



European Parliament
Attn. Committee on Economic and Monetary Affairs
Rue de la Loi 200
1040 - Brussels
Belgium

The Netherlands, 8 January 2010

Honorable Members of the European Parliament,

With reference to our letter of 27 August 2009 regarding the proposed Directive on Alternative Investment Fund Managers (the “**Proposal**”) we kindly request your attention for the following. In view of the suggestions to the Proposal by the Presidency of the Council and following the report of Mr Gauzès, the Rapporteur of the European Parliament, we would hereby like to outline the position of the Dutch pension funds. We would like to take the opportunity to suggest 7 specific amendments, which are focused on amendment of elements of the Proposal that are relevant to the pension funds we represent.

1. Introduction

To restore trust in financial institutions and financial markets the European Commission presented the Proposal. The objective of the Proposal is to appropriately regulate financial institutions that potentially have a significant impact on macro-economic financial stability and that were previously not regulated. As set out in our August ‘09 letter to the European Commission – which we still fully support – we could potentially be negatively impacted by the Proposal.

The undersigned view the efforts by the Presidency of the Council and the report of Mr Gauzès as a step in the right direction. However, we feel that there are various opportunities for improvement. Especially with respect to the scope of the Proposal as well as consistency with existing regulations following the EU’s objective for better regulation. The view of the undersigned dedicated asset managers and associations of pension funds is therefore that if these improvement opportunities are addressed, the objective of the Commission will be achieved and at the same time negative effects on the pensioners we service will be limited.

As pension funds service providers, asset managers and associations we have our origins in the pensions funds we service. We have a true social responsibility in providing pensions for over 7 million people and our governance models are based on democratic and not for profit principles. Protection of our scheme members and transparency are very important aspects of our pension systems. The losses made during the crisis have been buffered and we will draw the lessons learned and adapt our investment strategies accordingly in the future.

The pension funds we service approximately have EUR 500 billion of invested pension capital, with over 20% of this capital invested in Alternative Investment Funds (“**AIF**”). The Proposal could lead to an undue reduction of investment opportunities, higher costs and lower returns for us as investors in these AIF. Our assessment of the impact on the pension funds is that pension contributions would have to be

raised by no less than 6%. The many millions of European citizens who have a financial interest in this via their pension funds could, in our assessment, be adversely affected by these consequences of the Proposal.

In this letter we will identify the improvement opportunities that we feel are important for the Proposal and will explain why these improvements will help to achieve its objectives. In addition we will identify potential impacts of implementing the Proposal as it is now.

2. Improvement opportunity I: Scope

In line with other European directives pension funds themselves do not fall under the scope of the Proposal. In practice however, the management of pension fund capital is often not directly executed by pension funds themselves. To allow for consolidation many pension funds have outsourced the day-to-day asset management of their assets to dedicated pension fund asset managers/service administration companies which are often owned by the pension funds or operate solely for their benefit.

For efficiency purposes these organisations sometimes also bundle assets via an asset pooling fund structure especially incorporated for the benefit of the pension funds. These structures are not commercial propositions, but are administrative and operational structures used only to the extent that the individual investment policies agreed between individual pension funds and the asset management/service administration company coincide. Depending on the definition of AIF and Alternative Investment Fund Managers (“**AIFM**”) these entities may be subject to the Proposal.

We ask that these practices are taken into account, since the Proposal does not contain a clear exemption for dedicated pension fund asset managers/service administration companies or for pension fund asset pooling.

The opinion of the undersigned is that dedicated pension fund asset managers/service administration companies should be excluded from the scope of the Proposal for the following reasons:

- **No material difference between in-house and external dedicated pension fund asset managers/service administration companies**

The mission and objectives of in-house asset managers and external dedicated pension fund asset managers/service administration companies are identical, and responsibility remains with the outsourcing pension fund. Only the scale of operations differs, the closed user group remains the same. There are no additional risks. On the contrary, the outsourcing of asset management of pension funds assets has many advantages for pensioners and even reduces risk as a result of increased expertise available to larger organisations. Aforementioned outsourcing enables asset pooling which enhances services provided to the ultimate beneficiaries, the pensioners. Reference is made to amendments 1 and 4 attached hereto.

