



## EU bibliographies: Alternative Investment Fund Managers (AIFM) Directive

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This Note brings together documents relevant to the proposed “Alternative Investment Fund Managers Directive” (also known as the AIFM Directive or the “Hedge Funds” Directive), and its scrutiny in the UK and EU. It is not an attempt to define policy in this area. For information on policy developments contact Tim Edmonds on extn 4318. See also SN/BT/5099 [European responses to the financial crisis](#) specifically p39

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## Contents

<b>1</b>	<b>Background to the proposal</b>	<b>3</b>
<b>2</b>	<b>Draft Directive</b>	<b>3</b>
2.1	Related material	3
	EU material	3
<b>3</b>	<b>Purpose of Directive.</b>	<b>4</b>
<b>4</b>	<b>Treaty Base</b>	<b>4</b>
<b>5</b>	<b>EU Scrutiny</b>	<b>4</b>
<b>6</b>	<b>UK Parliament Scrutiny</b>	<b>5</b>
6.1	House of Commons	5
	European Scrutiny Committee	5
	European General Committee	5
6.2	House of Lords	5
<b>7</b>	<b>Comment</b>	<b>5</b>
7.1	HM Treasury	5
7.2	Other organisations	6
7.3	EurActiv	6
7.4	EU Observer	6
7.5	Parliamentary Questions and Debates	7
7.6	Press articles	9

## 1 Background to the proposal

The proposal is one of a package of measures put forward by the European Commission to regulate financial services in the EU following the financial crisis.

Early responses to the financial crisis by the EU can be found in the following documents:

[European Parliament resolution of 23 September 2008 with recommendations to the Commission on hedge funds and private equity](#)

European Commission, [Summit of the Euro Area Countries: Declaration on a Concerted European Action Plan of the Euro Area Countries](#), 12 October 2008

European Commission, [Communication From the Commission, From Financial Crisis to Recovery: A European Framework for Action](#), 29 October 2008

[Report of the High-Level Group on Financial supervision in the EU](#). Chaired by Jacques de Larosiere. 25 February 2009. For details of responses to the report and more background see [SN/BT/5099](#) pp34-35.

## 2 Draft Directive

[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](#). Council number 9494/2009 Commission number COM(2009)207. Sent to Council on 4 May 2009.

The proposal has since been examined by the Working Party on Financial Services at several meetings during the Czech, Swedish and Spanish Presidencies. The latest [compromise proposal](#) was issued by the Council presidency on 11<sup>th</sup> March 2010, Council number 7377/2010. The Economic and Financial Affairs Council agreed a mandate for negotiations with the European Parliament based on this compromise proposal at its meeting of 18<sup>th</sup> May 2010, while noting the remaining concerns expressed by delegations, e.g. the reservations expressed by the UK and the Czech Republic with respect to third country rules.<sup>1</sup>

### 2.1 Related material

#### ***EU material***

Commission Staff working document accompanying the 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 - [Impact Assessment](#) Council number 9494/2009 ADD 1, Commission number SEC(2009)576.

[Executive Summary of the Impact Assessment](#) Council number 9494/2009 ADD 2, Commission number SEC(2009)577.

EU Press Release [Financial services: Commission proposes EU framework for managers of alternative investment funds IP/09/669](#) 29 April 2009

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<sup>1</sup> See Council press release [7500/10](#) (Presse 64) "Council to negotiate with Parliament on draft EU rules for hedge fund managers"

[Glossary on the alternative investment fund managers directive](#), published by the Economic and Monetary Affairs Committee of the European Parliament 23 September 2010

### **3 Purpose of Directive.**

The purpose of the proposed Directive, as stated on the *European Legislative Observatory*, is to establish a secure and harmonised EU framework for monitoring and supervising the risks that Alternative Investment Fund Managers (AIFM) pose to their investors, counterparties, other financial market participants and to financial stability and to permit, subject to compliance with strict requirements, AIFM to provide services and market their funds across the internal market<sup>2</sup>.

### **4 Treaty Base**

The proposal was originally based on Article 47(2) of the EC Treaty. Since the Lisbon Treaty came into force in December 2009 the new legal base is Article 53(1) of the Treaty of European Union.

### **5 EU Scrutiny**

The draft Directive is subject to the co-decision procedure, which, since the adoption of the Lisbon Treaty, is known as the Ordinary Legislative Procedure (OLP). This procedure is outlined in Standard Note SN/IA/2120 [The European Parliament: its role and powers](#). It is also explained, with a graphic, on the [Europa website](#).

