments such as endowments and sovereign wealth funds, to the management of portfolios of investments in accordance with mandates given by investors on a discretionary, client-by-client basis nor to any other form of individual portfolio management. Nor should this Directive apply to managers insofar as they manage AIF whose only investors are their parent undertakings, their subsidiaries or other subsidiaries of their parent undertaking and where these investors are not themselves AIF. This Directive should furthermore not apply to the management of pension funds, or managers of non-pooled investments such as endowments, sovereign wealth funds or assets held on own account by credit institutions, insurance or reinsurance undertakings to central banks or national, regional and local governments and public bodies which manage funds supporting social security and public pension systems nor to securitisation vehicles. This Directive should neither apply to actively managed investments in the form of securities, such as certificates, managed futures, or index-linked bonds. It should, however, cover managers of all collective investment undertakings which are not required to be authorised as UCITS. Investment firms authorised under Directive 2004/39/EC on Markets in Financial Instruments¹⁰ should not be required to obtain an authorisation under this Directive in order to provide investment services in respect of AIF. Investment firms can however only provide investment services in respect of AIF, if and to the extent the units or shares thereof can be marketed in accordance with this Directive.
- (5b) When a management company authorised under Directive 2009/65/EC decides to also manage AIF which fall under this Directive, the competent authorities should, before granting an authorisation, verify that it complies with all the relevant provisions of this Directive.

¹⁰ OJ L 145, 30.4.2004, p. 1.

(5c) Investment firms authorised under Directive 2004/39/EC on Markets in Financial Instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC¹⁰ should not be required to obtain an authorisation under this Directive in order to provide investment services in respect of AIF.

[...]

- (7) This Directive aims at providing a harmonised and stringent regulatory and supervisory framework for the activities of AIFM. Authorisation in accordance with this Directive should cover the ~~services of management and administration~~ of AIF throughout the Community. ~~In addition, a~~ Authorised AIFM should be entitled to market AIF in the Community to professional investors, subject to a notification procedure.
- (8) This Directive does not regulate AIF. AIF may therefore continue to be regulated and supervised at the national level. ~~and~~ The Directive therefore does not prevent Member States from adopting or from continuing to apply ~~additional~~ national requirements in respect of AIF established on their territory. The fact that a Member State may impose additional requirements on AIF ~~domiciled~~ established on its territory compared to requirements applicable in other Member States should not prevent the exercise of rights of AIFM authorised in other Member States in accordance with this Directive to market to professional investors AIF ~~domiciled~~ established outside the Member State imposing additional requirements and which are therefore not subject to and do not need to comply with those additional requirements.

¹⁰ OJ L 145, 30.4.2004, p. 1.

- (9) Member States may allow the marketing of all or certain types of AIF managed by AIFM to retail investors on their territory. Without prejudice to the application of other instruments of Community law, Member States may in such cases impose stricter requirements for the marketing of AIF to retail investors than what is the case for marketing to professional investors on their territory, irrespective of whether AIF are marketed on a domestic or cross-border basis. Where a Member State allows the marketing of AIF to retail investors on its territory, this possibility should be available regardless of the Member State where the AIFM is established, and Member States may not impose stricter requirements for such marketing on a cross-border basis than for AIF marketed domestically. Investment firms authorised in accordance with Directive 2004/39/EC which provide investment services to retail clients have to take into account any additional requirements when assessing whether a certain AIF is suitable or appropriate for an individual retail client or whether it is a complex or non-complex financial instrument. Without prejudice to the application of other instruments of Community law, Member States may impose stricter requirements on AIFM whenever AIFM market an AIF solely to retail investors or whenever AIFM market the same AIF both to professional and retail investors, irrespective of whether units or shares of this AIF are marketed on a domestic or cross-border basis. These two exceptions enable Member States to impose additional safeguards which they deem necessary for the protection of retail investors. This takes account of the fact that AIF are often illiquid and subject to high risk of substantial capital loss. Investment strategies in relation to AIF are generally not adapted to the investment profile or needs of retail investors. They are more suitable for professional investors and investors having a sufficiently large investment portfolio so as to be able to absorb the higher risks of loss associated with these investments. Nevertheless, Member States may allow the marketing of all or certain types of AIF managed by AIFM to retail investors on their territory. Against the background of paragraphs 4 and 5 of Article 19 of Directive 2004/39/EC, Member States should continue to ensure that appropriate provision is made whenever they permit the marketing of AIF to retail investors.

~~Investment firms authorised in accordance with Directive 2004/39/EC which provide investment services to retail clients have to take into account these additional safeguards when assessing whether a certain AIF is suitable or appropriate for an individual retail client. Where a Member State allows the marketing of AIF to retail investors on its territory, this possibility should be available regardless of the Member State where the AIFM is established, and any additional provisions should apply on a non-discriminatory basis.~~

~~(10) In order to ensure a high level of protection of clients of investment firms within the meaning of Directive 2004/39/EC, AIF should not be considered as non-complex financial instruments for the purposes of that Directive. That Directive should therefore be amended accordingly.~~

[...]

HAVE ADOPTED THIS DIRECTIVE:

Chapter I

General provisions

Article 1

Subject matter

This Directive lays down the rules for the authorisation, ongoing operation and transparency of the managers of alternative investment funds (AIFM) established in the Community.

Article 2

Scope

1. This Directive shall apply to all AIFM established in the Community, which ~~provide management services to~~manage one or more alternative investment funds (AIF) irrespective of:
 - (a) whether the AIF is ~~domiciled~~established inside or outside of the Community;
 - (b) whether the AIFM provides its ~~services~~manages AIF directly or by delegation;
 - (c) whether the AIF belongs to the open-ended or closed-ended type;
 - (c1) whether the AIF is constituted under the law of contract or under trust law (managed by an external AIFM), under statute (managed either by an internal or external AIFM, at the choice of the AIF's governing body) or has any other legal form;
 - (d) the legal structure ~~of the AIF and~~ of the AIFM.

