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A7-0220/2012

28.6.2012

*****I**
REPORT

on the proposal for a directive of the European Parliament and of the Council amending Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings of collective investment in transferable securities (UCITS) and Directive 2011/61/EU on Alternative Investment Funds Managers in respect of the excessive reliance on credit ratings
(COM(2011)0746 – C7-0419/2011 – 2011/0360(COD))

Committee on Economic and Monetary Affairs

Rapporteur: Leonardo Domenici

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

In amendments by Parliament, amendments to draft acts are highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the draft act which may require correction when the final text is prepared – for instance, obvious errors or omissions in a language version. Suggested corrections of this kind are subject to the agreement of the departments concerned.

The heading for any amendment to an existing act that the draft act seeks to amend includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend. Passages in an existing act that Parliament wishes to amend, but that the draft act has left unchanged, are highlighted in **bold**. Any deletions that Parliament wishes to make in such passages are indicated thus: [...].

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a directive of the European Parliament and of the Council amending Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings of collective investment in transferable securities (UCITS) and Directive 2011/61/EU on Alternative Investment Funds Managers in respect of the excessive reliance on credit ratings (COM(2011)0746 – C7-0419/2011 – 2011/0360(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2011)0746),
 - having regard to Article 294(2) and Article 53(1) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0419/2011),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the opinion of the European Central Bank of 2 April 2012¹,
 - having regard to the opinion of the European Economic and Social Committee of 23 May 2012²,
 - having regard to Rule 55 of its Rules of Procedure,
 - having regard to the report of the Committee on Economic and Monetary Affairs and the opinion of the Committee on Legal Affairs (A7-0220/2012),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Amendment 1

Proposal for a directive

Recital 2

¹ OJ C 167, 13.6.2012, p. 2.

² Not yet published in the Official Journal.

Text proposed by the Commission

(2) An effect of the financial crisis has been that investors, including UCITS and AIFs, rely excessively on credit ratings to carry out their investments on debt instruments, without necessarily conducting their own assessments of the creditworthiness of issuers of such debt instruments. In order to improve the quality of the investments made by UCITS and AIFs and, therefore, to protect investors in those funds, it is appropriate to require the persons managing UCITS and AIFs to avoid relying exclusively and automatically on external credit ratings when assessing the risk involved in the investments made by the UCITS and AIFs they manage. The general principle on the avoidance of excessive reliance on external credit ratings should therefore be integrated into the risk management processes and systems of the managers of UCITS and AIFs, and adapted to their specificities.

Amendment

(2) An effect of the financial crisis has been that investors, including UCITS and AIFs, rely excessively on credit ratings to carry out their investments on debt instruments, without necessarily conducting their own assessments of the creditworthiness of issuers of such debt instruments. In order to improve the quality of the investments made by UCITS and AIFs and, therefore, to protect investors in those funds, it is appropriate to require the persons managing UCITS and AIFs to avoid relying exclusively and automatically on external credit ratings ***or making excessive use thereof*** when assessing the risk involved in the investments made by the UCITS and AIFs they manage. The general principle on the avoidance of excessive reliance on external credit ratings should therefore be integrated into the risk management processes and systems of the managers of UCITS and AIFs, and adapted to their specificities. ***In the medium term, further initiatives should be evaluated with a view to taking ratings out of financial regulation.***

Amendment 2

**Proposal for a directive
Recital 3**

Text proposed by the Commission

(3) In order to specify further the general principle on overreliance that should be introduced into Directives 2009/65/EC and 2011/61/EU, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in particular to ensure that managers of UCITS and AIFs are effectively prevented from over-relying on external credit ratings

Amendment

(3) In order to specify further the general principle on overreliance that should be introduced into Directives 2009/65/EC and 2011/61/EU, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in particular to ensure that managers of UCITS and AIFs are effectively prevented from over-relying on external credit ratings

for assessing the creditworthiness of the assets held by UCITS or AIFs. It is appropriate in this regard to amend the powers of the Commission in those Directives to adopt delegated acts in respect of the general provisions regarding risk management processes and systems employed by the managers of UCITS and AIFs. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level.

for assessing the creditworthiness of the assets held by UCITS or AIFs. It is appropriate in this regard to amend the powers of the Commission in those Directives to adopt delegated acts in respect of the general provisions regarding risk management processes and systems employed by the managers of UCITS and AIFs. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, ***and that it publish the results of the consultations.***

Amendment 3

Proposal for a directive Recital 5

Text proposed by the Commission

(5) Since the objective of this Directive, namely to contribute to the reduction of the excessive reliance of UCITS and AIFs on external credit ratings when making their investments, cannot be sufficiently achieved at the Member State level and can therefore, by reason of the pan-Union structure and impact of the activities of UCITS, AIFs and credit rating agencies, be better achieved at the Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on the European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.

