



Report on the Operation of the Alternative Investment Fund Managers Directive (AIFMD)

—
Directive 2011/61/EU

FISMA/2016/105(02)/C

Submitted 10th of December 2018

DISCLAIMER

The information and views set out in this study are those of the authors and do not necessarily reflect the official opinion of the European Commission. The European Commission does not guarantee the accuracy of the data included in this study. Neither the European Commission nor any person acting on the European **Commission's behalf may** be held responsible for the use which may be made of the information contained therein. The information and conclusions set out in this study shall not be deemed as prejudging any action or policy decision by the European Commission.

doi: 10.2874/683789 (EN PDF Version)

ISBN: 978-92-79-85731-7 (EN PDF Version)

© European Union (2018)

Reproduction is authorised provided the source is acknowledged.

Report on the Operation of the Alternative Investment Fund Managers Directive (AIFMD)

This study was carried out for the Directorate-General for Financial Stability, Financial Services and Capital Markets Union through a call for tenders (Ref.: FISMA/2016/105(02)/C) based on the Service contract FISMA/2016/105(02)/C4/ST/OP dated 26 September / 11 October 2017 between the Directorate-General for Financial Stability, Financial Services and Capital Markets Union and KPMG Law Rechtsanwalts-gesellschaft mbH. The evaluation team mainly comprised KPMG Law as lead firm and the subcontractors KPMG AG Wirtschaftsprüfungsgesellschaft, Germany and KPMG LLP, United Kingdom, supported by the European network of KPMG.

Authors:

Engagement Partner: Dr Ulrich Keunecke (KPMG Law Germany)
Technical Manager: Sigrid Aguilar Alvarez, Ines Schemmert (both KPMG Law Germany)
Project Management: Olaf Buske, Franziska Altmann, Julie von Zitzewitz (all KPMG Germany)
Quality Assurance: Julie Patterson (KPMG UK)

Core Project Team (in alphabetical order):

Patrick Baldes (KPMG Germany); Jürgen Buchelt (KPMG Germany); Oliver Decker (KPMG Law Germany); Axelle Ferey (KPMG France); Frank Fischer (KPMG Law Germany); Lukas Füchtjohann (KPMG Germany); Sören Gaum (KPMG Germany); Laurence Génillard (KPMG Germany); Dario Jüttner (KPMG Law Germany); Felix Natschinski (KPMG Germany); Michael Plazek (KPMG Germany); Ingmar Tripunovic (KPMG Germany).

Throughout the study, experts from DG FISMA provided very helpful comments and guidance. In particular, the authors would like to thank Sven Gentner (Head of Unit C4 Asset Management), Ulf Linder (Deputy Head of Unit C4 Asset Management), Lina Vatenaitė, Giovanni Garcea and Emilia Porebska for their continuous support.

Likewise, the authors are beholden to all stakeholders (representatives of member states, the EIB group, national competent authorities, public sector entities, associations and experts) who contributed their knowledge and valuable input to the study in 478 online survey responses and 80 semi-structured interviews. The access to valuable data sources they provided was highly appreciated.

The authors are responsible for any remaining errors or omissions.

Date: 21 November 2018

ABSTRACT

This report provides and assesses evidence for **the European Commission's review of AIFMD** pursuant to Article 69 AIFMD. The assessment of this study is focused on 15 selected Member States. It consists of two main sections.

The general survey among AIFMs, NCAs and other stakeholders asked questions about specific aspects of AIFMD and market developments. The evidence-based study was based on desk research, the general survey results, interviews, and quantitative data collection and analysis.

On the basis of the evidence retrieved and analysis undertaken, AIFMD has played a major role in helping to create an internal market for AIFs and a harmonised and stringent regulatory and supervisory framework for AIFMs. Most areas of the provisions are assessed as having contributed to achievement of the general, specific and operational objectives, to have done so effectively, efficiently and coherently, to remain relevant and to have EU added value. There are, however, aspects that have not contributed, or may be counter to, the achievement of these aims – particularly, but not exclusively, in relation to the principles of effectiveness and efficiency.

Key words:

AIFMD, EU Depository Markets, Alternative Investments, Asset Management, Financial Regulation, Capital Markets, Professional Investors, Private Equity, Venture Capital, Real Estate, Hedge Funds.

RÉSUMÉ

Ce rapport fournit et évalue des preuves pour la revue de la Directive AIFM par la **Commission Européenne telle que prévue en son article 69**. L'évaluation menée porte sur une sélection de 15 Etats membres. Il se compose de deux parties principales.

Le questionnaire général auprès des Gestionnaires de Fonds d'Investissement alternatifs (GFIA), des Autorités Nationales Compétentes et des autres parties prenantes aborde des thèmes précis de la Directive ainsi que les développements du marché. L'étude fondée sur éléments factuels (fact-based) repose sur des recherches documentaires, les résultats du questionnaire, des entretiens et la collecte et l'analyse de données quantitatives.

A partir des éléments tangibles rassemblés et de l'analyse menée, la Directive AIFM a joué un rôle majeur dans la création d'un marché unique pour les FIA et dans celle d'un cadre réglementaire et de supervision harmonisé et exigeant pour leurs gestionnaires. La plupart des dispositions sont estimées avoir contribué à l'atteinte des objectifs généraux, spécifiques et opérationnels, à l'avoir fait de façon effective, efficiente et cohérente, à rester pertinents et à présenter de la valeur ajoutée pour l'Union Européenne. Toutefois, certains aspects n'ont pas contribué à l'atteinte de ces objectifs, voire y ont été contraires – particulièrement, mais non exclusivement, en relation avec les principes d'effectivité et d'efficience.

Mots-clés:

Directive AIFM, Marchés européens pour les déposataires, Investissements alternatifs, **Gestion d'actifs**, Règlementation financière, Marchés de capitaux, Investisseurs professionnels, Capital investissement, Capital risque, Immobilier, Fonds spéculatifs (hedge funds).

KURZBESCHREIBUNG

Diese Studie erbringt und analysiert Nachweise im Zusammenhang mit der Überprüfung der AIFMD durch die Europäische Kommission gemäß Artikel 69 AIFMD. Die Studie konzentriert sich dabei auf 15 ausgewählte Mitgliedstaaten und besteht aus zwei Hauptteilen.

Die allgemeine Umfrage unter AIFMs, nationalen Aufsichtsbehörden und anderen Marktteilnehmern beinhaltet Fragen zu spezifischen Aspekten der AIFMD und Marktentwicklungen. Die evidenzbasierte Studie stützt sich auf Literaturrecherche, die Ergebnisse der allgemeinen Umfrage, Interviews und quantitative Datenerhebung sowie -auswertung.

Gemäß der Ergebnisanalyse hat die AIFMD eine tragende Rolle bei der Schaffung eines Binnenmarktes für AIFs und von harmonisierten und stringenten regulatorischen sowie aufsichtsrechtlichen Rahmenbedingungen für AIFMs gespielt. Im Ergebnis haben die meisten der untersuchten Bestimmungen zur Erreichung der allgemeinen, spezifischen und operativen Ziele beigetragen und sich als effektiv, effizient, kohärent sowie relevant erwiesen und weisen einen EU-Mehrwert auf. Allerdings haben einige Aspekte nicht dazu beigetragen bzw. der Erreichung dieser Ziele entgegengewirkt. Dies betrifft insbesondere, jedoch nicht ausschließlich, die Ziele im Hinblick auf die Prinzipien der Effektivität und Effizienz.

Schlagworte:

AIFMD, EU-Verwahrstellenmarkt, Alternative Investments, Asset Management, Finanzmarktregulierung, Kapitalmärkte, Professionelle Investoren, Private Equity, Venture Capital, Immobilien, Hedge Funds.

Table of Contents

List of Tables	11
List of Figures	12
Glossary	15
Executive Summary	19
1. Background	19
2. Methodology	19
3. AIFMD	20
4. Key findings from the general survey and evidence-based study	20
5. Post-AIFMD market developments	23
Résumé	25
1. Historique	25
2. Méthodologie	25
3. AIFMD	26
4. Principaux résultats de l'enquête générale et de l'étude factuelle	26
5. Évolution du marché post directive AIFM	30
Zusammenfassung	32
1. Hintergrund	32
2. Methodik	32
3. AIFMD	33
4. Wichtigste Ergebnisse der allgemeinen Umfrage und der evidenzbasierten Studie	34
5. Marktentwicklungen nach AIFMD	37
Introduction	39
1. Structure of the report	39
2. Purpose and scope of the general survey	40
3. Purpose and scope of the evidence-based study	41
4. Rules assessed	42
5. Five key principles	43
6. Role of EU intervention	44
7. Selection of Member States	45
Section 1: the general survey	48
1. Introduction to the general survey	48
2. Structure of the general survey	48
2.1. Approach	48
2.2. Survey design	49
2.2.1. Number of answer options	51
2.2.2. Middle alternatives	51
2.2.3. No-opinion category	51
2.2.4. Label-answer options	52
2.3. Target participants in the general survey	52
2.4. Sample selection	53
2.5. Descriptive sample statistics	53
3. Information about the participants in the general survey	54
3.1. Alternative Investment Fund Managers	56
3.2. Public authorities	61
3.3. Institutional investors or eligible counterparties	61
3.4. Representative bodies of investors and/or retail consumers	62

3.5. Entities marketing, selling or selecting AIFs	62
3.6. Non-listed company or enterprise receiving investment from AIFs	63
3.7. AIF depositaries or sub-custodians	63
3.8. Investment managers or advisers to AIFs	65
3.9. Fund administrators	66
3.10. Industry bodies	67
4. Summary of responses to the general survey	67
4.1. Appropriate authorisation and registration requirements	68
4.1.1. Authorisation process and costs	68
4.1.2. Consistency of application	73
4.1.3. Supervision and sanctions	78
4.1.4. Scope and thresholds	80
4.2. Enhanced transparency of macro-prudential risks	82
4.2.1. Reporting to NCAs	82
4.2.2. Leverage	86
4.3. Limitation of micro-prudential risk and investor protection	88
4.3.1. Remuneration	88
4.3.2. Conflict of Interests	89
4.3.3. Risk Management	89
a) Liquidity Management	90
b) Valuation	90
c) Delegation	93
d) Depositary	94
e) Disclosures to the public and investors	96
4.4. Investing in non-listed companies by private equity and venture capital funds	98
4.5. Single Market/European passport	100
4.6. Specific investment types	103
4.7. Market and commercial impacts	104
4.7.1. Impact on AIFMs' operations	104
4.7.2. Impact on costs, services and competition	105
4.7.3. Impact on investors	110
4.8. Impact of and interplay with other legislation	111
5. Concluding remarks	113
 Section 2: Evidence-based study	 118
1. Background to the evidence-based study	118
1.1. Description of AIFMD and its objectives	118
1.2. State of play and baseline scenario	121
1.2.1. State of play	121
1.2.2. Baseline scenario	121
2. Methods	122
2.1. Information sources	123
2.1.1. Desk research	123
2.1.2. Scoping interviews	123
2.1.3. General survey	123
2.1.4. Semi-structured interviews	124
2.2. Quantitative data	125
2.2.1. ESMA's central AIFMD database	125
2.2.2. National Competent Authorities	126
2.2.3. Pan-European and national trade associations	127
2.2.4. Investor complaints data	127
3. Data availability and reliability	127
3.1. Reporting requirements and legal definition of AIFMs	128
3.2. Granularity and reporting frequency	128

3.3. Confidentiality of data	129
3.4. Time series and regression analyses	129
4. Study of to what extent the AIFMD objectives have been achieved	132
4.1. Specific objective: All AIFMs are subject to appropriate authorisation and registration requirements	132
4.1.1. Thresholds determining the scope of AIFMD	132
a) Description of the rules	133
b) Assessment against the five key principles	133
c) Summary	151
4.2. Specific objective: Proper monitoring of macro-prudential risks	152
4.2.1. Reporting to NCAs	152
a) Description of the rules	152
b) Assessment against the five key principles	153
c) Summary	161
4.2.2. Supervisory cooperation among the NCAs and ESMA	162
a) Description of the rules	162
b) Assessment against the five key principles	163
c) Summary	167
4.2.3. Managing leveraged AIFs	168
a) Description of the rules	168
b) Assessment against the five key principles	169
c) Summary	173
4.3. Specific objective: Proper monitoring and limitation of micro-prudential risks & common approach to protect professional investors	174
4.3.1. Delegation rules	176
a) Description of the rules	176
b) Assessment against the five key principles	177
c) Summary	180
4.3.2. Valuation rules	181
a) Description of the specific rules	181
b) Assessment against the five key principles	182
c) Summary	186
4.3.3. Remuneration rules	187
a) Description of the rules	187
b) Assessment against the five key principles	188
c) Summary	192
4.3.4. Risk and liquidity management rules	193
a) Description of the rules	193
b) Assessment against the five key principles	194
c) Summary	200
4.3.5. Depositary rules	201
a) Description of the rules	201
b) Assessment against the five key principles	202
c) Summary	208
4.3.6. Rules on disclosures to investors to guide investment decisions	208
a) Description of the rules	208
b) Assessment against the five key principles	209
c) Summary	212
4.3.7. Asset segregation rules	213
a) Description of the rules	213
b) Assessment against the five key principles	214
c) Summary	217
4.3.8. Rules on investor disclosures in key risk areas	217
a) Description of the rules	218
b) Assessment against the five key principles	218

c) Summary	221
4.4. Specific objective: Greater public accountability of AIFM holding controlling stakes in companies	222
4.4.1. Investing in non-listed companies	222
a) Description of the rules	222
b) Assessment against the five key principles	224
c) Summary	235
4.5. Specific objective: Develop the Single Market in AIFs	235
4.5.1. Background	236
4.5.2. Managing EU AIFs and/or non-EU AIFs by EU AIFMs with the passport	237
a) Description of the rules	237
b) Assessment against the five key principles	238
c) Summary	242
4.5.3. Cross-border marketing EU AIFs by EU AIFMs with the passport	242
a) Description of the rules	242
b) Assessment against the five key principles	243
c) Summary	249
4.5.4. Marketing and/or managing non-EU AIFs by EU or non-EU AIFMs without a passport	249
a) Description of the rules	249
b) Assessment against the five key principles	251
c) Summary	254
4.6. Additional aspects assessed: commercial and market impacts	254
4.6.1. Impact of AIFMD on AIF investors	255
4.6.2. Impact of AIFMD on investment in or for the benefit of developing countries	260
4.6.3. Impact of AIFMD on the operations of AIFMs	260
4.6.4. Impact of AIFMD on AIF product ranges	261
4.6.5. Other matters impacting the effectiveness and efficiency of AIFMD	262
5. Overall assessment of achievement of the general objective	263
5.1. Overall assessment	264
5.2. The five key principles – areas of potential weakness	265
5.2.1. Effectiveness	265
5.2.2. Efficiency	266
5.2.3. Coherence	267
5.2.4. Relevance	267
5.2.5. EU added value	268
Annexes	269

List of Tables

Table 1: Overview of the objectives and specific rules to be assessed	42
Table 2: Five key principles	43
Table 3: Member State selection criteria	47
Table 4: Number of responses, average duration and average survey progress by stakeholder	54
Table 5: Overview of various charges indicated by NCAs (in EUR)	71
Table 6: Coverage of semi-structured interviews	124
Table 7: Aspects covered by quantitative data, by Member State	126
Table 8: The AIFMD rules pursuing the stated general, specific and operational objectives, assessed against the five key principles.	130
Table 9: Numbers of AIFMs (full-scope authorisation vs. registration)	137
Table 10: Trend in (full) AIFM authorisations in Member States	139
Table 11: Fees charged by NCAs and other costs for obtaining a licence	144
Table 12: Time to obtain a licence/statutory time frame in Member States	145
Table 13: Regulatory status of investments into non-listed companies (private equity/venture capital) by funds pre- and post-AIFMD	224
Table 14: Volume (increase/decrease) of investments into non-listed companies by funds from 2014 to 2017	228
Table 15: Cross-border distribution and passporting provisions	236
Table 16: Overview of the key elements of NPPRs regarding retail AIFs	255
Table 17: Overview of which questions of the general survey were posed to which type(s) of participants	302
Table 18: Semi-structured interviews	315
Table 19: Research question to guide the quantitative analysis	320
Table 20: Data coverage by Member State and source	321
Table 21: Number of AIFM year-end reports contained in the ESMA database	325
Table 22: Number of AIF year-end reports contained in the ESMA database	326
Table 23: Overview of organisations responsible for settling (retail) investor complaints	327
Table 24: Investor complaints related to AIF(M)s	328
Table 25: Member States included in the regression analysis	331
Table 26: Regression model variables	332
Table 27: OECD national share price indicators	333
Table 28: Results of the regression analysis	335
Table 29: Euro to currency unit – end-of-year rates	337
Table 30: Euro to Danish Krone (DKK) – monthly average rates	337
Table 31: Austria – AIF net assets and other indicators	353
Table 32: Czech Republic – AIF net assets and other indicators	354
Table 33: Denmark – AIF net assets and other indicators	355
Table 34: France – AIF net assets and other indicators	356
Table 35: Germany – AIF net assets and other indicators	357
Table 36: Hungary – AIF net assets and other indicators	358
Table 37: Ireland – AIF net assets and other indicators	359
Table 38: Italy – AIF net assets and other indicators	360
Table 39: Luxembourg – AIF net assets and other indicators	361
Table 40: United Kingdom – AIF net assets and other indicators	362
Table 41: AIFMD-related national transformation acts	370
Table 42: Similar pre-AIFMD domestic regulations	371
Table 43: Desk research findings	374

List of Figures

Figure 1:	Selected Member States	46
Figure 2:	Types of institutional stakeholder	55
Figure 3:	AIFMs and the countries of their head office	56
Figure 4:	Number of AIFs under management by AIFMs (Question 12)	57
Figure 5:	Total AIF assets under management by AIFMs (Question 12)	57
Figure 6:	Domiciles of AIFs under the management of AIFMs	58
Figure 7:	Type of AIFs managed by respondent AIFMs	59
Figure 8:	Invested asset types of AIFs managed by respondent AIFMs	60
Figure 9:	Specialist investment strategies executed within AIFs managed by respondent AIFMs	60
Figure 10:	Responsibilities of public authorities	61
Figure 11:	Asset classes of those AIFs overseen or serviced by depositaries or sub-custodians	63
Figure 12:	Types of AIFs overseen or serviced by depositaries or sub-custodians	64
Figure 13:	Asset classes of those AIFs serviced by respondent investment managers or investment advisers	65
Figure 14:	Investment strategies of those AIFs serviced by respondent investment managers and investment advisers	66
Figure 15:	Functions carried out by AIF investment managers and investment advisers	66
Figure 16:	Type of members of industry bodies	67
Figure 17:	Time to obtain a new or revised AIFM licence	70
Figure 18:	Time to obtain an AIF depositary licence	72
Figure 19:	Time to obtain an AIF depositary licence (by domicile)	73
Figure 20:	Consistent application of AIFMD by NCAs	73
Figure 21:	Inconsistent application of AIFMD with regard to specific issues	74
Figure 22:	On-site inspection by NCAs	79
Figure 23:	Sanctioning powers used by NCAs	79
Figure 24:	Most frequent types of sanctions used by NCAs authorising AIFMs	80
Figure 25:	Assessment of potential benefits of full-scope AIFMs	81
Figure 26:	Potential drawbacks of sub-threshold AIFMs	81
Figure 27:	Assessment of the reporting requirements by NCAs	82
Figure 28:	Understanding of AIFMs about the reporting requirements to NCAs	83
Figure 29:	Areas of the reporting template that include data AIFMs think are not essential or are reported in another section of the template or elsewhere	85
Figure 30:	Levels of leverage of AIFs indicated by AIFMs and AIF depositaries	86
Figure 31:	Changes since AIFMD implementation observed by market participants	87
Figure 32:	Potential changes of remuneration of risk-takers because of AIFMD	88
Figure 33:	Views of survey participants on the AIFMD valuation requirements	90
Figure 34:	Leading market practice of valuation of non-listed assets	92
Figure 35:	Delegation of functions by AIFMs to other entities	93
Figure 36:	Impact of AIFMD on the delegation activities of AIFMs	94
Figure 37:	The regulatory function of AIF depositaries	95
Figure 38:	Transitional provision allowing the domicile of the AIF to be different to that of the depositary	95
Figure 39:	Impact of AIFMD on the information provided to investors before entering into an investment in AIFs	97
Figure 40:	Impact of AIFMD on periodic disclosures to investors	97
Figure 41:	Actual and past investments by AIFs in non-listed entities	98
Figure 42:	AIFMD requirements on investments in non-listed entities	99

Figure 43: Views of AIFMs investing in non-listed entities on the transparency provisions	99
Figure 44: Domiciles of AIFs with an AIFM in a different domicile	101
Figure 45: Ability or commercial desire to be the AIFM for AIFs in other jurisdictions	101
Figure 46: Impact of AIFMD on the cross-border marketing of EU/EEA AIFs into other Member States	102
Figure 47: Impact of AIFMD on the marketing of non-EU/EEA AIFs into the EU	103
Figure 48: Impact of AIFMD on selected aspects	104
Figure 49: Extent to which AIFMD has improved AIFMs' businesses	105
Figure 50: Extent to which AIFMD caused AIFMs to rationalise or expand their product offerings	105
Figure 51: Impact of AIFMD on costs for services undertaken for or purchased by AIFMs	106
Figure 52: Views of AIFMs on the factors that most contributed to cost changes	106
Figure 53: Impact of AIFMD on competition in the AIF depositary and custody market	107
Figure 54: Impact of AIFMD on costs for services undertaken or outsourced by depositaries	108
Figure 55: Impact of AIFMD on fees charged to AIFs	108
Figure 56: Impact of AIFMD on investment managers'/advisers' service offerings	109
Figure 57: Impact of AIFMD on competition among service providers for their services and fees	110
Figure 58: Impact of AIFMD on the level of retail clients' investment in AIFs	110
Figure 59: Whether other legislation has assisted or hindered achievement of the objectives of AIFMD	113
Figure 60: Average depositary fees in Spain	204
Figure 61: Average depositary fees in Italy	204
Figure 62: Number of depositaries by Member State	205
Figure 63: Average share of AIFs serviced by the largest depositaries	206
Figure 64: Germany – number of foreign and EU AIFs	244
Figure 65: Germany – newly-marketed foreign and EU AIFs	244
Figure 66: Selected Member States – Private Equity – average fundraising by investor type	257
Figure 67: Ireland – Private Equity – funds raised by investor type	257
Figure 68: Czech Republic - number of funds	258
Figure 69: Czech Republic – AuM of retail AIFs	258
Figure 70: Split by domicile of all investment funds available to retail investors (AIFs & UCITS) by total number of share classes available for sale in the Member State	258
Figure 71: Split by domicile of all passively-managed investment funds available to retail investors by total number of share classes available for sale in the Member State	259
Figure 72: Austria – number of AIFs	338
Figure 73: Austria – net AIF assets	338
Figure 74: Belgium – number of AIFs	338
Figure 75: Belgium – net AIF assets	338
Figure 76: Cyprus – number of AIFs	338
Figure 77: Cyprus – net AIF assets	338
Figure 78: Czech Republic – number of AIFs	339
Figure 79: Czech Republic – net AIF assets	339
Figure 80: Denmark – number of AIFs	339
Figure 81: Denmark – net AIF assets	339
Figure 82: France – number of AIFs	339
Figure 83: France – net AIF assets	339

Figure 84: Germany – number of AIFs	340
Figure 85: Germany – net AIF assets	340
Figure 86: Hungary – number of AIFs	340
Figure 87: Hungary – net AIF assets	340
Figure 88: Ireland – number of AIFs	340
Figure 89: Ireland – net AIF assets	340
Figure 90: Italy – number of AIFs	341
Figure 91: Italy – net AIF assets	341
Figure 92: Luxembourg – number of AIFs	341
Figure 93: Luxembourg – net AIF assets	341
Figure 94: Malta – number of AIFs	341
Figure 95: Malta – net AIF assets	341
Figure 96: Netherlands – number of AIFs	342
Figure 97: Netherlands – net AIF assets	342
Figure 98: Spain – number of AIFs	342
Figure 99: Spain – net AIF assets	342
Figure 100: United Kingdom – number of AIFs	342
Figure 101: United Kingdom – net AIF assets	342
Figure 102: Number of AIFs serviced by Austrian depositaries	343
Figure 103: Number of AIFs serviced by the largest depositaries in Austria	343
Figure 104: Number of AIFs serviced by Cypriot Depositaries	343
Figure 105: Cyprus - number of AIFs serviced by depositary by year	344
Figure 106: Number of AIFs serviced by Danish depositaries	344
Figure 107: Denmark – number of AIFs serviced by the largest depositaries	344
Figure 108: Denmark – number of AIFs by depositary and by year	345
Figure 109: Number of AIFs serviced by German depositaries	345
Figure 110: Germany – number of AIF serviced by the largest depositaries	345
Figure 111: Number of Real Estate AIFs serviced by German depositaries	346
Figure 112: Germany – Real Estate AIFs serviced by the largest depositaries	346
Figure 113: Germany – number of Real Estate AIFs by depositary and by year	346
Figure 114: Number of AIFs serviced by Hungarian depositaries	346
Figure 115: Hungary – number of AIFs serviced by the largest depositaries	346
Figure 116: Hungary – number of AIFs by depositary and by year	347
Figure 117: Number of AIFs serviced by Irish depositaries	347
Figure 118: Ireland – number of AIFs serviced by the largest depositaries	347
Figure 119: Depositaries of Irish funds*	348
Figure 120: Ireland – number of AIFs by depositary and by year	348
Figure 121: Number of AIFs serviced by Italian depositaries	349
Figure 122: Italy – number of AIFs serviced by the largest depositaries	349
Figure 123: Italy – number of AIFs by depositary and by year	349
Figure 124: Number of funds* serviced by Luxembourgish depositaries	350
Figure 125: Luxembourg – number of funds* serviced by the largest depositaries	350
Figure 126: Luxembourg – total fund* NAV serviced by the largest depositaries	351
Figure 127: Luxembourg – number of funds* by depositary and by year	351
Figure 128: Number of AIFs serviced by Maltese depositaries	352
Figure 129: Number of UK AIF depositaries by year	352

Glossary

Frequently cited papers

AIFMD Impact Assessment: *Commission Staff Working Document accompanying the Proposal for a Directive of the European Parliament and of the Council on Alternative Investment Fund Managers and amending Directives 2004/39/EC and 2009/.../EC – Impact Assessment, 30 April 2009, SEC(2009) 576.* http://ec.europa.eu/internal_market/investment/docs/alternative_investments/fund_managers_impact_assessment.pdf

EC Cross-Border Distribution Proposal: *European Commission, Proposal for a Directive of the European Parliament and of the Council amending Directive 2009/65/EC of the European Parliament and of the Council and Directive 2011/61/EU of the European Parliament and of the Council with regard to cross-border distribution of collective investment funds, 12 March 2018, COM(2018) 92 final; and Proposal for a Regulation of the European Parliament and of the Council on facilitating cross-border distribution of collective investment funds and amending Regulations (EU) No 345/2013 and (EU) No 346/2013, 12 March 2018, COM(2018) 110 final.*

EC Cross-Border Impact Assessment: *Commission Staff Working Document, Impact assessment, accompanying the Proposal for a Regulation of the European Parliament and of the Council on facilitating cross-border distribution of collective investment funds and amending Regulations (EU) No 345/2013 and (EU) No 346/2013, and the Proposal for a Directive of the European Parliament and of the Council amending Directive 2009/65/EC of the European Parliament and of the Council and Directive 2011/61/EU of the European Parliament and of the Council with regard to cross-border distribution of collective investment funds.*

EC Remuneration Recommendation: *European Commission Recommendation of 30 April 2009 on remuneration policies in the financial services sector (2009/384/EC), OJ L 120, 15.05.2009, 22.*

ESMA AIFMD Report 2018: *AIFMD – A Framework for risk monitoring. ESMA Report on Trends, Risks and Vulnerabilities (1) 2018.* https://www.esma.europa.eu/sites/default/files/library/esma50-165-538_report_on_trends_risks_and_vulnerabilities_no.1_2018.pdf#page=40 [Retrieved 25 July 2018]. 44.