[Opinion of the European Central Bank](#) of 16 October 2009 (CON/2009/81) in OJC 272, 31.11.2009.

[Opinion of the European Economic and Social Committee](#) of 29<sup>th</sup> April 2010

Following further consultations in Council meeting 3015 of 18<sup>th</sup> May 2010 the Council agreed a mandate for negotiations with the European Parliament on the draft directive See [press release 7500/10](#)

The proposal was sent to the European Parliament on 30 April 2009 for consideration by the EP Committee for Economic and Monetary Affairs (Rapporteur: Jean-Paul Gauzes). The Legal Affairs Committee was also consulted.

The Economic and Monetary Affairs Committee published a [draft report](#) on 23 November 2009. The committee adopted its position on the draft Directive on [18<sup>th</sup> May 2010](#) under the Chairmanship of British MEP Sharon Bowles (ALDE Group<sup>3</sup>). The final report was published as EP report [A7-171-2010](#) on 11<sup>th</sup> June 2010. The European parliament adopted its legislative resolution on [11 November 2010](#). The Council of Ministers gave its approval on 25 May 2011 – see [press release 10494/11](#) of 27 May 2011 which states that the Council adopted the directive “without discussion”.

The Directive was adopted on 8 June 2011 as Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 and published in the [Official Journal L 174 of 1 July 2011](#).

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<sup>2</sup> <http://www.europarl.europa.eu/oeil/FindByProcnum.do?lang=2&procnum=COD/2009/0064>

<sup>3</sup> Group of the Alliance of Liberals and Democrats for Europe

## 6 UK Parliament Scrutiny

For a description of the scrutiny process for EU documents within Parliament see House of Commons Information Sheet L11 [EU Legislation and Scrutiny Procedures](#). For general background to the EU scrutiny see Research Paper 05/85 [The UK Parliament and European Business](#).

### 6.1 House of Commons

#### ***European Scrutiny Committee***

Considered by the EU Scrutiny Committee in [HC 19-xviii 2008/09](#) on 3 June 2009, in [HC 19-xxii 2008-09](#) on 1 July 2009 and in [HC 5-vi 2009-10](#) on 13 January 2010.

An [explanatory memorandum](#) from HM Treasury was received by the Committee on 25 May 2009.

Ministerial correspondence has been received by the Committee dated [26 June 2009](#), [17 December 2009](#) and [28 January 2011](#).

#### ***European General Committee***

Debated in European Committee B on [23<sup>rd</sup> February 2010](#).

### 6.2 House of Lords

European Union Committee Sub-Committee A (Economic and Financial Affairs and International Trade) published a report on the proposed AIFM Directive on 10<sup>th</sup> February 2010 [HL 48 2009/10](#) accompanied by a [press release](#).

The Committee received a response to the Report from the European Commission on [25 June 2010](#).

This report was debated in the Lords on 6<sup>th</sup> July 2010, [HL Deb Vol 720 c175-190](#).

## 7 Comment

### 7.1 HM Treasury

[Speech by the Financial Secretary to the Treasury](#), Mark Hoban MP, to PricewaterhouseCoopers 22 November 2011

[The Alternative Investment Fund Managers Directive](#), Speech at the Policy Exchange by Lord Myners, Financial Services Secretary, 11 September 2009.

[BVCA Private Equity Summit](#), Speech by Lord Myners, 14 October 2009.

[Financial Services Authority's Asset Management Conference](#). Speech by Lord Myners, 17 September 2009

[AIMA Breakfast address on the Alternative Investment Fund Management Directive](#). Speech by Lord Myners, 7 July 2009.

## 7.2 Other organisations

[Evaluating the prospects for the UK and European market under the Alternative Investment Fund Managers Directive](#) Speech by Dan Waters, Director, Conduct Risk, and Asset Management Sector Leader, Euromoney AIFM Directive conference 25 February 2011.

Financial Services Authority [Impact of the proposed AIFM Directive across Europe](#). October 2009.

## 7.3 EurActiv

EurActiv is an independent organisation which runs a website specialising in EU news and analysis.

[Barrier speaks out on hedge funds, EU budget reform](#) 14 September 2010

[Investment funds winning war on regulation](#) . (Comment on EP scrutiny of Directive) 27 November 2009.

[EU to bar alternative funds outside bloc](#) . 13 November 2009.

[Lawmakers scold City lobbying on EU finance rules](#) 9 November 2009

[France, Britain converge on EU hedge fund rules](#) 21 September 2009.

