

Directive 2013/14/EU of the European Parliament and of the Council of 21 May 2013 amending Directive 2003/41/EC on the activities and supervision of institutions for occupational retirement provision, Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) and Directive 2011/61/EU on Alternative Investment Funds Managers in respect of over-reliance on credit ratings (Text with EEA relevance)

DIRECTIVE 2013/14/EU OF THE EUROPEAN
PARLIAMENT AND OF THE COUNCIL

of 21 May 2013

amending Directive 2003/41/EC on the activities and supervision of institutions for occupational retirement provision, Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) and Directive 2011/61/EU on Alternative Investment Funds Managers in respect of over-reliance on credit ratings

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 53(1) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Central Bank⁽¹⁾,

Having regard to the opinion of the European Economic and Social Committee⁽²⁾,

Acting in accordance with the ordinary legislative procedure⁽³⁾,

Whereas:

- (1) Directive 2003/41/EC of the European Parliament and of the Council⁽⁴⁾ provides for regulation at Union level of institutions for occupational retirement provision (IORPs). Directive 2009/65/EC of the European Parliament and of the Council⁽⁵⁾ provides for regulation at Union level of undertakings for collective investment in transferable securities (UCITS). Similarly, Directive 2011/61/EU of the European Parliament and of the Council⁽⁶⁾ provides for regulation at Union level of managers of alternative investment funds (AIFMs). All three Directives establish prudential requirements as regards risk management by IORPs, by management and investment companies with regard to UCITS, and by AIFMs, respectively.
- (2) An effect of the financial crisis has been that there is over-reliance by investors, including IORPs, UCITS, and alternative investment funds (AIFs), on credit ratings to

carry out their investments in debt instruments, without necessarily conducting their own assessments of the creditworthiness of issuers of such debt instruments. In order to improve the quality of the investments made by IORPs, UCITS and AIFs and, therefore, to protect investors in those funds, it is appropriate to require IORPs, management and investment companies with regard to UCITS, and AIFMs to avoid relying solely or mechanistically on credit ratings or using them as the only parameter when assessing the risk involved in the investments made by IORPs, UCITS and AIFs. The general principle against over-reliance on credit ratings should therefore be integrated into the risk-management processes and systems of IORPs, management and investment companies with regard to UCITS, and AIFMs, and adapted to their specificities.

- (3) In order to specify further the general principle against over-reliance on credit ratings, which should be introduced into Directives 2009/65/EC and 2011/61/EU, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission to ensure that management and investment companies with regard to UCITS, and AIFMs are effectively prevented from over-reliance on credit ratings for assessing the creditworthiness of the assets held. It is appropriate in this regard to amend the powers of the Commission in those Directives to adopt delegated acts in respect of the general provisions regarding risk-management processes and systems employed by management and investment companies with regard to UCITS, and AIFMs. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that it publish the results of such consultations. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.
- (4) The relevant measures set out in this Directive should be complementary to other provisions in Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies⁽⁷⁾. Those provisions set the general objective of reducing over-reliance by investors on credit ratings and should facilitate the achievement of that objective.
- (5) Since the objective of this Directive, namely to contribute to the reduction of the over-reliance of IORPs, UCITS and AIFs on credit ratings when making their investments, cannot be sufficiently achieved at the Member State level acting in a coordinated manner and can therefore, by reason of the pan-Union structure and impact of the activities of IORPs, UCITS, AIFs and credit rating agencies, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.
- (6) Directives 2003/41/EC, 2009/65/EC and 2011/61/EU should therefore be amended accordingly.
- (7) In accordance with the Joint Political Declaration of Member States and the Commission of 28 September 2011 on explanatory documents⁽⁸⁾, Member States have undertaken to accompany, in justified cases, the notification of their transposition

measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified,

HAVE ADOPTED THIS DIRECTIVE:

Status: This is the original version (as it was originally adopted).

- (1) OJ C 167, 13.6.2012, p. 2.
- (2) OJ C 229, 31.7.2012, p. 64.
- (3) Position of the European Parliament of 16 January 2013 (not yet published in the Official Journal) and decision of the Council of 13 May 2013.
- (4) OJ L 235, 23.9.2003, p. 10.
- (5) OJ L 302, 17.11.2009, p. 32.
- (6) OJ L 174, 1.7.2011, p. 1.
- (7) OJ L 302, 17.11.2009, p. 1.
- (8) OJ C 369, 17.12.2011, p. 14.