ESMA AIFMD Reporting Guidelines: *Guidelines on reporting obligations under Articles 3(3)(d) and 24(1), (2) and (4) of the AIFMD. ESMA/2014/869.*

ESMA AIFMR Advice: *ESMA, Final Report, ESMA's technical advice to the European Commission on possible implementing measures of the Alternative Investment Fund Managers Directive, 16 November 2011, ESMA/2011/379*

ESMA Notification Study: *ESMA, Notification frameworks and home-host responsibilities under UCITS and AIFMD, ESMA Thematic Study among National Competent Authorities, / April 2017, ESMA34-43-340.*

ESMA Remuneration Guidelines: *ESMA, Guidelines on sound remuneration policies under the AIFMD, 3 July 2013, ESMA/2013/232 as well as subsequent amendments, i.e. ESMA, Guidelines on sound remuneration policies under the AIFMD, 14 October 2016, ESMA/2016/579*

Abbreviations

AFG	Association Française de la Gestion Financière (France)
AFM	Autoriteit Financiële Markten (The Netherlands)
AIF	Alternative Investment Fund
AIFM	Alternative Investment Fund Manager
AIFMD	Alternative Investment Fund Managers Directive (2011/61/EU)
AIFMR	Commission Delegated Regulation (EU) No. 231/2013

AMF	Autorité des Marchés Financiers (France)
AMIC	Asset Management and Investors Council of the International Capital Market Association (ICMA)
AuM	Assets under management
BaFin	Bundesanstalt für Finanzdienstleistungsaufsicht (Germany)
BAMOSZ	Befektetési Alapkezelők Magyarországi Szövetsége (Hungary)
CBI	Central Bank of Ireland
CCP	Central counterparty
CESR	Committee of European Securities Regulators
CIU	Collective Investment Undertaking
CMU	Capital Markets Union (EU)
CNB	Česká Národní Banka (Czech Republic)
CNMV	Comisión Nacional del Mercado de Valores (Spain)
CONSOB	Commissione Nazionale per le Società e la Borsa (Italy)
CRD	Capital Requirements Directive
CRR	Capital Requirements Regulation
CSDR	Central Securities Depositories Regulation
CSSF	Commission de Surveillance du Secteur Financier (Luxembourg)
CySEC	Cyprus Securities and Exchange Commission
DG FI SMA	Directorate-General for Financial Stability, Financial Services and Capital Markets Union
DNB	Dutch Central Bank
EBA	European Banking Authority
EC	European Commission
ECB	European Central Bank
EEA	European Economic Area
EFAMA	European Fund and Asset Management Association
EIOPA	European Insurance and Occupational Pensions Authority
ELTIF	European Long-Term Investment Fund

EMIR	European Market Infrastructure Regulation
ESAs	European Supervisory Authorities
ESFS	European System of Financial Supervision
ESMA	European Securities and Markets Authority
ESRB	European Systemic Risk Board
EU	European Union
EuSEF	European Social Entrepreneurship Fund
EuVECA	European Venture Capital Fund
FAQ	Frequently asked question
FCA	Financial Conduct Authority (UK)
FIN-NET	Financial Dispute Resolution Network
FMA	Finanzmarktaufsicht (Austria)
FSB	Financial Stability Board
FSMA	Financial Services and Markets Authority (Belgium)
FTE	Full-time equivalent
GAAP	Generally-accepted accounting principles
IFRS	International Financial Reporting Standards
INREV	European Association for Investors in Non-Listed Real Estate
IORPD	Institutions for Occupational Retirement Directive
IOSCO	International Organization of Securities Commissions
KID	Key information document (PRIIP)
KIID	Key investor information document (UCITS)
LTV	Loan-to-value
ManCo	Management Company (UCITS)
MFSA	Malta Financial Services Authority
MiFID	Markets in Financial Instruments Directive
MiFIR	Markets in Financial Instruments Regulation
MNB	Magyar Nemzeti Bank (Hungary)

MoU	Memorandum of Understanding
NAIF	Notified Alternative Investment Fund (Malta)
NAV	Net asset value
NCA	National Competent Authority
NPPR	National private placement regime
NURS	Non-UCITS Retail Scheme (UK)
PRIIP	Packaged Retail and Insurance-based Investment Products
QIS	Qualified Investor Scheme (UK)
RAIF	Reserved Alternative Investment Fund (Luxembourg)
SFTR	Securities Financing Transactions Regulation
SII	Solvency II Directive
TBD	Takeover Bid Directive
TPD	Transparency Directive
UCITS	Undertakings for Collective Investments in Transferable Securities
UCITSD	UCITS Directive
VaR	Value at risk

Executive Summary

1. Background

In response to the financial crisis of 2008, which exposed a series of vulnerabilities in the global financial system, the European Parliament and the Council of the European Union adopted the Alternative Investment Fund Managers Directive 2011/61/EU (AIFMD). AIFMD aimed to extend appropriate regulation and oversight to all actors and activities that embed significant risks, by introducing harmonised requirements for Alternative Investment Fund Managers (AIFMs).

Under Article 69 AIFMD, the European Commission (EC) had to start by 22 July 2017 a review of the application and scope of the Directive, its impact on investors, AIFs and AIFMs, within the EU and elsewhere, and the degree to which its objectives have been met.

In this context, KPMG Law Rechtsanwaltsgesellschaft mbH as lead firm, with the subcontractors KPMG AG Wirtschaftsprüfungsgesellschaft, Germany and KPMG LLP, United Kingdom supported by the European network of KPMG, has been mandated by the Directorate-General for Financial Stability, Financial Services and Capital Markets Union (CMU) to conduct a general survey and to carry out an evidence-based study.

2. Methodology

The general survey was addressed to the stakeholders that are most affected by AIFMD – such as AIFMs, investors, distributors, regulatory bodies, depositaries, asset managers, investment advisors and other entities enabling the management of AIFs, as well as industry representative bodies at national, EU and global level. It sought **their views on the AIFMD's requirements, their experience in applying them and the market impacts.**

478 sets of responses from individuals and institutions to the general survey were useable. About one-sixth of survey respondents were individuals, whereas the majority of participants answered on behalf of institutions. Among the latter, the majority (51%) were AIFMs, followed by investment managers/advisers to AIFs (12%). Each other type of institutional stakeholder was represented by less than 10% of all respondents and included investors, regulators, depositaries, industry bodies and other parties involved in the AIF market. The results of the general survey are summarised, analysed and presented as an independent part of this report and are also used as one source for the evidence-based study.

The evidence-based study provides a comprehensive account of our assessment of to what extent specific rules are effective, efficient, coherent and relevant, and have EU added value in achieving their general, specific and operational objectives. The study **analyses industry's and regulators' experiences in applying AIFMD, relevant national transformation acts and the Directive's impact on AIFs and AIFMs in the EU, investors and other concerned parties.** The study was carried out in 15 EU Member States. Contributions were also received from some other jurisdictions, in particular the US and the Channel Islands.

We used a triangulation method to assess the impact of AIFMD, taking into account different data sources for quantitative and qualitative information to cover the different aspects of the evaluation: desk research at national and EU level, results of the general survey, semi-structured interviews and quantitative data collection.

Data availability proved to be challenging. It was impossible in many areas to construct any sort of data time series that enabled us to substantiate or contradict opinions expressed in the general survey and our desk research, or to make statistically well-evidenced findings against the core questions in the mandate.

Research questions and indicators were developed based on four main questions:

1. How has AIFMD impacted the level of integration of the EU AIF market?
2. How has AIFMD impacted the structure of the EU depositories market?
3. How has AIFMD impacted the cost structure of EU depository services?
4. How has AIFMD impacted the market share of AIFs available to EU retail investors?

As an additional element of the quantitative analysis, we used a regression model to analyse whether AIFMD had a measurable impact on the AIF market. We used pan-European association data to estimate a panel regression model, controlling for a number of factors, such as the national equity markets.

3. AIFMD

The pre-AIFMD landscape across Member States was heterogeneous across all aspects: investor types, asset classes, investment and redemption strategies, legal and governance structures, form of manager regulation, depository or custody requirements, valuation and accounting practices, and transparency.

The co-legislators recognised this high level of heterogeneity and adopted a Directive that regulates the management company and not the fund itself (i.e. AIFMD is not product regulation). AIFMD therefore regulates only some of the aspects noted above and leaves a number of areas to national discretion, in particular for AIFs marketed to retail investors within the Member State.

The general objective of AIFMD is to create an internal market for EU and non-EU AIFs, and a harmonised and stringent regulatory and supervisory framework for AIFMs. Specifically, it seeks to ensure that all AIFMs are subject to appropriate authorisation and registration requirements; that there is proper monitoring of macro- and micro-prudential risks and a common approach to protecting professional investors; that there is greater accountability of AIFMs holding controlling stakes in non-listed companies; and the development of the Single Market in AIFs.

4. Key findings from the general survey and evidence-based study

On the basis of the evidence retrieved and analysis undertaken, it is clear that *AIFMD has played a major role in helping to create an internal market for AIFs and a harmonised and stringent regulatory and supervisory framework for AIFMs*. Moreover, most areas of the provisions are assessed as having contributed to achievement of the specific and operational objectives, to have done so effectively, efficiently and coherently, to remain relevant and to have EU added value. There are, however, some provisions (or the detail or application of which) that have not contributed, or may be counter to, the achievement of these aims. This is particularly, but not exclusively, in relation to the principles of effectiveness and efficiency.

Of those survey respondents who expressed an opinion, nearly half agreed that AIFMD is not applied consistently between Member States. However, when asked whether

they were concerned that AIFMD should be applied consistently across all Member States, most interviewees indicated that only *a small number of areas need further harmonisation* in order to prevent rule arbitrage and to ensure a common level playing field, with very few interviewees calling for harmonisation across the piece.

A number of Member States apply additional provisions to *sub-threshold* AIFMs (including requiring full authorisation in some cases). AIFMD provides for national discretion in this regard, which makes isolated assessment of the impact of the AIFMD threshold provisions difficult.

Large volumes of data are submitted by AIFMs to national competent authorities (NCAs) under the AIFMD *reporting requirements*, but respondents and interviewees noted that not all the data may be essential, some may be insufficient and some are duplicative. There are also overlapping reporting obligations under other EU legislation. Only just over one half of respondent AIFMs thought that there was consistent understanding within their Member State of what must be reported.

AIFMD stipulates the essential reporting requirements for AIFMs and AIFs, which are further elaborated in AIFMR. Hence, there is generally no room for national discretion in this regard. However, the NCA of the home Member State of the AIFM may stipulate the method of data delivery and may require additional information on a periodic or ad hoc basis. Consequently, differences in national interpretation and filing procedures were said further to exacerbate costs.

Most NCAs responded that they monitor and analyse reported data, but their analyses are not generally made publically available and only a subset of the data has, until recently, been collated and analysed at EU level. Industry respondents and interviewees would welcome regular publication of aggregate figures, which would provide all market participants (including investors) with better information about the market.

Survey respondents and interviewees requested that decisions about amendments to the reporting requirements should take into account the significant sunk costs in implementing the reporting systems, for AIFMs, NCAs and ESMA,¹ and the additional costs that would be incurred in making changes, especially if those changes are made in a piecemeal fashion. They also suggested that reporting should be looked at in the round for asset and fund managers, and should consider efficient use of new technologies.

The survey data indicate that the use of high *leverage* is rare in AIFs. Respondents and interviewees noted that it would be helpful to harmonise the calculation methodologies for leverage across AIFMD, the Undertakings for Collective Investments in Transferable Securities Directive (UCITSD)² and other relevant legislation. It was further suggested that, in the light of the work by the International Organization of Securities Commissions (IOSCO) on common leverage measures, it would be more efficient (for AIFMs, NCAs and investors) if any changes to EU requirements are **considered only after IOSCO's work is complete and** are introduced simultaneously for UCITS and AIFs. **ESMA's Action Plan for 2019 includes work** on leverage.

The binary choice in the *valuation* rules between internal or external valuation, and the differing national interpretations of the extent of the liability of external valuers, are assessed on the basis of responses and desk research as having impaired the

¹ European Securities and Markets Authority

² 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 (UCITS)

effectiveness of the rules for some asset classes and in some Member States. It has placed more focus on internal processes. Also, it is reported that there are fewer available external valuers in some Member States, which lowers the level of competition and could result in higher fees charged to AIFs/AIFMs.

On the basis of responses and desk research, there are questions about the coherence of the AIFMD *remuneration* rules with other pieces of legislation and guidelines (especially for AIFMs that are part of corporate groups with interfaces to more than one regulatory regime), which in turn reduces the potential efficiency of the regime. Also, for some types of AIF there remain additional national provisions.

The survey and interview results indicate that AIFMD has generally had a positive influence on the limitation of micro-prudential risks as regards conflicts of interests and risk management. AIFMs reviewed and in many cases adjusted their governance, policies and procedures to meet the requirements of AIFMD. However, there was a differentiated response, in particular from the private equity and real estate sectors, about the necessity of full *functional and hierarchical separation* of risk and portfolio management, especially for smaller AIFMs. The Directive places the onus on NCAs to ensure appropriate application of the proportionality principle in such cases, taking into account any general guidance provided by ESMA.

Respondents and interviewees noted that some of the AIFMD *depository* rules are interpreted differently in different Member States – for example, it was said that there are differing national approaches to the total look-through provision and to the cash monitoring duties – but it is not clear whether and to what extent this has impaired the effectiveness of the internal market in AIFs. There was an overall sense that the depository rules adopted a one-size-fits-all approach, which does not accommodate different asset classes or geographies.

The transitional provision in Article 61(5) AIFMD in relation to the domicile of the depository has proved to be of EU added value, especially for smaller Member States, which urge that it be extended.

Regarding the specific rules on *asset segregation*, on the basis of responses and desk research, the (perceived) requirement to operate different omnibus accounts at every level of a sub-custody chain is seen as unnecessary and burdensome for the industry, without providing increased protection for investors. This issue has recently been clarified by the EC.

There is a high degree of coherence between depository requirements under AIFMD and UCITSD, but the co-legislators decided that slightly less stringent asset segregation requirements (in particular, in relation to legal opinions) were appropriate for AIFs given the investment needs of EU professional investors (e.g. exposures to developing countries). Interviewees observed that the application of even more stringent rules to AIFs could have the effect of precluding AIFs from investing in certain third countries or via certain counterparties, which could in turn lead to professional investors seeking to invest via non-EU AIFs instead.

There was a strength of opinion among respondents and interviewees that the Article 23 AIFMD requirements on *disclosures to investors* are excessive in quantity and therefore are ignored or prevent investors from obtaining a clear understanding of **the AIF's investment proposal**. Experienced and well-informed investors have different reporting needs, it was said. On the other hand, some representatives of institutional investors noted that there remain insufficient or non-standardised disclosures of *all* fees, costs and charges in e.g. private equity investment AIFs.

It was also said that the AIFMD investor disclosure rules are inconsistent with other (more recent) EU investor disclosure regimes and give rise to duplicative, and potentially inconsistent, disclosures.

The requirements relating to *investments in non-listed companies* and enterprises came under particular criticism. The extent of the notifications to NCAs is viewed as not useful or essential, and overly burdensome (especially given that many private equity/venture capital AIFMs are smaller companies, for whom the administrative burdens may be proportionately greater). They require disclosures at additional levels of holdings and for more types of portfolio assets than the Second Company Law Directive, and it is not clear what use the NCAs can or do make of the information.

Further, AIFMD is not regarded by respondents and interviewees as having improved the information provided by the AIF/AIFM to controlled companies or as having had a positive impact on the relationship between AIFs/AIFMs and target or investee enterprises. Also, there is a lack of clarity in relation **to the meaning of “non-listed company” and the application of the rules to investments in unlisted special purpose investment vehicle and unlisted UCITS or AIFs**. Survey respondents and interviewees suggested that the rules be re-assessed in the context of the first objective of CMU - **“financing for innovation, start-ups and non-listed companies”**.

As regards the AIFMD *passport regimes*, statistical evidence indicates that the EU management passport is working well, but the EU marketing passport is lagging behind and is suffering from the different approaches taken by NCAs (as recognised in the EC Cross-Border Distribution Proposal).³ Member States have adopted different **approaches as to which activities constitute “marketing” and there is a lack of transparency with regard to the differing national rules and NCA processes**. This results in additional costs for the industry and investors, and undermines the benefits of the AIF passport and therefore the Single Market.

In relation to non-EU AIFs and AIFMs, developments vary markedly from one Member State to another due to discretion given to the Member States by Articles 36 and 42 AIFMD. Developments are heavily dependent on national measures and demand by professional investors in the Member State for non-EU AIFs. Respondents and interviewees observed that it has therefore been of EU added value that national private placement regimes (NPPRs) are permitted to operate. Some interviewees called for the non-EU passports to be introduced and a significant number, from a range of Member States and third countries, called for the NPPRs to be retained, even if the non-EU passports are introduced.

5. Post-AIFMD market developments

There are insufficient publicly available data at EU level to provide a meaningful picture of specific post-AIFMD trends in the overall AIF market, because NCA analyses of AIFMD reported data are generally not available and data collection within the industry is a patchwork across different associations. A statistical analysis of a sample of industry data led to the conclusion that *there is no statistically significant effect of AIFMD on AIF net assets*, after controlling for national share prices indices, inflation (consumer price index) and an industry re-categorisation. However, this result should be interpreted as the effects within countries, stripped of country-specific and time-specific unobserved variables. Methodology and potential limitations of the model are set out in Annex 4.

Interviewees recognised that there may be risks affecting the system as a whole, e.g. new emerging financial instruments where the embedded risk potential cannot yet be

³ EC, *Proposal for a Regulation of the European Parliament and of the Council on facilitating cross-border distribution of collective investment funds and amending Regulations (EU) No 345/2013 and (EU) No 346/2013*, 12 March 2018.

assessed, but shared the opinion that *AIFMD has yet to be fully tested*. The AIF sector as a whole has not been subject to major financial shocks since AIFMD. However, there have been volatile markets in a number of jurisdictions and in some asset classes, which the sector has managed.

Competition between AIFMs was thought by survey respondents to have only slightly increased since implementation of AIFMD. There was a mixed response to whether AIFMD had enabled AIFMs to rationalise their operational set-up and processes. About one-quarter of respondents indicated that AIFMD had had a positive impact, but over one-third of AIFMs disagreed.

The impact of AIFMD on investors is salutary. The large majority of *institutional investors* and trade bodies representing institutional investors (including from third countries) said that AIFMD had not influenced their decisions to invest (or not) through AIFs, or to invest through EU/EEA AIFs rather than third country AIFs (or *vice versa*).

In respect of developing countries, we could find no evidence of any positive effect on investment in or for the benefit of developing countries due to the introduction of AIFMD. Similarly, AIFMD appears to have had **no significant impact on investors' appetite for investment in non-listed or real assets**.

Member States make extensive use of the possibility to retain an NPPR for certain types of AIFs to *retail investors*, as stipulated under Article 43 AIFMD, and to impose **additional requirements (in particular, product regulation)**. Respondents' views were mixed about the impact of AIFMD on the **level of retail clients' investment in EU/EEA or non-EU/EEA AIFs**, and whether the impact was positive or negative. Key negative factors were reported to be higher costs, with ultimately more expensive products for retail investors, and less variety of products because smaller AIFMs no longer felt able to provide niche AIF products. Interpretations by some NCAs that all AIFs are **"complex" under MiFID II has resulted in significant impact in some Member States' retail fund markets**, it was said.

Survey questions on the impact of AIFMD on *AIF product ranges* also elicited mixed responses. Just under two-thirds of respondent AIFMs said that AIFMD had not caused them to rationalise or expand their product offerings and only one-fifth had expanded their AIF ranges. However, AIFMD has caused some Member States to introduce regimes for unauthorised, unlisted AIFs.

Disclaimer

The information and views set out in this study are those of the authors and do not necessarily reflect the official opinion of the European Commission. The European Commission does not guarantee the accuracy of the data included in this study. Neither the European Commission nor any person acting on the European Commission's behalf may be held responsible for the use which may be made of the information contained therein. The information and conclusions set out in this study shall not be deemed as prejudging any action or policy decision by the European Commission.

Doi: 10.2874/634923 (Executive Summary, EN PDF Version)

ISBN: 978-92-79-85758-4 (Executive Summary, EN PDF Version)

Résumé

1. Historique

En réponse à la crise financière de 2008 qui a révélé une série de vulnérabilités dans le système financier mondial, le Parlement européen et le Conseil de l'Union européenne ont adopté la directive 2011/61/ UE sur les gestionnaires de fonds d'investissement alternatifs (Directive AIFM). La Directive visait à étendre une réglementation et une surveillance appropriées à tous les acteurs et activités porteurs de risques significatifs en introduisant des règles harmonisées pour les gestionnaires de fonds d'investissement alternatifs (GFIA).

L'article 69 de la directive AIFM prévoyait que la Commission européenne (CE) entame **une revue de sa mise en œuvre et de son champ d'application, de son impact sur les investisseurs, les FIA et les GFIA, au sein de l'Union européenne et ailleurs, et du degré d'atteinte de ses objectifs, au plus tard le 22 juillet 2017.**

Dans ce contexte, KPMG Law Rechtsanwaltsgesellschaft mbH, en tant que société principale, assistée de KPMG AG, Wirtschaftsprüfungsgesellschaft, Allemagne, et de KPMG LLP, Royaume-Uni, en tant que sous-traitants et avec l'appui du réseau européen de KPMG, a été mandatée par la Direction générale pour la stabilité financière, les Services financiers et l'Union des Marchés de Capitaux (UMC) pour mener à bien une enquête générale et une étude fondée sur des éléments factuels.

2. Méthodologie

L'enquête générale s'adressait aux parties prenantes les plus touchées par la directive, telles que les gestionnaires de fonds alternatifs, les investisseurs, les distributeurs, les régulateurs, les dépositaires, les gestionnaires d'actifs, les conseillers en investissement et les autres acteurs impliqués dans la gestion de FIA, ainsi que les associations professionnelles représentatives au niveau national, européen et mondial. Elle les a interrogés sur les dispositions de la directive, la façon dont elles étaient appliquées et les incidences sur le marché.

478 jeux de réponses à l'enquête générale, en provenance de particuliers et d'institutions, se sont avérés exploitables. Les particuliers représentaient environ un sixième des répondants, la majorité des participants ayant répondu pour le compte d'institutions. Parmi ces derniers, la majorité (51%) étaient des GFIA, suivis par les gestionnaires / conseillers en investissement auprès de fonds alternatifs (12%). Chacune des autres catégories d'institutionnels représentait moins de 10% des répondants et comprenait les investisseurs, les régulateurs, les dépositaires, les associations professionnelles et d'autres intervenants du marché des fonds d'investissement alternatifs. Les résultats du sondage général sont résumés, analysés et présentés dans une section dédiée du rapport ; ils sont également utilisés comme source pour l'étude factuelle.

L'étude factuelle fournit une description complète de notre évaluation de l'efficacité, de l'efficience, de la cohérence et de la pertinence des dispositions de la directive et de leur valeur ajoutée au regard de leurs objectifs généraux, spécifiques et opérationnels. L'étude analyse le retour d'expérience de l'industrie et des régulateurs dans la mise en œuvre de la directive, les lois nationales y afférentes et l'impact de la directive sur les FIA et les gestionnaires de fonds alternatifs dans l'UE, sur les investisseurs et sur les autres parties prenantes. L'étude couvre 15 États membres de l'UE. Des contributions

ont également été reçues de certaines juridictions non européennes, telles que les États-Unis et les îles Anglo-Normandes.

Nous avons utilisé une méthode de triangulation pour évaluer l'impact de la directive AIFM, en tenant compte de sources de données quantitatives et qualitatives variées afin de couvrir les différents aspects de l'évaluation: recherche documentaire aux niveaux national et européen, résultats de l'enquête générale, entretiens semi-structurés et collecte de données quantitatives.

Les données se sont avérées difficilement disponibles. Il n'a pas été possible de construire de série chronologique permettant de corroborer ou de contredire les opinions exprimées dans l'enquête générale et dans la recherche documentaire, ou de dégager des conclusions bien établies sur le plan statistique pour un nombre important de questions clés du mandat.

3. AIFMD

Préalablement à la directive AIFM l'hétérogénéité régnait en maître au sein des États membres tant en terme de types d'investisseurs, de catégories d'actifs, de stratégies de souscription-rachat, de structures juridiques et de gouvernance, de type de réglementation des gérants, d'exigences relatives au dépositaire ou à la conservation des actifs, de pratiques d'évaluation et comptables, que de transparence.

Les co-législateurs ont pris acte de cette hétérogénéité forte et ont adopté une directive qui régleme la société de gestion et non le fonds lui-même (la directive AIFM n'est donc pas une réglementation produit). La directive AIFM ne régleme que certains des aspects susmentionnés et laisse un certain nombre de domaines à la discrétion des États membres, en particulier pour les FIA commercialisés auprès d'investisseurs de détail.

L'objectif général de la directive AIFM a été de créer un marché intérieur pour les fonds alternatifs européens et non européens, ainsi qu'un cadre réglementaire et de supervision harmonisé et strict pour leurs gestionnaires. En particulier le texte visait à garantir que tous les gestionnaires de fonds alternatifs soient soumis à des exigences appropriées en matière d'autorisation et d'enregistrement; qu'il existe une surveillance adéquate des risques macroprudentiels et microprudentiels et une approche commune en matière de protection des investisseurs professionnels; que les GFIA détenant des participations majoritaires dans des sociétés non cotées rendent davantage de comptes; et qu'un marché unique des fonds alternatifs se développe.

4. Principaux résultats de l'enquête générale et de l'étude factuelle

Les éléments factuels recueillis et les analyses menées établissent clairement que **la directive AIFM a joué un rôle majeur dans la création d'un marché intérieur pour les fonds alternatifs et d'un cadre réglementaire et de supervision harmonisé et exigeant**. En outre, la plupart des dispositions sont jugées avoir contribué à la réalisation des objectifs spécifiques et opérationnels, de l'avoir fait de manière efficace, efficiente et cohérente, de rester pertinentes et d'avoir une valeur ajoutée pour l'UE. Cependant, certaines dispositions (ou leur détail ou la façon de les appliquer) n'ont pas contribué à la réalisation de ces objectifs, voire même y ont été contraires. Ceci est particulièrement, mais non exclusivement, le cas eu égard aux principes d'efficacité et d'efficience.

