

ALTERNATIVE INVESTMENT FUNDS AND THEIR LIFE CYCLE


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Abstract. *In this paper, the author presents the results of empirical research on the regulatory framework of alternative investment funds in the European Union (EU). The paper first provides a historical overview of their regulation and a detailed analysis of the EU's Alternative Investment Fund Managers Directive (AIFMD) and other similar legal sources which further regulate areas of alternative investment funds. In the second part, the paper elaborates on the overall life cycle of an alternative investment fund, starting from the incorporation stage until its dissolution or liquidation. In an attempt to comprehensively observe the subject matter and expose the changes already driven by the new AIFMD, the paper also examines the potential effects which may be generated by implementing the business model where unqualified retail investors are regarded as qualified investors.*

Key words: *EU, alternative investment fund, AIFMD.*

1. INTRODUCTION

In the European Union (hereinafter: the EU), the normative framework for alternative investment funds was introduced as a consequence of the global economic and financial crisis in 2008 (Dell'Erba, 2017:321). The financial crisis started in the United States of America, as a result of sub-prime mortgages affecting the global economy, which ultimately created global economic recession and a collapse on a multinational level (Demyanyk, 2009:1). The G20 Summit was organized in November 2008, with the aim to secure a stable financial system for establishing appropriate regulatory framework which would extend the already existing regulations to alternative investment funds, and ensure transparency of investment fund managers and supervision of investor's activities. Moreover, the need for such normative framework was driven by the increasing globalization which generated the substantial inflows of capital from foreign investors within the financial markets (Kacperczyk, Sundaresan, Wang, 2018:1).

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In April 2009, the European Commission¹ published its proposal for the operative framework on direct regulation, management and supervision of close-ended alternative investment funds, named the Alternative Investment Fund Managers Directive (the AIFMD)², which entered into force in July 2011. The target deadline for the implementation of the AIFMD (2011/61/EU) within the EU Member States was July 2013, by the end of which the EU Member States had to have the AIFMD implemented into their national jurisdictions within the area of private equity funds, real estate funds, hedge funds and infrastructure funds.

Alternative investment funds ensure broader investment liberties (Čulinović-Herc, Braut Filipović, Audić Vuletić, 2017:52) as the legal regime of this types of funds does not implement strict rules and restrictions on investments (Derenčinović-Ruk, 2020:786). Such strategy options, which are available on the market, can ultimately allow investors to tailor their funds to meet their personal financial goals (Mahdzan, Zainudin, Yoong, 2020:112).

In 2012, the European Commission adopted the Delegated Regulation 231/2013/EU (hereinafter: the Level 2 Regulation)³, with the aim of supplementing the AIFMD in regard to exemptions, general operating conditions, depositaries, leverage, transparency and overall supervision. This Level 2 Regulation is of great importance for the operational side of the AIFM and other parties (depository, portfolio manager, auditor, administrator, custodian...) involved in the alternative investment fund management.

In November 2021, the European Commission published a proposal to amend its original AIFMD,⁴ as a result of agreement between the European Council and the European Parliament. The proposed text of the consolidated version (hereinafter: the AIFMD2) was unanimously adopted in February 2024 by the European Council and European Parliament, and published in the EU official journal.⁵ The driving factors for the AIFMD2 were: (1) the need for an appropriate adjustment to the most recent developments in the market; (2) alignment of the regulatory treatment of the custodians in the EU Member States; (3) the creation of rules for the liquidity management tools; (4) requirements on the loan originating funds at the EU Member State level; and (5) the need for alignment of the delegation regime at the EU Member State level (Preamble to the AIFMD2 § 1). The targeted deadline for the implementation of the AIFMD2 within the EU Member States would be within 2 years from its entry into force (Article 3§ 2 AIFMD2).