An AIFM authorised in accordance with this Directive ~~to provide management services to~~manage one or more AIF is also entitled to market shares or units of these AIF to professional investors in the Community subject to the conditions laid down in Chapter VI [and, where relevant, Article 35].

- [1b. The following provisions shall not apply to AIFM in respect of AIF they manage which are neither established nor marketed in the Community;
 - Chapter III, excluding Articles [14, 15 and 18];
 - Chapter IV, excluding Articles [21];
 - Chapter V, excluding Article [25];
 - Chapter VI.]

Article 2a

Exemptions

~~21.~~ This Directive shall not apply to any of the following:

- (a) AIFM which either directly or indirectly through a company with which the AIFM is linked by common management or control, or by a substantive direct or indirect holding, manage portfolios of AIF whose assets under management, including any assets acquired through use of leverage, in total do not exceed a threshold of EUR 100 million ~~Euro~~ or EUR 500 millions ~~euros~~ when the portfolio of AIF consists of AIF that are not leveraged and ~~with~~have no redemption rights exercisable during a period of 5 years following the date of constitution of each AIF;]
- (ba) AIFM insofar as they manage one or more AIF whose only investors are the parent undertakings or the subsidiaries of the AIFM or other subsidiaries of those parent undertakings, provided that none of those investors itself is an AIF;
- ~~(c) UCITS or their management or investment companies authorised in accordance with Directive 2009/.../EC [the UCITS Directive];~~
- ~~(d) credit institutions which are covered by Directive 2006/48/EC of the European Parliament and the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions (recast);~~
- (e) institutions which are covered by Directive 2003/41/EC of the European Parliament and the Council of 3 June 2003 on the activities and supervision of institutions for occupational retirement provision¹³;

¹³ OJ L 235, 23.9.2003, p. 10.

~~(f) institutions which are covered by the First Council Directive 73/239/EEC of 24 July 1973 on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance¹⁴, Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance¹⁵ and Directive 2005/68/EC of the European Parliament and Council of 16 November 2005 on reinsurance and amending Council Directives 73/239/EEC, 92/49/EEC as well as Directives 98/78/EC and 2002/83/EC¹⁶;~~

(g) supranational institutions, such as the World Bank, the IMF, the ECB, the EIB, the EIF, other supranational institutions and similar international organisations, ~~in case such institutions or organisations manage one or several AIFs;~~

(h) central banks;

(i) national, regional and local governments and public bodies which manage funds supporting social security and public pension systems;

(j) securitisation special purpose entities.

[~~32.~~ Member States shall ensure that AIFM not reaching the relevant threshold set out in paragraph ~~12~~(a) are entitled to be treated as AIFM falling under the scope of this Directive.]

[~~43.~~ The Commission shall adopt implementing measures with a view to clarifying~~determining~~:

(a) how to treat AIFM referred to in paragraph 1(a) whose assets under management including any assets acquired through use of leverage, in one and the same calendar year occasionally exceed and/or fall below the relevant threshold;

¹⁴ OJ L 228, 16.8.1973, p. 3.

¹⁵ OJ L 345, 19.12.2002, p. 1.

¹⁶ OJ L 323, 9.12.2005, p. 1.

(b) the determining the procedures under which AIFM managing portfolios of AIF whose assets under management do not exceed the threshold set out in paragraph 12(a) may exercise their right under paragraph 23.

Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 49(3).]

Article 3

Definitions

1. For the purpose of this Directive, the following definitions shall apply:

(a) ‘Alternative investment fund’ or AIF means any collective investment undertaking, including investment compartments thereof, ~~whose object is the~~

(i) which collective investment in assets raises capital from a number of investors, with a view to investing it in a portfolio of assets in accordance with a defined investment policy for the benefit of those investors; and

(ii) which does not require authorisation pursuant to Article 5 of Directive 2009/...65/EC [the UCITS Directive];

(b) ‘~~M~~anager of alternative investment funds-’ or AIFM means any legal ~~or natural~~ person whose ~~regular business is to~~ responsible for the management of one or several AIF;

[...]

~~(d) — ‘management services means the activities of managing and administering one or more AIF on behalf of one or more investors;~~

[...]

(z) 'Securitisation special purpose entity' means an entity whose sole purpose is to carry on a securitisation or securitisations within the meaning of Article 4(36) to (38) of Directive 2006/48/EC of the European Parliament and the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions (recast) and other activities which are appropriate to accomplish that purpose.

2. For the purposes of point (b) of paragraph 1, the management of an AIF shall include the functions, where relevant, referred to in the Annex.

Chapter II

AUTHORISATION OF AIFM

Article 4

Requirement for authorisation

1. Member States shall ~~ensure~~require that no AIFM covered by this Directive ~~provides management services to any AIF or markets shares or units thereof without prior authorisation~~manages AIF unless it has been authorised in accordance with this Directive.

[Entities which are neither authorised in accordance with this Directive nor, in case of AIFM not covered by this Directive, in accordance with the national law of a Member State, shall not be allowed to ~~provide management services to AIF or market shares or units or shares thereof within the Community.~~

2. ~~Member States may authorise AIFM~~ ~~may be authorised to provide management services~~ manage either for all or certain types of AIF.

~~An AIFM may hold an authorisation pursuant to this Directive and be authorised as a management or investment company pursuant to Directive 2009/.../EC [UCITS Directive]~~

Chapter VI

Provision of management and marketing services by AIFM

[...]