Près de la moitié des sondés ayant exprimé une opinion ont indiqué que la directive AIFM **n'était pas appliquée uniformément** entre États membres. Cependant, lorsqu'on leur a demandé si la directive AIFM se devait d'être appliquée de manière cohérente dans tous les États membres, la plupart ont indiqué que seul *un petit nombre de domaines nécessitaient une harmonisation plus poussée* pour éviter l'arbitrage réglementaire et assurer des conditions concurrentielles équitables (level playing field), **très peu des personnes interrogées appelant à une harmonisation d'ensemble.**

Certains États membres imposent des exigences additionnelles aux gestionnaires de fonds alternatifs *sous les seuils* (y compris en exigeant une soumission intégrale aux dispositions de la directive dans certains cas), une flexibilité qui leur est laissée par la Directive en la matière. L'évaluation isolée de l'impact de ces dispositions en est rendue difficile.

Les GFIA adressent aux autorités nationales compétentes (ANC) d'importants volumes de données conformément aux exigences en matière de reporting, mais selon les sondés toutes les données ne sont pas nécessairement essentielles, certaines peuvent être insuffisantes et d'autres font double emploi. Il existe également des redondances **avec d'autres réglementations européennes en matière d'obligations de transparence.** Un peu plus de la moitié seulement des gestionnaires de FIA ayant répondu au questionnaire ont estimé qu'il existait une compréhension uniforme de l'information à transmettre au sein de leur État membre.

La Directive fixe le cadre général des exigences de transparence applicables aux GFIA et aux FIA, lesquelles sont détaillées dans le règlement AIFMR. De ce fait, et de **manière générale les États membre n'ont pas de marge de manœuvre en la matière. Toutefois, l'ANC de l'État membre du GFIA peut spécifier le mode de transmission de la donnée et exiger des informations additionnelles sur une base périodique ou ad hoc.** Ces divergences entre interprétations nationales et procédures de dépôt accroissent encore les coûts selon les sondés.

La plupart des ANC ont déclaré contrôler et analyser les données communiquées, mais **leurs analyses ne sont généralement pas accessibles au public; jusqu'à une date récente, seule une partie des données a été recueillie et analysée au niveau européen.** Les représentants de l'industrie interrogés et les sondés apprécieraient que des données agrégées soient publiées régulièrement, fournissant ainsi une meilleure information sur le marché à tous les acteurs (investisseurs compris).

Les sondés et les personnes interrogées ont exprimé leur souhait que toute décision de modifier les exigences en matière de reporting tienne compte des coûts **incompressibles significatifs liés au déploiement des systèmes d'information pour les GFIA,** les ANC et l'AEMF (Autorité Européenne des Marchés Financiers), ainsi que des coûts supplémentaires qui découleraient de tels changements, en particulier si ces derniers étaient effectués de manière fragmentée. Ils ont également suggéré que les **rapports soient analysés de manière approfondie et que l'utilisation des nouvelles technologies à des fins d'efficacité soit envisagée.**

Les données de l'enquête indiquent que l'utilisation d'un fort effet de levier est rare dans les FIA. Les sondés et les personnes interrogées ont indiqué qu'il serait utile d'harmoniser les méthodes de calcul de l'effet de levier entre la directive AIFM, la directive OPCVM et d'autres réglementations pertinentes. Il a également été suggéré, **pour plus d'efficacité (pour les GFIA, les ANC et les investisseurs), que toute modification des exigences de l'UE soit envisagée uniquement après achèvement des travaux en cours de l'Organisation internationale des commissions de valeurs (OICV) sur les méthodologies communes de calcul du levier et s'applique simultanément aux OPCVM et aux FIA.**

Le choix binaire en matière de règles d'*évaluation* - évaluation interne ou évaluation externe - ainsi que les interprétations nationales divergentes quant à l'**étendue** de la responsabilité des évaluateurs externes sont estimés avoir compromis l'efficacité des règles pour certaines classes d'actifs et dans certains États membres, selon les réponses aux questionnaires et les recherches documentaires menées. Ces règles ont conduit à mettre davantage l'accent sur les processus internes. En outre, aux dire de **certains, le nombre d'évaluateurs externes aurait diminué dans certains États** membre, ce qui réduit la concurrence et pourrait résulter dans un niveau de frais accru pour les FIA / les GFIA.

Selon les réponses au questionnaire et les recherches documentaires menées, des interrogations se font jour sur la cohérence entre les règles en matière de *rémunération* de la directive AIFM et celles prévues par d'autres textes réglementaires et lignes directrices (en particulier pour les GFIA faisant partie de **groupes soumis à plus d'un régime réglementaire**), ce qui en réduit l'efficacité potentielle. De plus, pour certains types de fonds alternatifs, des dispositions nationales supplémentaires s'appliquent.

Les résultats de l'enquête et des entretiens indiquent que la directive AIFM a eu une influence globalement positive sur la limitation des risques microprudentiels en matière de conflits d'intérêts et de gestion des risques. Les gestionnaires de fonds alternatifs ont revu et, dans de nombreux cas, adapté leur gouvernance, leurs politiques et leurs procédures pour répondre aux exigences de la directive. Cependant, une réponse différenciée a vu le jour, en particulier de la part des secteurs du capital investissement et de l'immobilier, concernant la nécessité d'une *séparation fonctionnelle et hiérarchique* complète des fonctions de gestion des risques et de gestion de portefeuille, en particulier pour les plus petits gestionnaires. La Directive **stipule qu'il** incombe aux ANC de veiller à l'application appropriée du principe de proportionnalité dans de tels cas, **en tenant compte d'éventuelles recommandations de l'AEMF**.

Les répondants relèvent que certaines règles relatives au *dépositaire* sont interprétées différemment selon les États membres - par exemple, certains ont **souligné qu'il** existe différentes approches nationales en ce qui concerne la transparence totale et les obligations de suivi des flux de liquidité - **mais il n'est pas** clairement établi si, et dans quelle mesure, cela a affecté le bon fonctionnement du marché intérieur des FIA. De l'avis général, les règles relatives aux dépositaires ont imposé une approche uniforme (one-size-fits-all), qui ne tient pas compte différentes classes d'actifs ou zones géographiques.

La disposition transitoire prévue par l'article 61, paragraphe 5, de la directive AIFM concernant le domicile du dépositaire s'est révélée avoir de la valeur ajoutée pour **l'UE, en particulier pour les petits** États membres, qui souhaitent vivement la voir étendue.

En ce qui concerne les règles spécifiques sur la *ségrégation des actifs*, et sur base des réponses recueillies, **l'exigence (perçue) d'utiliser différents comptes omnibus** à tous les niveaux d'une chaîne de sous-conservation est considérée comme inutile et lourde pour le secteur, sans pour autant offrir une protection accrue aux investisseurs. La CE a récemment clarifié ce point.

Les exigences applicables aux dépositaires en vertu de la directive AIFM et celles découlant de la directive OPCVM sont très cohérentes; toutefois, les co-législateurs ont estimé que des exigences de ségrégation des actifs légèrement moins strictes (en particulier en ce qui concerne les avis juridiques) étaient appropriées pour les FIA, compte tenu des besoins des investisseurs professionnels de l'UE (par exemple, expositions aux pays en développement). **Les sondés font observer que l'application** de règles encore plus strictes aux FIA peut dissuader ceux-ci **d'investir dans certains**

pays tiers ou via certaines contreparties, ce qui peut même conduire certains investisseurs professionnels à investir via des FIA non européens.

De l'avis général des personnes interrogées, les obligations en matière d'information aux investisseurs énoncées à l'article 23 de la directive sont excessives et ne sont donc pas respectées ou empêchent les investisseurs de comprendre clairement la proposition d'investissement qui leur est faite. Les investisseurs expérimentés et bien informés sont estimés avoir des besoins différents en matière d'information. Par ailleurs, certains représentants des investisseurs institutionnels ont fait observer qu'il n'existait toujours pas d'informations complètes ou normalisées sur l'ensemble des frais, coûts et charges dans les fonds de capital-investissement, par exemple.

En outre, les règles de transparence prévues par la directive AIFM sont incompatibles **avec d'autres régimes d'information aux investisseurs (plus récents) et donnent lieu à des déclarations faisant double emploi, voire potentiellement incohérentes selon les personnes interrogées.**

Les dispositions relatives aux prises de *participation dans des sociétés non cotées* ont été particulièrement critiquées. Les notifications aux ANC, très détaillées, sont jugées inutiles ou non essentielles et trop lourdes (ce d'autant plus que de nombreux gestionnaires de fonds de capital-risque sont des structures de petite taille pour lesquelles les charges administratives peuvent être proportionnellement plus lourdes). La directive exige des notifications de franchissements de seuil plus nombreuses et portant sur un gamme d'actifs détenus plus étendue que la deuxième directive sur le droit des sociétés; de surcroît, il est difficile de savoir quelle utilisation les ANC peuvent faire ou font de ces informations.

En outre, les personnes interrogées n'estiment pas que la directive AIFM ait amélioré l'information divulguée par les FIA/GFIA aux sociétés dont ils ont pris le contrôle ou ait eu un effet positif sur la relation entre FIA/GFIA et société cible. Un manque de clarté est également souligné concernant le sens du terme «société non cotée» et l'application des règles aux investissements dans des sociétés holdings intermédiaires et dans des OPCVM ou FIA non cotés. Les sondés et les personnes interrogées ont suggéré que les règles soient réévaluées dans le contexte du premier objectif de l'UMC- «Financement de l'innovation, des start ups et des sociétés non cotées».

En ce qui concerne les *régimes de passeport* prévus par la directive AIFM, les statistiques attestent du bon fonctionnement du passeport de gestion, alors que le **passeport de commercialisation reste à la traîne et souffre du manque d'harmonisation dans l'approche entre ANC (ce que la récente proposition de la CE sur la distribution transfrontalière reconnaît).** Les États membres ont adopté des points de vue différents concernant les activités qualifiées de «marketing»; les règles nationales et les processus appliqués par les ANC restent par ailleurs peu transparents, ce qui entraîne **des coûts supplémentaires pour l'industrie et pour les investisseurs et réduit les bénéfices du passeport produit et par là-même ceux du marché unique.**

La situation des fonds alternatifs et des gestionnaires de pays tiers varie considérablement **d'un État membre à un autre** conformément à la discrétion conférée aux États membres par les articles 36 et 42 de la directive. Ces derniers dépendent **fortement des dispositions nationales et de l'appétit des investisseurs professionnels** pour de tels FIA dans un État membre donné. **L'autorisation faite aux régimes nationaux de placement privé (RNPP) de continuer à fonctionner est donc jugé bénéfique pour l'UE** par les sondés. Quelques une des personnes interrogées ont appelé à l'introduction des passeports pays tiers et un nombre important d'États membres et de pays tiers ont demandé à ce que les RNPP soient conservés, même en cas d'introduction des passeports pays tiers.

5. Évolution du marché post directive AIFM

Dans l'UE, les données accessibles au public restent insuffisantes pour donner une image précise des tendances **dans l'ensemble du marché des fonds alternatifs post directive AIFM**. En effet, les analyses menées par les ANC sur les données transmises sont généralement indisponibles et les données collectées par l'industrie au travers de **différentes associations se présentent sous forme d'un patchwork non harmonisé**. L'analyse statistique d'un échantillon de données sectorielles a **uniquement permis de conclure qu'il n'existait aucun effet statistiquement significatif de la directive AIFM sur l'actif net des FIA**, après retraitements (indices de prix des actions nationales et indice des prix à la consommation notamment). Toutefois, ce résultat doit être interprété comme découlant des effets pays, sans tenir compte des variables non observées spécifiques à un pays donné ou à un moment précis.

Les personnes interrogées ont admis qu'il pouvait y avoir des risques pour le système **dans son ensemble, tels que ceux liés à l'émergence de nouveaux instruments financiers** dont le potentiel de risque inhérent ne peut pas encore être évalué, mais **partagent l'avis selon lequel la directive AIFM n'a pas encore montré ses pleins effets**. Le secteur des fonds alternatifs dans son **ensemble n'a pas subi de choc financier majeur** depuis la mise en place de la directive. Cependant, les marchés ont été volatiles dans un certain nombre de pays et sur certaines classes d'actifs, mais l'industrie a su y faire face.

Les sondés ont estimé que la *concurrence entre les gestionnaires de fonds alternatifs* n'avait que légèrement progressé **depuis la mise en œuvre de la directive**. La question de savoir si la directive AIFM leur avait permis de rationaliser leur structure et leurs processus opérationnels a suscité des réactions mitigées. Environ un quart des personnes interrogées ont indiqué que la directive AIFM avait eu un impact positif, mais plus d'un tiers d'entre elles réfutait cette affirmation.

L'effet de la directive sur les investisseurs est jugé salubre. La grande majorité des *investisseurs institutionnels* et de leurs associations professionnelles représentatives (y compris celles de pays tiers) ont déclaré que la directive AIFM **n'avait pas influencé leur décision d'investir (ou pas) au travers de FIA, ou d'investir au travers de fonds alternatifs de l'UE / EEE** plutôt que de fonds pays tiers (ou vice versa).

En ce qui concerne les pays en développement, rien ne nous **indique que l'introduction de la directive AIFM ait eu un effet positif sur les investissements dans ces pays ou à leur profit**. De même, la directive **n'a apparemment eu aucun impact significatif sur l'appétit des investisseurs pour des investissements en actifs non cotés ou réels**.

Les États membres ont largement recours à la possibilité de conserver un régime de placement privé national pour certains types de FIA destinés à des *investisseurs de détail*, conformément à l'article 43 de la directive AIFM, et d'imposer des exigences additionnelles (notamment une réglementation des produits). Les personnes **interrogées ont exprimé des opinions partagées quant à l'impact de la directive AIFM** sur le niveau des investissements dans les FIA- européens et non européens – de la part **d'investisseurs de détail**, et sur le fait de savoir si les effets étaient bénéfiques ou pas.

Les principaux facteurs négatifs cités ont été des coûts plus élevés, avec des produits finalement plus chers pour les investisseurs de détail et une moins grande variété de produits, les plus petits gestionnaires ne se sentant plus **capables d'offrir** des produits alternatifs de niche. Les interprétations de certaines ANC selon lesquelles tous les FIA sont «complexes» au sens de la directive MiFID 2 ont eu un impact non négligeable sur le marché des fonds destinés aux investisseurs de détail dans certains États membres selon les personnes interrogées.

Les questions de l'enquête sur l'impact de la directive AIFM sur *les gammes de FIA* ont également suscité des réponses partagées. Un peu moins des deux tiers des gestionnaires de fonds alternatifs interrogés ont déclaré que la directive ne les avait pas conduits à rationaliser ou à élargir leur offre de produits; seul un cinquième déclare avoir élargi sa gamme de fonds alternatifs. Toutefois, la directive AIFM a incité certains États membres à créer des régimes de fonds alternatifs non réglementés au niveau des produits ou dédiés aux FIA non cotés.

Avertissement

Les informations et opinions présentées dans ce rapport sont celles des auteurs et ne **représentent pas nécessairement l'opinion officielle de la Commission. La Commission ne peut pas garantir l'exactitude des données incluses dans cette étude. La Commission ou toute personne agissant en son nom, ne peut être rendue responsable de l'usage** qui peut être fait des informations contenues dans ce rapport. Les informations et les **conclusions présentées dans cette étude ne sauraient préjuger d'éventuelles actions** ou décisions politiques émanant de la Commission européenne.

Doi : 10.2874/45164 (Executive Summary, PDF French Version)

ISBN : 978-92-79-85757-7 (Executive Summary, PDF French Version)

Zusammenfassung

1. Hintergrund

Als Reaktion auf die Finanzkrise im Jahr 2008, die eine Reihe von Schwachstellen im globalen Finanzsystem aufdeckte, haben das Europäische Parlament und der Rat der Europäischen Union die Richtlinie 2011/61/EU über Manager alternativer Investmentfonds (AIFMD) verabschiedet. Die AIFMD zielte darauf ab, eine angemessene Regulierung und Aufsicht auf alle Akteure und Tätigkeiten auszudehnen, die erhebliche Risiken bergen, indem harmonisierte Anforderungen für Manager alternativer Investmentfonds (AIFMs) eingeführt wurden.

Gemäß Artikel 69 AIFMD musste die Europäische Kommission (EK) bis zum 22. Juli 2017 eine Überprüfung der Anwendung und des Geltungsbereichs der Richtlinie, ihrer Auswirkungen auf Anleger, AIFs und AIFMs innerhalb und außerhalb der EU sowie des Grades der Zielerreichung einleiten.

In diesem Zusammenhang wurde federführend die KPMG Law Rechtsanwaltsgesellschaft mbH mit den Subunternehmern KPMG AG Wirtschaftsprüfungsgesellschaft, Deutschland und KPMG LLP Großbritannien, unterstützt durch das europäische Netzwerk der KPMG, von der Generaldirektion für Finanzstabilität, Finanzdienstleistungen und Kapitalmarktunion (KMU) mit der Durchführung einer allgemeinen Umfrage und der Erstellung einer evidenzbasierten Studie beauftragt.

2. Methodik

Die allgemeine Umfrage wurde an die von der AIFMD am stärksten betroffenen Marktteilnehmer gerichtet – wie AIFMs, Investoren, Vertriebspartner, Regulierungsbehörden, Verwahrstellen, Vermögensverwalter, Anlageberater und andere Einheiten, die die Verwaltung von AIFs ermöglichen, sowie an Branchenverbände auf nationaler, EU- und globaler Ebene. Die Umfrage hat ihre Ansichten zu den Anforderungen der AIFMD, ihre Erfahrung bei deren Anwendung und deren Auswirkungen auf den Markt eingeholt.

478 Antworten von natürlichen Personen und Institutionen auf die allgemeine Umfrage konnten verwertet werden. Etwa ein Sechstel der Umfrageteilnehmer waren Einzelpersonen, während die Mehrheit der Teilnehmer im Auftrag von Institutionen antwortete. Unter den letzteren waren die meisten (51%) AIFMs, gefolgt von Investmentmanagern/Beratern von AIFs (12%). Jede andere Art von institutionellen Marktteilnehmern wurde von weniger als 10% aller Umfrageteilnehmer vertreten, darunter Investoren, Regulierungsbehörden, Verwahrstellen, Branchenverbände und andere am AIF-Marktteilnehmer. Die Ergebnisse der allgemeinen Umfrage werden als unabhängiger Teil dieser Studie zusammengefasst, analysiert und präsentiert. Sie dienen auch als eine Quelle für die evidenzbasierte Studie.

Die evidenzbasierte Studie liefert einen umfassenden Überblick über unsere Beurteilung, inwieweit die einzelnen Regelungen wirksam, effizient, kohärent, relevant und mit einem EU-Mehrwert versehen bei der Erreichung der allgemeinen, spezifischen und operativen Ziele waren. Die Studie analysiert die Erfahrungen der Industrie und der Regulierungsbehörden bei der Anwendung der AIFMD, der jeweiligen nationalen Umsetzungsgesetze und die Auswirkungen der Richtlinie auf AIFs und AIFMs in der EU, auf Investoren und andere betroffene Parteien. Die Studie wurde in

15 EU-Mitgliedstaaten durchgeführt. Auch Beiträge aus einigen anderen Rechtsordnungen, insbesondere den USA und Kanalinseln, wurden berücksichtigt.

Um die Auswirkungen der AIFMD zu bewerten, haben wir ein Triangulationsverfahren angewendet und dabei verschiedene Datenquellen für quantitative und qualitative Informationen berücksichtigt, um die verschiedenen Aspekte der Bewertung abzudecken: Fachliteraturrecherche auf nationaler und EU-Ebene, Ergebnisse der allgemeinen Umfrage, halbstrukturierte Interviews und quantitative Datenerhebung.

Die Datenverfügbarkeit erwies sich als schwierig. Es war in vielen Bereichen nicht möglich, irgendeine Art von Datenzeitreihen zu konstruieren, die es uns ermöglicht hätten, Meinungen gemäß der allgemeinen Umfrage und Recherche zu untermauern oder zu widerlegen oder statistisch fundierte Erkenntnisse zu den Kernfragen der Beauftragung zu gewinnen.

Forschungsfragen und Indikatoren wurden anhand von vier Hauptfragen entwickelt:

1. Wie hat die AIFMD den Grad der Integration des EU-AIF-Marktes beeinflusst?
2. Wie hat die AIFMD die Struktur des EU-Verwahrstellenmarktes beeinflusst?
3. Wie hat die AIFMD die Kostenstruktur der EU-Verwahrstellendienstleistungen beeinflusst?
4. Wie hat sich die AIFMD auf den Marktanteil der AIF ausgewirkt, die den Kleinanlegern in der EU zur Verfügung stehen?

Als zusätzliches Element der quantitativen Analyse haben wir mit einem Regressionsmodell analysiert, ob die AIFMD einen messbaren Einfluss auf den AIF-Markt hatte. Wir haben Daten von Pan-europäischen Verbänden verwendet, um ein Panel-Regressionsmodell anzusetzen, das für eine Vielzahl von Faktoren, wie beispielsweise die nationalen Kapitalmärkte, eine Steuerung ermöglicht.

3. AIFMD

Die vor der Einführung der AIFMD in den Mitgliedstaaten herrschende Sachlage war in allen Aspekten heterogen: Anlegertypen, Anlageklassen, Anlage- und Rücknahmestrategien, Rechts- und Verwaltungsstrukturen, Form der Managerregulierung, Verwahrstellen- oder Verwahrungsvorschriften, Bewertungs- und Rechnungslegungspraktiken sowie Transparenz.

Die Mitgesetzgeber erkannten dieses hohe Maß an Heterogenität an und verabschiedeten eine Richtlinie, die die Verwaltungsgesellschaft und nicht die Fonds selbst regelt (d.h. die AIFMD ist keine Produktregulierung). Die AIFMD regelt daher nur einige der oben genannten Aspekte und überlässt eine Reihe von Bereichen dem nationalen Ermessen, insbesondere für AIFs, die an Kleinanleger innerhalb der Mitgliedstaaten vertrieben werden.

Das allgemeine Ziel der AIFMD ist die Schaffung eines Binnenmarktes für EU-AIFs und Drittstaaten-AIFs sowie eines harmonisierten und strikten Regulierungs- und Aufsichtsrahmens für AIFMs. Insbesondere soll sichergestellt werden, dass alle AIFMs geeigneten Zulassungs- und Registrierungsanforderungen unterliegen; dass die makro- und mikroprudenziellen Risiken angemessen überwacht werden und dass ein gemeinsamer Ansatz zum Schutz professioneller Anleger besteht; dass die Rechenschaftspflicht der AIFM, die Mehrheitsbeteiligungen an nicht börsennotierten Unternehmen halten, erhöht wird und dass der Binnenmarkt für AIFs entwickelt wird.

4. Wichtigste Ergebnisse der allgemeinen Umfrage und der evidenzbasierten Studie

Auf Grundlage der gewonnenen Erkenntnisse und der durchgeführten Analysen kann festgestellt werden, dass *die AIFMD eine wichtige Rolle bei der Schaffung eines Binnenmarkts für AIFs und eines harmonisierten und strikten Regulierungs- und Aufsichtsrahmens für AIFMs gespielt hat*. Darüber hinaus haben die meisten Aspekte der untersuchten Bestimmungen zur Erreichung der allgemeinen, spezifischen und operativen Ziele beigetragen und sich als effektiv, effizient, kohärent, relevant sowie mit einem EU-Mehrwert versehen erwiesen. Allerdings haben einige Bestimmungen (oder Aspekte davon oder deren Anwendung) nicht dazu beigetragen bzw. der Erreichung dieser Ziele entgegengewirkt – insbesondere, jedoch nicht ausschließlich, im Hinblick auf die Prinzipien der Effektivität und Effizienz.

Von den Umfrageteilnehmern, die eine Stellungnahme abgegeben haben, stimmte fast die Hälfte zu, dass die AIFMD nicht einheitlich von den Mitgliedstaaten angewendet wird. Andererseits haben die meisten Umfrageteilnehmer und Interviewpartner auf die Frage, ob sie besorgt seien, dass die AIFMD in allen Mitgliedstaaten einheitlich angewendet werden sollte, geantwortet, dass lediglich eine *kleine Anzahl von Bereichen einer weiteren Harmonisierung bedarf*, um Regelungsabweichungen zu verhindern und gemeinsame gleiche Wettbewerbsbedingungen zu gewährleisten, wobei nur sehr wenige Befragte oder Interviewpartner Befragte eine Harmonisierung insgesamt anregten.

Eine Reihe von Mitgliedstaaten wenden zusätzliche Bestimmungen für AIFM *unterhalb der Schwellenwerte* an (einschließlich der Verpflichtung zur Vollerlaubnis in einigen Fällen). Die AIFMD lässt den Mitgliedstaaten diesbezüglich einen Ermessensspielraum, was die isolierte Bewertung der Auswirkungen der AIFMD-Schwellenwertbestimmungen schwierig macht.

Im Rahmen der *AIFMD-Berichtsansforderungen* werden von den AIFM große Datenmengen an die nationalen Aufsichtsbehörden (NCA) übermittelt, aber die Umfrageteilnehmer und Interviewpartner merkten an, dass nicht alle Daten wesentlich, einige unzureichend und andere doppelt vorhanden seien. Auch gibt es Überschneidungen bei den Berichtspflichten aufgrund anderer EU-Rechtsvorschriften. Nur etwas mehr als die Hälfte der Umfrageteilnehmer AIFMs waren der Ansicht, dass in ihrem Mitgliedstaat ein einheitliches Verständnis dafür besteht, was zu melden ist.

Die AIFMD legt die wesentlichen Berichtsansforderungen für AIFMs und AIFs fest, welche in der AIFMR weiter ausgearbeitet werden. Daher besteht diesbezüglich generell kein nationaler Ermessensspielraum. Allerdings kann die NCA des Herkunftsmitgliedstaates die Art der Datenübermittlung festlegen und sowohl in regelmäßigen Abständen als auch einzelfallbezogen zusätzliche Informationen anfordern. Resultierend daraus wurden Unterschiede in den nationalen Auslegungs- und Anmeldeverfahren als zusätzliche Gründe für eine Verschärfung der Kosten gesehen.

Die überwiegende Anzahl der NCAs sagten aus, dass sie gemeldete Daten überwachen und analysieren, aber ihre Analysen werden im Allgemeinen nicht öffentlich zugänglich machen, und nur eine kleine Teilmenge der Daten wurde bis vor kurzem auf EU-Ebene gesammelt und analysiert. Die Umfrageteilnehmer aus der Branche und die Interviewpartner würden es begrüßen, wenn regelmäßig aggregierte Zahlen veröffentlicht werden, die allen Marktteilnehmern (einschließlich Investoren) bessere Informationen über den Markt liefern würden.

