

Europe: Important Issues Still Open for Debate in EU's AIFMD and UCITS Reviews

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On 24 January 2023, the ECON Committee of the EU Parliament adopted its [report](#) on proposed amendments to the EU's main fund rules, AIFMD and the UCITS Directive, ahead of trilogue negotiations with the EU Council and Commission set to begin in March. When agreed, the revised Directives are expected to come into force in 2025 in light of the 24 months transposition period. Notable proposals include:

- Delegation

Expansion of the concept of delegation in AIFMD beyond portfolio and risk management to (for example) ancillary MiFID services (eg separate account management), marketing, and certain administrative tasks (e.g. customer inquiries, legal and fund management accounting services) that may sometimes be delegated by the AIFM to third parties such as distributors or administrators, as well as more detailed mandatory disclosure on delegation of portfolio management or risk management when applying for authorisation.

- Liquidity Risk Management

National regulators should be able to require an AIFM to activate or deactivate certain liquidity management tools such as suspension of redemptions and subscriptions, and redemption gates, but only where justified by reasonable and balanced investor protection, or financial stability, risks.

- Loan Originating Funds

AIFMs should ensure that a loan originated to any single borrower by an AIF it manages, does not exceed 20% of the AIF's capital, if the borrower is a collective investment undertaking, a MiFID investment firm or a financial undertaking. Furthermore, loan originating funds must be closed-ended where long-term, illiquid loans would, in the eyes of the relevant national regulator, otherwise lead to probable liquidity mismatches as a result of investor redemption requests.

- Depositary services

Pending introduction of a depositary passport, EU Member States should be able to authorise cross-border depositary appointments where this would otherwise be disallowed by AIFMD or the UCITS Directive.

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