[Boris] [Johnson: I don't want to see Europe make 'unforced errors'](#) 3 September 2009

## 7.4 EU Observer

EU observer is an independent news service founded in 2000 “to support the debate on - and development of European affairs”.

[EU defends hedge fund plans after US criticism](#) 11 March 2010

[EU parliament takes first shot at hedge fund regulation](#), 25 November 2009

[EU presidency wants pay caps for fund managers](#), 12 November 2009

[ECB joins chorus attacking EU hedge fund plans](#), 23 October 2009

[Sweden warns against 'overzealous' hedge fund regulation](#), 2 July 2009

[Brussels gets set for battle on hedge fund rules](#), 29 April 2009

## 7.5 Parliamentary Questions and Debates

### EU: Alternative Investment Funds

**Lord Myners:** To ask Her Majesty's Government what actions they are taking to ensure that the European Union draft directive on alternative investment fund management does not disadvantage funds based in or managed from the United Kingdom, and those funds' ability to market themselves in the European Union.[HL2760]

**The Commercial Secretary to the Treasury (Lord Sassoon):** ECOFIN reached political agreement on the alternative fund managers directive on 19 October. The Government believe that this text is a good outcome for UK interests and represents significant gains from the European Commission's original proposal, the European Parliament's proposal and the ECOFIN general approach of 5 May. In particular, the Government believe that the text lays out a path for meeting the G20 commitments that implementation of such regulation should be internationally consistent and non-discriminatory. The text would provide for a European marketing passport for all managers of alternative investment funds that meet the requirements of the directive, regardless of where they are established. For non-EU managers, the passport will be introduced through a phased regime and will therefore become available two years after the end of the transposition period, subject to a positive review by the European Securities and Markets Authority. To ensure minimum market disruption and investor access, national private placement regimes will continue to operate until at least 2018. The Government believe that the agreement will, over time, ensure a level playing field in the European market for managers of alternative investment funds, including those established in the United Kingdom.

The text agreed at ECOFIN on 19 October is now subject to discussion with the European Parliament, which is expected to vote in plenary session in November.

**HL Debates 1 November 2010 vol 721 c349WA**

### EU Alternative Investment Funds

#### Viscount Trenchard

To ask Her Majesty's Government what position they will take at the meeting of the European Council on 18 and 19 June on the draft Alternative Investment Fund Managers Directive.

**The Financial Services Secretary to the Treasury (Lord Myners):** My Lords, the Government support the principle of a harmonised regime for alternative investment products, to help to develop the single market and to provide a framework for dealing with potential systemic risks on a cross-border basis. The current proposals contain flaws. We will continue to work constructively with our partners in the EU to secure improvements.

**Viscount Trenchard:** My Lords, I thank the Minister for his reply. However, especially given his great experience in this sector, he may be a little complacent about the threat to London's competitiveness which will result from a transfer of regulatory powers to Brussels. In particular, can he confirm that the Government would be able to prevent the enactment of some of the more protectionist features of this ill drafted directive, such as those prohibiting delegation of portfolio management outside the European Union and requiring private equity funds and investment trusts to appoint UCITS-style depositories, which is wholly unnecessary and alien to our British way of doing things?

**Lord Myners:** My Lords, the draft directive was produced without the customary consultation. The equivalent UCITS directive, which applies to a smaller industry, had three rounds of consultation before it was published. As a result of the pace at which the draft directive has been produced there are, as I said, flaws. There are misunderstandings about the role of depositories and the calculation of leverage. Some provisions appear to conflict with the concept of subsidiarity. I am confident that we will be able to help improve the directive. To that end I am meeting people in the Commission and with other countries in the EU, including Sweden this weekend ahead of it taking up the presidency. We are also working very actively with the industry. We have had meetings with more than 100 managers of alternative investment funds and private equity to make sure that we understand their views and we are working with them to assemble arguments.

**Lord Tomlinson:** My Lords, important as this draft alternative investment fund managers directive is, does my noble friend recognise that there are other extremely important issues on the European Council agenda? In particular, does he welcome the very positive remarks made by the Irish Europe Minister, Dick Roche, on the radio this morning looking forward to a successful outcome of the negotiations concerning the Lisbon treaty, thus enabling it to be ratified in all member states and to come into force before the Barroso Commission goes out of office, which will be of major benefit to all the peoples of Europe?

**Lord Myners:** My Lords, I regret that I did not hear the radio interview. I was taking note of the preceding question—I was walking to work while the interview was being broadcast. However, I take note of my noble friend's comments and the encouraging sentiments that he expresses.