Die Umfrageteilnehmer und Interviewpartner forderten, dass bei Entscheidungen über Änderungen der Meldepflichten die erheblichen uneinbringlichen Kosten bei der Einführung der Meldesysteme für AIFM, NCAs und ESMA (Europäische Wertpapier- und

Marktaufsichtsbehörde) sowie die zusätzlichen Kosten, die durch Änderungen entstehen, berücksichtigt werden sollten, insbesondere wenn diese Änderungen schrittweise vorgenommen werden. Sie schlugen auch vor, dass die Berichterstattung durch Vermögensverwalter und Fondsmanager geprüft und der effiziente Einsatz neuer Technologien in Betracht gezogen werden sollte.

Die Umfragedaten deuten darauf hin, dass die Verwendung einer hohen *Hebelfinanzierung* bei AIFs selten ist. Die Umfrageteilnehmer und Interviewpartner wiesen darauf hin, dass es hilfreich wäre, die Berechnungsmethoden für die Hebelwirkung zwischen der AIFMD, der Richtlinie 2009/65/EU betreffend Organismen für gemeinsame Anlagen (OGAW) in Wertpapieren (OGAW-Richtlinie) und anderen relevanten Rechtsvorschriften zu harmonisieren. Ferner wurde vorgeschlagen, dass angesichts der Arbeit von IOSCO (Internationale Organisation der Wertpapieraufsichtsbehörden) an gemeinsamen Hebelfinanzierungsmaßnahmen es effizienter wäre (für AIFM, NCAs und Investoren), wenn Änderungen der EU-Anforderungen erst nach Abschluss der Arbeit von IOSCO berücksichtigt würden und gleichzeitig für OGAW und AIF eingeführt würden.

Die binäre Wahl hinsichtlich der *Bewertungsregeln* zwischen interner oder externer Bewertung und die unterschiedliche nationale Auslegung bezüglich des Umfangs der Haftung externer Bewerter werden auf Basis der Umfrageergebnisse und Fachliteraturrecherche als Beeinträchtigung der Wirksamkeit der Regeln für einige Anlageklassen und in einigen Mitgliedstaaten gesehen. Dadurch wurde der Fokus stärker auf interne Prozesse gelegt. Außerdem wird berichtet, dass in einigen Mitgliedstaaten weniger externe Bewerter zur Verfügung stehen, was das Wettbewerbsniveau senkt und zu höheren Gebühren für AIF/AIFMs führen könnte.

Auf Basis der Umfrageergebnisse und Fachliteraturrecherche ergeben sich auch Fragen im Zusammenhang mit der Kohärenz der *AIFMD-Vergütungsregeln* mit anderen Gesetzen und Richtlinien (insbesondere für AIFMs, die Teil von Konzernen mit Schnittstellen zu mehr als einem Regulierungssystem sind), was wiederum die potenzielle Effizienz des Systems verringert. Auch gibt es für einige AIFs noch zusätzliche nationale Bestimmungen.

Die Ergebnisse der Umfrage und der Interviews zeigen, dass die AIFMD generell einen positiven Einfluss auf die Begrenzung der mikroprudenziellen Risiken in Bezug auf Interessenkonflikte und Risikomanagement hat. Die AIFM haben ihre Prozesse, Richtlinien und Verfahren überprüft und in vielen Fällen angepasst, um den Anforderungen von AIFMD gerecht zu werden. Allerdings gab es insbesondere aus dem Private Equity- und Immobiliensektor eine differenzierte Antwort auf die Notwendigkeit einer vollständigen *funktionalen und hierarchischen Trennung* des Risiko- und Portfoliomanagements, insbesondere bei kleineren AIFMs. Die AIFMD überlässt es den NCAs, in solchen Fällen eine angemessene Anwendung des Grundsatzes der Verhältnismäßigkeit sicherzustellen und hierbei jeden allgemeinen Leitfaden von ESMA zu berücksichtigen.

Die Umfrageteilnehmer und Interviewpartner merkten an, dass einige der AIFMD-*Verwahrstellenvorschriften* in den einzelnen Mitgliedstaaten unterschiedlich ausgelegt werden – beispielsweise wurde angemerkt, dass es unterschiedliche nationale Ansätze hinsichtlich des Gesamtdurchschau-Prinzips und der Cash-Monitoring-Aufgaben gebe –, wobei unklar ist, ob und inwieweit sich dies auf die Wirksamkeit des Binnenmarkts für AIF auswirken kann. Es herrschte der allgemeine Eindruck, dass die Verwahrstellenvorschriften einen „One-Size-Fits-All“-Ansatz verfolgen, welcher keine unterschiedlichen Anlageklassen oder Regionen berücksichtigt.

Die Übergangsbestimmung in Artikel 61 Absatz 5 AIFMD in Bezug auf den Sitz der Verwahrstelle hat sich als EU-Mehrwert erwiesen, insbesondere für kleinere Mitgliedstaaten, welche auf deren Verlängerung drängen.

Was die spezifischen Vorschriften zur *getrennten Verwahrung von Vermögenswerten* betrifft, so wird auf Basis der Umfrageergebnisse und Fachliteraturrecherche die (vermeintliche) Verpflichtung, verschiedene Sammelkonten auf allen Ebenen einer Unterverwahrkette zu betreiben, als unnötig und belastend für die Branche angesehen, ohne einen erhöhten Anlegerschutz zu bieten. Dieses Problem wurde kürzlich von der EK in ihrer jüngst angenommenen Delegierten Verordnung zur Änderung der AIFMR-Regeln für Verwahrstellen und Unterverwahrstellen von Fondsvermögen geklärt.

Es besteht ein hohes Maß an Kohärenz zwischen den Verwahrstellenanforderungen der AIFMD und OGAW-Richtlinie, aber die Mitgesetzgeber haben entschieden, dass etwas weniger strenge Anforderungen an die getrennte Verwahrung von Vermögenswerten (insbesondere in Bezug auf Rechtsgutachten) für AIFs angesichts der Anforderungen professioneller Anleger aus der EU an Investments (z.B. Exponierung gegenüber Entwicklungsländern) angemessen sind. Nach Wahrnehmung der Interviewpartner könnte die Anwendung von strikteren Regeln auf AIFs zur Folge haben, dass AIFs von der Investition in gewisse Drittländer oder vermittelt gewisser Gegenparteien ausgeschlossen sind und dies wiederum dazu führen kann, dass professionelle Investoren statt dessen über Nicht-EU-AIFs investieren.

Es herrschte unter den Umfrageteilnehmern und Interviewpartnern Einigkeit darüber, dass die Anforderungen des Artikels 23 AIFMD über die *Offenlegung an die Anleger* übermäßig hoch sind und daher ignoriert werden oder die Anleger daran hindern, ein klares Verständnis für den Anlagevorschlag des AIF zu erlangen. Demgemäß haben erfahrene und gut informierte Anleger unterschiedliche Berichtsanforderungen. Andererseits stellten einige Vertreter institutioneller Investoren fest, dass es nach wie vor unzureichende oder nicht standardisierte Offenlegungen aller Gebühren, Kosten und Preise z.B. in Private Equity-AIFs gibt.

Laut den Umfrageteilnehmern stehen außerdem die AIFMD-Regeln über die Offenlegung gegenüber Anlegern im Widerspruch zu anderen (jüngeren) EU-Offenlegungsregelungen und führen zu doppelten und potenziell widersprüchlichen Offenlegungen.

Besonders kritisiert wurden die Anforderungen an *Investitionen in nicht börsennotierte Unternehmen*. Der Umfang der Meldungen an die NCAs wird als nicht sinnvoll oder wesentlich und als übermäßig belastend angesehen (insbesondere angesichts der Tatsache, dass viele Private Equity/Venture Capital AIFMs kleinere Unternehmen sind, bei denen der Verwaltungsaufwand proportional höher sein kann). Sie verlangen Offenlegungen auf zusätzlichen Beteiligungsebenen und für mehr Arten von Portfoliovermögen als die Zweite Gesellschaftsrechtsrichtlinie, und es ist nicht klar, welchen Nutzen die NCAs aus den Informationen ziehen können oder wollen.

Darüber hinaus wird von den Umfrageteilnehmern und Interviewpartnern nicht davon ausgegangen, dass die AIFMD die vom AIF/AIFM an kontrollierte Unternehmen übermittelten Informationen verbessert hat oder sich positiv auf das Verhältnis zwischen AIF/AIFM und Zielgesellschaften oder Beteiligungsunternehmen ausgewirkt hat. Außerdem besteht Unklarheit in Bezug auf die Bedeutung von "nicht börsennotierten Unternehmen" und die Anwendung der Regeln auf Anlagen in nicht börsennotierte Zweckgesellschaften und nicht börsennotierte OGAWs oder AIFs. Die Umfrageteilnehmer und Interviewpartner schlugen vor, die Regeln im Zusammenhang mit dem ersten Ziel der KMU – "Finanzierung von Innovationen, Start-ups und nicht börsennotierten Unternehmen" – neu zu bewerten.

Was die *AIFMD-Passregelungen* betrifft, so deuten die statistischen Beweise darauf hin, dass der EU-Verwaltungspass gut funktioniert, aber der EU-Vertriebspass zurückliegt und unter den unterschiedlichen Ansätzen der NCAs leidet (wie im Vorschlag für eine EU-Verordnung zur Erleichterung des grenzüberschreitenden Vertriebs von Investmentfonds vom 12. März 2018 anerkannt). Die Mitgliedstaaten verfolgen unterschiedliche Ansätze, welche Tätigkeiten als "Vertrieb" gelten und es mangelt an Transparenz in Bezug auf die unterschiedlichen nationalen Vorschriften und NCA-Verfahren. Dies führt zu zusätzlichen Kosten für die Branche und die Investoren und untergräbt die Vorteile des AIF-Passes und damit des Binnenmarkts.

Im Vergleich zu Nicht-EU-AIFs und AIFMs unterscheiden sich die Entwicklungen von Mitgliedstaat zu Mitgliedstaat auf Grund des ihnen gemäß Art. 36 und 42 AIFMD eingeräumten Ermessensspielraums erheblich. Entwicklungen sind stark von nationalen Maßnahmen und der Nachfrage professioneller Investoren in den Mitgliedstaaten nach Nicht-EU-AIFs abhängig. Die Umfrageteilnehmer und Interviewpartner erachteten es daher für die EU von zusätzlichem Nutzen, dass nationale Privatplatzierungsvorschriften angewendet werden können. Einige Befragte forderten die Einführung der Nicht-EU-Pässe und eine beträchtliche Zahl von Personen aus einer Reihe von Mitgliedstaaten forderte die Beibehaltung der nationalen Privatplatzierungsvorschriften auch dann, wenn die Nicht-EU-Pässe eingeführt werden.

5. Marktentwicklungen nach AIFMD

Es fehlen öffentlich zugängliche Daten auf EU-Ebene, um ein aussagekräftiges Bild der spezifischen Post-AIFMD-Trends auf dem gesamten AIF-Markt zu vermitteln, da durch NCAs vorgenommene Auswertungen der auf Grundlage der AIFMD erhaltenen Daten im Allgemeinen nicht zugänglich sind und Datensammlungen innerhalb der Branche einen Flickenteppich zwischen unterschiedlichen Verbänden darstellen. Die statistische Analyse einer Stichprobe von Daten führte zu dem Schluss, dass es *keinen statistisch signifikanten Einfluss der AIFMD auf das Nettovermögen von AIF gibt*, nachdem die nationalen Aktienpreisindizes, die Inflation (Verbraucherpreisindex) kontrolliert wurden und eine Neukategorisierung der Branche vorgenommen wurde. Dieses Ergebnis ist jedoch als die Auswirkungen innerhalb der Länder zu interpretieren, ohne Berücksichtigung länderspezifischer und zeitspezifischer unbeobachteter Variablen.

Die Umfrageteilnehmer wiesen darauf hin, dass Risiken bestehen können, die das Gesamtsystem betreffen, z.B. neue aufkommende Finanzinstrumente, bei denen das eingebettete Risikopotenzial noch nicht abgeschätzt werden kann, vertraten jedoch die Auffassung, die *AIFMD müsste noch vollständig getestet werden*. Der AIF-Sektor als Ganzes war seit der Einführung der AIFMD keinen größeren finanziellen Schocks ausgesetzt. Allerdings gab es in einer Reihe von Ländern und in einigen Anlageklassenunbeständige Märkte, welche der Sektor bewältigt hat.

Der *Wettbewerb zwischen den AIFMs* wurde von den Umfrageteilnehmern seit Einführung der AIFMD als nur geringfügig verschärft angesehen. Gemischte Reaktionen gab es hinsichtlich der Frage, ob die AIFMD es den AIFM ermöglicht hat, ihre Betriebsstrukturen und -prozesse zu rationalisieren. Etwa ein Viertel der Umfrageteilnehmer gab an, dass die AIFMD einen positiven Einfluss hatte, aber mehr als ein Drittel der AIFMs stimmte dem nicht zu.

Die Auswirkungen der AIFMD auf die Anleger sind positiv. Die große Mehrheit der *institutionellen Investoren* und der Branchenverbände, die institutionelle Investoren vertreten, erklärte, dass die AIFMD ihre Entscheidungen in AIFs zu investieren (oder nicht) oder in EU/EWR-AIFs und nicht in Drittstaaten-AIFs (oder umgekehrt) zu investieren, nicht beeinflusst habe.

In Bezug auf Entwicklungsländer haben wir keine Hinweise auf positive Auswirkungen auf Investitionen in oder zum Nutzen der Entwicklungsländer aufgrund der Einführung der AIFMD gefunden. Ebenso scheint die AIFMD keinen wesentlichen Einfluss auf den Investitionsbedarf der Anleger in nicht börsennotierte oder Sachwerte zu haben.

Die Mitgliedstaaten machen umfangreichen Gebrauch von der Möglichkeit, gemäß Artikel 43 AIFMD für bestimmte Arten von AIFs an *Kleinanleger* eine nationale Privatplatzierungsregelung beizubehalten und zusätzliche Anforderungen (insbesondere Produktregulierung) zu stellen. Die Meinungen der Umfrageteilnehmer waren gemischt, was die Auswirkungen der AIFMD auf die Anlage von Kleinanlegern in EU/EWR oder Nicht-EU/EWR-AIFs betrifft, und ob die Auswirkungen positiv oder negativ waren. Als wesentliche negative Faktoren wurden höhere Kosten mit letztlich teureren Produkten für Privatanleger und eine geringere Produktvielfalt gemeldet, da sich kleine AIFMs nicht mehr in der Lage sahen, AIF-Nischenprodukte anzubieten. Gemäß der Umfrage hatte **die Auslegung einiger NCAs, dass alle AIFs "komplex"** im Sinne von MiFID II (Richtlinie 2014/65/EU vom 15. Mai 2014 über Märkte für Finanzinstrumente) seien, erheblichen Einfluss auf den Kleinanlegermarkt in einigen Mitgliedstaaten.

Auch die Fragen nach den Auswirkungen von AIFMD auf die *AIF-Produktpalette* wurden unterschiedlich beantwortet. Knapp zwei Drittel der Umfrageteilnehmer AIFM gaben an, dass die AIFMD sie nicht veranlasst habe, ihr Produktangebot zu rationalisieren oder zu erweitern, und nur ein Fünftel gab an, ihr AIF-Angebot erweitert zu haben. Die AIFMD hat jedoch einige Mitgliedstaaten dazu veranlasst, Regelungen für nicht zugelassene, nicht börsennotierte AIF einzuführen.

Haftungsausschluss

Die Verantwortung für den Inhalt dieses Dokuments liegt ausschließlich bei dessen Verfasser/n. Die darin vertretenen Auffassungen entsprechen nicht unbedingt dem offiziellen Standpunkt der Europäischen Kommission. Die Informationen und Schlussfolgerungen in dieser Studie greifen weder zukünftigen Handlungen noch politischen Entscheidungen der Europäischen Kommission vor.

Introduction

In response to the financial crisis of 2008, which exposed a series of vulnerabilities in the global financial system, the European Parliament and the Council of the European Union adopted AIFMD.⁴ AIFMD aimed to extend appropriate regulation and oversight to all actors and activities that embed significant risks by introducing harmonised requirements for Alternative Investment Fund Managers (AIFMs).

The impact assessment accompanying the proposal for AIFMD⁵ (hereinafter referred to as the “**AIFMD Impact Assessment**”) identified important gaps and weaknesses in European and national approaches to the regulation and supervision of the AIFM sector (see 1.1 in Section 2). The activities of AIFMs were considered by the European Commission (EC) to be associated with attendant risks for AIF investors, counterparties, the financial markets and the wider economy.

Under Article 69 AIFMD (see sub-section 2 below), the EC had to start by 22 July 2017 a review of the application and scope of the Directive, its impact on investors, AIFs and AIFMs, within the EU and elsewhere, and the degree to which its objectives have been met.

KPMG Law Rechtsanwaltsgesellschaft mbH as lead firm with the subcontractors KPMG AG Wirtschaftsprüfungsgesellschaft, Germany and KPMG LLP, United Kingdom supported by the European network of KPMG has been mandated by the Directorate-General for Financial Stability, Financial Services and Capital Markets Union⁶ to conduct a general survey addressed to the stakeholders that are most affected by the AIFMD – such as AIFMs, depositaries, investors, distributors and asset managers. We sought **their views on the AIFMD’s requirements, their experience in applying them** and the market impacts. The general survey is complemented by an evidence-based study assessing whether AIFMD is effective, efficient, relevant and coherent and has EU added value. The study was carried out in 15 EU Member States. Input was also sought from some third countries (any marked differences in the comments from EU versus third countries are noted in the relevant sub-section).

1. Structure of the report

This Introduction gives an overview of the purpose and scope of the general survey (sub-section 2) and the evidence-based study (sub-section 3). We describe the rules assessed (sub-section 4), the five key principles they are assessed against (sub-section 5), the role of EU intervention (sub-section 6) and the selection of Member States covered by the respective work streams (sub-section 7).

⁴ See also N. Amenc, S. Sender, *Response to ESMA Consultation Paper to Implementing Measures for the AIFMD*; EDHEC-Risk Institute (2011), p. 3 et seq; KPMG, *A guide to the Implications of the Alternative Investment Fund Managers directive (AIFMD) for annual reports of Alternative Investment Fund (AIFs)* (2015), p. 1 et seq; Deloitte, *Alternative Investment Fund Managers Directive (AIFMD): meeting the challenge* (2013), p. 1 et seq.; Ernst & Young, *AIFMD: the road to implementation* (2013).

⁵ Commission of the European Communities, *Commission Staff Working Document accompanying the Proposal for a Directive of the European Parliament and of the Council on Alternative Investment Fund Managers and amending Directives 2004/39/EC and 2009/.../EC – Impact Assessment*, 30 April 2009, SEC(2009) 576. Retrieved from http://ec.europa.eu/internal_market/investment/docs/alternative_investments/fund_managers_impact_assessment.pdf.

⁶ Service contract FISMA/2016/105(02)/C4/ST/OP dated 26 September / 11 October 2017 (including the call for tenders FISMA/2016/105(02)/C, which forms an integral part of the service contract)

In Section 1: the general survey, the structure of participants in and results of the general survey are presented. This Section begins by outlining the structure of the general survey and the methodological approach (sub-sections 1 and 2). Descriptive statistics on participants in the survey are presented in sub-section 3, including which stakeholder types participated and to what extent.

In sub-section 4, we aggregate and analyse the results of the general survey. We present the specific objectives and rules that received either a very good or a very poor score on the Likert-scales with descriptive statistics. Where relevant, we point to Member States and stakeholders that have shown particularly noteworthy patterns in their answers. Our analyses are complemented by illustrative figures and infographics.

In summarising the narrative responses to the survey, we present the main lines of argumentation relating to the issues most frequently mentioned. This enables us to assess the correlation between different answers and provides indications on the causal relationship between two variables. The assessment that a particular rule is deemed successful or problematic by stakeholders is viewed as conclusive only if combined with a qualitative assessment that supports the argument.

Sub-section 5 offers concluding remarks drawn from the results of the survey and describes how these insights are incorporated into the evidence-based study.

In line with the approach adopted for the general survey, the presentation of the results of the evidence-based study in Section 2 starts with a brief description of the background and the methodological framework employed (sub-sections 1, 2 and 3).

In sub-section 4, we assess the effectiveness, efficiency, relevance, coherence and EU added value of each rule to be assessed, in achieving its general, specific and operational objectives. The rules assessed are grouped according to their specific and operational objectives. We start with a brief description of the rule, followed by an assessment against the five principles. Under the principle of effectiveness, we address the achievement of the specific and operational objectives of the rule. Our assessment against the five principles is based on qualitative data obtained through desk research and external data sources at the Member State and pan-EU level, as well as quantitative and qualitative data obtained through the general survey and semi-structured interviews. The assessment of each rule is accompanied by a description of the statistical evidence and summary findings. Each rule section ends with a summary assessment of the key findings against the five principles.

Sub-section 5 ends with a summary of the main findings of the evidence-based study and the main points that can be drawn from our research.

The Annexes provide further detail of the different consultation activities and the results. In particular, Annex 4 and Annex 5 provide the results of the quantitative analysis and country data.

2. Purpose and scope of the general survey

Article 69 AIFMD states that by 22 July 2017 the EC shall start a review of the application and scope of the AIFMD, its impact on investors, AIFs and AIFMs, within the EU and in third countries, and the degree to which its objectives have been met.

The AIFMD review must be underpinned by a general survey on the functioning of the AIFMD rules and the experience acquired in applying them, including the aspects listed in Article 69:

- the marketing by EU AIFMs of non-EU AIFs in the Member States taking place through national regimes;

- the marketing of AIFs in the Member States by non-EU AIFMs taking place through national regimes;
- the management and marketing of AIFs in the EU by AIFMs authorised in accordance with AIFMD taking place through the passport regime provided for in this Directive;
- the marketing of AIFs in the Union by or on behalf of persons or entities other than AIFMs;
- the investment into AIFs by or on behalf of European professional investors;
- the impact of the depositary rules set out in Article 21 AIFMD on the depositary market in the EU;
- the impact of the transparency and reporting requirements set out in Articles 22 to 24, 28 and 29 AIFMD on the assessment of systemic risk;
- the potential adverse impact on retail investors;
- the impact of AIFMD on the operation and viability of the private equity and venture capital funds;
- the impact of AIFMD on the investor access in the EU;
- the impact of AIFMD on investment in or for the benefit of developing countries; and
- the impact of AIFMD on the protection of non-listed companies or issuers provided by Articles 26 to 30 AIFMD and on the level playing field between AIFs and other investors after the acquisition of major holdings in or control over such non-listed companies or issuers.

The purpose of the general survey was to take into consideration the views of the most important stakeholders in the AIF market – including investors, AIFMs, regulatory bodies, depositaries, distributors, asset managers, investment advisors and other entities enabling the management of AIFs – as well as industry representative bodies at the national, EU and global level, and to gain qualitative as well as quantitative data. The results of the general survey are summarised, analysed and presented as an independent part of the AIFMD study and are also used as one source for the evidence-based study.

3. Purpose and scope of the evidence-based study

According to Article 69 AIFMD, the review should be carried out in the form of an evidence-based study, providing the EC with a comprehensive account of to what extent the objectives of AIFMD have been achieved, and supported by the general survey. The study analyses the experiences in applying AIFMD, its impact on AIFs and AIFMs in the EU and third countries, investors and other concerned parties, and the achievement of its objectives. It was carried out in accordance with the Better Regulation Guidelines of 7 July 2017.

The following overarching questions were considered:

- Has AIFMD managed to provide an effective legal framework for monitoring and managing the risks associated with the activities of AIFMs?
- Are the macro- and micro-prudential risks adequately addressed by the provisions of AIFMD?
- Is the information provided to the investors and employees of non-listed companies sufficient to safeguard their interests?
- Is the AIFMD passport working efficiently?

- What changes have the AIFM and AIF market structure undergone since the adoption of AIFMD?

4. Rules assessed

Table 1: Overview of the objectives and specific rules to be assessed

General objective	Specific objectives	Operational objectives	Specific rules to be assessed
To provide an internal market for EU and non-EU AIFMs; and a harmonised and stringent regulatory and supervisory framework for AIFMs.	All AIFMs are subject to appropriate authorisation and registration requirements	Ensure that all AIFMs satisfy a specific set of requirements (minimum capital, fit and proper, transparency) before operating across the EU	Thresholds determining the scope of AIFMD
	Proper monitoring of macro-prudential risks	Enhance transparency of AIFM activity, including the systematic use of leverage, to enable the effective monitoring of systemic risks Ensure that relevant macro-prudential data are shared at European level	Reporting rules to monitor systemic risks: use of the reported information and ability to monitor systemic risk by the competent authorities
			Supervisory cooperation among the NCAs and ESMA
			Requirements for managing leveraged AIFs. Rules on imposing limits on leverage to monitor the concentration risk and leverage in the financial system
	Proper monitoring and limitation of micro-prudential risks & common approach to protect professional investors in AIFM-managed funds	Impose risk management controls on major risks to which AIFMs are exposed (market, liquidity, counterparty – credit and settlement (especially in the case of short selling) – and operational risks)	Delegation rules
			Valuation rules
			Remuneration rules
			Risk and liquidity management rules
			Depositary rules
	Reduce potential for weakness in investor disclosures as barrier to effective due diligence	Ensure proper management of conflicts of interest. Impose appropriate controls and processes in key risk areas, such as valuation and custody	Disclosure rules: information provided to guide investment decisions, understand risks and strategies of different AIFs, and to monitor investments.
			Asset segregation rules
	Disclosures to investors	Increase transparency by an AIFM when an AIF it manages acquires a controlling stake in, and manages, companies	Rules for investing in non-listed companies by private equity and venture capital funds
Greater public accountability of AIFMs/AIFs holding controlling stakes in companies			
Develop the Single Market in AIFs	Remove barriers to the efficient cross-border distribution of AIFs to professional investors without compromising the effectiveness of regulation and supervision	The rules on managing EU AIFs and/or non-EU AIFs by EU AIFMs with the passport	
		The rules on cross-border marketing of EU AIFs by EU AIFMs with the passport	
		Applicable rules on marketing and/or managing non-EU AIFs by EU or non-EU AIFMs without a passport	

Source: EC Tender Specifications.

In order to address the overarching questions set out in sub-section 3 above, the functioning of the rules – grouped according to the general, specific and operational objectives – were assessed (see Table 1).

5. Five key principles

The purpose of the evidence-based study is to appraise the effectiveness, efficiency, relevance, coherence and EU added value of the specific rules to be assessed, in achieving their general, specific and operational objectives. The five key principles are defined in Table 2.