Article 32

Option for Member States to allow the marketing of AIF to retail investors

1. ~~Without prejudice to other instruments of Community law,~~ Member States may allow the marketing of AIF to retail investors ~~in~~ on their territory, irrespective of whether AIF are marketed on a domestic or cross-border basis.

In such cases, Member States may ~~for that purpose~~ impose stricter requirements ~~on AIFM~~ for the marketing of AIF or the AIF than the requirements applicable to the marketing of AIF to professional investors on their territory. However, Member States may not impose stricter requirements on AIF marketed on a cross-border basis than for AIF marketed domestically.

2. This Article shall not apply to the marketing of shares or units of AIF that are subject to a current offer to the public under a prospectus that has been drawn up and published in accordance with Directive 2003/71/EC.

~~32.~~ Member States that permit the marketing of AIF to retail investors on their territory under paragraph 1 of this Article, shall, within one year of the date referred to in Article 54(1) inform the Commission of:

- (a) the types of AIF which AIFM may market to retail investors on their territory;
- (b) any additional requirements that the Member State imposes for the marketing of AIF to retail investors on their territory.

Member States shall also inform the Commission of any subsequent changes with regard to the first subparagraph.

Chapter IX

Transitional and final provisions

[...]

Article 52

Amendment of Directive 2004/39/EC

The following indent is added in Article 19(6) of Directive 2004/39/EC:

~~"the service does not relate to an AIF within the meaning of Article 3(a) of [Directive xx/xx/EC]".~~

Proposal for a

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on Alternative Investment Fund Managers and amending Directives ~~2004/39/EC~~ and ~~2009/...65/EC~~

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,
Having regard to the Treaty establishing the European Community, and in particular Article 47(2) thereof,

[...]

Whereas:

[...]

- (11) It is necessary to provide for the application of minimum capital requirements to ensure the continuity and the regularity of the management of AIF services provided by the AIFM. ~~The ongoing capital requirements should cover the potential exposure of AIFM to professional liability in respect of all their activities, including management services provided under delegation or on the basis of a mandate.~~ [If the AIFM solely manages AIF which, according to their investment strategy and objectives, make investments and divestments solely on a non-frequent basis, are not leveraged and have no redemption rights exercisable during a period of 5 years following the date of constitution of each AIF, the capital requirements should be reduced.]

[...]

HAVE ADOPTED THIS DIRECTIVE:

Chapter I

General provisions

[...]

Article 3

Definitions

For the purpose of this Directive, the following definitions shall apply:

[...]

(x) ‘Initial capital’ means the funds as referred to in points (a) and (b) of Article 57 of Directive 2006/48/EC;

(y) ‘Own funds’ means own funds as referred to in Title V, Chapter 2, Section 1 of Directive 2006/48/EC;

[...]

Chapter II

AUTHORISATION OF AIFM

[...]

Article 6

Conditions for granting the authorisation

[...]

(a) the AIFM has sufficient initial capital in accordance with the requirements in Article [14/6a]:

[...]

[...]

Chapter III

Operating conditions for AIFM

SECTION 01: GENERAL PRINCIPLES

[Article 8a]

[Ongoing requirements]

[1. The competent authorities of the AIFM home Member State shall require that the AIFM which they have authorised complies with the provisions of this Directive on an ongoing basis.]

[The own funds of an AIFM shall not fall below the level specified in Article [6a/14]. If they do, however, the competent authorities may, where the circumstances so justify, allow such AIFM a limited period in which to rectify their situations or cease their activities.]

[2. ...]

SECTION 1: CONDUCT OF BUSINESS

Article 9

General principles

1. Member States shall ~~ensure~~require that AIFM may ~~provide their management services~~AIF and market shares or units of AIF they manage within the Community only if they comply with the provisions of this Directive ~~on an ongoing basis~~.

The AIFM shall:

[...]

[...]

[SECTION 2: CAPITAL REQUIREMENTS]

Article [~~6a~~/14]

Initial capital and own funds~~ongoing capital~~

1. Member States shall require that an AIFM shall ~~have~~ an initial capital~~own funds~~ of at least EUR 125 000, taking into account the following:-

(a) ~~When~~Where the value of the portfolios of AIF managed by the AIFM exceeds EUR 250 million, the AIFM shall must be required to provide an additional amount of own funds; ~~that additional amount of own funds shall be~~ which is equal to 0.02 % of the amount by which the value of the portfolios of the AIFM exceeds EUR 250 million but the required total of the initial capital and the additional amount must not, however, exceed EUR 10 million:-

~~Irrespective of the amount of the requirements set out in the first and second subparagraphs, the own funds of the AIFM shall never be less than the amount required under Article 21 of Directive 2006/49/EC of the European Parliament and of the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions (recast)¹:~~

~~(b) For the purposes of point (a) the first, second and third subparagraphs the following portfolios shall be deemed to be the portfolios of the AIFM:~~

~~(a) any AIF portfolios managed by the AIFM, including AIF for which the AIFM has delegated one or more functions in accordance with Article 18;~~

~~(b) but excluding any AIF portfolios that the AIFM is managing under delegation, shall be deemed to be the portfolios of the AIFM:-~~

~~(c) irrespective of the amount of those requirements, the own funds of the AIFM shall never be less than the amount required under Article 21 of Directive 2006/49/EC of the European Parliament and of the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions (recast)².~~

~~2. Member States may authorise AIFM not to provide up to 50 % of the additional amount of own funds referred to in point (a) of paragraph 1 if they benefit from a guarantee of the same amount given by a credit institution or an insurance undertaking which has its registered office in a Member State, or in a third country where it is subject to prudential rules considered by the competent authorities as equivalent to those laid down in Community law.~~

~~[3. Paragraphs 1 and 2 shall not apply to AIFM managing solely AIF which:~~

~~(a) are not leveraged;~~

¹ OJ L 177, 30.6.2006, p. 201.