¹ European Commission (2009). Financial services: Commission proposes EU framework for managers of alternative investment funds, 29 April 2009, Brussels, https://ec.europa.eu/commission/presscorner/detail/hr/ip_09_669

² Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) 1060/2009 and (EU) 1095/2010, (hereinafter: AIFMD) ; <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32011L0061>

³ Commission Delegated Regulation (EU) No 231/2013 of 19 December 2012 supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to exemptions, general operating conditions, depositaries, leverage, transparency and supervision; <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32013R0231>

⁴ European Commission (2021). Proposal for a Directive of the European Parliament and of the Council amending Directives 2011/61/EU and 2009/65/EC as regards delegation arrangements, liquidity risk management, supervisory reporting, provision of depository and custody services and loan origination by alternative investment funds, Brussels, 25.11.2021, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52021PC0721>

⁵ Eur-LEX: Directive (EU) 2024/927 of the European Parliament and of the Council of 13 March 2024, amending Directives 2011/61/EU and 2009/65/EC as regards delegation arrangements, liquidity risk management, supervisory reporting, the provision of depository and custody services and loan origination by alternative investment funds, *Official Journal of the EU*, 26.3.2024, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L_202400927

2. WHAT IS THE ALTERNATIVE INVESTMENT FUND MANAGER (AIFM)?

Depending on the stringency of the regulatory framework and whether investment funds are open-ended or close-ended (Derenčinović-Ruk, Braut-Filipović, Audić-Vuletić, 2020:168), investment funds can be divided into two main groups: (a) the UCITS (undertaking for collective investment in transferable securities); and (b) alternative investment funds (Radović, Radović, Jovanović, 2021:656). Both are managed within the scope of their investment activities by the professional investment fund manager, whose goal is to adequately manage the fund and provide its investors returns over the benchmarks (Evans, Gómez, Ma, Tang, 2023:2). Similarly to the UCITSs⁶ which are managed by a licenced management company (*société de gestion*, ManCo), the alternative investment funds are managed by alternative investment fund managers (Article 3 § 2 AIFMD).

Under the AIFMD (2011), alternative investment fund managers (hereinafter: AIFMs) are entities that manage AIFs as a regular business (Preamble to the AIFMD § 6). They are required to ensure adequate transparency of the investment activities, effectively manage risks, and establish a framework for addressing those risks (Preamble to the AIFMD § 2-3). The scope of their work, *inter alia*, includes the portfolio management services, risk management, marketing or administrative activities. In order for an investment fund manager to provide services as an AIFM, the entity may be either registered with and/or authorised by the national regulatory authority within the EU Member State. The registered AIFMs are not authorized to distribute the fund across the EU; thus, the funds can only be distributed through the national private placement regime on a country by country basis (Davis, 2016:4). On the contrary, the authorised AIFMs may engage in the marketing and the cross-border marketing of alternative investment funds within the EU to qualified investors, as part of the portfolio management and administrative activities.

2.1. Types of alternative investment fund managers (AIFM)

The AIFMD (2011/61/EU) recognizes two types of alternative investment fund managers: 1) the AIFMs that either directly or indirectly (through a company with which the AIFM is linked by common management or control, or by a substantive direct or indirect holding) manage portfolios of alternative investment funds whose assets under management, including any assets acquired through use of leverage, in total do not exceed a threshold of EUR 100 million (Article 3 § 2(a) AIFMD); and the AIFMs that either directly or indirectly (through a company with which the AIFM is linked by common management or control, or by a substantive direct or indirect holding) manage portfolios of AIFs whose assets under management in total do not exceed a threshold of EUR 500 million, when the portfolios of alternative investment funds consist of unleveraged funds that are and have no redemption rights exercisable during a period of 5 years following the date of initial investment in each AIF (*the sub-threshold AIFM, fr. de-minimis AIFM*) (Article 3 § 2(b) AIFMD); and 2) other legal persons (EU AIFMs) that manage one or more alternative investment funds irrespective of whether: (a) they are EU AIFs or non-EU AIFs; (b) they are non-EU AIFMs which manage one or more EU AIFs; and (c) they are non-EU

⁶ As defined in the EU legal regime: Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32009L0065>

AIFMs that market one or more AIFs in the Union regardless of whether such AIFs are EU AIFs or non-EU AIFs (Article 2 § 1 AIFMD).