Table 2: Five key principles

Effectiveness	<p>Identify the impacts on the objectives of the AIFMD specific rules mentioned in Table 1, the factors driving or hindering progress and to what extent they are linked to AIFMD:</p> <p>To what extent have the objectives been achieved? What have been the qualitative and quantitative effects of the specific rules on their objectives?</p> <p>Where expectations have not been met, what factors have hindered their achievement?</p> <p>Are there any aspects/means/actors that render certain aspects of the AIFMD more or less effective than others, and – if there are – what lessons can be drawn from this?</p> <p>Are there any unintended effects of the specific AIFMD rules?</p> <p>To what extent has the different implementation of the initiative in your Member State impacted the effectiveness of the measures on the objectives. Is there national gold-plating that hampers the internal market?</p>
Efficiency	<p>Provide an in-depth analysis of the costs and benefits of the specific rules mentioned in the table above and dedicate sufficient efforts on their quantification. The analysis should identify if these costs are proportionate or not, taking account of the total regulatory/administrative costs of the measure and the overall benefits for all stakeholders. Provide both qualitative information (mapping of the different costs for the different stakeholders) and quantitative estimation. An appropriate methodology on how to obtain such data should be proposed. The analysis should make it clear to what extent the cost and benefits can be linked to the measure. For instance:</p> <p>What are the regulatory and administrative costs for the specific AIFMD rules?</p> <p>What does this represent in terms of administrative and reporting burdens?</p> <p>How affordable are the regulatory/administrative costs borne by all stakeholders?</p> <p>What aspects of the measure are the most efficient or inefficient,</p>

	<p>especially in terms of resources that are mobilised by stakeholders during the different phases of the process?</p> <p>What are the main benefits for AIFMs and civil society that derive from AIFMD?</p>
Coherence	<p>Analyse both external and internal coherence of AIFMD, i.e. between its various components and vis-à-vis other EU measures with similar objectives:</p> <p>Are there overlaps or complementarities between AIFMD and the action of any other EU measures that have similar objectives?</p> <p>Is there any issue of internal coherence of AIFMD (i.e. between the various rules of the Directive)?</p>
Relevance	<p>Determine whether the general, specific and operational objectives of AIFMD, as listed in Table 1, are still relevant and how well they have matched the identified needs and problems:</p> <p>To what extent do the initial objectives of consumer protection, financial stability and market integration still correspond to current needs/issues?</p> <p>To what extent are there adaptation mechanisms in place to follow technological, and scientific and social developments?</p>
EU Added Value	<p>Analyse the EU added value of AIFMD, bringing together the findings of other criteria mentioned above, presenting the arguments on causality and drawing conclusions, based on evidence to hand, about the performance of the measure:</p> <p>Is there additional value resulting from AIFMD compared to what could be achieved on merely national level?</p> <p>To what extent do the issues addressed by AIFMD continue to require action at EU level?</p>

Source: EC Tender Specifications.

6. Role of EU intervention

A main focus of the evidence-based study is to establish a link of causality between the AIFMD rules and the actual situation and market changes identified, based on the evidence available. We demonstrate if there is evidence of causality; in particular, if the intervention brought about the expected changes or if there have been other unintended or unexpected changes. Within this evaluation, we link changes in a situation to the EU intervention. The study also assesses the strength of the evidence obtained and the implications for the robustness of the conclusions reached.

Another aspect of the evidence-based study is to examine what changes the AIFM and AIF market structure has undergone since implementation of AIFMD. In this context, *inter alia*, the following aspects are considered:

- While the original focus was to establish regulatory and supervisory standards for hedge funds, private equity and other systemically important intermediaries, AIFMD covers a much wider range of funds, e.g. closed-ended

securities funds, professional investor funds with plain vanilla investment strategies, real estate funds, loan funds, infrastructure funds, etc.

- The implementation of AIFMD had diverse impacts in different Member States. In some cases, for example, it cut across long-established governance structures. Also, a number of Member States used the opportunity to review (or remove) their NPPRs.
- The EMIR,⁷ ELTIFR,⁸ EuSEFR,⁹ EuVECAR,¹⁰ SFTR¹¹ and the PRIIP KID Regulation,¹² and the product disclosure requirements under MiFID II, have all been introduced (or are being implemented) since AIFMD came into effect. This has introduced areas of product (as opposed to manager) regulation into the AIF universe, which may have changed the dynamic in some markets.

7. Selection of Member States

Both the general survey and the evidence-based study were intended to cover at least 12 EU Member States and the broadest possible representative sample of the relevant stakeholders. We actually covered 15 Member States, as shown in Figure 1.

The chosen geographical coverage meets the EC's requirement to capture the diverse levels of development of AIF markets across the EU, with a geographical scope striking a balance among:

- (a) small and large Member States;
- (b) those that joined the EU before 2004 and those that joined later; and
- (c) those that are important domiciles for AIFs or AIFMs, and those that are not but that have a sizeable demand (including from retail investors) for investment in AIFs.

In order to provide further balance and insights, we included the following additional considerations:

- (d) Member States that export AIFs or AIFM services and those that do not;
- (e) those that have a wide range of types of AIFs and those that do not;
- (f) those that pre-AIFMD regulated all types of AIFMs and those that did not; and
- (g) those that post-AIFMD have introduced new or differently-regulated AIFs or AIFMs.

These additional criteria provide further information about the ways in which the introduction of AIFMD impacted funds, management companies and investors, and about its benefits and costs. This provides useful and more comprehensive information

⁷ Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories, OJ L 201, 27.07.2012, 1.

⁸ Regulation (EU) 2015/760 of the European Parliament and of the Council of 29 April 2015 on European long-term investment fund, OJ L 123, 19.05.2015, 98.

⁹ Regulation (EU) No 346/2013 of the European Parliament and of the Council of 17 April 2013 on European social entrepreneurship funds, OJ L 115, 25.04.2013, 18.

¹⁰ Regulation (EU) No 345/2013 of the European Parliament and of the Council of 17 April 2013 on European venture capital funds, OJ L 115, 25.04.2013, 1.

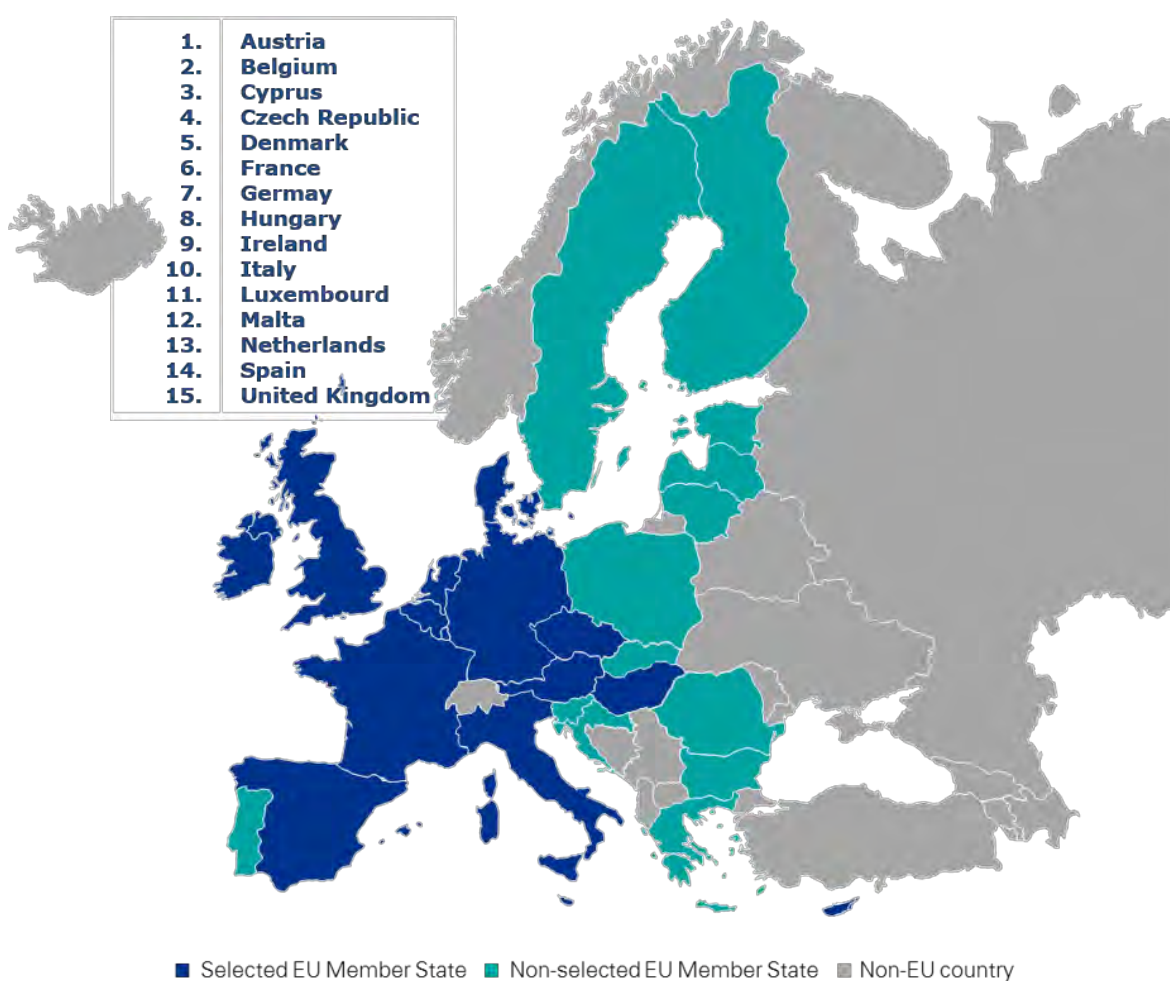
¹¹ Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of reuse and amending Regulation (EU) No 648/2012, OJ L 337, 23.12.2015, 1.

¹² Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents (KID) for packaged retail and insurance-based investment products (PRIIPs), OJ L 352, 09.12.2014, 1.

about whether, how and in what ways AIFMD has achieved the original legislative objectives.

Under (d) to (g) we additionally selected Cyprus, Czech Republic, Hungary and Malta, in order also to represent a balanced mix of small and large Member States and Member States that joined the EU before the year 2004 and that joined in 2004 or later.

Figure 1: Selected Member States



Source: KPMG (2018).

Table 3 provides a summary of the above-mentioned criteria against each of the the selected 15 Member States.¹³

¹³ For the implementation of AIFMD in the individual Member States see CESifo DICE (2015), *AIFMD* transposition, state of play across countries*, p. 1 et seq.

Table 3: Member State selection criteria

Member States	No of AIFs	AIF AuM	Exported AIFs	Exported AIFMs	Exported MiFID services	Strength of domestic demand	Importance as AIF/AIFM cross-border domicile	Population small/large
Austria	H	M	L	L	L	H	L	small
Belgium	M	M	L	L	L	M	L	
Cyprus	L	L	L	L	L	L	L	small
Czech Republic	M	L	L	L	L	L	L	
Denmark	M	M	L	M	M	M	M	small
France	H	H	M	H	H	H	H	large
Germany	M	H	M	L	M	H	M	large
Hungary	M	L	L	L	L	L	L	small
Ireland	M	H	H	M	L	H/M	H/M	small
Italy	M	M	L	L	L	M	L	large
Luxembourg	H	H	H	H	M	L	H	small
Malta	L	L	L	L	L	L	L	small
Netherlands	H	H	M	L	M	H	M	
Spain	H	M	L	L	L	H/M	L	large
United Kingdom	H	H	H	H	H	H	H	large

Legend: H = High, M = Medium, L = Low

Colours indicate the main criterion for selection of the Member State

- blue: Importance as AIF/AIFM cross-border domicile
- purple: Strength of domestic demand
- orange: Joined EU in 2004 or later

Source: KPMG (2018).

Additionally, we sought input from a small number of third countries in order to give an additional perspective from non-EU countries that are important domiciles for AIFs, AIFMs or AIF investors. This provided insights, in particular, about the relative position of AIFs that are marketed to EU investors via NPPRs versus EU AIFs with the passport, and the perspective of investors as between them. The main contributions were from the US and the Channel Islands.

Section 1: the general survey

1. Introduction to the general survey

The general survey was conducted via an online questionnaire, which was live from 6 February 2018 until 29 March 2018.

This Section outlines the structure of the general survey and the methodological approach. Descriptive statistics on participants in the survey are presented, including which stakeholder types participated and to what extent.

The results of the survey are aggregated and analysed. We present the specific objectives and rules that received either a very good or a very poor score on the Likert-scales with descriptive statistics. Where relevant, we point to Member States and stakeholders that have shown particularly noteworthy patterns in their answers. Our analyses are complemented by illustrative figures and infographics.

In summarising the narrative responses to the survey, we present the main lines of argumentation relating to the issues most frequently mentioned. This enables us to assess the correlation between different answers and provides indications on the causal relationship between two variables. The assessment that a particular rule is deemed successful or problematic by stakeholders is viewed as conclusive only if combined with a qualitative assessment that supports the argument.

Finally, we offer concluding remarks drawn from the results of the survey and describe how these insights are incorporated into the evidence-based study (which is described in Section 2).

2. Structure of the general survey

2.1. Approach

A questionnaire was developed that accommodated all sectors of the AIF industry and all types of stakeholders (see Annex 1). It was informative (i.e. it covered all relevant aspects), but at the same time used filters and routing in order to ensure it appeared concise enough to encourage the widest possible participation.

The questionnaire covered the issues deemed relevant by the EC, as laid down in the Tender Specifications.¹⁴ **However, covering only these aspects in a 'tick box'-approach would not have provided sufficient granularity of information for the EC's purposes.** Some items in the list are high-level issues across the AIF and AIFM market place, while others refer to specific actors or specific types of assets, for example. Therefore, we designed the questionnaire to reflect a combination of the aspects outlined in Article 69 AIFMD and the five key principles. This approach also ensures a better connectivity between the general survey and the evidence-based study.

With regard to the length and conciseness of the questionnaire, it was constructed in such a way as to avoid overly complex, technical terminology, so that it was accessible to all types of stakeholders. Also, key sections of the questionnaire were capable of being completed in a relatively short time, so as not to deter participants from providing input to the study. However, the questionnaire also allowed for more

¹⁴ European Commission, Invitation to tender N° FISMA/2016/105(02)/C – Report on the Operation of the Alternative Investment Fund Managers Directive (AIFMD) – Directive 2011/61/EU.

extensive answers from stakeholders in case they wanted to explain the reasoning behind their answers. This additional information provided input to the analysis of the causality of the effects of specific AIFMD requirements.

We therefore designed the questionnaire to consist mainly of closed questions, with optional, standardised answers or evaluation questions, e.g. using Likert-scales, which yields quantitative information that can be used for descriptive statistics. Participants had the opportunity to provide narrative, and hence more qualitative input that amplified the reason(s) for their chosen answer, and supporting evidence, or to offer any additional comments.

The ability to submit narrative entries also gave participants the opportunity to indicate the cause of any concern they had raised. We should bear in mind that concerns identified by respondents may not all arise from the Directive itself, but from the Level 2 Regulation, Level 3 guidance and FAQs, national implementation, other national legislation (for instance on AIF product regulation and taxation) or industry practice. It is important to distinguish between these measures in order to gain a more informed picture of causality – it may not be EU-level intervention that has caused a specific issue or benefit to arise.

In order to limit the amount of time and effort participants had to spend, the questionnaire used filters (questionnaire routing), so that participants were asked only those questions that were relevant to them. Therefore, after some opening questions relating to contact details, the questionnaire started with a multiple choice question where participants selected which stakeholder category or categories best described their position and interest.

For this purpose, we developed a matrix outlining which questions were displayed to which stakeholder category (see Annex 2). **The questionnaire also included an 'other' option**, for participants to specify their role if they did not identify with any of the listed categories. Some questions comprising the analytical core of the survey – i.e. the questions relating to assessing the aspects listed in Article 69 AIFMD, supplemented by aspects regarding the five principles guiding the evidence-based study – were shown to all categories of stakeholders. Other questions were relevant only for certain categories of stakeholders and were shown only to the participants that had selected the corresponding stakeholder category.

In order to collect input for the evidence-based study, we included questions on issues of special interest, for instance on the benefits and costs of AIFMD to AIFMs, on the impact on retail investors, or on passporting. We are aware of previous EU research on compliance costs and have taken account of it as input where possible.

2.2. Survey design

Regarding the design of the survey and especially the progress of the Likert-scales, we considered the most important scientific findings to fulfil the three main psychometric criteria for testing quality, which are *objectivity*, *reliability* and *validity*.¹⁵ These aspects build upon one another.

Objectivity describes, *inter alia*, the independence of the measurement. One of our aims was to reduce the bias through examiners or the examination situation. Through using an online survey instead of performing face-to-face-interviews, we ensured a higher probability for receiving pure results. Participants in an interview situation are more likely to sophisticate their answers to precarious questions. Furthermore, KPMG

¹⁵ Lienert, G. A. & Raatz, U. (1998). *Testaufbau und Testanalyse (6th edition)*. BeltzPVU: Weinheim.

acts as an independent body, which is an important aspect for an unbiased implementation of a study. Objectivity is crucial for a trustworthy analysis of the results. The results of the survey should be independent from the individual who is evaluating the data. One approach in order to ensure autonomy is the involvement of different specialists in the KPMG network.

Reliability depicts the accuracy of the measurements.¹⁶ One of the best ways to proof reliability in a statistical manner is to apply test/re-test reliability. This examines the variation in measurements taken by a single person on the same item, under the same conditions, and in a short period of time. For economic and organisational reasons as well for resource conservation, it is not possible to take another measurement with the same participants at different dates. Instead, we calculate internal consistency¹⁷ for Likert-scales where it makes substantive sense. This is an often-used statistical test for reliability. When questions with similar contributions relate in an appropriate degree to each other, it is proven that measuring is reliable. With this method we guarantee the precision of the conducted measurement by the survey.

For some questions that refer to one main topic, we proofed the internal consistency **by using Cronbach's alpha**. Cronbach's alpha has a range from minus infinity to one. Only positive numbers can be interpreted meaningfully. Some scientists, as a rule of thumb, require a reliability of 0.65 as the lowest acceptable threshold before they will use an instrument.¹⁸ Others demand a minimum value of just 0.5.¹⁹ For question 76 (see Annex 1), which dealt with different aspects relating to AIF depositaries, **Cronbach's Alpha is 0.89**. For question 98, which contained 11 questions about AIFM authorisation posed to all institutions, the reliability is 0.88. For the five items of question 72, the value for internal consistency is 0.61 and therefore barely under the minimum requirement of 0.65 of some experts. However, the threshold refers primarily to questionnaires that gather data on psychological issues, which are more specific. Considering that **this survey seeks participants'** evaluation of economic and commercial matters, the internal consistency is in general good and the questionnaire is therefore reliable.

The last quality criterion is validity. This criterion is examined by comparing the outcome of the survey with other methods that investigate the same questions. If the findings of the survey are aligned with the results of the semi-structured interviews and desk research conclusions, this convergence is an indication of validity. Following our considerations concerning the conception of Likert-Scales, if the findings of the survey, the semi-structured interviews and the desk research are coherent, we conclude that convergent validity is given.²⁰

Many findings of the survey match with other data sources we used. Where findings of the survey and other sources are equal, similar or lead to the same conclusion, we can proof convergent validity of different methods. This is part of the construct validity²¹ (the five key principles), so these are measured by the questionnaire.

¹⁶ Trochim, W. M. K. (2006). Reliability. Web Center for Social Research Methods. Retrieved from <http://www.socialresearchmethods.net/kb/reliable.php>.

¹⁷ Cronbach, L. J. (1951). Coefficient alpha and the internal structure of tests. In: *Psychometrika*, 16, 297–334.

¹⁸ D. L. Streiner (2003). Starting at the beginning: An introduction to coefficient alpha and internal consistency. In: *Journal of Personality Assessment*, 80, 99–103.

¹⁹ Wirtz M. (Hrsg.) (2013). *Dorsch – Lexikon der Psychologie*.

²⁰ Campbell, D. T., Fiske, D. W. (1959). Convergent and discriminant validation by the multitrait-multimethod matrix. *Psychological Bulletin*, 56, 81-105.

²¹ Cronbach, L. J.; Meehl, P.E. (1955). Construct Validity in Psychological Tests. *Psychological Bulletin*, 52 (4), 281–302.

2.2.1. Number of answer options

With regard to the Likert-scales questions, we chose 5-point scales. Krosnick & Presser (2010)²² came to the conclusion that 5- to 7-point scales provide the best results regarding reliability, validity and the level of differentiation. Also, respondents feel most comfortable with this range.²³ If more points are used, the meaning of each point is not as clear. If fewer points are used, the differentiation is not sufficiently granular.

2.2.2. Middle alternatives

There are pros and cons for using middle alternatives. The main reason for using Likert-scales with an even number of points is that people may not be sufficiently motivated or think the question too important to express a clear opinion, so they choose the middle category. Sturgis et al. (2014)²⁴ call this type of answer “face saving don’t knows”. On the other hand, O’Muircheartaigh et al. (1999)²⁵ proved that reliability and validity improve by applying a middle category. Furthermore, several studies concluded that participants who really have a neutral opinion or have a persuasion that is in between the maximum and the minimum point of the Likert-scale, tend to prefer for most of the questions only one of the two given options, which leads systematically to errors.^{26,27} In conclusion, arguments for using a middle alternative have a greater weight. Therefore, Sturgis et al. (2014)²⁴ and Krosnick & Presser (2010)²⁸ both recommend using a middle category to prevent people being forced to give substantially wrong answers.

2.2.3. No-opinion category

The question whether it is sensible or not to use a no-opinion category should be primarily answered by the context of the question. Do all the participants have enough information to answer the question, or not? Also, if a middle option were offered, there would be a high risk that without a no-opinion option, participants would chose the middle option instead of not answering. For these two reasons, we presumed it better to offer a no-opinion option and, indeed, the results show that this was the right decision. For a small number of questions, over 50% of participants took the no-opinion option. It is likely that most of these individuals would otherwise have used the middle alternative, which would have led to skewed results.

²² Krosnick, J. A., & Presser, S. (2010). *Question and questionnaire design*. In J. D. Wright & P. V. Marsden (Eds.), *Handbook of Survey Research* (pp. 263-313). Bingley, UK: Emerald Group.

²³ Krosnick, J. A. & Fabrigar L. R. (1997). *Designing rating scales for effective measurement in surveys*. In L. Lyberg, P. Biemer, M. Collins, E. de Leeuw, C. Dippo, N. Schwarz, & D. Trewin (Eds.), *Survey measurement and process quality* (pp. 141-164). New York: John Wiley & Sons, Inc.

²⁴ Sturgis, P., Roberts, C. & Smith, P. (2014). *Middle alternatives revisited: How the neither/nor response acts as a way of saying “I don’t know”?* *Sociological Methods & Research*, 43(1), 15-38.

²⁵ O’Muircheartaigh, C., Krosnick, J. A. & Helic, A. (1999). *Middle alternatives, acquiescence, and the quality of questionnaire data*. Paper presented at the annual meeting of the American Association for Public Opinion Research, St. Petersburg, Florida.

²⁶ Krosnick, J. A., Holbrook, A. L., Berent, M. K., Carson, R. T., Hanemann, W. M., Kopp, R. J., Mitchell, R. C., Presser, S., Rudd, P. A., Smith, V. K., Moody, W. R., Green, M. C., & Conaway, M. (2002). *The impact of “no opinion” response options on data quality: non-attitude reduction or an invitation to satisfice?* *The Public Opinion Quarterly*, 66, 371-403.

²⁷ Schuman, H. & Presser, S. (1981). *Questions and answers in attitude surveys: Experiments on question form, wording and context*. New York: Academic Press.

²⁸ Krosnick, J. A., & Presser S. (2010). *Question and Questionnaire Design*. Peter V. Marsden und James D. Wright (eds.), *Handbook of Survey Research*, (pp. 264-313). Bingley, UK: Emerald.

2.2.4. Label-answer options

Regarding the labelling of the answer options, there are mainly two options. Either the poles of the Likert-scales are labelled or every answer option. Again, we took the findings of academic research into account. A review of several researchers came to the conclusion that fully labelled categories raised the reliability of the questionnaire.²⁹ Additionally, Wallsten, Budescu, & Zwick (1993) proved that users find it much more pleasant to answer questions with fully labelled Likert-scales.³⁰ The labels should consider three aspects. The wording should be precise and universal so that everybody understands the meaning. The scale should be symmetrical, which means the same amount of positive and negative categories are used within a scale. Lastly, the gap between the points of the Likert-scale based on wording should be equal. Throughout the development of the questionnaire, KPMG took all these rules into account.

2.3. Target participants in the general survey

The aim of the general survey is to cover a wide set of stakeholders so as to obtain a balanced and fair description of the functioning of the AIFMD rules. Based on initial assessments within the KPMG network, a profound stakeholder analysis and additional desk research, we identified the following stakeholder categories, which were targeted by the online questionnaire:

- AIFMs managing different types of AIFs. These cover both full-scope and sub-threshold AIFMs, and AIFs with different legal structures, investor bases (e.g. professional only or retail), assets (including securities, money market instruments, venture capital and private equity, real estate, infrastructure) and investment strategies (e.g. hedge funds, funds of funds, leveraged funds).
- Professional investors and eligible counterparties investing in AIFs for their own account. These may include insurance companies, occupational pension funds, banks, charities, corporate treasuries.
- Retail investors and representative organisations.
- Entities marketing, selling or selecting AIFs. These may be financial advisers, wealth managers, execution-only brokers and platforms, insurance companies, defined contribution pension providers, banks and other distributors / intermediaries.
- Non-listed companies receiving investment from AIFs.
- AIF depositaries and custodians.
- AIF investment managers/advisers.
- Other entities enabling AIFs to operate. These may include e.g. prime brokers, brokers in the underlying AIF assets, fund administrators, external valuers.
- Public authorities. These include NCAs and the European Supervisory Authorities (the ESAs).

²⁹ Saris, W. E. & Gallhofer, I. N. (2007). *Design, evaluation, and analysis of questionnaires for survey research*. Hoboken, New Jersey: John Wiley & Sons, Inc.; Menold, N., Kaczmirek, L., Lenzner, T. & Neusar, A. (2014). *How do respondents attend to verbal labels in rating scales?* *Field Methods*, 26(1), 21-39.

³⁰ Wallsten, T. S., Budescu, D. V., & Zwick, R. (1993). *Comparing the calibration and coherence of numerical and verbal probability judgments*. *Management Science*, 39, 176-190.

- Regional and national industry representative bodies. These may include representatives of AIFMs, depositaries, custodians and investment managers.

2.4. Sample selection

We received responses to the general survey via different channels. Personalised links were sent to specific contacts at institutions or to those who requested a personalised link from us. Such links could be used only once and were not publicly available. Open links were publicly available and distributed through about 100 different channels (via the FISMA website, associations etc.). These links could be used multiple times.

We ensured that responses – especially those received via the open links – were valid and not just participants exploring but not actually responding to the survey. We also removed duplicate entries. We used the following criteria to consider a data set as eligible:

- The participant provided a name and (for institutions) the name and country of the institution – this way we could ensure that there were no duplicate entries by the same person for the same institution, but also that there was serious intent to complete the questionnaire and to be available in case of questions (the results were subsequently anonymised).
- The participant answered crucial questions about the nature of the stakeholder that determined the majority of the questionnaire routing (filters that activated relevant questions) and answered at least 30% of their allocated questions.

Using these criteria, we consider 478 data sets as eligible and discarded 1,240 that did not meet the criteria, the vast majority (1,068) of these were submitted via the open links and only a small amount were duplicates (18). Most of the discarded data sets included only a handful of answers. It was obvious that those persons took only a cursory look at the survey and did not intend, or decided not, to respond.