- **Regulation already in place**

These asset managers/service administration companies and pension fund asset pools are effectively extensions of pension funds that are already subject to other regulation. Pursuant to this regulation there is already a framework of requirements in place for pension funds governing the outsourcing of the management of pension funds assets. With a few adjustments the Proposal can be harmonised with existing legislation. Reference is made to amendments 2 and 3 attached hereto.

- **Maintain a level-playing-field**

The objective of pension funds throughout the EU is roughly the same, however the underlying

principles are split in two groups. One group consisting of those Member States which opted for a system of fully capitalized retirement provisioning (The Netherlands, the UK and Sweden) will be unduly hindered by some of the regulatory requirements included in the Proposal, whilst the effects on the other group are minimal

We would suggest to maintain a level-playing-field between pension provisioning in different Member States and to recognize the negative impact on parts of the EU financial markets in the final deliberations on this Proposal.

3. Improvement opportunity II: Consistency with existing regulation

Various issues addressed by the Proposal are covered by existing legislation that has proven itself in the past. Examples are the proven terminology and principle based approach of UCITS and MiFID. The opinion of the undersigned is that consistency with existing regulation will improve the Proposal for the following reasons:

- **Simplification will speed up implementation**

MiFID and its structure could be used in the Proposal to achieve simplification of the Proposal, for instance in respect of the provisions on valuation, delegation and depositaries. Simplification could be achieved by stripping out and referring to existing MiFID and UCITS provisions such as for depositary requirements, operating conditions, capital requirements and authorisation procedures for investment firms and managers of investment funds respectively, as well as for disclosure obligations to investors and provisions on delegation.

- **Consistency with implemented regulation will facilitate compliance**

Follow the proven path: UCITS contains provisions that have over the years have proven to be robust and useful and are currently being evaluated. The undersigned are in favour of utilising these provisions.

4. Impact

The current drafting of the Proposal will have an undue negative impact on the effective functioning of the pension fund industry. It will impact our ability to assist in the economic recovery in the post-crisis era. It will impact the solidity of the foundation for an optimal response to the challenges of an ageing population in the EU. Our major concerns are limitation of investment opportunities and increasing costs.

- **Increase of cost**

We have performed a high-level quantitative assessment of the possible impact of the Proposal. We estimate that by limiting the investment universe the Proposal in its current form might result in an annual loss of roughly EUR 1.5 bln. Below is a brief summary while for more detailed calculations reference is made to Annex 1.

The Proposal could lead to a switch in investments of all positions in alternative non-UCITS non-EU assets to more traditional asset classes like equities and fixed income. To show the consequences of this re-allocation and – using the maximum return assumptions of the Dutch Central Bank (DNB) for a traditional asset mix – this would result in an average return of 6.46%. However, the average yield on non-EU non-UCITS alternative investments is 8.84%. Since these investments make up 9% of the overall portfolio, such an asset mix transformation would – on a total size of EUR 693 bln of the Dutch pension industry – equate to an annual loss in income of EUR 1.47bn. As the Dutch pension contributions amount to EUR 23.5 bln on a macro level, the potential

negative impact of the Proposal would have to be compensated by raising the pension contributions by no less than 6%.

- **Third countries**

The Proposal includes restrictions and requirements on third country AIF marketing and management. The Council has suggested to delete the required authorization for non-EU AIFM to market AIF in the EU. In our view this is a big step in the right direction. However, even the proposal by the Council sets two conditions for the management by EU AIFM of AIF in non-EU countries: (i) AIF should be compliant with standards of international organizations and (ii) appropriate cooperation agreements should be in place.

The Proposal should in our view contain clear conditions for the management of AIF in non-EU countries so that it is known to investors and/or AIFM whether an investment in a non-EU AIF can qualify. As the presence of an appropriate cooperation agreement imposes a major uncertainty as to whether the AIF in the third country will qualify and as from when, it is suggested to delete the second requirement.

Finally, pursuant to the Proposal it is not possible for a non-EU AIFM to request authorization. If in future the “AIFM” label – like the UCITS label – will represent a certain quality in the way a fund manager manages its funds, one should also make it possible for non-EU AIFM to request authorization under the Proposal, thereby voluntarily submitting itself to the European AIFM legislation.