**Lord Pearson of Rannoch:** My Lords, has the Minister read the new book by Marta Andreasen, the former chief accountant of the European Union, which reveals that accrual accounting and double-entry book-keeping remain strangers in that land? Do the Government not agree that the British people will become even more angry with their political class if they learn that even a part of our financial industries has been taken over by the Eurocrats?

**Lord Myners:** My Lords, the noble Lord's views on these matters are well known. We are seeking, as we already have with other directives, to strike the right balance between the benefits to UK investors and the companies in which these funds invest of enhanced regulation and supervision while not in any way conflicting with the concept of national responsibility for supervision. Indeed, the Prime Minister will make that point forcefully at the European Council meetings in Brussels today and tomorrow.

**Lord Lawson of Blaby:** My Lords, perhaps we might revert to the Question on the Order Paper, eccentric though that appears. Is it not the case that the Minister can be a great deal more robust than he has been so far in these exchanges? Not only is the context for this particular industry global, not European—it is global co-operation which is required—but it is an industry where, unusually, the United Kingdom is not merely larger than any other; in this particular sector, it is larger than all the others put together. Therefore, it would be wholly wrong for us to agree to any European directive on this matter that we are not satisfied is 100 per cent right.

**Lord Myners:** My Lords, I would not wish noble Lords to believe that I am not being robust on these matters. I recognise the importance of the UK as a centre for hedge fund management; over 80 per cent of hedge funds in Europe are managed from the UK. We are also the regional centre for private equity management, and I am working to make sure that



the views of the industry are well understood. I believe that our knowledge and awareness of the issues and our capacity to provide detailed understanding to address some of the flaws that lie in the directive will lead to a positive outcome. I can best do that through constructive engagement with our colleagues in Europe, rather than being unnecessarily confrontational.

**Lord Newby:** My Lords, there appears to be growing confusion about the differences of view between the Chancellor of the Exchequer and the Governor of the Bank of England on banking regulation. The governor said yesterday, in his Mansion House speech,

“If some banks are ... too big to fail, then ... they are too big”.

Does the Chancellor agree?

**Lord Myners:** My Lords, the issue of the banking community's size in respect of the domestic economy, and then the size of individual banks, is one to which we are giving considerable attention. We shall be producing a White Paper on the future of financial markets in early July, which will address that issue. In the Chancellor of the Exchequer's Mansion House speech last night, however—which I thought was, truly, an exceptionally good speech by the Chancellor on the steps that he has taken to protect our economy—he set out his own broad views, which are that the critical factors to protect us against bank failure are good governance, good risk control, appropriate regulation and constant supervision. In that context, I am sure that diversity in the scale of our banks can still be a source of strength for our economy.

**HL Debates 18 June 2009 c1181-83**

Debate [Financial Services Regulation](#) **HC Debates 10<sup>th</sup> November 2009 Col 1-20WH.**

## **7.6 Press articles**

“[Concern over Esma advice on alternatives](#)” By Baptiste Aboulian *Financial Times* 21 November 2011

“[Alternatives directive is only the beginning](#)” By Hans Hack, *Financial Times* 19 September 2011

“[Approval for alternatives directive](#)”. By Baptiste Aboulian. *Financial Times* 4 April 2011

“[Remuneration fallout](#)”. By Baptiste Aboulian. *Financial Times* 6 December 2010

“[AIFMD rules to be diluted](#)”. By Steve Johnson. *Financial Times* 12 July 2010

“[Bank of England panel condemns draft EU hedge fund legislation](#)”. By Suzy Jagger, *The Times* 8 February 2010. Refers to the report *AIFM Directive: Legal Risks*, Issue 145, Financial Markets Law Committee. January 2010.

“[Pension funds fear EU hedge funds rules](#)”. By Martin Arnold *Financial Times* 13 January 2010

“[Hedge funds demand change to EU pay plan.](#)” By Louise Armitstead *The Daily Telegraph* 13 November 2009

[EU directive could force Wales to waste millions on 'bureaucracy'](#). By Martin Shipton *The Western Mail* 23 October 2009

[EU rules would see hedge funds go overseas](#). By Sam Jones. *Financial Times* 21 September 2009

[Brussels official faces up to sharp criticism of 'ogres'](#) By Jeremy Woolfe *Financial Times* 27 July 2009

[Investment trusts oppose one size fits all legislation](#). By Ruth Sullivan *Financial Times* , 13 July 2009

[Ucits looks to gain from hedge woes](#) By Baptiste Aboulian *Financial Times* 4 May 2009