



EUROPEAN PARLIAMENT

2009 - 2014

Committee on Economic and Monetary Affairs

2011/0360(COD)

29.3.2012

AMENDMENTS

5 - 13

Draft report
Leonardo Domenici
(PE480.851v01-00)

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

Proposal for a directive
(COM(2011)0746 – C7-0419/2011 – 2011/0360(COD))

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PE486.063v02-00

EN

United in diversity

EN

Amendment 5
Gianni Pittella

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 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. ***However, internal models for risk assessment have not proven to be a more reliable option and a mere shift from external ratings to internal evaluations is unlikely to be beneficial. In the medium term, further initiatives should be evaluated in order to take ratings out of financial regulation and eliminate risk-weighting of assets through external rating or internal models".***

Or. en

Amendment 6
Ildikó Gáll-Pelcz

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 ***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.

Or. hu

Amendment 7
Ildikó Gáll-Pelcz

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

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.

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, ***after which it should publish the results of the consultations.***

Or. hu

Amendment 8 **Ildikó Gáll-Pelcz**

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

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

objectives.

necessary in order to achieve those objectives.

Or. hu

Amendment 9
Pascal Canfin, Emilie Turunen
on behalf of the Verts/ALE Group

Proposal for a directive
Article -1 (new)
2003/41/EC
Article 18

Text proposed by the Commission

Amendment

Article -1

Amendments to Directive 2003/41/EC

Directive 2003/41/EC is amended as follows:

In Article 18, 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."

Or. en

Amendment 10
Sharon Bowles

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

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 shall be updated;

(c) the presentation of the information by means of a standardised disclosure template.

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."

Or. en

Amendment 11
Pascal Canfin, Emilie Turunen
on behalf of the Verts/ALE Group

Proposal for a directive
Article 1 – paragraph 1 – point 1 a (new)
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 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."

Or. en

Amendment 12

Pascal Canfin, Emilie Turunen

on behalf of the Verts/ALE Group

Proposal for a directive

Article 2 – paragraph – point 1 a (new)

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."

Or. en

Amendment 13

Krišjānis Kariņš

Proposal for a directive

Article 3 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Amendment

Member States shall bring into force the

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laws, regulations and administrative provisions necessary to comply with this Directive by XX XXXX [12 months from the date of entry into force of the directive] at the latest. They shall forthwith communicate to the Commission the text of those provisions ***and a correlation table between those provisions and this Directive.***

laws, regulations and administrative provisions necessary to comply with this Directive by XX XXXX [12 months from the date of entry into force of the directive] at the latest. They shall forthwith communicate to the Commission the text of those provisions.

Or. lv