See our suggested wording of Amendment 6.

5. Conclusion

Currently, the ultimate effect of the Proposal is that it still leads to an undue reduction of investment opportunities, higher costs and lower returns for investors. The many millions of European citizens who have a financial interest in this issue via their pension funds could, in our assessment, be adversely affected by the Proposal. Risks might not decrease, but might increase and be transferred to these constituents instead.

We would therefore suggest seven specific amendments to the Proposal. Our aim is simply to strengthen the framework and prevent unwanted effects by duplications included in the current draft of the Proposal. These amendments relate to:

- Specific for the undersigned: the scope of the Proposal (Amendments 1, 2 and 3).
- For the industry as a whole:
 - exemption for intra-group AIF (Amendment 4).
 - the requirements with regard to the depository (Amendment 5).
 - the conditions for the management of AIF in third countries (Amendment 6).
 - inclusion of grandfathering clauses (Amendment 7).

The institutions listed below fully support the views and concerns expressed herein and hope that their concerns will be considered in such way that the Proposal will serve the interest of the pension funds they service in general and the interest of their pension beneficiaries in particular. We would be pleased to discuss our views with you or your representatives and would also be willing to provide more detailed comments on the various specific provisions or to explain our position bilaterally.

If you require further information, please do not hesitate to contact either Sibylle Reichert at +32 474 932841 or via sreichert@opfvb.eu or Gerben Everts at +31 20 604 8168 or via Gerben.Everts@apg-am.nl.

Yours sincerely,

APG
Blue Sky Group
Doctors Pension Fund Services
Hoogovens Pension Fund
Mn Services

PGGM
Philips Pension Fund
Unilever Pensionfund Progress
Shell Asset Management Company
Syntrus Achmea

The following pension industry representative organizations support this initiative:

The Dutch Association of Industry wide Pension Funds (*Vereniging van Bedrijfstakpensioenfondsen*)
The Dutch Association of Company Pension Funds (*Stichting voor Ondernemingspensioenfondsen*)

Cc:

- (i) The European Commission;
- (ii) The Spanish presidency of the EU; and
- (iii) The Permanent Representation of The Netherlands to the EU.

ANNEX 1

Quantitative impact of limiting the choice of investments

The Proposal imposes certain restrictions and requirements on Alternative Investment Fund Managers (AIFM) marketing non-EU Alternative Investment Fund (AIF) and non-EU AIFM marketing AIF in the EU. This will potentially have a negative impact on the investment universe available to pension funds.

Below, the results are listed of a quantitative assessment of the possible impact of limiting the investment universe. As a proxy for the asset mix of the average Dutch pension fund, data of the pension fund regulator in The Netherlands, the Dutch Central Bank (DNB) have been used (DNB Statistisch Bulletin, September 2009). Other inputs used are the maximum return assumptions stipulated by the Dutch Central Bank (DNB), and a rough estimate of the percentages of Alternative Investments of the larger Dutch pension funds that are invested via non-UCITS non-EU investment funds. Note that this assessment does not take into account the impact of limiting the investment universe of non-EU AIFM managing EU AIF.

Table 1: Asset mix average Dutch pension fund (source: DNB)

Real Estate	10.8%		
<i>non-EU AIFM</i>			3.9%
Equity	35.0%		
Fixed Income	45.5%		
Alternatives	8.6%		
Hedge Funds		3.1%	
<i>non-EU AIFM</i>			3.0%
Private Equity		2.7%	
<i>non-EU AIFM</i>			2.0%
Commodities		2.6%	
Other		0.3%	
	100.0%	8.6%	8.9%

Table 2: Percentage invested via non-UCITS non-EU investment funds

	% non-EU AIFM
Hedge Funds	97%
Private Equity	75%
Real Estate	36%

Table 3: maximum return assumptions DNB

	arithmetic returns
Fixed income	4.5%
Equity	9.0%
Private equity	9.5%
Direct real estate	8.0%
Commodities	8.0%
Hedge funds	9.5%

Change in asset mix

The method used assumes that as a result of the introduction of the Proposal, all positions in non-UCITS non-EU investment funds will be liquidated and subsequently allocated to equities and fixed income. Based on the current distribution between equities and fixed income and – using the maximum return assumptions of DNB – a traditional asset mix would result in an average return of 6.46%. The average yield on non-EU non-UCITS investments (located within the Real Estate, Hedge Fund and Private Equity portfolios), however, is 8.84% (using the weights in table 1 and returns in table 3). As these investments make up 9% of the overall portfolio, such an asset mix transformation would lower the average portfolio return by 0,21%. Given a total size of EUR 693 bln of the Dutch pension industry, this would equate to a loss in income of EUR 1.47bn.