² OJ L 177, 30.6.2006, p. 201.

(b) have no redemption rights exercisable during a period of 5 years following the date of constitution of each AIF; and

(c) which, according to their investment strategy and objectives, make investments and divestments solely on a non-frequent basis.]

Member States shall require that an AIFM which fulfils the conditions of the first subparagraph has an initial capital of at least EUR [50 000/60 000].

4. This Article shall not apply to management companies authorised under Directive 2009/65/EC which also manage AIF.

Chapter IX

Transitional and final provisions

[...]

Article 53

Amendment of Directive 2009/...65/EC¹

Directive 2009/65XX /EC shall be amended as follows:

[1. at the end of Article 7(1) the following paragraph shall be inserted:

‘For the purposes of point (a) of the first subparagraph, Member states may authorise a management company which is also an AIFM within the meaning of Directive [...] of the European parliament and of the council on Alternative Investment Fund Managers and amending Directives 2004/39/EC and 2009/65/EC, not to include in the calculation of the additional amount of own funds referred to in point (i) of point (a) of the first subparagraph AIF that fulfil the criteria of the first subparagraph of Article[6a/14](3) of Directive [...] managed by the management company.]

¹ OJ L , , p. .

[2.]The following new Article 50a shall be inserted:

[...]

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THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 47(2) thereof,

[...]

Whereas:

[...]

- (13) Reliable and objective asset valuation is crucial for the protection of investor interests. Different AIFM employ different methodologies and systems for valuing assets, depending on the assets and markets in which they predominantly invest. It is appropriate to recognise these differences but to, nevertheless, require the ~~valuation of assets to be undertaken by an entity which is independent of the AIFM~~ to implement procedures ensuring the use of appropriate valuation models which in turn would result in proper valuation of assets of the AIF.

[...]

HAVE ADOPTED THIS DIRECTIVE:

Chapter I

General provisions

[...]

Article 3

Definitions

1. For the purpose of this Directive, the following definitions shall apply:

[...]

~~(e) — ‘Valuator’ means any legal or natural person or company valuing the assets or establishing the value of the shares or units of an AIF;~~

[...]

SECTION 3: ORGANISATIONAL REQUIREMENTS

[...]

Article 16

Valuation

1. The AIFM shall ensure that, for each AIF that it manages, a valuator is appointed which is independent of the AIFM to establish the value of assets acquired by the AIF and the value of the shares and units of the AIF appropriate and consistent procedures for the proper valuation of the assets and shares or units of AIF are established.

- 1a. The AIFM shall, where appropriate, ensure the functional independence of the valuation function and the portfolio management function in view of the nature, scale and complexity of each AIF that it manages.
- 1b. The ~~valuator~~ valuation procedures used shall ensure that the assets, and shares and/or units are valued at least once a year or, and where relevant, each time shares or units of the AIF are issued or redeemed if this is more frequent, unless the value of the assets held by the AIF is stable enough that this more frequent valuation is unnecessary.
- ~~2. When an external valuator is used AIFM shall ensure that the valuator has appropriate and consistent procedures to value the assets of the AIF in accordance with existing applicable valuation standards and rules, in order to reflect the net asset value of the shares or units of the AIF. Article 18 paragraph 1 (c) and (d) and paragraph 2 shall apply.~~
- 2a. Notwithstanding paragraph 2, when an external valuator is not used, the competent authorities of the home Member State may require the AIFM to have its valuation procedures and/or valuations verified by an external valuator or, where appropriate, an auditor.
3. The rules applicable to the valuation of assets and the calculation of the net asset value per share or unit ~~or share~~ of the AIF shall be laid down in the law of the country where the AIF is ~~domiciled~~ established or in the AIF rules or instruments of incorporation.
4. The Commission shall adopt implementing measures further specifying the criteria ~~under which a valuator can be considered independent in the meaning of paragraph 1~~ concerning the procedures for the proper valuation of the assets and shares or units of AIF.

Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 49(3).

Chapter VII

Specific rules in relation to third countries

[...]

Article 37

Valuator established in a third country

- ~~1. Member States shall only allow the appointment of a valuator established in a third country, provided that all of the following conditions are met:
 - ~~(a) the requirements set out in Article 16 are fulfilled;~~
 - ~~(b) the third country is the subject of a decision taken pursuant to paragraph 3 stating that the valuation standards and rules used by valuers established on its territory are equivalent to those applicable in the Community.~~~~
- ~~2. The Commission shall adopt implementing measures specifying the criteria for assessing the equivalence of the valuation standards and rules of third countries as referred to in paragraph (1) (b).

Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 49(3).~~
- ~~3. On the basis of the criteria referred to in paragraph 2, the Commission shall, in accordance with the procedure referred to in Article 49(2), adopt implementing measures, stating that the valuation standards and rules of a third country legislation are equivalent to those applicable in the Community.~~

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2009/~~...~~65/EC**

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 47(2) thereof,

[...]

Whereas:

[...]

- (14) AIFM may delegate ~~responsibility~~ for the performance of its functions in accordance with this Directive. AIFM should however not be able to delegate their functions to the extent that they become a letter-box entity. AIFM should remain responsible for the proper performance of their functions and compliance with the rules set out in this Directive. The functions of an AIFM are listed in the Annex. All functions may not be applicable for all kinds of AIFM. For example, a closed-ended AIF does not redeem shares (or units).

[...]

