

BAI feedback statement

Savings & Investments Union – EU rules to foster market integration and efficient supervision

I. Preliminary Note

The German Alternative Investments Association (Bundesverband Alternative Investments e.V. - **BAI**) welcomes the opportunity to give feedback on the proposals to foster market integration and efficient supervision. As an industry association we represent more than 300 national and international members active in the institutional alternative investments sector (i.e. infrastructure, private equity, private debt, liquid alternatives), representing the entire value chain (asset manager, funds, banks, service providers, etc.). Likewise institutional investors (insurance companies, pension funds, occupational pension schemes, etc.) are represented in our investor board so that our activities have a dedicated focus on the asset owner side and their investment topics and needs as well.

We support the European Commission's (EC's) ambitions in creating a savings and investment union. As we already pointed out in our previous feedback statements to the call for evidence¹ and targeted consultation², the development of deep, integrated, and efficient capital markets across the EU, needs regulatory frameworks that must be designed in a way that promotes accessibility, innovation, and competitiveness, while safeguarding market integrity and investor protection. The proposed changes are a right step towards these goals. To reach those, a timely legislative process / implementation is necessary.

In general, we would like to point out some aspects ahead of more detailed feedback on the different proposals (directives and regulations) below:

1. Coherence and Consistency in Policymaking:

We call on the EC to ensure coherence across legislative initiatives and to respect the intent and design of Level 1 legislation in subsequent Level 2 and 3 measures. Too often, implementation diverges from the legislative mandate, creating legal uncertainty and operational burden. A stronger commitment to good legislative process – including realistic implementation timelines – will be essential to the SIU's success.

2. Stability, Not Constant Change:

Private Markets and NBFIs Recent reforms – particularly the revised Alternative Investment Funds Managers Directive (AIFMD) – have delivered a viable and stable framework for private debt and alternative investments. This progress should not be undermined by

¹ [BAI comments on the European Commission call for evidence on the Savings and Investments Union \(SIU\).](#)

² [BAI response to the European Commission's consultation on the Savings and Investments Union.](#)

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overlapping initiatives at the EU and international levels targeting so-called Non-Bank Financial Intermediation (NBFI). While we support monitoring emerging risks, further legislative action should not be pursued before evaluating the effects of recent regulatory changes. Private markets are critical to achieving the EU's strategic goals, and constant regulatory churn creates unnecessary uncertainty.

3. Simplifying and Harmonizing Regulatory Reporting:

Current regulatory reporting requirements under AIFMD, MiFID II, and the UCITS Directive are overlapping, inconsistent, and often duplicative. These inefficiencies increase costs for fund managers without proportionate benefits to regulators. We call for a holistic and centralized approach to regulatory reporting, with ESMA serving as the primary reporting hub and coordinating data distribution to national competent authorities (NCAs). This would increase efficiency and consistency while maintaining transparency and oversight. Furthermore, we support an enhanced role for ESMA in assessing third-country equivalence regimes, which should be based on technical, not political, criteria.

4. Measures to Enhance Investments of Professional Investors:

To strengthen the role of professional investors in financing long-term investments, a coherent regulatory concept tailored specifically to professional investors should be developed. Such a concept should acknowledge the experience and capabilities of these investors and provide a more proportionate regulatory framework. The following measures outline key elements of such a framework.

First, the concept of the professional investor under MiFID should be revised. The current definition is outdated and overly focused on liquid financial instruments that are traded frequently. As a result, it does not adequately reflect investment strategies centered on long-term assets. A revised concept should recognize entrepreneurial and investment experience more broadly, rather than limiting relevant expertise primarily to experience in the financial industry. In addition, the framework should include practical and workable opt-in provisions, and the Key Information Document (KID) requirement should be abolished for professional investors.

Second, investments by institutional professional investors such as insurance companies, pension funds, and banks should be facilitated. This would require a review of capital charges under Solvency II and the Capital Requirements Regulation (CRR), particularly for investments in diversified long-term fund structures. Reporting requirements applicable to these investors should also be reduced in order to remove unnecessary administrative burdens.

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Third, the regulatory framework under the AIFMD should be streamlined for managers who manage only alternative investment funds that are marketed exclusively to professional investors. In such cases, authorisation, transparency, reporting, and disclosure requirements should be significantly reduced. In addition, a structured mapping exercise – such as a workshop involving regulators, managers, and investors – should be conducted to identify which information currently provided to NCAs and investors is truly essential and which elements are of limited relevance.