Amendment

(5) Since the objective of this Directive, namely to contribute to the reduction of the excessive reliance of UCITS and AIFs on external credit ratings when making their investments, cannot be sufficiently achieved at the Member State level ***acting in a coordinated manner*** and can therefore, by reason of the pan-Union structure and impact of the activities of UCITS, AIFs and credit rating agencies, be better achieved at the Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on the European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.

Amendment 4

Proposal for a directive Article -1 (new)

Directive 2003/41/EC
Article 18

Text proposed by the Commission

Amendment

Article -1

Amendments to Directive 2003/41/EC¹

In Article 18 of Directive 2003/41/EC, the following paragraph is inserted:

"1a. Institutions shall not include investment rules that would result in the automatic sale of assets in the event of a downgrade of their creditworthiness by an external credit rating agency."

¹ *Directive 2003/41/EC of the European Parliament and of the Council of 3 June 2003 on the activities and supervision of institutions for occupational retirement provision (OJ L 235, 23.9.2003, p. 3).*

Amendment 5

Proposal for a regulation

Article - 1 a (new) – point 1

Directive 2004/109/EC

Article 2 – paragrapg 1 – point pa to pd (new) and Article 18a

Text proposed by the Commission

Amendment

Article -1a

Amendments to Directive 2004/109/EC¹

Directive 2004/109/EC is amended as follows:

1. In Article 2(1) the following points are added:

“(pa) 'financial instrument' means an instrument listed in Section C of Annex I to Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments;

(pb) 'securitisation' means securitisation within the meaning of Article 4(36) of

Directive 2006/48/EC;

(pc) 'structured finance instrument' means a financial instrument or other assets resulting from a securitisation;

(pd) 'originator' means originator within the meaning of Article 4(41) of Directive 2006/48/EC;

(pe) 'sponsor' means sponsor within the meaning of Article 4(42) of Directive 2006/48/EC;"

2. The following article is inserted:

"Article 18a

Additional information requirements for issuers whose structured finance instruments are admitted to trading on a regulated market

1. The issuer shall ensure that either the originator or the sponsor of a structured finance instrument established in the Union shall disclose to the public, in accordance with paragraph 4, information on the credit quality and performance of the individual underlying assets of that structured finance instrument, the structure of the securitization transaction, the cash flows and any collateral supporting a securitisation exposure as well as any information that is necessary to conduct comprehensive and well informed stress tests on the cash flows and collateral values supporting the underlying exposures.

2. The obligation to disclose information under paragraph 1 shall not extend to the provision of such information that would breach statutory provisions governing the protection of confidentiality of information sources or the processing of personal data.

3. ESMA shall develop draft regulatory technical standards to specify:

(a) the information that the persons

referred to in paragraph 1 are to disclose;

(b) the frequency with which such information is to be updated;

(c) a template by which to disclose the information.

ESMA shall submit those draft regulatory technical standards to the Commission by 1 January 2013.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1095/2010.

4. ESMA shall set up a webpage for the publication of the information on structured finance instruments in accordance with paragraph 1."

¹ 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/EC (OJ L 390, 31.12.2004, p. 38).

Amendment 6

Proposal for a directive – amending act

Article 1 – point 1

Directive 2009/65/EC

Article 51 – paragraph 1 – subparagraph 1

Text proposed by the Commission

A management or investment company shall employ a risk-management process which enables it to monitor and measure at any time the risk of the positions and their contribution to the overall risk profile of the portfolio. In particular, it shall not

Amendment

A management or investment company shall employ a risk-management process which enables it to monitor and measure at any time the risk of the positions and their contribution to the overall risk profile of the portfolio. In particular, it shall not

solely *or mechanistically* rely on external credit ratings for assessing the creditworthiness of the UCITS assets.

solely rely on external credit ratings for assessing the creditworthiness of the UCITS assets.

Amendment 7

Proposal for a directive

Article 1 – point 1 a (new)

Directive 2009/65/EC

Article 51 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

(1a) the following paragraph is inserted:

"3a. A UCITS shall not include in its fund rules any rule that would result in the automatic sale of its assets in the event of a downgrade of its creditworthiness by an external credit rating agency."