Consequently, by limiting the investment universe, the introduction of the Proposal in its current form might result in a loss of roughly EUR 1.5 bln on an *annual basis*. As the Dutch pension contributions amount to EUR 23.5 bln on a macro level, the potential negative impact of the Proposal would have to be compensated by raising the pension contributions by no less than 6%.

This exercise underestimates the possible negative impact, as a change in asset mix not only lowers the average return, but also limits diversification, thereby increasing the overall volatility of the pension assets.

AMENDMENT 1 – SCOPE (SERVICE ADMINISTRATION COMPANIES)

Amendment by [Insert name member European Parliament]

Text proposed by the Commission

Amendments by Parliament

Whereas [15a]

N.A.

15a This Directive does not apply to investment firms providing portfolio management services authorised under Directive 2004/39/EC (MiFID), pension funds and other pension organizations governed by Directive 2004/41/EC (IORP) and their dedicated asset management and/or service administration companies, or collective investment undertakings governed by Directive 2009/65/EC (UCITS). In practice - for cost efficiency purposes - investment firms managing individual portfolio's under the Directive 2004/39/EC, pension asset management and/or service administration companies, and managers of UCITS (and, in due course, AIFM) may administratively or operationally pool investments within their mandates. In light of its aims this Directive should not apply to those internal pooling structures.

Justification

The scope of the proposed AIFM Directive is confined to the management of collective investment undertakings which raise capital from a number of investors with a view to investing it in accordance with a defined investment policy on the principle of risk-spreading for the benefit of those investors. This Directive does not apply to investment firms, pension funds and their dedicated asset management and/or service administration companies, or UCITS funds. In practice, for cost efficiency purposes, MiFID investment firms managing individual portfolio's, pension asset management and/or service administration companies, and managers of UCITS (and, in due course, AIFM) may administratively or operationally pool investments within their mandates through omnibus securities accounts or entities separating legal from beneficial.

These structures are not commercial propositions to attract assets for collective investments ignoring the individual qualities and requirements of clients, nor are they marketed or even available for investment outside the scope of the overarching individual mandates, which are already regulated themselves under various European directives. These administrative and operational structures are used only to the extent that individual mandates, which are based on the individual qualities and requirements of clients, coincide

and benefit of scale and other cost savings can be achieved. The principal of risk-spreading as such does not apply to these structures. These structures are directly or indirectly (through one or more subsidiary companies) managed and controlled by the investment firm, the pension asset manager and/or service administration company, or UCITS manager and used by it in its own discretion. Therefore, this Directive should also not apply to those structures.

For the avoidance of doubt, pension asset management and/or service administration companies and asset pooling as described, do not fall within the definition of AIF, AIFM or depositary.

AMENDMENT 2 – SCOPE

Amendment by [*Insert name member European Parliament*]

Text proposed by the Commission

Amendments by Parliament

Article 2a, paragraph 1, point e

N.A.

This Directive shall not apply to any of the following: (...)

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 provision (IORP), including, where applicable, *the entities referred to in Article 9(4) of that Directive*, the authorised entities responsible for managing IORP and acting on their behalf referred to in Article 2(1) of that Directive, *including any investment or asset pooling structures utilized thereby specifically for these IORP*, or the appointed investment managers pursuant to Article 19(1) of the same Directive, insofar as they do not manage AIF established in the Community.