(20) It is appropriate to allow the AIFM to delegate ~~administrative tasks~~ the performance of its functions to an entity established in a third country in accordance with this Directive. AIFM should remain responsible for the proper performance of their functions and compliance with the rules set out in this Directive provided that necessary safeguards are in place. [...] ~~Under certain conditions, it should also be possible for the AIFM to appoint an independent valuator established in a third country.~~

[...]

HAVE ADOPTED THIS DIRECTIVE:

Chapter I

General provisions

[...]

Article 3

Definitions

1. For the purpose of this Directive, the following definitions shall apply:

[...]

(b) 'manager of alternative investment funds' or AIFM means any legal ~~or natural~~ person who is responsible for the overall management of one or several AIF ~~whose regular business is to manage one or several AIF;~~

[...]

(d) ~~'management services' means the activities of managing and administering one or more AIF on behalf of one or more investors;~~

[...]

2. For the purposes of point (b) of paragraph 1, the management of an AIF shall include the functions, where relevant, referred to in the Annex.

SECTION 4: DELEGATION OF AIFM FUNCTIONS

Article 18

Delegation

1. AIFM which intend to delegate to third parties the task of carrying out on their behalf one or more of their own ~~portfolio or risk management~~ functions must notify ~~shall request prior authorisation from the competent authorities of the home Member State.~~ the competent authorities of the home Member State.

The following conditions have to be complied with:

- (a) the third party must be creditworthy and the persons who effectively conduct the business must be of sufficiently good repute and sufficiently experienced;
- (b) where the delegation concerns the portfolio management or the risk management, the ~~mandate third party~~ must also be given only to undertakings which are authorised or registered for the purpose of asset management and subject to prudential supervision ~~also be authorised as an AIFM to manage an AIF of the same type;~~
- (c) where the delegation concerns the portfolio management or the risk management and is given to a third-country undertaking, co-operation between the competent authorities of the home Member State and the supervisory authority of the undertaking shall be ensured, for example through an appropriate co-operation agreement between the authorities concerned;
- (d) the delegation shall not prevent the effectiveness of supervision of the AIFM, and, in particular, it must not prevent the AIFM from acting, or the AIF from being managed, in the best interests of its investors;

~~(ed)~~ the AIFM must demonstrate that the third party is qualified and capable of undertaking the functions in question, that it was selected with due care and that the AIFM is in a position to monitor effectively at any time the delegated activity, to give at any time further instructions to the third party and to withdraw the delegation with immediate effect when this is in the interest of investors.

No delegation of portfolio management shall be given to the depositary. Nor shall any delegation be given, ~~the valuator or to any other~~ undertaking whose interests may conflict with those of the AIF ~~or its investors~~.

The AIFM shall review the services provided by each third party on an ongoing basis.

2. The liability of the AIFM shall not be affected by delegation by the AIFM of any functions to third parties. The AIFM shall not delegate its functions to the extent that it becomes a letter-box entity. ~~In no case shall the AIFM's liability be affected by the fact that the AIFM has delegated functions to a third party, nor shall the AIFM delegate its functions to the extent that, in essence, it can no longer be considered to be the manager of the AIF.~~
3. ~~The third party may not sub-delegate any of the functions delegated to it.~~
4. ~~The Commission shall adopt implementing measures further specifying the following:~~
 - (a) ~~the conditions for approving the delegation;~~
 - (b) ~~the conditions under which the manager could no longer be considered to be the manager of the AIF as set out in paragraph 2.~~

~~Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 49(3).~~

Chapter VII

Specific rules in relation to third countries

Article 36

Delegation by the AIFM of administrative tasks to an entity established in a third country

Member States shall only allow an AIFM to delegate administrative services to entities established in a third country, provided that all of the following conditions are met:

- (a) the requirements set out in Article 18 are fulfilled;
- (b) the entity is authorised to provide administration services or registered in the third country in which it is established and is subject to prudential supervision;
- (c) there is an appropriate co-operation agreement between the competent authority of the AIFM and the supervisory authority of the entity.

Article 37

Valuator established in a third country

1. Member States shall only allow the appointment of a valuator established in a third country, provided that all of the following conditions are met:

- (a) the requirements set out in Article 16 are fulfilled;
- (b) the third country is the subject of a decision taken pursuant to paragraph 3 stating that the valuation standards and rules used by valutors established on its territory are equivalent to those applicable in the Community.

2. The Commission shall adopt implementing measures specifying the criteria for assessing the equivalence of the valuation standards and rules of third countries as referred to in paragraph (1)(b).

~~Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 49(3).~~

~~3. On the basis of the criteria referred to in paragraph 2, the Commission shall, in accordance with the procedure referred to in Article 49(2), adopt implementing measures, stating that the valuation standards and rules of a third country legislation are equivalent to those applicable in the Community.~~

[...]

ANNEX

Functions included in the management of an AIF, where relevant:

- Investment management:
 - (a) portfolio management:
 - (b) risk management:
- Administration:
 - (a) legal and fund management accounting services:
 - (b) customer inquiries:
 - (c) valuation and pricing (including tax returns):
 - (d) regulatory compliance monitoring:
 - (e) maintenance of unit-/shareholder register:
 - (f) distribution of income:

(g) unit/shares issues and redemptions:

(h) contract settlements (including certificate dispatch):

(i) record keeping.

Marketing.

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/...65/EC~~

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 47(2) thereof,

[...]

Whereas:

[...]