Amendment 8

Proposal for a directive – amending act

Article 1 – point 2 a (new)

Directive 2009/65/EC

Article 82 a (new)

Text proposed by the Commission

Amendment

(2a) The following article is inserted after Article 82:

"Article 82a

Use of external ratings

Investment firms, management companies and insurance undertakings shall not suggest that their customers insert, in their standard investment agreements, fund rules or insurance contracts, references to reliance on ratings."

Amendment 9

Proposal for a directive – amending act

Article 2 – point 1

Directive 2011/61/EU

Article 15 – paragraph 2 – first subparagraph

Text proposed by the Commission

AIFMs shall implement adequate risk management systems in order to identify, measure, manage and monitor appropriately all risks relevant to each AIF investment strategy and to which each AIF is or may be exposed. In particular, AIFMs shall not solely *or mechanistically* rely on external credit ratings for assessing the creditworthiness of the AIF assets.

Amendment

AIFMs shall implement adequate risk management systems in order to identify, measure, manage and monitor appropriately all risks relevant to each AIF investment strategy and to which each AIF is or may be exposed. In particular, AIFMs shall not solely rely on external credit ratings for assessing the creditworthiness of the AIF assets.

Amendment 10

Proposal for a directive

Article 2 – point 1 a (new)

Directive 2011/61/EU

Article 15 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

(1a) the following paragraph is inserted:

"3a. The AIFM shall ensure that the AIF is not required automatically to sell any of its assets in the event of a downgrade of its creditworthiness by an external credit rating agency."

Amendment 11

Proposal for a directive – amending act

Article 2 – point 2 a (new)

Directive 2011/61/EU

Article 23 a (new)

Text proposed by the Commission

Amendment

(2a) The following article is inserted after

Article 23:

"Article 23a

Use of external ratings

Investment firms, management companies and insurance undertakings shall not suggest that their customers insert, in their standard investment agreements, fund rules or insurance contracts, references to reliance on ratings."

27.4.2012

OPINION OF THE COMMITTEE ON LEGAL AFFAIRS

for the Committee on Economic and Monetary Affairs

on the proposal for a directive of the European Parliament and of the Council amending Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings of collective investment in transferable securities (UCITS) and Directive 2011/61/EU on Alternative Investment Funds Managers in respect of the excessive reliance on credit ratings
(COM(2011)0746 – C7-0419/2011 – 2011/0360(COD))

Rapporteur: Sebastian Valentin Bodu

SHORT JUSTIFICATION

Your rapporteur is of the view that credit rating agencies provide forward-looking opinions and research about credit risk, and serve a valuable role in the financial markets because they provide a point of reference that is easily understood by market participants, such as investors in undertakings of collective investment in transferable securities (UCITS) and alternative investment funds (AIFs).

However, UCITS and AIFs should themselves assess the opinions issued by the credit rating agencies and make their own credit judgments, thus taking a position on whether to agree or disagree with the agencies opinions. In this regard, credit ratings are important for the markets because they have proven to be valuable credit market assessments. However, they should not be construed as the sole arbiters of credit risk.

Credit ratings are just opinions on the relative future credit risk of entities, credit commitments, or debt or debt-like securities and are a useful gauge of future creditworthiness. They do not measure any other risk, and as such should not be used as a proxy for assessing other characteristics of a security in which UCITS and AIFs invests, such as liquidity risk, price volatility or marketability.

Your rapporteur further considers that official recognition and use of ratings may lead to distortions in the business of credit rating agencies. The widespread incorporation of ratings into legal instruments such as the directives on UCITS and AIFs can affect the way ratings are used by regulated entities, the bases upon which managers of such entities choose such agencies and the ways the agencies compete with each other.

Directly incorporating credit ratings alone into the oversight regime of the UCITS and AIFs creates incentives for market participants to over-emphasise the opinions of credit rating agencies instead of conducting their own credit analysis. In view of the above, your rapporteur supports this legislative proposal submitted by the European Commission.