Within the corporate structure, depending on their legal form and overall organization, the AIFMs can be internally or externally managed. Internally managed AIFs funds exist when the management functions are preformed by the AIF's managing body or another internal resource, or in case one of the companies within the structure, which invests in the alternative investment fund, owns the legal entity (AIFM) and the AIF's governing body chooses not to appoint an external AIFM. In contrast, an external AIFM is a legal entity which is appointed as a third party by the alternative investment fund or on its behalf, and thus delegated the mandate and responsibility to manage the AIF (Preamble to the AIFMD § 20).⁷

2.2. Who are the Investors?

As noted, depending on the stringent regulatory framework and whether they are open-ended or closed-ended funds, investments funds are classified into two groups: the UCITSs (undertakings for collective investment in transferable securities) and the AIFs (alternative investment funds). Another significant difference between them is the investor type or structure. Generally, investors are classified according to their nationality (national and foreign investors), the length of investment (short-term, long-term investors), the scale of investment (small-scale, large-scale), their share in company ownership (minority and majority), as well as their status.

Based on their status, investors can be divided into two major groups: 1) professional (qualified) investors who invest on behalf of and for the account of others (clients); and 2) non-professional (retail) investors, who invest for their own account. The group of professional (qualified) investors includes: (a) institutional investors such as financial institutions, investment banks, investment companies, investment funds, insurance companies, pension funds, wealthy family companies, trusts (Bouchakour, 2010:4); (b) large undertakings meeting the specific size and revenue criteria; and (c) national and regional governments and public bodies, central banks, international and supranational institutions, and other institutional investors in financial instruments and transactions.⁸ On the other hand, retail investors are non-professional investors (e.g. private individual investors) who do not have the expertise and experience of professional investors but may be allowed (upon an extensive assessment and aptitude test) to act as investors.⁹ Traditionally, the overall strategy of alternative investment funds is guided by institutional (qualified) investors (Vojvodić, 2019:85). However, the power of retail investors and their possibility to influence the fund's overall strategy cannot be ignored (Talwar, Talwar, Tarjanne, Dhir, 2021:2144). For example, the GameStop Corporation triggered an unprecedented short squeeze (Jones, Reed, Waller, 2021:11) by driving up GameStop's stock price to an unimaginable high point (Zheng, Tian, Wan, Wang, Zeng, Wang, 2021:1).

⁷ The investment strategies of the alternative investment funds are specifically listed within the Annex IV, under section "alternative investment fund-specific information to be provided" of the Level 2 Regulation, for all of the funds (i.e. hedge funds, private equity funds, real estate funds, fund of funds and other).

⁸ See: Annex II (Section 1, items 1-4) of the Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU, (the MiFiD II); <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32014L0065>

⁹ Annex II (Section 2. 1) of the Directive 2014/65/EU on markets in financial instruments

In the beginning, the difference between the UCITS and the AIFs was that the retail investors were not allowed to participate and invest in alternative investment funds. However, in the past decade, there was a growing desire by retail investors to be included within these funds (McVea, 2012:141). Consequently, driven by the change in the market trends, the EU regulations are being revised in order to reflect such new requirements. The initial intention of the AIFMD was to establish that alternative investment funds are only reserved for qualified (professional) investors. The “*début*” appearance of retail investors and their inclusion in the alternative investment funds was based on meeting of a number of conditions, including knowledge of financial transactions, prior experience in investments and financial instrument in a specific amount,¹⁰ which was subsequently minimised. Now, the AIFMs are only obliged to properly inform the investors of their rights and to specify the investment funds by submitting particular investor documents, such as the key investor information disclosures (Maai, 2021:10).