Furthermore, all Level II and Level III measures relevant to alternative investment funds marketed to professional investors should be revisited, not only those directly related to AIFMD, in order to ensure consistency and proportionality across the broader regulatory framework.

In the area of sustainability regulation, a carve-out for professional investors should be introduced under the Sustainable Finance Disclosure Regulation (SFDR), reflecting their higher level of sophistication and ability to assess sustainability-related risks and disclosures independently.³

Finally, the requirements under the Digital Operational Resilience Act (DORA), including the associated auditing requirements, should be evaluated to ensure that they are proportionate and do not impose unnecessary burdens on market participants serving professional investors.

5. Client categorization:

Professional status opt-in - Modify number of transactions criteria for private assets: Additionally, the categorization as a professional investor should be revised. Typically, private asset investments are marked by fewer, but more significant trades compared to publicly traded investments, where it is easier and – arguably – also more meaningful in terms of experience gained to achieve a high number of trades. “10 transactions over EUR 30,000 in unlisted companies over the last five years” could be helpful in that regard. However, it would still not help with market entry, as most funds are eligible for professional investors only. It may be better to further decrease the number of transactions required, e.g. from 10 to 5, and accept a higher per investment minimum amount, say 60k instead of 30k. This would allow UHNWIs to achieve the relevant numbers more quickly to be eligible for professional opt-up based on trading experience.

Clarify that Asset Manager rely on classification carried out by distribution partners without duplicative obligations: We would also ask to clarify that AIFMs and UCITS ManCos can fully rely on client classifications carried out by their distribution partners, e.g. regulated MiFID

³ Please also refer to our statement on the SFDR review.

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firms or banks, and do not have to oversee or underwrite any such client classifications when considering whether an investor meets the relevant eligibility criteria of a fund. This would significantly reduce regulatory uncertainty and allow for streamlined operational processes.

AIFs only marketed to semi-professional investors – clarification, that there is no need to produce a KID: We call for the implementation of a "semi-professional" investor category in EU law. The concept of semiprofessional/sophisticated client exists in several key markets e.g., LU, IE and it is indeed not harmonized. Professional and semi-professional investors should be able to invest in AIF managed by small-size managers. This would broaden the distribution opportunities for small-size AIFM, while still making sure to keep investor protection in mind by excluding retail investors. Hence, we would like to use the VC package review to clarify there is an exemption from the obligation to produce a KID where an investor category in-between retail and professional clients is recognized either by EU law, the laws of a Member State or an NCA.

II. Proposal for a Directive of the European Parliament and of the Council amending Directives 2009/65/EC, 2011/61/EU and 2014/65/EU as regards the further development of capital market integration and supervision within the Union

Comments on the amendments to Directive 2009/65/EC (UCITSD) and 2011/61/EU (AIFMD):

Passporting for sub-threshold AIFMs

We welcome the continued commitment to a robust passporting regime for AIFMs and the overarching objective of streamlining marketing rules across the European Union. In this context, we encourage the extension of the passporting regime to sub-threshold AIFMs. Such a step would further enhance market integrity, foster competition, and contribute to a more level playing field across Member States, while maintaining appropriate supervisory safeguards.

AIFMD and UCITS review

We acknowledge that the recent reviews of the AIFMD and UCITS frameworks have been comprehensive and far-reaching, and we therefore see limited value in a broad-based overhaul at this stage. Instead, priority should now be given to the consistent and harmonised implementation of the agreed reforms across Member States. In particular, we underline the importance of a faithful and timely transposition of the AIFMD Review

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Directive, including the introduction of the new cross-border lending passport, which constitutes a significant advancement for the European investment landscape. We call on Member States and supervisory authorities to ensure that loan-originating funds benefit from a genuinely pan-European regime, not only in legal and supervisory practice but also with regard to tax treatment. Beyond this, only targeted and proportionate adjustments aimed at further harmonisation appear necessary. Strengthening the position of sub-threshold AIFMs would support competition and broaden the range of investment opportunities available to investors. With respect to UCITS, we encourage the European Commission to use the ongoing revision of the Eligible Assets Directive to modernise the framework. In particular, enabling UCITS to invest in ELTIFs would allow retail investors to gain indirect access to long-term private assets, thereby helping to align long-term capital needs with retail investor demand for higher-yielding investment opportunities.