Justification

Under the proposal for the AIFM Directive and consistent with other European directives, i.e the UCITS directive and the MiFID directive, pension funds do not fall under the scope of the proposal for the AIFM Directive. To allow for consolidation, professional management, better risk management and to benefit from economies of scale, many pension funds have outsourced the day-to-day management of their assets to an individual or joint asset management and/or service administration company. These are separate organizational entities, but are often owned by the pension funds and/or are dedicated to them operating solely for the benefit of these pension funds. Many of these asset managers/service administration companies facilitate pooling structures on behalf of pension funds in order to efficiently maximize returns from a purely operational and administrative perspective against the lowest possible costs for the pension beneficiaries. These asset management / service administration companies and pension fund asset pools are, as extensions of the pension funds themselves, already regulated by virtue of the IORP Directive (and sometimes Directive 2004/39/EC). Under the proposal for the AIFM Directive pension funds have to assure that there is sufficient supervision on the outsourced tasks, including those to asset management/service administration companies. This means that these companies are subject to the same supervisory requirements as pension funds themselves. With an extra layer of regulation, the good functioning of the financial market is not supported. The AIFM Directive should therefore include that the such directive shall not apply to institutions which are covered by IORP Directive, including, where applicable, the authorised entities responsible for managing IORP or the

appointed investment managers, insofar as they do not manage AIF established in the Community (in line with the Council text of the 15th of December 2009). In addition it should be noted the AIFM Directive should also not apply to any investment- or asset pooling structures utilized specifically for these IORP institutions.

AMENDMENT 3 – SCOPE

Amendment by [Insert name member European Parliament]

Text proposed by the Commission

Amendments by Parliament

Article 4a.3(a)

N.A.

By way of derogation from paragraph 1, Member States may authorize an externally appointed AIFM to provide the following services:

Management of portfolios of investments, including those owned by pension funds and institutions for occupational retirement provision in accordance with Article 19(1) of Directive 2003/41/EC, in accordance with mandates given by investors on a discretionary, client-by-client basis, *including where such mandates are managed in the form of investment- or asset pooling structures.*

Justification

The suggestions made by the Council on the 15th of December 2009 provided the possibility in paragraph 4a.3(a) for Member States to authorize AIFM not already authorised under the UCITS directive (2009/65/EC) to provide investment management services to investment portfolios owned by pension funds and IORPs. It should be made clear whether the AIFM Directive would also cover investment- or asset pooling structures, as is of course intended. It is therefore suggested to incorporate the text suggested by the Council and add to that the wording of the above paragraph 4a.3(a) to include that the exemption applies in case such mandates are managed in the form of investment- or asset pooling structures.

AMENDMENT 4 – INTRA-GROUP AIF

Amendment by [Insert name member European Parliament]

Text proposed by the Commission

Amendments by Parliament

Article 2a, paragraph (ba)

N.A.

This Directive shall not apply to any of the following:
(...)

(ba) AIFM insofar as they manage one or more AIF whose only investors are (i) the AIFM themselves, (ii) the parent undertakings or the subsidiaries of the AIFM, (iii) other subsidiaries of those parent undertakings or (iv) pension funds connected to the institutions mentioned under (i), (ii) and (iii) and to which those institutions contribute pension premium payments, provided that none of those investors itself is an AIF;

Justification

The offering of financial services within a group of companies has historically always been exempted from the scope of European financial legislation. Both the MiFID directive and the UCITS directive contain explicit exemptions for the offering of asset management and fund management within a group of companies. The rationale for this is that as long as no financial services are offered to third parties there is no need for public financial regulation. In the regulatory practice this exemption is usually interpreted in such a way that corporate pension funds – albeit often not forming part of the group in the legal-technical sense – for all practical purposes fall within the scope of aforementioned exemption.

While the initial proposal for the AIFM Directive did not contain a group exemption the latest Council text suggestions for the AIFM Directive in Article 2a(ba) did contain an exemption for AIFM insofar as they manage one or more AIF whose only investors are the AIFM itself or group companies of the AIFM. We interpret this to be a group exemption alike the MiFID and UCITS exemption. Such an exemption will be useful for many multinationals within the European Union, provided it is clear that their corporate pension funds fall under this exemption. This is important because these multinationals often have an internal pension service administration company that make use of structures that would qualify as AIF under the current proposal if they combine ('pooling') the assets of their corporate pension funds. Multinationals do this for risk management, economy of scale and/or efficiency reasons. Obviously this is not intended to be within the scope of the financial regulation, as the pension funds themselves are of course already subject to local pension fund supervision. Therefore it needs to be absolutely clear that the AIFM Directive does not intend to cover the offering of AIF to group pension funds, by stating explicitly that these pension funds fall within the same 'group of companies' for the purposes of the exemption in Article 2a(ba).