3. ALTERNATIVE INVESTMENT FUND’S LIFE CYCLE

The appropriate investment strategy has to be determined on the basis of the overall goal of the investors or the AIFM (who set up an alternative investment fund) and the overall capacity of the corporate structure (whether the entity is in a low-tax jurisdiction, or controls the AIFs terms, or protects the identity of the Ultimate Beneficial Owner (UBO))¹¹, or pursues a fund-specific type of investment vehicle within the cross-border corporate structure, or a team commitment vehicle, or a co-investment vehicle, or a parallel fund).

Depending on the investor’s status, the strategy may differ. On the one hand, if the investors are yet to be determined, the alternative investment fund will have to be marketed¹² or even pre-marketed;¹³ during this period, the fund will have an opportunity to test (within the market) the investors’ interest to invest in such a fund. On the contrary, if

¹⁰ Thus, the minimum criteria are met by the retail investor if two of the following conditions are jointly fulfilled: (1) the retail investor has carried out a number of transactions of significant size on the relevant market, at an average frequency of 10 transactions quarterly over the previous four quarters; (2) the size of the retail investor’s financial instrument portfolio, defined as including cash deposits and financial instruments, exceeds EUR 500 000; and (3) the investor works or has worked in the financial sector for at least one year in a professional position, which requires knowledge of the transactions or services involved (Annex II (Section 2. 1) of the MiFI Directive 2014/65/EU).

¹¹ The Ultimate Beneficial Owner (UBO) is the natural person(s) who ultimately owns or controls the customer and/or the natural person(s) on whose behalf a transaction or activity is being conducted and includes at least 25 % plus one share or an ownership interest of more than 25 % in the customer (Art.3 §1(6) Directive (EU) 2015/849 (Anti-Money Laundering Directive); <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32015L0849>).

¹² Under Article 4 § 1(x) of the AIFMD (2011), “marketing” means a direct or indirect offering or placement at the initiative of the AIFM or on behalf of the AIFM of units or shares of an alternative investment fund it manages to or with investors domiciled or with a registered office in the Union”.

¹³ Article 4§1 of the AIFMD 2011/61/EU was amended in Article 2(1) of the CBDF Directive (2019/1160/EU), which specifies: “pre-marketing” means provision of information or communication, direct or indirect, on investment strategies or investment ideas by an EU AIFM or on its behalf, to potential professional investors domiciled or with a registered office in the Union in order to test their interest in an alternative investment fund or a compartment which is not yet established, or which is established, but not yet notified for marketing in accordance with Article 31 or 32, in that Member State where the potential investors are domiciled or have their registered office, and which in each case does not amount to an offer or placement to the potential investor to invest in the units or shares of that alternative investment fund or compartment” (EUR-Lex: Directive (EU) 2019/1160 of the European Parliament and of the Council of 20 June 2019 amending Directives 2009/65/EC and 2011/61/EU with regard to cross-border distribution of collective investment undertakings, PE/53/2019/REV/1, OJL 188, 12/07/2019, (the CBDF Directive); <https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A32019L1160>).

the investors are known prior to the alternative investment fund's set-up, there is no objective need for a marketing phase of the alternative investment fund, as the reverse-chaperoning model would apply.

The alternative investment fund structuring and incorporation phase would be initiated once the agreement on the decisive factors was laid down in a document known in practice as a term sheet¹⁴, which is most commonly drafted on the basis of or in parallel with the tax-memorandum.¹⁵ This process tends to be very efficient and quick in the event the underlying project involves a product in which the fund investors have decided upfront to invest in. The set-up of the alternative investment fund (AIF) is initiated by drafting the constitutional document (articles of association) and, if needed, marketing document(s).