2.5. Descriptive sample statistics

To factor in data sets with only 30% completion rate may seem low, but the questionnaire was long for certain types of stakeholder (e.g. for AIFMs) and participants with a lower completion rate still answered certain valuable sections of the questionnaire. However, only 8% of the eligible data sets were below a 60% completion rate.

Only two questions were mandatory (those determining the routing of the questionnaire) and the questionnaire had a number of open questions, some of which were for the participants to explain their scores where appropriate. It is usual that such open questions are not widely used, so the 88% average progress for all eligible data sets means the foundation overall is solid.

Participants of eligible data sets spent on average 50 minutes to complete the survey, with noticeable differences between different types of stakeholder. This was expected, since the questionnaire length varied depending on stakeholder type. For instance, AIFMs were invited to answer the highest number of questions and took on average 71 minutes to complete the questionnaire, whereas individuals (not representing institutions) were invited to answer the lowest number of questions and took 11 minutes on average.

We also analysed answers of participants with a very fast completion time (under six minutes) for anomalies to ensure they did not just randomly answer questions. As far

as we could tell, there was no unusual behaviour in those sets. By popular demand, we also provided a word version of the questionnaire for institutions to enable them to discuss the questions and collect answers internally, and then to copy their answers into the survey tool. This enabled them to enter their responses more quickly and efficiently.

Table 4: Number of responses, average duration and average survey progress by stakeholder

Stakeholders	No of participants	Average duration in minutes	Average survey progress
Individual	80	11	80%
AIFM	203	71	90%
Industry body, representing any parties in the operation of AIFs	33	60	92%
AIF depositary	28	60	90%
External valuer	23	23	87%
Institutional investor or eligible counterparty investing in AIFs for own account	20	36	87%
Other (incl. directors/partners of AIFs)	19	32	92%
Fund administrator	15	40	87%
Public authority	15	106	86%
Investment manager/adviser to AIFs	14	26	92%
Other type of entity with activities relating to the operation of AIFs	9	24	79%
Representative body of investors and/or retail consumers	9	23	80%
Entity marketing, selling or selecting AIFs to or for investors	8	29	94%
AIF sub-custodian	1	11	81%
Prime Broker	1	117	97%
Overall	478	50	88%

Source: KPMG (2018). Note for calculation: If a participant was part of more than one stakeholder group we assigned it to the stakeholder group with more questions.

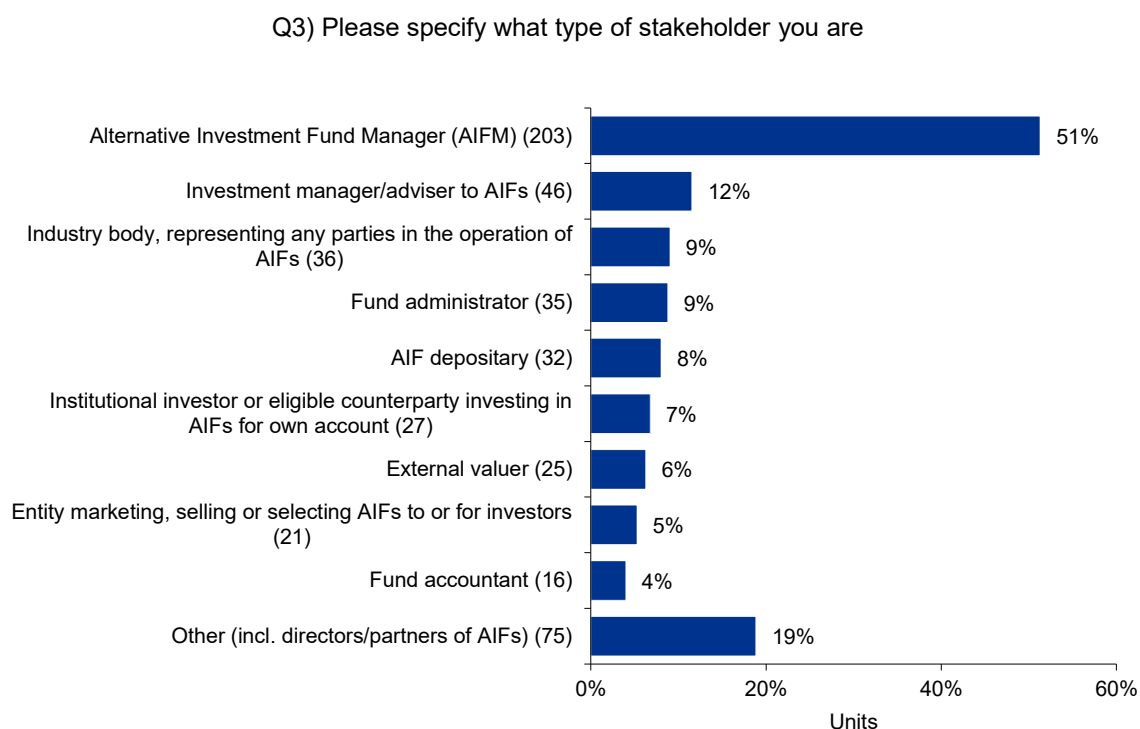
3. Information about the participants in the general survey

The question numbers referred to throughout this sub-section are the question numbers in the online questionnaire (see Annex 1).

A small group representing about one-sixth of all survey participants were individuals, whereas the majority of participants answered on behalf of institutions. Among the latter, there were various types of institutional stakeholders as illustrated in Figure 2.

The majority (51%) of the institutional stakeholders were AIFMs, followed by investment managers/advisers to AIFs (12%). Any other type of institutional stakeholders was represented by less than 10% of all participants. For instance, industry bodies representing any parties in the operations of the AIFs or fund administrators both represented 9% of participants, followed by AIF depositaries at 8%. Institutional investors or eligible counterparties investing in AIFs for their own account were 7%, from which the vast majority (25 out of 27 respondents) were professional investors rather than eligible counterparties.

Figure 2: Types of institutional stakeholder³¹



Source: KPMG (2018). Note: This question was posed only to institutional respondents. The number of respondents to this question was 398. This number differs from the total of the numbers stated in the figure due to the question being multiple choice.

80% of the institutional stakeholders said that they were already active in the AIF market prior to AIFMD coming into force.

In terms of individuals, only 23% of respondents indicated that they were investors in AIFs. This figure is low relative to 67% of institutional investor participants that invested in AIFs. A small majority (58%) of individuals investing in AIFs indicated that they do so as professional investors (which is significantly lower than the ratio for institutional investors - 93%), followed by 24% acting as retail investors and 18% acting as semi-professional investors.

As the group of institutional stakeholders was more widespread and diverse due to the breadth of activities they undertook or functions and services they provided, within the first section of the survey (where the business profiles of the participants

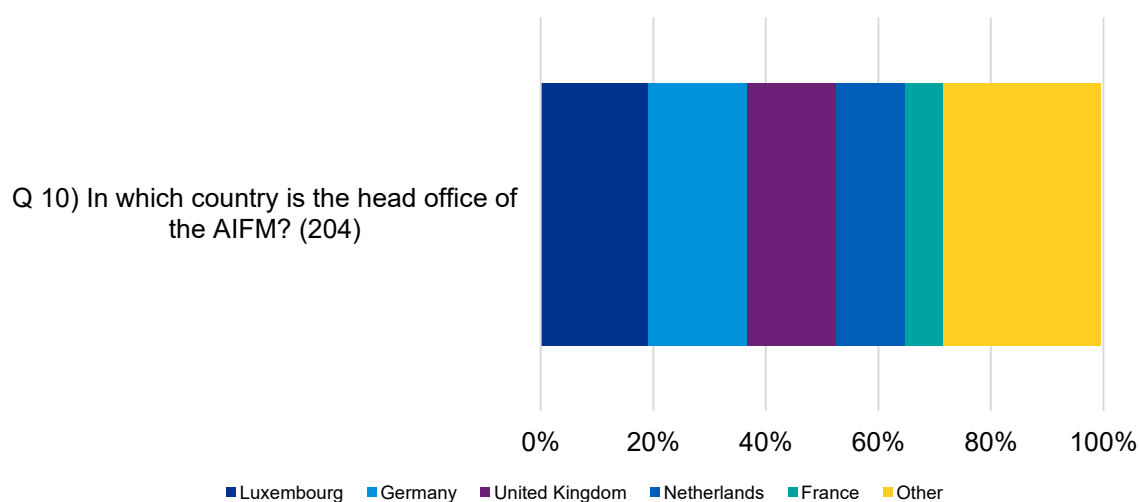
³¹ See section 2.3. "Other" includes fund accountants, external valuers, other types of entity with activities relating to the operation of AIFs, and directors and partners of AIFs.

are generally analysed) nearly 75% of the related questions were dedicated to the institutional stakeholders.

3.1. Alternative Investment Fund Managers

AIFMs were the major institutional stakeholder group that participated in the survey. The countries of the AIFMs' head offices are illustrated in Figure 3. Respondent AIFMs comprised 84% full-scope AIFMs and 16% sub-threshold AIFMs.³² From the latter, about one-eighth (12.5%) had opted up to a full-scope AIFM.

Figure 3: AIFMs and the countries of their head office



Source: KPMG (2018). Note: This question was posed to AIFMs. The number of respondents to this question was 203.

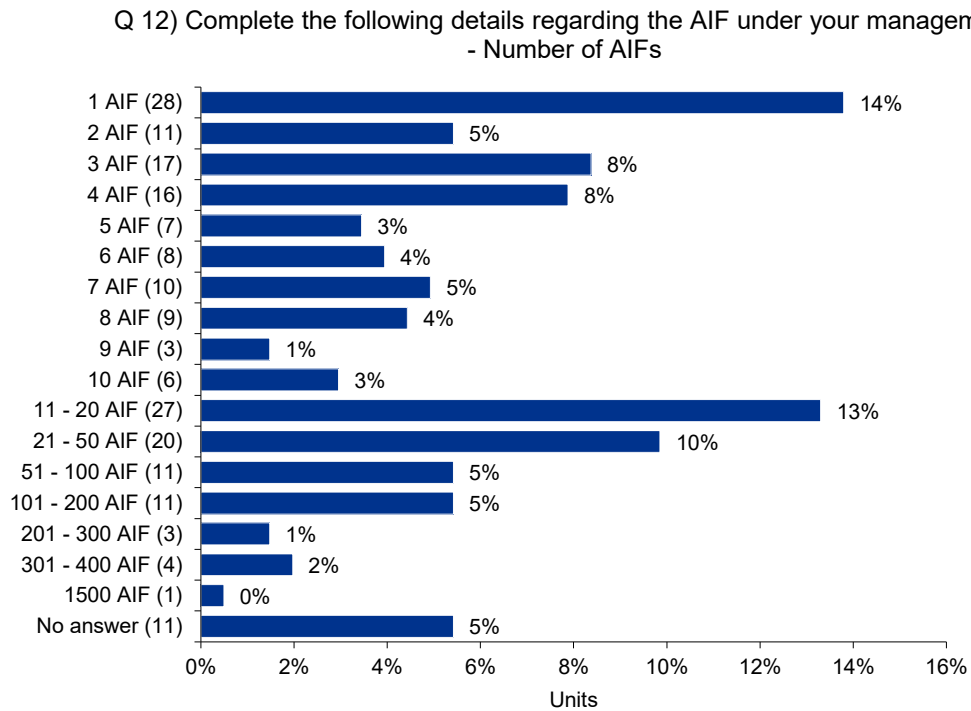
The four most frequently cited countries were Luxembourg (19%), Germany (18%), the United Kingdom (16%) and the Netherlands (12%). Only 7% of the AIFMs that participated in the survey had their head office in France. 12 respondents were headquartered in Australia, Japan, the US or Switzerland.

The volume and country of domicile of AIFs managed by the respondent AIFMs are depicted in Figure 4, Figure 5 and Figure 6.

As can be seen in Figure 4, 50% of respondent AIFMs had no more than seven AIFs under management whereas the average number of AIFs under management was 39. The fact that the median (the middle value of all the numbers) is so much lower than the mean (the sum of all numbers divided by the number of responses) indicates that a small number of respondent AIFMs managed a high number of AIFs, well above the average.

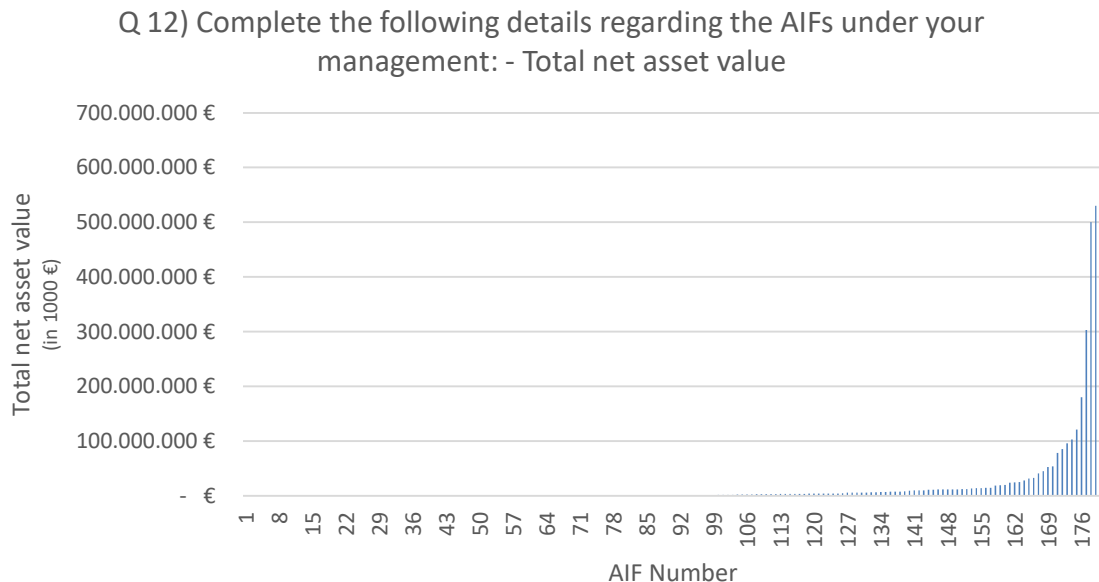
³² An AIFM is sub-threshold if it either directly or indirectly, through a company with which it is linked by common management or control, or by a substantive direct or indirect holding, manages portfolios of AIFs whose aggregate volume of AuM either does not exceed €100m, including any assets acquired through the use of leverage, or does not exceed EUR 500m as long as the portfolio of AIFs consists of AIFs that are unleveraged and have no redemption rights exercisable during a period of five years following the date of initial investment in each AIF.

Figure 4: Number of AIFs under management by AIFMs (Question 12)



Source: KPMG (2018). Note: This question was posed only to AIFMs. The number of respondents to this question was 203.

Figure 5: Total AIF assets under management by AIFMs (Question 12)



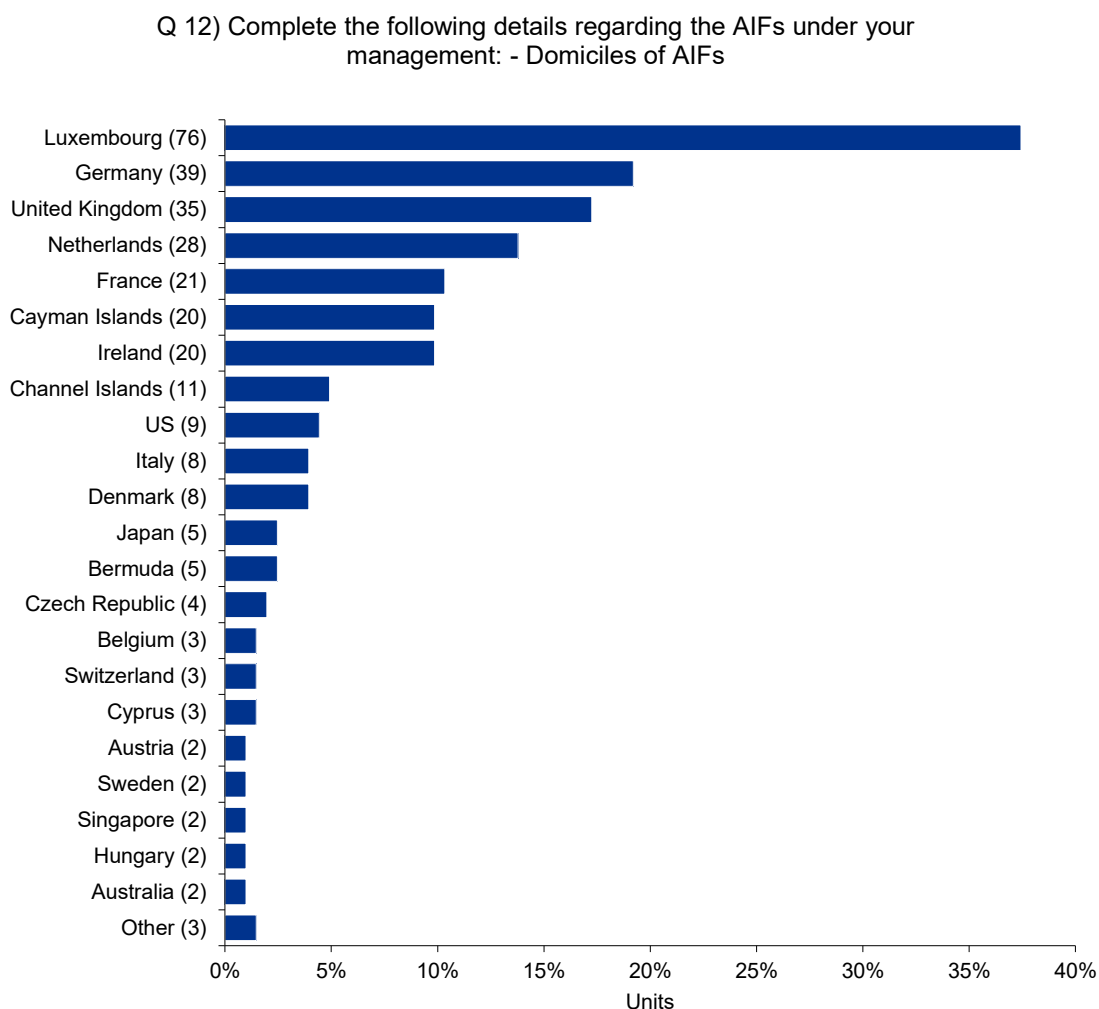
Source: KPMG (2018). Note: This question was posed only to AIFMs. The number of respondents was 203.

Figure 5 shows a significant disparity in terms of total AIF assets under management (AuM), with a large number of respondent AIFMs with only small amounts of total AuM and a small number of respondent AIFMs representing the major bulk of total AuM. In

fact, 50% of respondent AIFMs managed no more than EUR 1.4 bn in AIF assets, whereas the average level of total AIF assets was much higher at EUR 18.6 bn. This indicates that among respondents there were very many relatively small AIFMs and a small group of AIFMs with high volumes under management, up to nearly EUR 600 bn.

The majority of respondent AIFMs used Luxembourg (37%) as a domicile for their AIFs under management, followed by Germany (19%), the United Kingdom (17%) and the Netherlands (14%). A comparison of Figure 6 with Figure 3 shows that the ratios are quite similar for Germany, the Netherlands and the UK, whereas for Luxembourg it shows that the country is used nearly twice as much as a domicile for AIFs as it is used by respondent AIFMs as their head offices. As AIFMs can manage multiple AIFs domiciled in various countries but have to opt for one specific country of domicile for their head offices, this is not a very remarkable result. However, it shows that Luxembourg serves as the dominant pan-European hub whenever an AIFM considers to domicile an AIF in a Member State other than its own domicile.

Figure 6: Domiciles of AIFs under the management of AIFMs³³



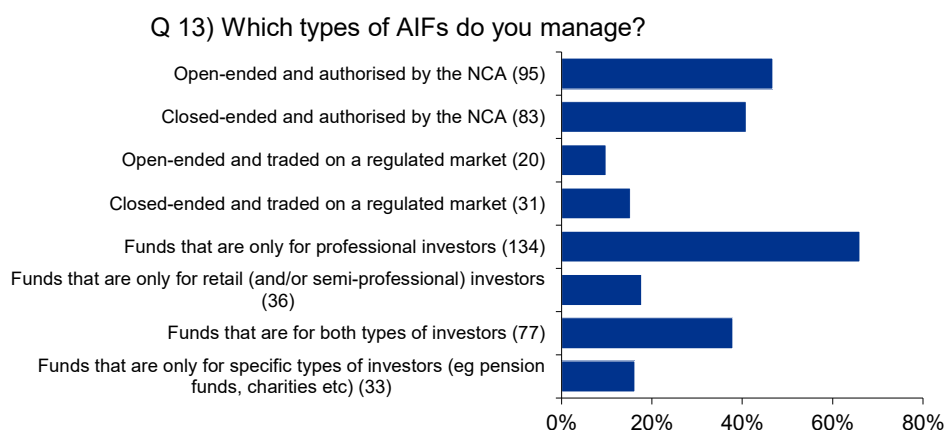
Source: KPMG (2018). Note: This question was posed only to AIFMs. The number of respondents to this question was 203. This number differs from the total of the numbers stated in the figure because it was a multiple choice question.

³³ No AIFs managed by respondent AIFMs were reported to be domiciled in Estonia, Finland, Greece, Lithuania, Slovakia or Slovenia.

Figure 7, Figure 8 and Figure 9 shed more light on the AIFs managed by the AIFMs, starting with the structure of funds.

As depicted in Figure 7, two-thirds of all respondent AIFMs managed funds that are only for professional investors, whereas only 18% managed funds that are only for retail investors. About 38% managed funds for both types of investors. A small number (16%) of respondent AIFMs managed funds that are for specific types of investors. An interesting finding is that less than half the respondent AIFMs managed open-ended or closed-ended authorised funds (47% and 41%, respectively). This indicates that most of the participating AIFMs specialised in only one of these types of funds, although larger AIFMs were more likely to record that they managed a wider range of vehicle types.³⁴

Figure 7: Type of AIFs managed by respondent AIFMs



Source: KPMG (2018). Note: This question was posed only to AIFMs. The number of respondents was 203. This number differs from the total of the numbers stated in the figure because it was a multiple choice question.

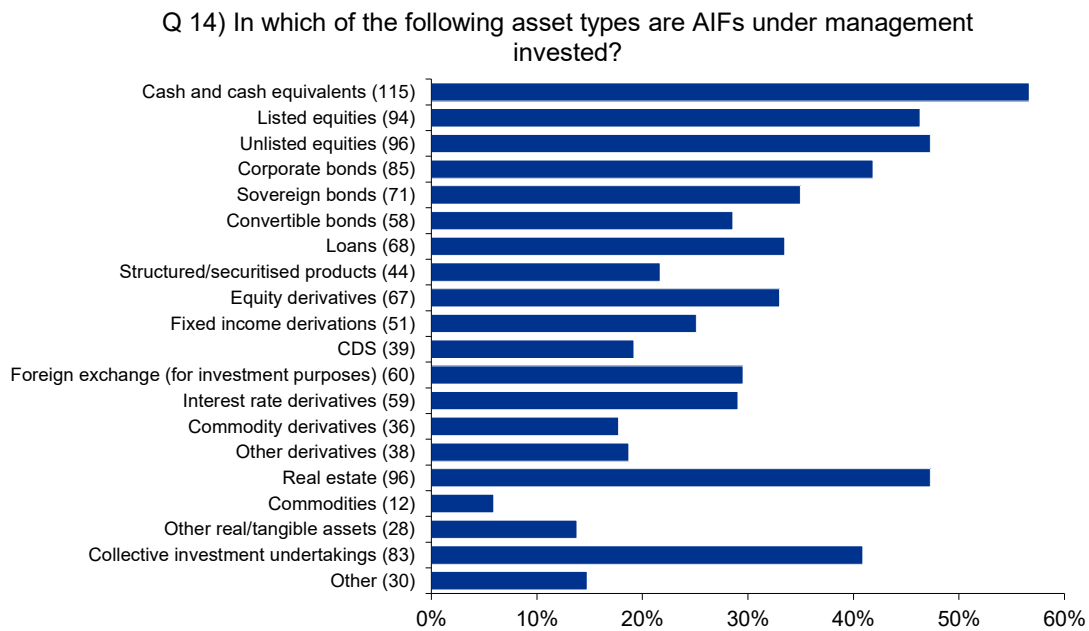
Figure 8 reveals that the majority of respondent AIFs managed AIFs invested in cash and cash equivalents (57%), followed by real estate and unlisted equities (47% each), listed equities (46%), corporate bonds (42%) and collective investment undertakings (41%).

As shown in Figure 9, the most common specialist investment strategy (46%) was real estate, followed by fund-of-funds (44%) and equity (43%). Specialist investment strategies focusing on private equity (39%) or fixed income (35%) were also commonly used. It is interesting to note that the majority (57%) of respondent AIFMs pursued a multiple investment strategy approach, selecting at least four investment strategies. Contrary to this, a minority (23%) focused on one single investment strategy. The larger respondent AIFMs were more likely to record that they managed fixed income and funds-of-funds.³⁵

³⁴ These correlations are significant ($p < 0.05$): Open-ended and authorised by the NCA ($r = .46$), Closed-ended and authorised by the NCA ($r = .26$), Open-ended and traded on a regulated market ($r = .26$), Funds that are only for professional investors ($r = .24$), Funds that are only for retail (and/or semi-professional) investors ($r = .35$), Funds that are for both types of investors ($r = .36$), Funds that are only for specific types of investors (e.g. pension funds, charities etc.) ($r = .32$). Only for "Closed-ended and traded on a regulated market" is there no significant correlation by the size of the AIFM.

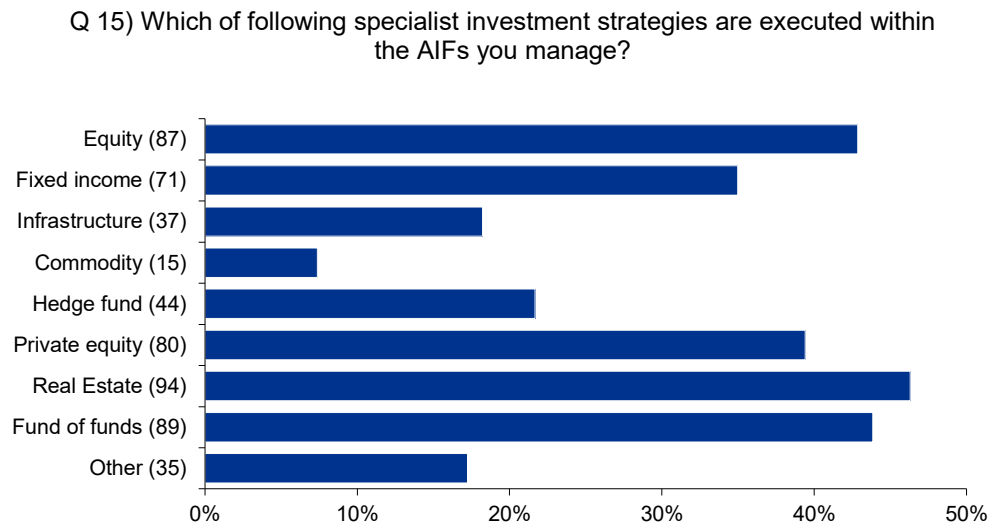
³⁵ The correlations are significant ($p < 0.05$): Fixed income ($r = .48$); Fund of funds ($r = .46$)

Figure 8: Invested asset types of AIFs managed by respondent AIFMs



Source: KPMG (2018). Note: This question was posed only to AIFMs. The number of respondents to this question was 203. This number differs from the total of the numbers stated in the figure because it is a multiple choice question.

