



*European Association of Co-operative Banks  
Groupement Européen des Banques Coopératives  
Europäische Vereinigung der Genossenschaftsbanken*

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## EACB comments on the proposal of the European Commission on a directive on Alternative Investment Fund Managers (AIFM)

17 September 2009

The **European Association of Co-operative Banks** (EACB) is the voice of the co-operative banks in Europe. It represents, promotes and defends the common interests of its 28 member institutions and of co-operative banks in general. Co-operative banks form decentralised networks which are subject to banking as well as co-operative legislation. Democracy, transparency and proximity are the three key characteristics of the co-operative banks' business model. With 4.200 locally operating banks and 63.000 outlets co-operative banks are widely represented throughout the enlarged European Union, playing a major role in the financial and economic system. They have a long tradition in serving 160 million customers, mainly consumers, retailers and communities. The co-operative banks in Europe represent 50 million members and 750.000 employees and have a total average market share of about 20%.

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### AN ASSOCIATION ON THE MOVE

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## General remarks

1. The European Association of Co-operative Banks (EACB) would like to provide some comments on the proposal of the European Commission for a directive of the European Parliament and of the Council on Alternative Investment Fund Managers (COM(2009) 2007 final).
2. Alternative investment funds (AIF) have an important role in the European financial system. The impact of their activities on the markets and companies in the European Union is significant. European co-operative banks are therefore overall supportive of the intention – expressed as a global consensus by the leaders of the G20 countries during the recent summit in London in April 2009 – to minimize possible systemic risks in this area.
3. Generally EACB regrets that a high number of details, requirements, procedures, etc. in the AIFM proposal have been delegated – through implementing measures – to subsequent levels of decision. This structure leads to a high degree of complexity.
4. In the following paragraphs EACB would like to point out detailed comments concerning the scope of the initiative, the outlines on organizational requirements for the valuation of AIF assets and depositaries as well as the delegation of AIFM functions.

## Scope of the initiative

5. It is quite impossible to clearly define alternative investment funds in general and hedge funds in particular. Therefore we welcome the approach of the Commission to regulate the managers of alternative investment funds. In view of a higher stability of the financial markets they are certainly reasonable targets for such a directive.
6. European co-operative banks do, however, have serious problems with the very broad scope of this initiative, including any collective investment undertaking which is not covered by the UCITS directive.
7. Real estate funds – for instance – would fall in the scope of this initiative but they cannot be considered as an alternative investment at all. In most European countries they are well known as traditional types of investments and are regulated at a national level.
8. Analogue to this example, thousands of non-UCITS, non-alternative investment funds and their management are touched by the proposed directive even though national rules are already in place for a very long time. It would be better to focus on standardizing these national rules and introduce the result in the UCITS regime.

## Valuation

9. It should be explicitly mentioned in Article 16 that also the depositary can take over the tasks of a valuator.



## Depository

10. European co-operative banks overall appreciate the outlines made in article 17 paragraph 3 and consider it as important for an enhanced financial stability in the area of alternative investments that a depository for AIFM shall be a credit institution having its registered office in the European Union.
11. However article 17 paragraph 5 on detailed liability rules for depositaries providing services for AIFM is from our perspective redundant for the following reasons:
12. The first paragraph in article 17 (5) on the liability of a depository to the investors of alternative investment funds in case of failures is problematic. The contractual relationship in this case is between the management of the AIF and the depository which provides services to the AIFM and not to the investors. The depository does not know the investors. Therefore it would make sense that the AIFM – in case of losses caused by failures – claims for compensation and not the investor. Since this case is already covered by general law there is no need for particular additional legal rules for AIFM.
13. The second paragraph in article 17 (5) deals with the liability of a depository with respect to its safe-keeping duties. Such a rule is not only valid for the services of a depository for AIFM but also generally for services of a custodian in the field of securities. In this case the general legal rules for depositaries and custodians apply. Also in this respect there is no need for specific rules for AIFM.
14. For the mentioned reasons we would suggest to completely delete paragraph 5 of article 17.

## Delegation

15. Article 17 (3) states that a depository shall be a credit institution. It is mandatory for credit institutions to have an adequate management concerning conflicts of interest. We therefore consider the general exclusion of the delegation of management tasks to depositaries – as outlined in article 18 (1) paragraph 3 – as disproportionate.

### Contact:

The EACB trusts that its comments will be taken into account. For further information or questions on this paper, please contact:

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