However, in the event that there is a need to test the market interest prior to the incorporation of the fund, an AIF can be pre-marketed within the EU by using the pre-marketing documents. This process entails an appropriate communication with the national regulators within the individual EU Member States, where the alternative investment fund would be filed for pre-marketing. This phase is very sensitive as the fund's pre-marketing documents must be compliant with both EU and state regulations. The pre-marketing documents can only explain the fund's overall characteristics in general terms, on the basis of which the investor cannot make a final decision to invest in the fund. In parallel with the pre-marketing, the constitutional document and, if needed, marketing documents and other agreements with the third parties would be negotiated and drafted, and the bank account opening process would be initiated. On the other hand, in case it is decided that the pre-marketing phase of the alternative investment fund for testing of the investors interest within a specific market would not be needed, all the aforesaid activities (the alternative investment fund incorporation, work on the third party agreements, bank account opening process, and the management and marketing notification to the local regulatory authority) would be performed at the same time.

Depending on the national laws of the EU Member State, the constitutional documents¹⁶ of the alternative investment fund may comprise the incorporation document¹⁷ and, if required by the national law, the marketing document¹⁸, which is not set out as mandatory under the AIFMD.

Upon the alternative investment fund's incorporation, the negotiations with investors may ensue; once the negotiations are concluded, an investor would enter into an agreement with the alternative investment fund in order to specify the investor's commitment on a contribution¹⁹ for its subscription to the fund's interest or share or units, which is done by means of a subscription agreement.²⁰ The subscription agreement comprises a general set of rules which are in line with the alternative investment fund's constitutional and marketing documents. However, a list of specific terms regulating the relations between the fund and the particular investor can be set by means of a side letter. The side letter is a document which

¹⁴ A term sheet is a short version of the fund prospectus underlying the most important aspects of the AIF's strategy, objectives and investment types.

¹⁵ Most commonly drafted by local legal tax counsel, a tax memo is a document underlying the individual impact of the alternative investment fund on the investors and its overall impact on the cross-border corporate structure.

¹⁶ In the UK legal practice, they are known as *bylaws* (articles of association, limited partnership agreement).

¹⁷ It may include instruments such as: Articles of Incorporation, Articles of Association, Incorporation Deed, Limited Partnership Agreement.

¹⁸ It may include: the AIF prospectus, private placement memorandum (PPM), offering memorandum, offering document, known in the UK legal practice as the confidential offering memorandum (COM).

¹⁹ The contribution may be done in cash, in kind, in sweat, or other.

²⁰ In the UK legal practice, it is known as the Adherence Agreement. In other jurisdictions, it is called Sub. Doc.

clarifies the main terms or supplement details, or modifies the terms that are originally set in the subscription agreement as the main agreement. The most common clause set by the side letter is the most favoured nations clause, which is used when an investor requests written assurance that he/she will have the same rights as some or all of the other investors in the alternative investment fund.

In parallel with the incorporation of the alternative investment fund and negotiations with the investor(s), the fund would be negotiating the terms of services and entering into service agreements with the third party service providers.²¹ In order for the service providers to enter into an agreement with the fund, a due diligence procedure must be performed on it. Therefore, prior to the entry into service agreements with service providers the fund would submit its know your customer related documents for the risk assessment of the service providers. Upon the completion of the due diligence and the negotiation phase for the terms of the agreement, the fund and the service provider would enter into an agreement.

Along with the above steps, the AIFM which is actively marketing the newly incorporated alternative investment fund would embark on negotiating the terms of subscription agreements with the potential investor(s) and performing its mandatory due diligence process on them (Mitić, 2023:11). The due diligence assessment of the investors is a mandatory step involving the compliance with the know-your-customer regulations and the anti-money laundering and terrorism financing EU laws.²² The investor due diligence assessment includes two main check points: (1) the background of the investor, and (2) the investor's source of funds. Both are crucial in the process of assessing the investor's business and financial standing: establishing whether the investor is or is not associated with any financial crime, or prohibited to act as an investor if he/she is a politically exposed person (to avoid corruption and money laundering), and determining the real source of funds which would be invested in the fund (to avoid the corruption and money laundering). The know-your-customer related documents (such as the investor's passport/ID, proof of residence, source of wealth, criminal record check) are crucial for instituting proper risk management; they are used in the process of risk assessment, which is followed by the creation of a risk profile of the investor and his/her source of wealth (Neuberg, Petit, Vogt, Kleinbart, 2023:5). Based on the risk assessment, the AIFM can conclude whether the investor's funds would be considered as "clean money", and whether they comply with the anti-money laundering and terrorism financing legal regulations and standards within the EU.²³