Pre-marketing

We strongly support the removal of the pre-marketing regime. Its abolition represents an important step towards deeper market integration, as the regime introduced considerable administrative burden without delivering commensurate benefits for investors or supervisors. In the absence of any demonstrated supervisory or market failures, the pre-marketing requirements proved disproportionate and ineffective. We therefore consider its removal to be both justified and timely.

III. Proposal for a Regulation of the European Parliament and of the Council amending Regulations (EU) No 1095/2010, No 648/2012, No 600/2014, No 909/2014, 2015/2365, 2019/1156, 2021/23, 2022/858, 2023/1114, No 1060/2009, 2016/1011, 2017/2402, 2023/2631 and 2024/3005 as regards the further development of capital market integration and supervision within the Union

Comments on the amendments to Regulation (EU) No 600/2014 (MiFIR):

BAI welcomes the EC's proposal to transfer the supervision of significant trading venues and pan-European market operators (PEMOs) to the European Securities and Markets Authority (ESMA). This shift from national to supranational supervision will simplify oversight and ensure uniform treatment across the EU.

We also support efforts to harmonise the rules applicable to trading venues. Transferring these rules to MiFIR, which is directly applicable, is the logical next step towards creating a uniform set of rules and ensuring effective, centralised supervision.

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We also welcome the creation of the PEMO status and the introduction of the possibility of operating several trading venues in more than one Member State with a single licence. This approach fosters the growth of the European single market, while also reducing the administrative burden on market participants.

However, we urge the EC to simplify the regulation regarding the threshold for trading venues to qualify as significant trading venues. The current approach is more complicated than necessary and prone to errors due to the referencing technique used.

Additionally, we call for an adoption of a principle-based approach to cost and charge disclosure as well as adapting the client categorization framework to enable greater access for “semi-professional” investors.

We also urge the EC to reduce unnecessary burdens on buy-side investment firms by moving to a single-sided transaction reporting model rather than the current reporting regime.

Comments on the amendments to Regulation (EU) No 2019/1156 (CBDR):

Marketing

We are pleased to welcome the proposal of the EC to harmonise the rules on marketing communications, and in particular, to remove the requirement for prior notification of marketing communications (known as pre-marketing). We also particularly welcome the improvement in passporting regulations for UCITS, and AIFs distributed across borders in the European Union. This change facilitates the internal market and cross-border distribution of investment funds, while at the same time increasing transparency.

We support the proposed amendments, that the delegation provisions of the AIFMD and the UCITS Directive do not apply where a distributor acts on its own behalf and markets an AIF or UCITS in accordance with MiFID or through insurance-based investment products under the IDD.

For the sake of accuracy and harmonization of the entire legal framework, the clarification that, in cases where the marketing function is carried out by one or more distributors acting on their own behalf, those distributors – and not the AIFM or the UCITS management company – are responsible for ensuring that the marketing communications they prepare and address to investors comply with the requirements of the CBDR is both necessary and welcome.

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Data platform; Fees

With regard to the planned data platform, we strongly emphasize that its implementation must be timely and must serve a purely declaratory purpose. The simplification objective should be to establish an automatic mechanism whereby the authorisation of a fund at national level automatically entails the right to market that fund cross-border. Registration in the ESMA data platform should therefore have no constitutive effect, but merely document an existing legal status. Only such an approach ensures legal certainty, avoids unnecessary administrative hurdles, and preserves transparency in cross-border distribution.

Against this background, we see no justification for fees or charges levied by competent authorities in connection with passporting or the ESMA data platform. If cross-border distribution follows automatically from the authorisation of a fund, and if the data platform merely has declaratory character, there is no administrative service that would warrant additional costs. The objective of strengthening the Savings and Investment Union is undermined if cross-border distribution is burdened with fees. Consequently, fees for the (de-)notification of funds should be abolished as far as possible, or at a minimum fully harmonised and equal across all Member States.

Passporting for sub-threshold AIFMs

As mentioned above, we welcome the continued commitment to a robust passporting regime for AIFMs and the overarching objective of streamlining marketing rules across the European Union. In this context, we encourage the extension of the passporting regime to sub-threshold AIFMs. Such a step would further enhance market integrity, foster competition, and contribute to a more level playing field across Member States, while maintaining appropriate supervisory safeguards.