AMENDMENT 5 – DEPOSITARY

Amendment by [*Insert name member European Parliament*]

Text proposed by the Commission

Amendments by Parliament

Preamble

N.A.

Depending on the laws of the Member States, generally, investment funds may be constituted as entities with legal personality and/or as contractual entities without legal personality. With respect to fund entities without legal personality, the laws of the relevant Member States may necessitate an investment fund (including AIFs) to include a dedicated entity with legal personality established in their jurisdiction to be the bearer of rights and liabilities of the fund for the risk and benefit of its investors. It is understood that, where these entities are used in the context of an AIF, such entities are deemed to be a part of the AIF itself.

Article 17

N.A.

3. The depositary shall be either:

(...) a legal person which is authorised by the competent authorities of the home Member State of the AIFM to act as a depositary, is subject to prudential regulation and ongoing supervision and which can furnish sufficient financial and professional guarantees to be able to effectively perform the relevant depositary functions and meet the commitments inherent in those functions.

Justification

No “justification” would be necessary given the “whereas” nature of the amendment itself. As for the depositary it should be added to Article 17 that as depositary should also be a legal person which is authorised by the competent authorities and is subject to prudential regulation.

AMENDMENT 6 – THIRD COUNTRIES

Amendment by *[Insert name member European Parliament]*

Text proposed by the Commission

Amendments by Parliament

Article [34a]

N.A.

1. Member State shall ensure that an authorised AIFM may only manage and/or market an AIF established in a third country where any relevant legislation in the third country is in line with the standards set by international organisations or the AIFM can demonstrate that the AIF in the third country complies with these standards.

Article [35]

An AIFM may only market shares or units of an AIF domiciled in a third country to professional investors domiciled in a Member State, if the third country has signed an agreement with this Member State which fully complies with the standards laid down in Article 26 of the OECD Model Tax Convention and ensures an effective exchange of information in tax matters. Where AIFM market shares or units of AIF domiciled in a third country the home Member States may prolong the period referred to in Article 31(3), when this is necessary to check whether the conditions of this Directive are met. Before allowing AIFM to market shares or units of AIF domiciled in a third country, the home Member State shall have particular regard to the arrangements made by the AIFM in accordance with Article 38, where relevant.

Deleted

Article [35a]

N.A.

1. Professional investors domiciled in a Member State may invest in an AIF domiciled in a third country provided that either the AIF is managed by an AIFM having its registered office in a Member State and authorized in accordance with Article 4, or the third country where the AIF has its registered office if any relevant legislation in the third country is in line with the standards set by international organisations or if the AIFM can demonstrate that the AIF in the third country complies with these standards.
2. The commission shall adopt implementing measures regarding the standards referred to in paragraph 1. 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).

Justification

The AIFM Directive should contain clear conditions for the management of AIF in third countries so that it is known to investors and/or AIFM whether an investment in a non-EU AIF can qualify. Therefore it is suggested to include the suggestion for Article 34a of the Council in its draft of the 15th of December 2009, but not to include the second requirement of that suggested Article 34(a) as the requirement of the presence of an appropriate cooperation agreement imposes a major uncertainty as to whether the AIF in the third country will qualify and as from when. The same argument goes for the amendment of Article 35a. Consequently to the amendment of Article 34(a) as suggested above, Article 35 can be deleted.

Article [39]

1. Member States may authorise, in accordance with this Directive, AIFM established in a third country to market units or shares of an AIF to professional investors in the Community under the conditions of this Directive, provided that: (a) the third country is the subject of a decision taken pursuant to paragraph 3 (a) stating that its legislation regarding prudential regulation and on-going supervision is equivalent to the provisions of this Directive and is effectively enforced; (b) the third country is the subject of a decision taken pursuant to paragraph 3 (b) stating that it grants Community AIFM effective market access comparable to that granted by the Community to AIFM from that third country; (c) the AIFM provides the competent authorities of the Member State in which it applies for authorisation with the information referred to in Articles 5 and 31 ; (d) a cooperation-agreement between the competent authorities of that Member State and the supervisor