AMENDMENT

The Committee on Legal Affairs calls on the Committee on Economic and Monetary Affairs, as the committee responsible, to incorporate the following amendment in its report:

Amendment 1

Proposal for a directive

Recital 2

Text proposed by the Commission

(2) An effect of the financial crisis has been that investors, including UCITS and AIFs, rely excessively on credit ratings to carry out their investments on debt instruments, without necessarily conducting their own assessments of the creditworthiness of issuers of such debt instruments. In order to improve the quality of the investments made by UCITS and AIFs and, therefore, to protect investors in those funds, it is appropriate to require the persons managing UCITS and AIFs to avoid relying exclusively and automatically on external credit ratings when assessing the risk involved in the investments made by the UCITS and AIFs they manage. The general principle *on the avoidance of* excessive reliance on external credit ratings *should therefore be integrated into the risk management processes and systems of the managers of UCITS and AIFs, and adapted to their specificities.*

Amendment

(2) An effect of the financial crisis has been that investors, including UCITS and AIFs, rely excessively on credit ratings to carry out their investments on debt instruments, without necessarily conducting their own assessments of the creditworthiness of issuers of such debt instruments. In order to improve the quality of the investments made by UCITS and AIFs and, therefore, to protect investors in those funds, it is appropriate to require the persons managing UCITS and AIFs to avoid relying exclusively and automatically on external credit ratings when assessing the risk involved in the investments made by the UCITS and AIFs they manage. *The internal risk management processes and systems of the managers of UCITS and AIFs should therefore be upgraded and* the general principle *adopted of avoiding* excessive reliance on external credit ratings.

PROCEDURE

Title	Coordination of laws, regulations and administrative provisions relating to undertakings of collective investment in transferable securities (UCITS) and Directive 2011/61/EU on Alternative Investment Funds Managers in respect of the excessive reliance on credit ratings
References	COM(2011)0746 – C7-0419/2011 – 2011/0360(COD)
Committee responsible Date announced in plenary	ECON 30.11.2011
Committee(s) asked for opinion(s) Date announced in plenary	JURI 30.11.2011
Rapporteur(s) Date appointed	Sebastian Valentin Bodu 19.12.2011
Date adopted	26.4.2012
Result of final vote	+: 22 –: 2 0: 0
Members present for the final vote	Raffaele Baldassarre, Sebastian Valentin Bodu, Françoise Castex, Christian Engström, Marielle Gallo, Giuseppe Gargani, Lidia Joanna Geringer de Oedenberg, Sajjad Karim, Antonio López-Istúriz White, Jiří Maštálka, Bernhard Rapkay, Evelyn Regner, Francesco Enrico Speroni, Dimitar Stoyanov, Rebecca Taylor, Alexandra Thein, Cecilia Wikström, Tadeusz Zwiefka
Substitute(s) present for the final vote	Piotr Borys, Sergio Gaetano Cofferati, Vytautas Landsbergis, Eva Lichtenberger, Axel Voss
Substitute(s) under Rule 187(2) present for the final vote	Karin Kadenbach

PROCEDURE

Title	Amendment of Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings of collective investment in transferable securities (UCITS) and Directive 2011/61/EU on Alternative Investment Funds Managers in respect of the excessive reliance on credit ratings		
References	COM(2011)0746 – C7-0419/2011 – 2011/0360(COD)		
Date submitted to Parliament	15.11.2011		
Committee responsible Date announced in plenary	ECON 30.11.2011		
Committee(s) asked for opinion(s) Date announced in plenary	JURI 30.11.2011		
Rapporteur(s) Date appointed	Leonardo Domenici 10.5.2011		
Discussed in committee	20.12.2011	29.2.2012	26.4.2012
Date adopted	19.6.2012		
Result of final vote	+: –: 0:	39 3 4	
Members present for the final vote	Burkhard Balz, Elena Băsescu, Sharon Bowles, Udo Bullmann, George Sabin Cutaş, Leonardo Domenici, Derk Jan Eppink, Diogo Feio, Markus Ferber, Jean-Paul Gauzès, Sven Giegold, Sylvie Goulard, Gunnar Hökmark, Syed Kamall, Othmar Karas, Wolf Klinz, Jürgen Klute, Rodi Kratsa-Tsagaropoulou, Philippe Lamberts, Werner Langen, Astrid Lulling, Hans-Peter Martin, Arlene McCarthy, Sławomir Witold Nitras, Ivari Padar, Alfredo Pallone, Anni Podimata, Antolín Sánchez Presedo, Olle Schmidt, Edward Scicluna, Peter Simon, Peter Skinner, Theodor Dumitru Stolojan, Kay Swinburne, Sampo Terho, Marianne Thyssen, Ramon Tremosa i Balcells, Pablo Zalba Bidegain		
Substitute(s) present for the final vote	Sari Essayah, Ashley Fox, Roberto Gualtieri, Olle Ludvigsson, Marisa Matias, Mario Mauro, Sirpa Pietikäinen, Emilie Turunen		
Date tabled	28.6.2012		