Figure 9: Specialist investment strategies executed within AIFs managed by respondent AIFMs

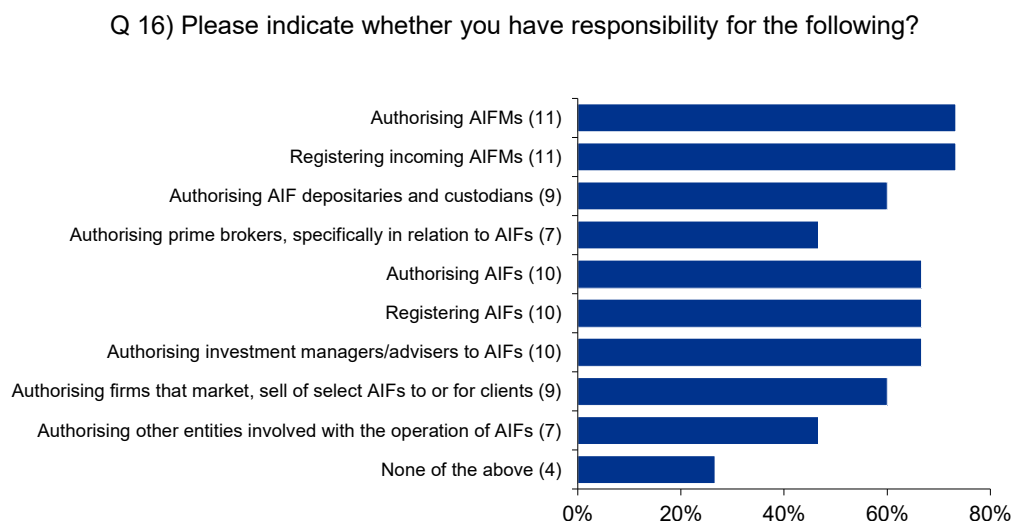


Source: KPMG (2018). Note: This question was posed only to AIFMs. The number of respondents to this question was 203. This number differs from the total of the numbers stated in the figure because it is a multiple choice question.

3.2. Public authorities

Public authorities comprised 4% of all institutional stakeholders that participated in the survey. Their range of responsibilities is depicted in Figure 10.

Figure 10: Responsibilities of public authorities



Source: KPMG (2018). Note: This question was posed only to public authorities. The number of respondents was 15. This number differs from the total of the numbers stated in the figure because it is a multiple choice question.

Most of the participating public authorities indicated a broad range of responsibilities by selecting six responsibilities. The majority were responsible for authorising and registering AIFMs (73% each), followed by authorising and registering AIFs (67%). 67% of the public authorities also authorised investment managers/advisers to AIFs, followed by 60% that authorised AIF depositaries and custodians and/or firms that market, sell or select AIFs.

3.3. Institutional investors or eligible counterparties

Institutional investors or eligible counterparties comprised 4% of all the institutional stakeholders that participated in the survey. Insurance companies represented the largest group of institutional investors, with a ratio of about 37%, followed by other authorised or regulated financial institutions or other types of institution (22% each). Investment firms and UCITS management companies ("ManCos") represented 11% and 7%, respectively.

93% of this type of respondent invested in EU/EEA AIFs, of which 50% were invested in not more than 22 EU/EEA-AIFs. The average number of investments in AIFs was 31, which indicates a skewness of the distribution to the right towards a small group of investors invested in multiple AIFs. In the survey sample, there were seven respondents with numbers of AIFs above the average, in the range 34 to 135 AIFs.

Regarding the amounts invested in EU/EEA AIFs, the skewness of the distribution looks similar. For 50% of the institutional investors or eligible counterparties invested in EU/EEA AIFs, the total invested was not higher than EUR 630 mn, whereas the average amount invested was much higher at EUR 14.4 bn, mainly driven by two major outliers with investments of EUR 70 bn and EUR 200 bn. 72% of the

respondents were invested in EU/EEA AIFs domiciled in Luxembourg, followed by the United Kingdom (64%), France (48%), Germany (40%), Sweden (40%) and the Netherlands (28%).

In contrast, the amounts invested in non-EU/EEA AIFs were very different. A reduced, but still high, proportion of respondents (67%) were also invested in non-EU/EEA AIFs. The mean number of investments in non-EU/EEA AIFs was 50, significantly higher than the mean number of 22 investments in EU/EEA AIFs. The same holds true for the average number of 67 investments in non-EU/EEA AIFs, which again is significantly higher than the average of 31 investments in EU/EEA AIFs.

For 50% of the institutional investors or eligible counterparties invested in EU/EEA AIFs, the total amount invested was not higher than EUR 1.2 bn, whereas the average invested was two-thirds higher at EUR 2.0 bn, mainly driven by one outlier with a total invested in non-EU/EEA AIFs above EUR 12 bn. 83% of the respondents were invested in non-EU/EEA AIFs domiciled in the US, followed by the Channel Islands (72%), Cayman Islands (44%) and British Virgin Islands (28%). The remaining domiciles indicated by the respondents were Singapore, Hong Kong, Switzerland and Bermuda, with a ratio of 17% each.

3.4. Representative bodies of investors and/or retail consumers

Representative bodies of investors and/or retail consumers were slightly above 3% of all respondent institutional stakeholders. The majority of respondent bodies represented either one or a combination of institutions (67%) and/or eligible counterparties (42%),³⁶ both investing for their own account. The remaining respondents represented individual investors, being either one or a combination of professional (33%), retail (25%) and/or semi-professional investors (17%). Bodies representing investment firms made up 80% of the sub-sample and referred to either professional or semi-professional investors. Bodies representing pension funds, other authorised/regulated financial institutions and insurance companies made up 40%, and those representing credit institutions and UCITS or UCITS ManCos were 20% each. Respondents included bodies in third countries.

3.5. Entities marketing, selling or selecting AIFs

21 entities marketing, selling or selecting AIFs participated in the survey, representing slightly above 5% of all respondent institutional stakeholders. These entities were discretionary investment/wealth managers (57%), financial advisors (43%), execution-only brokers (33%) or other entities (14%). 95% of the respondents had professional investors among their clients, with semi-professional investors at 33% and retail investors at 38%. 91% of the respondents market, sell or select EU/EEA AIFs to or for EU/EEA clients in their own jurisdiction. 67% of the respondents carry out cross border activities within the EU.

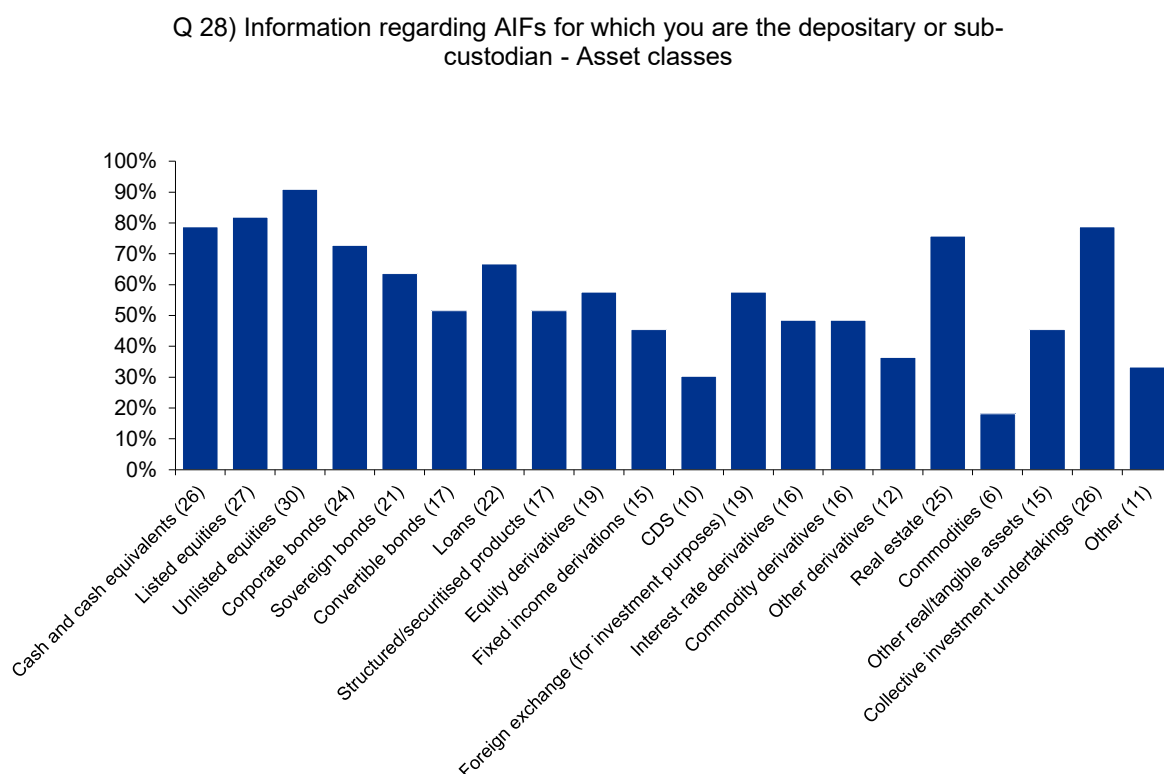
³⁶ Note that the sum of the share ratios is more than 100% because the question is of multiple choice type.

3.6. Non-listed company or enterprise receiving investment from AIFs

The section of the general survey with questions dedicated to non-listed companies or enterprises receiving investment from AIFs could not be evaluated as no response was received from this type of institutional stakeholder. The set of questions with regard their general information was limited to two questions about (i) the size of the enterprise, in terms of being a small or medium-sized³⁷ enterprise or not, and (ii) potential voting and control rights by one or more AIFs or AIFMs.

3.7. AIF depositaries or sub-custodians

Figure 11: Asset classes of those AIFs overseen or serviced by depositaries or sub-custodians



Source: KPMG (2018). Note: This question was posed only to AIF depositaries or sub-custodians. The number of respondents to this question was 33. This number differs from the total of the numbers stated in the figure because it is a multiple choice question.

AIF depositaries or sub-custodians were represented with a ratio of slightly above 8% of all respondent institutional stakeholders.

50% of them did not oversee or service more than 62 AIFs. The average number of AIFs was more than four times higher at 271, driven by a minority group of 20% of

³⁷ A small or medium-sized enterprise employs fewer than 250 persons and has an annual turnover not exceeding EUR 50 mn and/or an annual balance sheet total not exceeding EUR 43 mn.

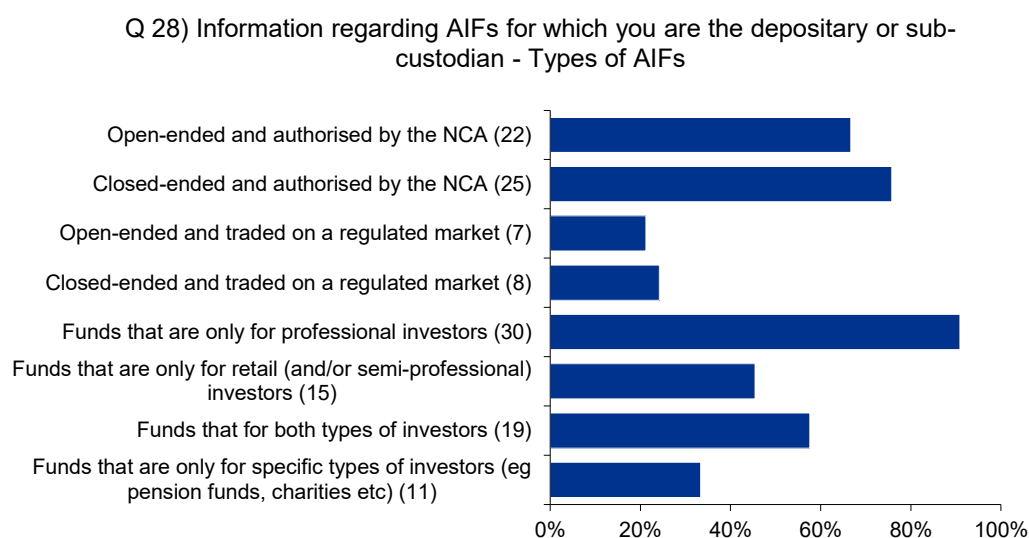
the respondents with numbers of AIFs ranging between 260 and 400, including two outliers with 1,500 and more than 3,300 AIFs.

For 50% of the respondents, the total NAV of the AIFs ranged up to EUR 15 bn, whereas the average was EUR 97 bn. Again, this left-handed skewness of the distribution is attributed to five respondents with AIFs totalling EUR 100 bn to EUR 887 bn.

The wide ranges can be explained in part by the fact that some respondents submitted one response for a group with several depositaries in different domiciles, whereas others responded for one entity.

As can be seen from Figure 11, the majority of depositaries or sub-custodians indicated that their AIFs were invested in unlisted equities (91%) or listed equities (82%), followed by cash and cash equivalents and collective investment undertakings (both indicated by 79% of respondents), and real estate (76%). Various kinds of derivative instruments were indicated in a range from 58% for equity derivatives to 48% for interest rate derivatives and 36% for others. Commodities were the smallest group of asset classes, indicated by only 18% of the respondents.

Figure 12: Types of AIFs overseen or serviced by depositaries or sub-custodians



Source: KPMG (2018). Note: This question was posed only to AIF depositaries or sub-custodians. The number of respondents to this question was 33. This number differs from the total of the numbers stated in the figure because it is a multiple choice.

The majority of respondent AIF depositaries or sub-custodians oversaw or serviced funds that are available only to professional investors (91%), whereas less than half of the respondents oversaw or serviced funds that are available only to retail investors (45%). 58% of the respondents oversaw or serviced both types of funds. Larger depositaries were much more likely than smaller depositaries to record that they serviced funds available to retail and semi-professional investors.³⁸ 76% of respondents oversaw or serviced closed-ended funds, followed by 67% for open-ended funds.

³⁸ The correlation is significant ($p < 0.05$): Funds that are only for retail (and/or semi-professional) investors ($r = .41$)

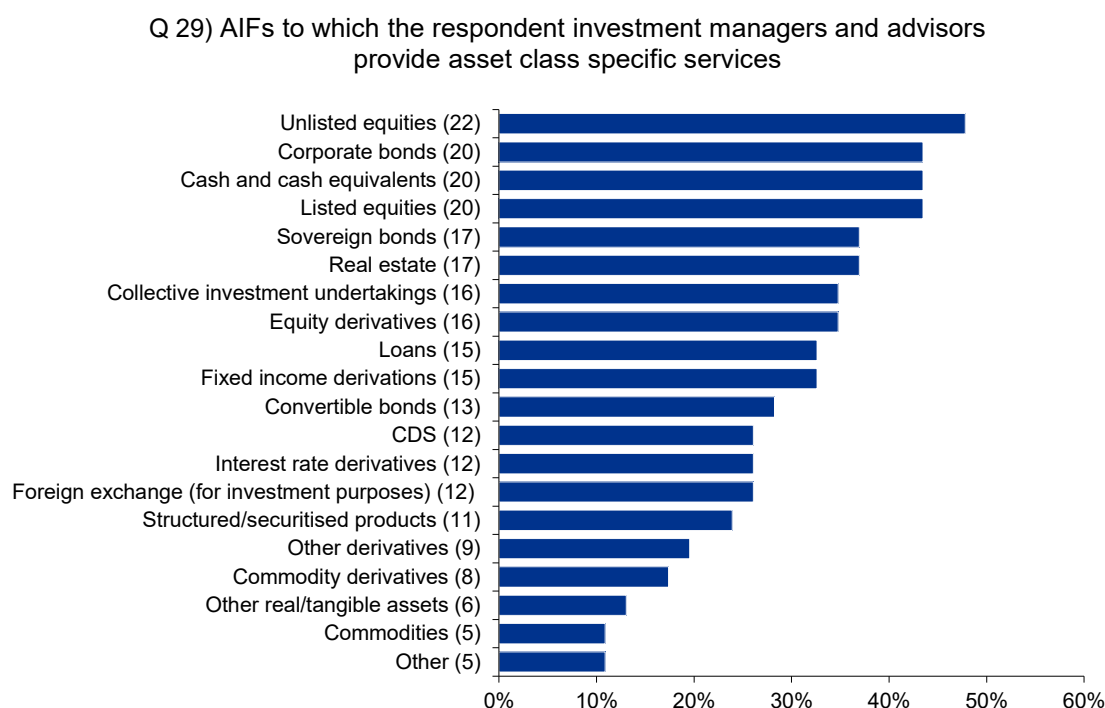
3.8. Investment managers or advisers to AIFs

12% of all respondent institutional stakeholders comprised investment managers or advisers to AIFs.

As far as the number of AIFs is concerned, 50% of the respondents serviced not more than five AIFs. The average number of AIFs serviced was more than four times higher at 22. For 50% of respondents, the total NAV of AIFs serviced was not higher than EUR 780 mn. The average total NAV was EUR 10.1 bn.

The asset classes and investment strategies of the AIFs, to which the investment managers or advisers to AIFs provided services, are depicted in Figure 13 and Figure 14.

Figure 13: Asset classes of those AIFs serviced by respondent investment managers or investment advisers



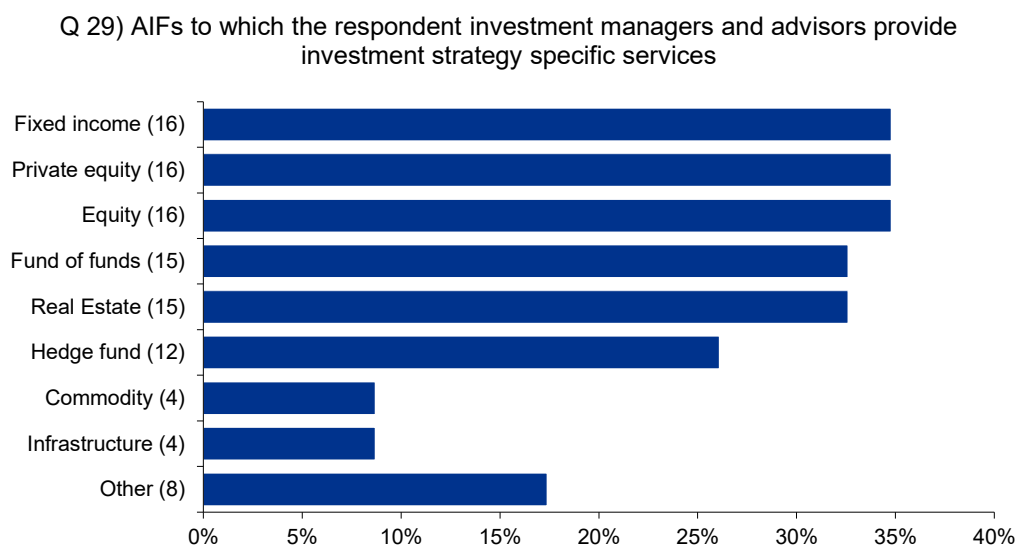
Source: KPMG (2018). Note: This question was posed only to investment manager and investment advisers to AIFs. The number of respondents was 46. This number differs from the total of the numbers stated in the figure because it is a multiple choice question.

Equities, either listed (43%) or unlisted (48%), cash and cash equivalents (43%) and corporate bonds (43%) represented the most common asset classes. Commodities, in contrast, were quite uncommon, with a ratio of only 11%.

The three most common investment strategies were equity, fixed income and private equity (35% each). The least common investment strategies were infrastructure and commodities (9% each).

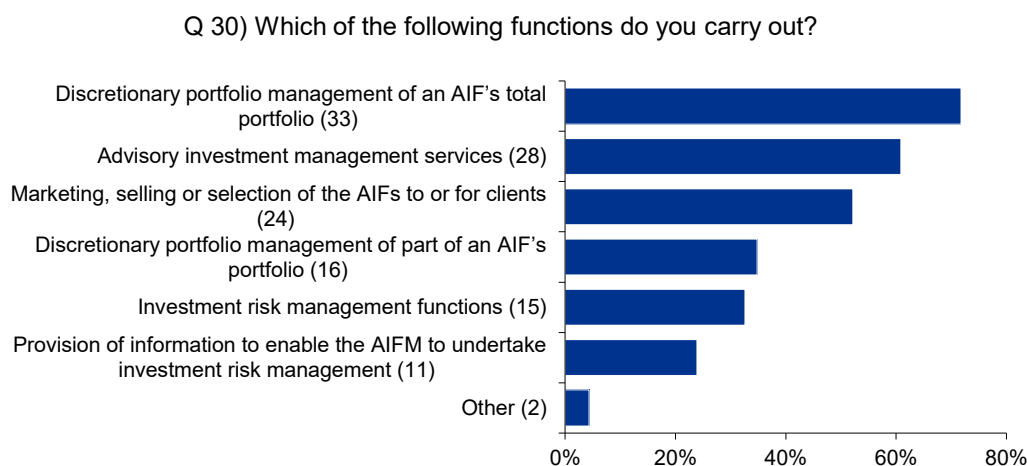
72% of respondent AIF investment managers and investment advisers carried out discretionary portfolio management, followed by advisory (61%) and marketing, selling and selection services (52%). About one-third of the respondents carried out risk management functions.

Figure 14: Investment strategies of those AIFs serviced by respondent investment managers and investment advisers



Source: KPMG (2018). Note: This question was posed only to investment managers and investment advisers to AIFs. The number of respondents was 46. This number differs from the total of the numbers stated in the figure because it is a multiple choice question.

Figure 15: Functions carried out by AIF investment managers and investment advisers



Source: KPMG (2018). Note: This question was posed only to investment managers and investment advisers to AIFs. The number of respondents was 46. This number differs from the total of the numbers stated in the figure because it is a multiple choice question.

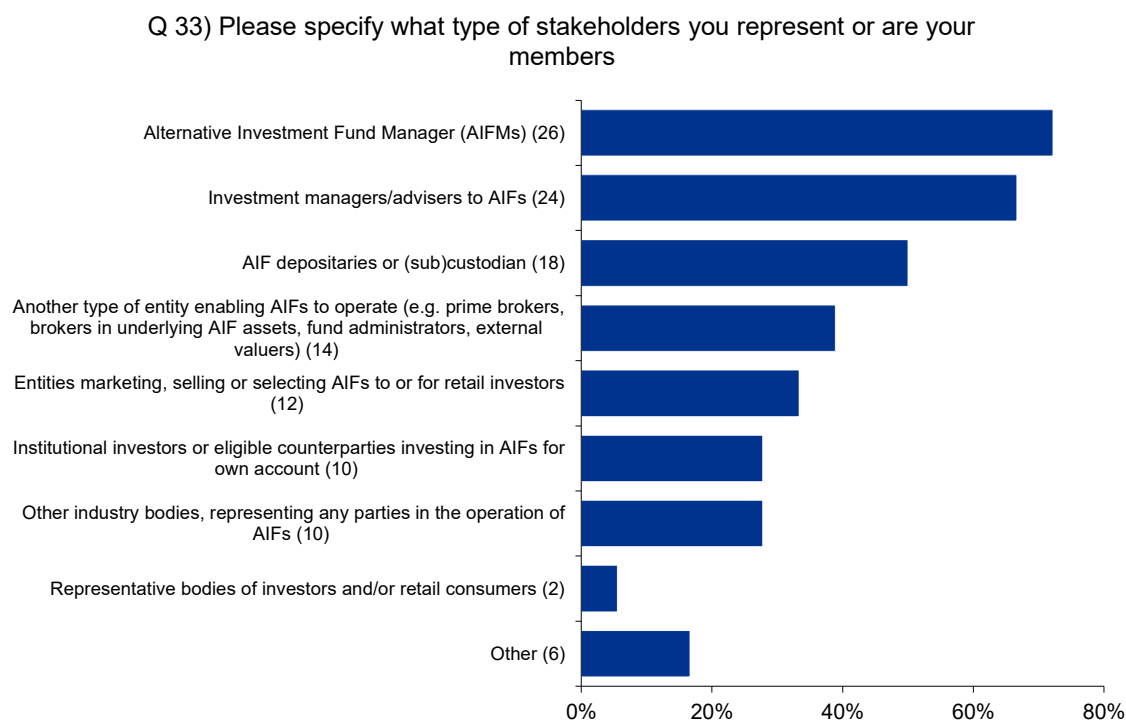
3.9. Fund administrators

Fund administrators represented about 7% of all institutional stakeholders that participated in the survey. For 50% of these respondents, the total NAV of AIFs administered was not higher than EUR 8.8 bn. The average number of total NAV of AIFs administered was EUR 42.4 bn.

3.10. Industry bodies

Finally, industry bodies representing any parties involved in the operation of AIFs comprised about 9% of all institutions that participated in the survey. The distinction with regard to which type of stakeholders they represent is depicted in Figure 16.

Figure 16: Type of members of industry bodies



Source: KPMG (2018). Note: This question was posed only to industry bodies representing any parties involved in the operation of AIFs. The number of respondents was 36. This number differs from the total of the numbers stated in the figure because it is a multiple choice question.

The majority of respondent industry bodies (72%) represented AIFMs, followed by investment managers and investment advisers to AIFs (67%), AIF depositaries or (sub-)custodians (50%), and entities marketing, selling or selecting AIFs (33%).

In comparison with Figure 2, it can be seen that AIFMs were over-represented by the industry bodies relative to **AIFMs' direct** participation ratio of about 52% of all institutional stakeholders. The difference is even more marked for both investment managers (67% versus 12%) and AIF depositaries (50% versus 9%).

36 industry bodies in total participated in the survey. Their jurisdictional coverage included the major European markets and smaller Member States. In addition, some pan-European and international associations were represented.

4. Summary of responses to the general survey

This sub-section summarises survey respondents' views on the extent to which the objectives of the AIFMD have been met.

It contains an analysis of the answers of 478 participants, composed of 398 institutional and 80 individual stakeholders. Where reasonable and conveying

additional information, given answers to a question are illustrated by a bar chart. Such a presentation, however, holds true only for standard closed-ended questions. In contrast, the analysis of answers to open-ended questions is complex and requires in-depth analytical effort before drawing any conclusions. By nature, the information gathered in responses to this type of question is unstructured and therefore generally cannot be illustrated in a figure.

Which stakeholders a question was posed to can be seen either in the title of the figure for the respective question or more precisely in the footnote below the figure. For more information, see Annex 2. Additionally, the information about the total number of stakeholders that answered a question is shown in the footnote. This kind of information is especially relevant for multiple choice type questions, in order to understand to what extent, in percentage terms, each single answer response statement has been chosen by the stakeholders to whom the question was posed.