- (15) Given that an AIFM may employing high levels of leverage, at the level of the AIF, in their investment strategies may, under certain conditions, contribute to the build up of systemic risk or disorderly markets, special requirements should be imposed on AIFM employing leverage using certain techniques giving rise to particular risks. The information needed to detect, monitor and respond to those risks has not been collected in a consistent way throughout the Community, and shared across Member States so as to identify potential sources of risk to the stability of financial markets in the Community. To remedy this situation, special requirements should apply to AIFM, which employ consistently use high levels of leverage at the level of the AIF as part of the in their investment strategy strategies. Such ~~These~~ AIFM should be obliged to disclose information regarding the their use and sources of leverage in their AIF. ~~That information~~ Information gathered by competent authorities should be aggregated and shared with other authorities in the Community, so as to facilitate a collective analysis of the impact of the leverage of ~~those~~ AIF managed by AIFM on the financial system in the Community, as well as a common response. If an individual AIFM, or an individual AIF managed by an AIFM could potentially constitute an important source of counterparty risk to a credit institution or other systemically relevant institutions in other Member States, such information should also be shared with the relevant authorities.

(16) ~~Activities of AIFM based on the use of high levels of leverage could be detrimental to the stability and efficient functioning of financial markets. It is considered necessary to allow the competent authorities Commission to impose limits on the level of leverage that AIFM could employ in AIF where the stability and integrity of the financial system may be threatened. use, in particular in those cases where AIFM employ high levels of leverage on a systematic basis. These The limits to the maximum amount of leverage should take into account aspects related to the source of leverage and the strategies employed by the AIFM, as well as the market conditions in which the AIF operates. They should also take into account the essentially dynamic nature of the management of leverage by most AIFM using a high level of leverage in their AIF and possible pro-cyclical effects. In this respect the ~~limits to leverage could for example either consist in a threshold that should not be breached at any point in time or a limit on the average leverage employed during a given period (i.e. monthly or quarterly).~~~~

[...]

(27) In particular the Commission should be empowered to adopt the measures necessary for the implementation of this Directive. [...] Those measures should be ~~They are~~ designed to specify the disclosure requirements imposed on AIFM as regards leverage and the frequency and format of reporting to competent authorities and of disclosure to investors. The measures should also specify the principles competent authorities should use when considering implementation of limits on leverage. ~~They are designed to setting limits to the level of leverage AIFM can employ when managing AIF [...]~~

[...]

HAVE ADOPTED THIS DIRECTIVE:

Chapter I

General provisions

[...]

Article 3

Definitions

For the purpose of this Directive, the following definitions shall apply:

[...]

- (l) 'Leverage' means any method by which the AIFM increases the exposure of an AIF it manages, as part of the investment strategy, to a particular investment whether through borrowing of cash or securities, or leverage embedded in derivative positions or by any other means, considered in all cases on a netted basis;

[...]

Chapter IV

Transparency requirements

[...]

Article 20

Disclosure to investors

1. AIFM shall make available to ~~ensure that~~ AIF investors ~~receive~~ the following information before they invest in the AIF, as well as any changes thereof:

- (a) a description of the investment strategy and objectives of the AIF, all the assets which the AIF can invest in and of the techniques it may employ and of all associated risks, any applicable investment restrictions, the circumstances in which the AIF may use leverage, the types and sources of leverage permitted and the associated risks and of any restrictions to the use of leverage;

[...]

3. AIFM managing one or more AIF employing leverage on a systematic basis shall for each such AIF:

(a) disclose, where relevant, the maximum level of leverage which the AIFM may employ on behalf of the AIF as well as any right of the re-use of collateral or any guarantee granted under the leveraging arrangement:

(b) disclose the total amount of leverage employed by that AIF in the preceding quarter.

43. The Commission shall adopt implementing measures further specifying the disclosure obligations of AIFM and the frequency of the disclosure referred to in paragraphs 2 and 3. These measures shall be adapted to the type of AIFM to which they apply.

Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 49(3).

Article 21

Reporting obligations to competent authorities

[...]

4. AIFM managing one or more AIF employing leverage on a systematic basis shall, on request, make available to the competent authorities of its home Member State, information about the overall level of leverage employed by each AIF it manages, and a break-down between leverage arising from borrowing of cash or securities and leverage embedded in financial derivatives.

5. Where necessary for the effective monitoring of systemic risk, the competent authority of the home Member State may require information in addition to that described in this article, in particular as regards the netting arrangements.

64. The Commission shall adopt implementing measures further specifying the reporting obligations referred to in paragraphs 1, 2, 3 and 43 and their frequency.

Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 49(3).

Chapter V

Obligations regarding AIFM managing specific types of AIF

[SECTION 1: OBLIGATIONS FOR AIFM MANAGING LEVERAGED AIF]

Article 22

Scope

~~This section shall apply only to AIFM which manage one or more AIF employing high levels of leverage on a systematic basis.~~

~~AIFM shall assess on a quarterly basis whether the AIF employs high levels of leverage on a systematic basis and shall inform the competent authorities accordingly.~~

~~For the purposes of the second subparagraph, an AIF shall be deemed to employ high levels of leverage on a systematic basis where the combined leverage from all sources exceeds the value of the equity capital of the AIF in two out of the past four quarters.~~

~~Article 23~~

~~Disclosure to investors~~

~~AIFM managing one or more AIF employing high levels of leverage on a systematic basis shall for each such AIF:~~

- ~~(a) disclose to investors the maximum level of leverage which the AIFM may employ on behalf of the AIF as well as any right of re-use of collateral or any guarantee granted under the leveraging arrangement;~~
- ~~(b) quarterly disclose to investors the total amount of leverage employed by each AIF in the preceding quarter.~~

~~Article 24~~

~~Reporting to competent authorities~~

- ~~1. AIFM managing one or more AIF employing high levels of leverage on a systematic basis shall regularly provide, to the competent authorities of its home Member State, information about the overall level of leverage employed by each AIF it manages, and a break-down between leverage arising from borrowing of cash or securities and leverage embedded in financial derivatives.~~