1. Member States may authorise, in accordance with this Directive, AIFM established in a third country to manage AIF that market units of shares of an AIF to professional investors in that Member State under the conditions of this Directive and according to the procedures in articles 5 and 31, provided that:
a. the AIFM is under on-going supervision in the third country; and
b. any relevant legislation in the third country is in line with the standards set by international organisations or the AIFM can demonstrate that the AIF in the third country complies with these standards.
2. The commission shall adopt implementing measures regarding the standards referred to in paragraph 1. Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with

of the AIFM exists which ensures an efficient exchange of all information that are relevant for monitoring the potential implications of the activities of the AIFM for the stability of systemically relevant financial institutions and the orderly functioning of markets in which the AIFM is active. (e) the third country has signed an agreement with the Member State in which it applies for authorisation which fully complies with the standards laid down in Article 26 of the OECD Model Tax Convention and ensures an effective exchange of information in tax matters. 2. The Commission shall adopt implementing measures aimed at establishing: (a) general equivalence criteria for the equivalence and effective enforcement of third country legislation on prudential regulation and on-going supervision, based on the requirements laid down in Chapters III, IV and V. (b) general criteria for assessing whether third countries grant Community AIFM effective market access comparable to that granted by the Community to AIFM from those third countries. 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 regulatory procedure referred to in Article 49(2), adopt implementing measures stating: (a) that the legislation on prudential regulation and ongoing supervision of AIFM in a third country is equivalent to this Directive and effectively enforced; (b) that a third country grant Community AIFM effective market access at least comparable to that granted by the Community to AIFM from that third country.

scrutiny referred to in Article 49(3).

Justification

Investors have also largely invested in EU AIF managed by non-EU AIFM (for example by US managers). Under the proposed AIFM Directive it is not possible for a non-EU AIFM to request for an authorization. This means that investors will still need to liquidate these investments if the proposed AIFM Directive enters into force. If like the UCITS label, the "AIFM" label in future stands for certain quality in the way a fund manager handles its funds, it should be possible for non-EU AIFM to request for an authorization under the proposed AIFM Directive. Such manager will then become voluntarily subject to the European AIFM legislation.

AMENDMENT 7 – GRANDFATHERING

Amendment by [*Insert name member European Parliament*]

Text proposed by the Commission

Amendments by Parliament

Article [51, paragraph 2]

AIFM operating in the Community before [the deadline for the transposition of this Directive] shall adopt all necessary measures to comply with this Directive and shall submit an application for authorisation within one year of the deadline for the transposition of this Directive.

1. AIFM operating in the Community before [the deadline for the transposition of this Directive] shall adopt all necessary measures to comply with this Directive and shall submit an application for authorisation within one year of the deadline for the transposition of this Directive.

2a. AIFM insofar as they manage AIF of the closed-ended type or the open-end type with de facto an active lock-up at the date of entry into force of the AIFM Directive which do not make any capital commitments after 4 years after the date of entry into force of the AIFM Directive may however continue to manage such AIF without authorisation under this Directive until 20 years after the date of entry into force of the AIFM Directive.

2b. Professional investors domiciled in a Member State that have invested at the date of entry into force of the AIFM Directive, in an AIF domiciled in a third country are allowed to continue their investment in such AIF as the investment is deemed to have taken place at the initiative of the professional investor.

Justification

Currently the proposal for the AIFM Directive only includes one transitional provision for AIFM managing AIF that are currently in existence (also referred to as 'grandfathering'). This provision has a very limited scope. It is essential that more and broader grandfathering provisions are available. Investors will be confronted with very significant costs and, potentially, losses if they would need to withdraw in a short-term period from AIF that no longer qualify. The current grandfathering provision only applies to certain closed-end funds. However, also for open-end or semi open-end funds problems can arise if a large group of institutional investors is forced to sell on the market because the AIF they have invested in can no longer be marketed and/or managed by their AIFM under the AIFM Directive. Therefore it is suggested to – at the very least – implement a provision stating that investments in a non-EU AIF of a non-EU AIFM

at the time of the entry into force of the AIFM Directive are deemed to have taken place at the initiative of the institutional investor and can therefore be continued.