Once the alternative investment fund is established, a managing entity incorporated,²⁴ and the fund registered with the national Company Register, the external service provider's agreements are drafted and effected (for the administrator, domiciliary, AIFM, depositary, custodian, auditor, etc.). Once the auditor is engaged and/or other documents are executed (or are in the final or close to the final stage), the alternative investment fund would hold

²¹ For example: an administrative agent, a depositary, a bank, a custodian, a portfolio manager, an investment advisor, legal advisors, tax advisors, auditors and a transfer agent.

²² Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (the Anti Money Laundering Directive 4); <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32015L0849>

²³ Including but not limited to AMLD4, AMLD5, AMLD6, as amended from time to time and all other EU level legal acts covering the AML/CFT.

²⁴ In case the AIF managing entity is a natural person or entity without legal personality (standing), the managing entity may be incorporated as well.

its first closing.²⁵ The closings differ depending on what would be approved by the alternative investment fund within them: (1) if the incorporation of the alternative investment fund and the fact that the agreements had been executed are approved, the closing is most commonly named “dry closing” or “soft closing” or “pre-closing”; (2) if the investors are admitted to the fund, the closing is most commonly named “first closing” or “initial closing”.

Any consequent closing during which the investors are admitted to the fund during the investor on-boarding period would be named as per its number (second closing, third closing, etc.) up until the “final closing”, after which the investor on-boarding phase would be closed and any new investors would not be able to join the fund. Only the already admitted investors would be able to periodically increase their initial investment commitment in the form of top-ups (by a predefined percentage) to secure extra funding.

The investment period may ensue alongside with the fund-raising period. The investment period starts by calling the admitted investors, committed under their subscription agreements, to contribute the agreed contribution amounts. It is done via capital calls, by means of a drawdown investor notice. Once the funds have been collected, the alternative investment fund can proceed with the purchase of investment(s).

During the entire alternative investment fund life cycle (from fund-setting to liquidation), the AIFM or a third party that has been delegated to perform any specific service²⁶ will be involved in ongoing performance monitoring, regulatory reporting, assets valuation, audit, tax related filings, and compliance of these services with the normative framework.

If not otherwise agreed within the alternative investment funds constitutional and/or marketing document(s), once the investment period comes to a term, the harvesting period may start; during this period, when the investment realizes profits and gains, the cash returns may be paid to the investors by means of dividend distributions. The harvesting period is of great importance to the investors for a number of reasons. Essentially, the main reason they have entered into the investment within the AIF framework and their major interest is not only to return the invested amount but also to gain profit. Thus, the harvesting period is important not only in specific alternative investment fund projects but also for any future project (or in case of having parallel funds) as it enables the investors to profit from the value of activities taken by the AIFM and the fund, including: (1) careful selection of investors and the underlying target investment(s); (2) management of the alternative investment fund and the investment(s); and (3) performance of activities aimed at maximizing the returns from target investment(s).²⁷

The final stages of the alternative investment fund’s life include the divestment and exit strategy. Divestment represents a strategy with economic implications for the purpose of the disposal of the target investment(s), subsidiary properties or divisions to increase the investor’s profits or a parent company’s value²⁸. Depending on the type of investment, the divestment phase would be different. If the target investment was the purchase of a real estate, the divestment would entail the selling of such asset; if the asset was in private

²⁵ In the first (initial) closing, the investor and the fund manager sign the fund’s subscription documents; thus, the investor gets committed to invest in the fund.

²⁶ i.e. depository, custodian, calculation of valuation, tax filing, etc.

²⁷ These three reasons are the key argumentation for the presence of a team vehicle within the project, which is most commonly achieved with parallel funds and/or another project involving the same investors with previous experience with the AIFM.