~~That information shall include the identity of the five largest sources of borrowed cash or securities for each of the AIF managed by the AIFM, and the amounts of leverage received from each of those entities for each of the AIF managed by the AIFM.~~

- ~~2. The Commission shall adopt implementing measures further specifying the disclosure requirements with regard to leverage and the frequency of reporting to competent authorities and of disclosure to investors.~~

~~Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 49(3).~~

Article 25

Use of information by competent authorities, supervisory cooperation and limits to leverage

1. Member States shall ensure that the competent authorities of the home Member State use the information to be gathered ~~reported~~ under Article 21 ~~24~~ for the purposes of identifying the extent to which the use of leverage contributes to the build-up of systemic risk in the financial system or risks of disorderly markets
2. Home Member States shall ensure that all information gathered ~~received~~ under Article 21 ~~24~~, aggregated in respect of all AIFM that it supervises, is ~~are~~ made available to other competent authorities through the procedure set out in Article 46 on supervisory co-operation. It shall, without delay, also provide information through this mechanism, and bilaterally to other Member States directly concerned, if an AIFM under its responsibility, or AIF managed by this AIFM could potentially constitute an important source of counterparty risk to a credit institution or other systemically relevant institution in other Member States.

~~3. In order to ensure the stability and integrity of the financial system, the Commission shall adopt implementing measures setting limits to the level of leverage AIFM can employ. These limits should take into account, inter alia, the type of AIF, their strategy and the sources of their leverage.~~

~~Those measures designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 49(3).~~

~~34. When it is deemed necessary In exceptional circumstances and when this is required in order to ensure the stability and integrity of the financial system, the competent authorities of the home Member State may impose additional limits to the level of leverage that an AIFM can employ or other restrictions on the management of the AIF with respect to the AIF under its management. Measures taken by the competent authorities of the home Member States shall have a temporary nature and should comply with the provisions adopted by the Commission pursuant to paragraph 3.~~

~~4. The Commission shall adopt implementing measures setting out principles clarifying the circumstances in which competent authorities would exercise the provisions in the third paragraph, taking into account different strategies of AIF, different market conditions in which AIF operate and possible pro-cyclical effects following from exercising the provisions.~~

~~Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 49(3).~~

[...]

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/...~~65/EC

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 47(2) thereof,

[...]

Whereas:

[...]

- (17) It is necessary to ensure that an AIFM provides all companies over which it can exercise a controlling or dominant influence with the information necessary for the company to assess how this controlling influence in the short to medium term impacts the company's economic and social situation. When AIFM are managing AIF which are in a position to exercise controlling influence in an issuer whose shares are admitted to trading on a regulated market, information shall be disclosed according to Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids¹ and Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC². To this end, particular requirements should apply to AIFM managing AIF which are in a position to exercise controlling influence over a listed or non-listed company, in particular to notify the existence of this position and to disclose information to the company and all its other shareholders about the intentions of the AIFM with regard to the future business development and other planned changes of the controlled company. In order to ensure transparency regarding the controlled company, enhanced reporting requirements should apply. The annual reports of the relevant AIF should be supplemented with information that is specific to the type of investment and the controlled company.
- (27) [...] ~~They are designed to determine the detailed content and the way AIFM acquiring controlling influence in issuers and non-listed companies should fulfil their information obligation towards issuers and non-listed companies and their respective shareholders and representatives of employees, including the information to be provided in the annual reports of the AIF they manage.~~ [...]

[...]

¹ OJ L 142, 30.4.2004, p. 12.

² OJ L 390, 31.12.2004, p. 38.

HAVE ADOPTED THIS DIRECTIVE:

Chapter I

General provisions

[...]

Article 3

Definitions

For the purpose of this Directive, the following definitions shall apply:

[...]

~~(n) — ‘Issuer’ means any issuer of shares domiciled in the Community within the meaning of Article 2(1)(d) of Directive 2004/109/EC;~~

(n) ‘Non-listed company’ means any company domiciled in the Community whose shares are not admitted to trading on a regulated market within the meaning of Article 4(1), point 14, of Directive 2004/39/EC;

[...]

Chapter V

Obligations regarding AIFM managing specific types of AIF

SECTION 1: OBLIGATIONS FOR AIFM MANAGING LEVERAGED AIF

[...]

SECTION 2: OBLIGATIONS FOR AIFM MANAGING AIF WHICH ACQUIRE CONTROLLING INFLUENCE IN NON-LISTED COMPANIES

Article 26

Scope

1. This section shall apply to the following:
 - (a) AIFM managing one or more AIF which either individually or in aggregation acquires ~~30 % or more of the voting rights of an issuer or~~ controlling influence of a non-listed company ~~domiciled in the Community, as appropriate;~~
 - (b) AIFM having concluded an agreement with one or more other AIFM which would allow the AIF managed by these AIFM to acquire ~~30 % or more of the voting rights of the issuer or~~ controlling influence in the non-listed company, ~~as appropriate.~~

For the purpose of this section, more than 50 % of the voting rights of a non-listed company shall constitute controlling influence.

2. This section shall not apply where ~~the issuer or the non-listed companies~~ ies concerned are small and medium enterprises.