Article 17c(9) CBDF (new)

Pursuant to Article 93(8) of the UCITS Directive, a waiting period of 30 days currently applies even in cases where the only change concerns the addition of new share classes, without any other material amendments.

The draft proposal provides for the complete deletion of Chapter XI of the UCITS Directive, including Article 93. Against this background, clarification is sought as to whether, going forward, Article 17c CBDF will apply, i.e. whether a notification period of at least 15 working days will be required, after which the change will be automatically reflected in the marketing passport and the new share class may be marketed in the host Member States.

Based on supervisory practice, changes limited to the addition of share classes are typically approved by the Central Bank of Ireland within a few days; similarly, the CSSF usually processes such changes swiftly under its simplified procedure, without a detailed review.

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In this context, we would welcome clarification as to how the future process is envisaged. In particular, it should be clarified whether competent authorities of the home Member States will continue to have discretion to approve such changes within a shorter timeframe, or whether the 15-working-day notification period under Article 17c CBDF must be observed in all cases.

Conciliation procedure between host and home Member States; escalation process

The draft provides for a detailed procedure in cases where host Member States raise concerns regarding potential breaches of applicable rules, including the submission of statements by both the home and the host Member States.

In practice, serious breaches are expected to be the exception rather than the rule. Against this background, we suggest introducing a preliminary, simplified step, under which the host Member State could initially contact the management company or AIFM directly in order to point out identified deficiencies and request their remediation (for example, where PRIIPs KIDs are missing in the local language for certain share classes).

The full, formalised procedure involving the competent authorities of both the home and host Member States, as well as the management company or AIFM, should in our view be reserved for serious breaches or for cases where identified deficiencies are not remedied within an appropriate timeframe. Consideration could also be given to making such a preliminary step optional for host Member States.

Such a graduated approach would appear to be in the interest of all parties involved, as it would facilitate the swift and efficient remediation of minor issues while reducing unnecessary administrative burden for both authorities and market participants.

Comments on the amendments to Regulation (EU) No 2022/858 (DLTPR):

BAI supports the EC's efforts to make the DLT pilot regime more attractive to market participants and believes, that, in particular, the removal of time limits for authorisations granted under the pilot scheme is a step in the right direction. This measure demonstrates the EC's confidence in the DLT pilot regime and its sustainability.

We also welcome the expansion and flexibilisation of the scope of application with regard to the permissible instruments and the scope of activities. Specifically, the removal of the product-specific threshold and the increase in the maximum total market value from EUR 6 billion to EUR 100 billion will allow DLT trading venues to be designed more flexibly and facilitate their growth.

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We also support the establishment of a streamlined framework for smaller DLT market infrastructures, analogous to the registered capital management company framework outlined in the AIFMD/KAGB. This facilitates market entry for new participants, leading to a more diverse market landscape.

In this instance, too, we urge timely implementation in order to avoid a gap in applicability between the original DLT pilot regime and the reviewed regulation now planned. The original DLT pilot regime is scheduled to expire on 23 March 2026, and therefore requires timely replacement.

Comments on the amendments to Regulation (EU) No 2023/1114 (MiCAR):

We support the EC's efforts to transfer the supervision of crypto asset service providers (CASPs) from the national competent authorities to ESMA, as this will ensure a uniform set of rules and centralised supervision.

However, we call for a clear definition of when exactly the main activity of an entity lies in the provision of crypto-asset services in Article 3. In the current proposal, the definition is provided in Article 138a MiCAR. In our opinion, mentioning the definition in Article 3, where the significant definitions are located, would be more coherent.

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The **Bundesverband Alternative Investments e.V. (BAI)** is the cross-asset and cross-product lobby association for the alternative investment industry in Germany and we consider ourselves as a catalyzer between professional German investors and suppliers of Alternative Investment products worldwide. The overarching goal is that German institutional and professional investors must be able to diversify their investment with regard to Alternatives better and more easily. The BAI is promoting a broad diversification which includes Alternative Investments as indispensable, in particular in terms of safeguarding long-term retirement pensions and the provision of money for construction, maintenance, and development of public infrastructure and renewable energies.

BAI members are recruited from all areas of the Alternative Investments' industry, e.g., AIF managers and banks as well as service providers. At present, the BAI counts more than 300 national and international member companies and is growing continuously.