²⁸ A parent company is a vehicle through which investors have indirectly invested into the AIF.

equity or infrastructure, the divestment strategy would be the sale of a portion of the firm's assets to a third party.

Exit strategy is the final phase in the alternative investment fund's life cycle as it refers to a planned approach by the investors to sell or liquidate the alternative investment fund. If the exit strategy would be to sell the alternative investment fund, the exit strategy is completed when all investor's shares in the alternative investment fund are transferred to other investors, all fees, costs, charges or any other obligations toward the third parties are paid, and the bank account(s) are closed. On the other hand, if the exit strategy entails the alternative investment funds liquidation, the liquidation process may start when all investors, the AIFM, third party service providers, and/or any other invoices, costs, charges and fees are paid and the bank account(s) are closed.

4. DISCUSSION AND CONCLUSION

The need for the normative regulation of investments which may be classified under the alternative investments umbrella was justifiable after the 2008 financial crisis. At that time, the requirement for an adequate regulation of such investments, aimed at protecting the investors, was absolute. However, if the overall aim is continue the investor protection, established as a result of the 2008 financial crisis, the current trend of expansion of qualified investors within the alternative investment funds, who invest in underlying projects with a riskier element, should not be considered as the best approach. The trend of inclusion of retail investors is visible in the specialised fund labels of the EU alternative investment funds. A good example would be the European Long Term Investment Fund, which included the retail investors within the umbrella of qualified investors in its *lex specialis*, which has recently entered into force. In some EU Member States jurisdictions, such as the Grand Duchy of Luxembourg, the national laws have been amended in the past few years, regulating the alternative investment funds and their special vehicle types (RAIF, SIF, SICAR)²⁹. The amendments were introduced with the aim of lowering the conditions for retail investors to be considered as qualified investors for investments in the alternative investment funds.

Overall, one may argue that even with the obligation of the AIFM to properly inform the retail investor by including numerous mandatory clauses and disclaimers in the AIF marketing document(s), the retail investor would still be unaware of the objective investment risk. The stance that the equality between institutional and retail investors would be established by enabling the retail investors to be considered as qualified investors simply cannot be accepted because of the professional inequality. It is not uncommon that the riskier funds are marketed as more profitable ones, which puts retail investors in an unfavorable position due to their lack of experience and access to information, when compared to professional and institutional investors. For this reason, regardless of the disclaimers issued by the AIFM, retail investors are no match to institutional investors with their professional and experienced advisors.

²⁹ Reserved Alternative Investment Fund (RAIF), fr. *Fonds d'investissement alternatifs réservé* - FIAR); Specialised Investment Funds (SIF), fr. *Fonds d'investissement spécialisé* - FIS); Risk Capital Investment Company (SICAR), fr. *Sociétés d'investissement en capital à risque* - SICAR).

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ALTERNATIVNI INVESTICIONI FOND I NJIHOV ŽIVOTNI CIKLUS

Ovaj rad predstavlja rezultate empirijskog istraživanja o pravnom uređenju alternativnih investicionih fondova (AIF) u Evropskoj Uniji. Nakon kratkog istorijata pravnog uređenja alternativnih investicionih fondova u Evropskoj Uniji, u prvom delu rada se konkretno analizira Direktiva 2011/61/EU o upravicima alternativnih investicijskih fondova (AIFMD). U drugom delu rada autor govori o životnom ciklusu alternativnog investicionog fonda, od faze osnivanja sve do likvidacije. U pokušaju da se sveobuhvatnije sagleda ova tematika kao i promene koje je već pokrenula AIFM Direktiva, autor razmatra potencijalne efekte koji mogu nastati kao posledica primene poslovnog modela u kome se neprofesionalni (nekvalfikovani) investitori tretiraju kao profesionalni (kvalfikovani) investitori.

Ključne reči: *Evropka unija, alternativni investicioni fond, AIFM Direktiva.*