For the purposes of this section, small and medium enterprises shall mean companies that which, according to their last annual or consolidated accounts, meet at least two of the following three criteria:

(a) an average number of employees in the Community during the financial year of
lessfewer than [250] persons;

(b) a total balance sheet not exceeding EUR [43] million; have

~~(c) an annual net turnover not exceeding EUR [50] million euro and/or an annual balance sheet not exceeding 43 million euro.~~

Article 27

Notification of the acquisition of controlling influence in non-listed companies

1. Member States shall ~~ensure~~ require that when an AIFM is in a position to exercise ~~30 % or more of the voting rights of~~ controlling influence in a non-listed company, ~~such~~ the AIFM notifies the non-listed company and ~~all other share-holders,~~ the identities and addresses of which are available to the AIFM or can be made available by the non-listed company or a register to which the AIFM has or can get access, the information ~~specified~~ provided in paragraph 2.

This notification shall be made, as soon as possible, but not later than [four/~~ten~~] ~~trading~~ working days the first of which being the day on which the AIFM has reached the position of being able to exercise ~~30 % of the voting rights~~ controlling influence.

2. The notification required under paragraph 1 shall contain at least the following information:
 - (a) the resulting situation in terms of voting rights;
 - (b) the conditions under which ~~the 30% threshold~~ controlling influence has been reached, including information about the identity of the different shareholders involved, any natural person or legal entity entitled to exercise voting rights on their behalf and, if applicable, the chain of undertakings through which voting rights are effectively held;
 - (c) the date on which ~~the threshold~~ controlling influence was reached ~~or exceeded~~.

Article 28

Disclosure in case of acquisition of controlling influence in ~~issuers or~~ non-listed companies

1. ~~In addition to Article 27,~~ Member States shall ~~ensure~~require that where an AIFM manages an AIFM that acquires 30 % or more of the voting rights of controlling influence in an issuer or a non-listed company, that AIFM makes the information set out in the second and third subparagraphs available to ~~the issuer,~~ the non-listed company, ~~its~~their respective shareholders and representatives of employees or, where there are no such representatives, to the employees themselves.

~~With regard to issuers, the AIFM shall make available the following to the issuer concerned, its shareholders and representatives of employees:~~

- ~~(a) the information referred to in Article 6(3) of Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids¹;~~
- ~~(b) the policy for preventing and managing conflicts of interests, in particular between the AIFM and the issuer;~~
- ~~(c) the policy for external and internal communication of the issuer in particular as regards employees.~~

~~With regard to non-listed companies, t~~The AIFM shall make available the following to the ~~non-listed company~~ concerned, its shareholders and representatives of employees:

- ~~(d) the identity of the AIFM which either individually or in agreement with other AIFM have reached the 30 % threshold~~controlling influence;
- ~~(e) the development plan for the non-listed company;~~
- ~~(f) the policy for preventing and managing conflicts of interests, in particular between the AIFM and the non-listed company;~~

¹ OJ L 142, 30.4.2004, p.12.

~~(g) — the policy for external and internal communication of the issuer or non-listed company, in particular as regards employees.~~

~~2. — The Commission shall adopt implementing measures determining:~~

~~(a) — the detailed content of the information provided under paragraph 1;~~

~~(b) — the way the information shall be communicated.~~

~~Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 49(3).~~

Article 29

Specific provisions regarding the annual report of AIF exercising controlling influence in ~~issuers or~~ non-listed companies

1. Member States shall ~~ensure~~require that an AIFM includes in the annual report provided for in Article 19 for each AIF ~~that they~~it manages that exercises controlling influence in one or more non-listed company, the additional information ~~specified~~provided in paragraph 2 of this Article.
2. The AIF annual report shall include the following additional information for each ~~issuer and non-~~listed company in which the AIF has invested:

- (a) ~~with regard to~~ the operational and financial developments, in particular a presentation of revenues and earnings, capital structure and a description of, and key factors relating to, the nature of the company's operations and its principal activities, stating the main categories of products sold and/or services performed, and an indication of any significant new products and/or services that have been introduced and, to the extent the development of new products or services has been publicly disclosed, the status of development ~~by business segment, statement on the progress of company's activities and financial affairs, assessment of expected progress on activities and financial affairs, report on significant events in the financial year;~~
- (b) ~~with regard to financial and other risks at least financial risks associated with capital structure;~~
- (c) ~~with regard to employee matters, turnover, terminations, recruitment~~ the number of employees at the end of the period covered by the report (and changes in such numbers, if material).
- (d) ~~statement on significant divestment of assets.~~

~~In addition, the AIF annual report shall, for each issuer in which it has acquired a controlling influence, contain the information provided for in point (f) of Article 46a(1) of Fourth Council Directive 78/660/EEC of 25 July 1978 based on Article 54 (3) (g) of the Treaty on the annual accounts of certain types of companies[†] and an overview of the capital structure as referred to in points (a) and (d) of Article 10(1) of Directive 2004/25/EC.~~

[†] ~~_____~~ OJ L 222, 14.8.1978, p. 11.

~~For each non-listed company in which it has acquired a controlling influence, the AIF report shall provide an overview of management arrangements and the information provided for in points (b), (c) and (e) to (h) of Article 3 of Second Council Directive 77/91/EEC of 13 December 1976 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent[†].~~

~~3. The AIFM shall, for each AIF it manages and for which it is subject to this section, provide the information referred to in paragraph 2 above to all representatives of employees of the company concerned referred to in paragraph 1 of Article 26 within the period referred to in Article 19 (1).~~

~~4. The Commission shall adopt implementing measures specifying the detailed content of the information to be provided under paragraphs 1 and 2.~~

~~Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 49(3).~~

Article 30

Specific provisions regarding companies whose shares are no longer admitted to trading on a regulated market

~~Where, following an acquisition of 30 % or more of the voting rights of an issuer, the shares of that issuer are no longer admitted to trading on a regulated market, it shall nevertheless continue to comply with its obligations under Directive 2004/109/EC for two years from the date of withdrawal from the regulated market.~~

[†] OJ L 26, 31.1.1977, p. 1.