Another prominent type of questions are those using Likert-scales, where stakeholders were asked for their agreement or disagreement with a definite set of attributes (typically five). It is important to avoid misinterpretation of the results by comparing the length of the coloured sections for different questions. The length of similarly coloured sections is determined not only by the amount of stakeholders supporting a **particular response to a statement but also by the amount of stakeholders having "no opinion" about a given statement.**

Where there are statistically significant ($p < 0.05$)³⁹ differences in the responses to a particular question by respondents of different types, domicile or size, they are described in the relevant sub-section below. To prove whether there are statistically relevant differences by countries for some answers, we used a non-parametric test (Kruskal–Wallis test).⁴⁰ The size criterion relates only to AIFMs and depositaries. Due to data interpretation and comparison issues with the responses regarding total AuM, the number of AIFs managed or overseen was used as the proxy for size.

Depending on the size of the respondent, we produced a linear correlation (Spearman's Rho).⁴¹ For some questions we checked if the answers correlated significantly ($p < 0.05$) with the size. A positive correlation means that the bigger the institution, the more likely it is to agree or select an answer type. Consequently, the smaller the institution, the more likely it is to disagree or not select an answer type. A negative correlation describes the opposite. The correlation coefficient can range between -1 and +1. The higher the correlation coefficient, the stronger the relation between the size and the given answers.⁴²

4.1. Appropriate authorisation and registration requirements

4.1.1. Authorisation process and costs

AIFMD seeks to ensure that all AIFMs are subject to appropriate authorisation or registration requirements (including minimum capital, and fit and proper requirements). In particular, the minimum thresholds for AIFMs (based on total AIF

³⁹ The *p*-value denotes the probability that random chance could explain the result; in general, a *p*-value of 5% or lower is considered to be statistically significant and means that there is a less than 5% probability that the correlation or country differences are by chance.

⁴⁰ Kruskal & Wallis (1952). *Use of ranks in one-criterion variance analysis*. *Journal of the American Statistical Association*, 47 (260), 583–621.

⁴¹ Spearman C. (1904). "The proof and measurement of association between two things". *American Journal of Psychology*, 15, 72–101.

⁴² Weak correlation: .1 - .29, Moderate correlation: .30 - .49, Strong correlation: .50 - 1 (by Cohen 1988).

AuM) were designed to be set appropriately to meet this objective. It also requires an appropriately authorised depositary for EU/EEA AIFs.

This sub-section summarises the views of survey respondents on whether and to what extent these requirements are met in accordance with Chapters I, II and IX AIFMD. Regarding the objectives of AIFMD, except for four questions that were posed to both individuals and institutions, all other questions were posed only to institutional stakeholders. Furthermore, a large number of questions were dedicated only to AIFMs, depositaries or public authorities.

About 54% of respondent AIFMs affirmed that they were already authorised by the NCA as the equivalent of an AIFM (i.e. subject to broadly equivalent national rules) prior to AIFMD. Larger AIFMs were more likely to record that they were already authorised prior to AIFMD.⁴³

Furthermore, half the respondent AIFMs stated that the cost of *obtaining* a new AIFM authorisation from the NCA or of revising an existing authorisation to comply with AIFMD implementation, excluding passport notifications and ongoing costs, was not higher than EUR 22,500. However, the figure stated on average among all respondent AIFMs was much higher at about EUR 75,000 due to some AIFMs who stated significantly higher cost figures. The same also holds true for spend on people resources. Half the respondent AIFMs indicated figures below EUR 50,000 whereas the average figure indicated among all respondent AIFMs was again much higher at EUR 105,000. The average expenditure on other cost items was EUR 162,000 among all respondent AIFMs. In general, it can be concluded that across all cost items, the figures for the mean average are significantly higher than those indicated by half of the respondent AIFMs (i.e. the median), mainly because a small number of respondent AIFMs indicated they have spent significantly more in relation to the others.

As regards the costs of *maintaining* an AIFM authorisation (excluding passport notifications), respondent AIFMs indicated that the median (middle value) and mean average figures (sum of all responses divided by the number of responses) were:

- EUR 10,000 and EUR 47,000 for NCA fees;
- EUR 6,000 and EUR 63,000 for contributions to ombudsmen;
- EUR 25,000 and EUR 58,000 to external advisors;
- EUR 20,000 and EUR 61,000 to other parties; and
- EUR 4,000 and EUR 50,000 for other cost items.

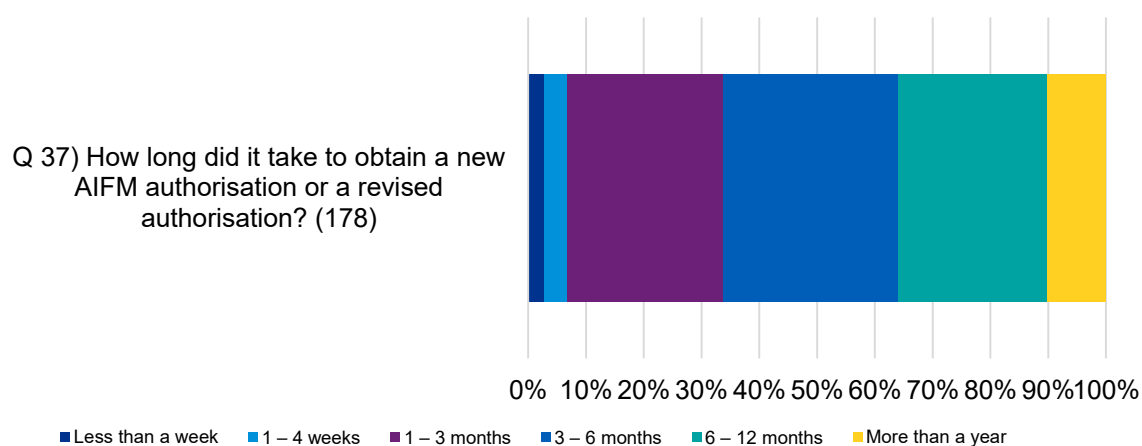
With regard to the approximate annual cost of maintaining all passport notifications, nearly half the respondent AIFMs indicated that they pay less than EUR 20,000, with an average of EUR 74,000. The means are significantly higher than the medians because a small number of AIFMs paid significantly more relative to others.

In response to a question about how long it took to obtain a new or revised AIFM authorisation, only a minority of 35% of respondent AIFMs got through the process in *less than three months*. On an individual country basis, the result is quite similar for German AIFMs and only slightly higher for UK AIFMs (40%), whereas about 70% of respondent French AIFMs indicated that it took them less than three months. In contrast, only 25% of respondent Dutch AIFMs and 22% of Luxembourg AIFMs indicated that they had completed the process in less than three months.

⁴³ The correlation is significant ($p < 0.05$): Was your institution active in the AIF market prior to AIFMD coming into force? ($r = .20$)

Although 90% of respondent AIFMs obtained a new AIFM authorisation in less than a year (100% of French and UK AIFMs), the proportion of respondent AIFMs for whom authorisation took longer than one year was relatively low at 10% (see Figure 17), including AIFMs in Germany, Luxembourg and the Netherlands.

Figure 17: Time to obtain a new or revised AIFM licence



Source: KPMG (2018). Note: This question was posed only to AIFMs. The number of respondents was 178.

Taking into consideration the results from the semi-structured interviews as another source of information, the outcome depicted above was supported by the majority (56%) of the AIFMs and NCAs with whom this topic was discussed during the interviews. Nearly 10% of the interviewees had no opinion about whether the outcome from the general survey is reasonable or not. Blending out this group, i.e. just looking at those interviewees who replied with either “Yes” or “No”, the outcome depicted above is supported by 62%.

Most of the interviewees that deemed the outcome of the survey reasonable (that obtaining an AIFM authorisation takes longer than the three months set out in the Directive) gave different reasons for the additional time taken. One of the arguments was that the outcome may be due to unacceptable quality of the application files sent to the NCAs. This results in the NCAs requesting additional documents, which typically leads to additional time consumed in back and forth communication with the applicant. Even though NCAs comply with the statutory law requirements of a time frame of three months to respond to an application and to provide a licence that time frame cannot be met if a request for additional information arises.

It was suggested that the applicant needs fully to understand what information is needed in the first instance before submitting the application and, if any additional information request arises, to ensure they have a full understanding of what is required and promptly to gather the information and send it to the NCA. It was also noted that better guidance by the NCA on what precise documentation they want to see in the application file can potentially speed up the application process. Sometimes, however, the time delay is caused by third parties engaged by the AIFM, as new contractual agreements have to be met for which the signing in some cases takes longer than expected.

Other interviewees noted that the survey outcome might largely be driven by the fact that many respondents sought AIFMD authorisation (or conversion of an existing national licence) during the implementation period of the AIFMD into national law. This

resulted in many institutions seeking a licence at the same time and therefore a waiting list at the NCA. One NCA observed that whenever new legislation is introduced, more time is required to examine the specific requirements throughout the authorisation process. After some time has passed, different aspects of the regulation will most probably become more mature and clearer. Also, both applicants and NCAs will become more familiar with the process, thereby reducing the time taken.

On the other hand, some respondents did not think the survey result was reasonable. Their general view was that a process of more than six months was not business-friendly and might jeopardise investor relationships.

Similar questions (except for the approximate annual cost of maintaining all passport notifications) were posed to depositaries. 66% of respondent depositaries responded that they were already licenced by their respective NCAs as a depositary for UCITS or AIFs prior to the AIFMD coming into force, with larger depositaries much more likely to record that they were already authorised.⁴⁴

Table 5: Overview of various charges indicated by NCAs (in EUR)

Type of charges	Minimum (average)	Maximum (average)
A new full-scope AIFM licence	8,300	10,900
A new sub-threshold AIFM licence	4,200	4,200
Revision to a full-scope AIFM licence	6,700	7,000
Revision to a sub-threshold AIFM licence	3,100	3,100
Annual supervisory fee for full-scope AIFM	8,000	13,200
Annual supervisory fee for sub-threshold AIFM	4,400	4,500
Processing an incoming AIFM passport notification	2,400	3,000
A new AIF depositary licence	6,000	9,200
Revision to an AIF depositary licence	1,400	3,000
Annual supervisory fee for AIF depositary	4,400	9,400

Source: KPMG (2018)

⁴⁴ The correlation is significant ($p < 0.05$): Was your institution active in the AIF market prior to AIFMD coming into force? ($r = .51$)

Regarding the approximate cost of *obtaining* a new AIF depositary licence from the NCA or revising an existing licence to comply with AIFMD implementation, excluding ongoing costs, the median and mean figures on some cost items were as follows:

- EUR 5,000 and EUR 63,000 for NCA fees;
- EUR 25,000 and EUR 68,000 spent on people resources; and
- EUR 50,000 and EUR 380,000 for other cost items.

In order to *maintain* their AIF depositary licence, the depositaries indicated that the median and mean average figures on some cost items were as follows:

- EUR 15,000 and EUR 27,000 for NCA fees;
- EUR 25,000 and EUR 97,000 to external advisors;
- EUR 10,000 and EUR 20,000 in resources expended on NCA inspections; and
- EUR 10,000 and EUR 26,000 for other cost items.

The mean averages are significantly higher than the median averages because a small number of respondents paid significantly more.

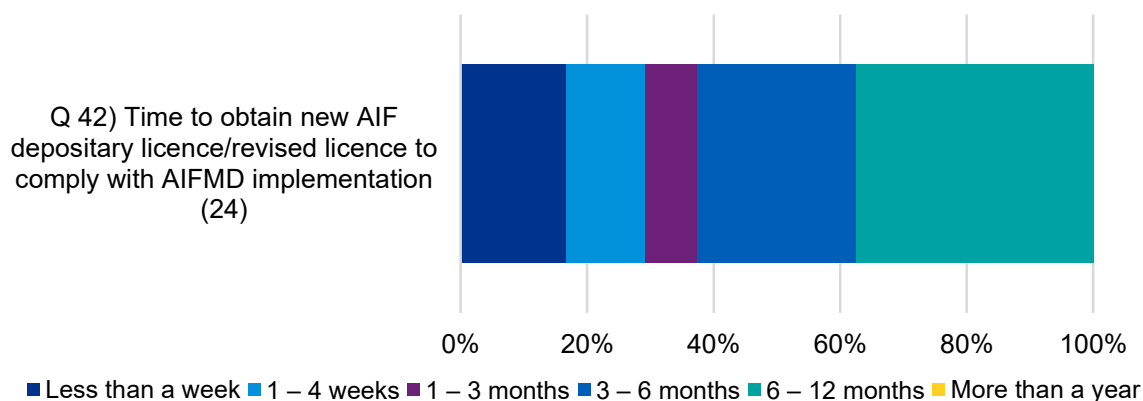
The information on NCA costs received by the AIFMs and the depositaries can be contrasted with the information provided by the NCAs (see Table 5)

The median figure of NCA fees of EUR 5,000 for *obtaining* a new licence as indicated by the depositaries is less than the minimum average figure of EUR 6,000 reported by the NCAs that licence depositaries. However, with regard to the NCA fees for *maintaining* the licence, the median figure of EUR 15,000 is above the maximum average figure of EUR 12,400 reported by the NCAs.

The NCAs that licence AIFMs indicated that the maximum fees charged for a new full scope AIFM licence are EUR 10,900 on average. This outcome corresponds with the response of 50% of AIFMs, whereas the other 50% reported to have spent significantly more, resulting in the much higher average figure of EUR 47,000.

Regarding the time taken to obtain a new AIF depositary licence, 38% of all respondent depositaries took six to 12 months to obtain a new AIF depositary licence (see Figure 18).

Figure 18: Time to obtain an AIF depositary licence

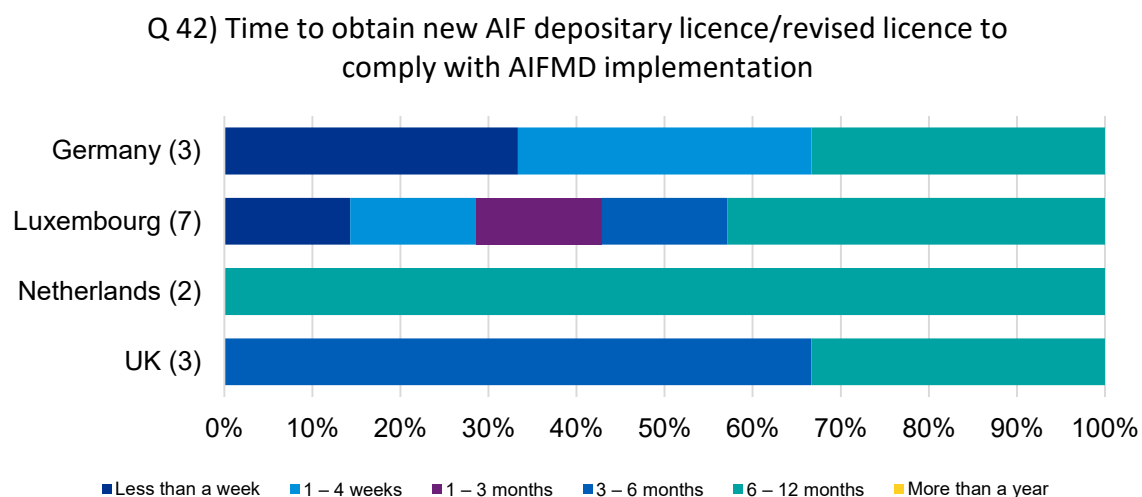


Source: KPMG (2018). Note: This question above was displayed to AIF depositaries only. The number of respondents to this question was 24.

Figure 19 provides a split by certain depositary domiciles. The numbers of respondents involved is too small to draw any meaningful conclusions, but it is interesting to note

that four respondents indicated that it took them less than a month to obtain a new AIF depository licence, of which for two it took less than a week.

Figure 19: Time to obtain an AIF depository licence (by domicile)



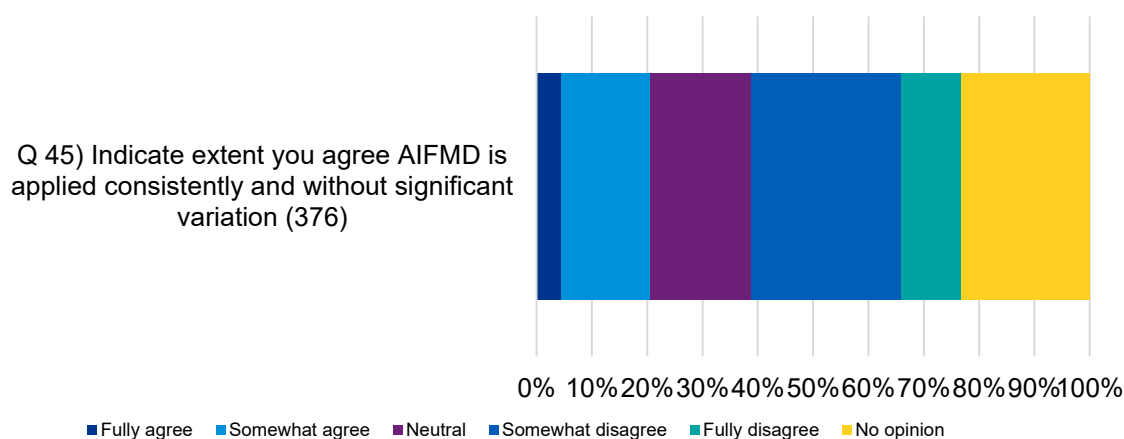
Source: KPMG (2018). Note: the illustration above is a split analysis of Figure 18.

4.1.2. Consistency of application

This sub-section considers the extent to which survey respondents agreed that AIFMD is applied consistently and without significant variation by all NCAs.

23% of respondents did not have any opinion whether or not AIFMD is applied consistently and without significant variation across NCAs. 38% of those having an opinion disagreed with the statement. Those that agreed represented only 21% (27% if those having no opinion are excluded).

Figure 20: Consistent application of AIFMD by NCAs

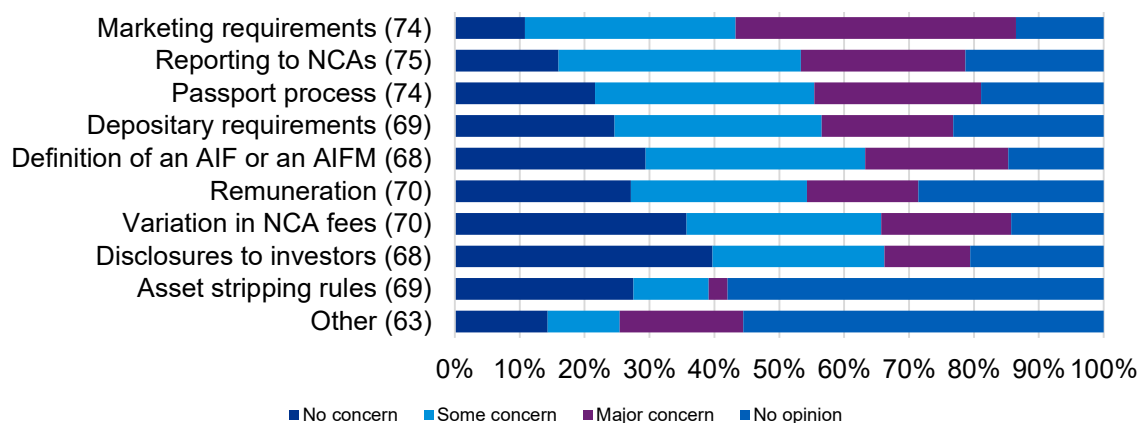


Source: KPMG (2018). Note: This question was posed only to stakeholders of type b – k, or o (see Annex 2). The number of respondents was 376.

A disagreement by over one-third of those having an opinion is a strong indication that there are inconsistencies. During the semi-structured interviews, this topic was

explicitly discussed with the interviewees in order to shed more light on what subject matters in detail might be of some or major concern. The outcome is shown in Figure 21.

Figure 21: Inconsistent application of AIFMD with regard to specific issues



Source: KPMG (2018). Note: This topic was discussed during the semi-structured interviews. The number of respondents varied from 63 to 75.

There was no agreement on how much of a concern it is that AIFMD is not applied consistently in all Member States. Most respondents and interviewees indicated that there were some areas that needed further harmonisation in order to prevent rule arbitrage and to ensure a common level playing field, with a small number calling for harmonisation across the piece. It was also noted by interviewees, however, that AIFMD is not like the UCITS Directive (UCITSD) – which regulates both the managers and the funds, and thus creates a harmonised set of products. AIFMD specifically accommodates the very wide range of types of AIFs that exist around the EU and elsewhere. Therefore, there are bound to be some differences from Member State to Member State, which ought to be allowed to endure.

Most concerns were expressed about marketing requirements (by 76%, or by 88% if those having no opinion are excluded). Interviewees noted two specific concerns:

- A large divergence of marketing requirements between Member States due to inconsistent application of the AIFMD marketing rules, coupled with additional national requirements.
- Uncertainty over the application of the definition of marketing and pre-marketing under AIFMD.

It was reported that different Member States have adopted different approaches as to **which activities constitute “marketing”**, which is said to undermine the efforts of enhancing the Single Market via the AIFMD passport. Firms incur higher costs of marketing in Members States with more restrictive rules. For example, one industry representative noted that the pre-marketing phase is treated more strictly by BaFin,⁴⁵ the German NCA, than by NCAs in other EU Member states.

The application of different or additional requirements by Member States results in a diverse and quite complex legal situation, and therefore in a European market that is still partially fragmented rather than fully harmonised. There is still a considerable lack

⁴⁵ Bundesanstalt für Finanzdienstleistungsaufsicht

of transparency with regard to the different rules in place, which is said to be a major obstacle for rolling out uniform marketing activities across Member States. This lack of transparency directly translates into additional expenditures on time and other resources, such as costly legal advice. As one industry representative commented, *"The different interpretations and national requirements around the EU mean that the benefit of the passport is diminished, by way of additional costs to the industry and, ultimately, at the expense of the investors."* (See also sub-section 4.5 below.)

The EC Cross-Border Distribution Proposal is not thought sufficient in the opinion of a number of respondents and interviewees. A major critique voiced is that the definition of "pre-marketing" focusses on issues in the mass retail market and the proposed drafting does not sit well in the professional market space. The additional marketing requirements were said to be inappropriate for professional or well-informed investors.

Concerns about the passport process were expressed by 59% (73% if those expressing no opinion are excluded) and were largely in accordance with the concerns raised about the marketing requirements, i.e. as long as there is a tendency towards gold-plating in various national regimes, AIFMD will not be applied consistently across Member States, which undermines the aspired benefits of a harmonised marketing passport regime.

Reporting to NCAs was a concern of 63% of survey respondents (80% if those expressing no opinion are excluded) – see also sub-section 4.2.1 below. The semi-structured interviews also revealed that the reporting requirements differ among NCAs, with different interpretations or additional requirements. Differences in filing procedures and translation costs were said to add to the burden for those AIFMs that have reporting obligations to NCAs located in Member States in addition to their home office domicile, or if the AIFM invests in a target company located in a different specific.

Furthermore, the amount of data required was thought to be disproportionately high. For example, it was said that the reports include data that cannot be processed on a quarterly basis. Redundancy and duplication of reported data (within the AIFMD reports or vis-à-vis other regulatory reporting) was also deemed a major issue.

In general, the interviewees shared the opinion that the differences in interpretation and filing procedures further exacerbated the costs of reporting, which are not compensated for by the provision by the NCAs or ESMA of regular analyses of aggregated market data.

Most would prefer to see a consistent application of the AIFMD reporting requirements and a rationalised template. However, the high costs of implementation of the reporting requirements was frequently mentioned, along with the need to look at regulatory reporting in the round for asset managers. Therefore, there was strong resistance to change before such a comprehensive review is undertaken. In the meantime, it was suggested that regular provision of market analyses by ESMA and the NCAs would go some way to compensating for the regulatory burden, and would also be beneficial for regulators and investors.

In contrast, some NCA interviewees observed that the list of investment strategies, for **example, led to too many AIFMs ticking "other", which prevented useful analysis.** They were strongly of the opinion that such items needed to be amended as soon as possible.

Some interviewees proposed to move away from a one-size-fits-all approach, noting that a common and uniform rule set might tend to be less specific reporting and possibly not fully reflect the different natures of AIFs.

As far as cash monitoring is concerned, some depositaries had difficulties with the interpretation of the requirements for private equity and real estate funds. It was argued that the current cash monitoring requirements are not appropriate because for private equity and venture capital funds, for instance, significant cash holdings and cash movements at fund level appear relatively rarely. This means that the consideration of all cash flows within the AIF at fund level, as well as in the underlying target funds and companies, is not feasible from an operational standpoint. Furthermore, one interviewee asked for more clarity regarding the treatment of assets that cannot be held in custody and the implications thereof for depositaries specialising in these types of assets.

56% (66% if those expressing no opinion are excluded) were concerned about inconsistent definitions of an AIF or an AIFM (see also sub-section 4.1.4 below). One issue was said to be the unclear definition of what constitutes an AIF or an AIFM. Some of the NCAs agreed that Article 3 AIFMD (exemptions) is indeed somewhat unclear and therefore is interpreted differently by Member States. In particular, the different interpretations of the AIF definition make it difficult to assess the full scope of AIFMD. This affects the question whether different market products are collective schemes or non-fund-like vehicles, for instance. One industry representative added that this leads to the AIFMD rules being applied to common non-fund vehicles that were not intended to be covered by the Directive. On the other hand, vehicles that are fund-like could fall outside the scope.

In the interviews, it was also pointed out that a large number of financial instruments, which are issued by vehicles, fall under local securitisation laws rather than being considered within the scope of AIFMD. However, as many of these instruments share a number of features with collective schemes, one interview participant explicitly supported a case-by-case analysis of these instruments according to the approach outlined by ESMA, which might lead to qualifying (some of) these instruments as AIFs.

Concerns were also expressed with regard to certain activities recognised as delegated activities. One interviewee criticised that some Member States do not consider certain activities as delegated activities if the fund manager never exercised them on its own or delegated them prior to AIFMD coming into force. In addition, the interviewee argued that Member States seem to have different views as to what extent both portfolio management and risk management tasks may be outsourced. There were also concerns about inconsistency of treatment between AIFMs and UCITS ManCos. It was argued that there are market participants that have both UCITS and AIFM licences, which requires them to meet both regulatory frameworks. This can lead to potential conflicts in the case of contradictory requirements, leaving it unclear which regulatory framework primarily to comply with.

Concerns about the remuneration provisions were expressed by 44% (62% if those expressing no opinion are excluded) – see also sub-section 4.3.1 below. The AIFMD remuneration requirements were assessed differently by the interviewees. In general, they agreed that a strict implementation of the remuneration requirements, irrespective of the underlying individual complexity, potentially led to competitive disadvantages for EU firms relative to competitors domiciled elsewhere. Furthermore, a strict implementation favours less complex business models and creates a major disadvantage for market participants facing a higher complexity of operations, which should be taken into account by an appropriate proportionality approach.

One interviewee commented that the remuneration requirements did not achieve their objective as investors do not receive transparent and consistent information, irrespective of the domicile of the reporting entities across the Member States. Examples were given that firms may disclose total remuneration irrespective of the number of AIFs they manage. Another example referred to carried interest and

partner remuneration, which are in many cases only partially incorporated in the compensation figures and, furthermore, are not consistently disclosed by AIFMs, it was said. This reiterates the general critique of a lack of level playing field, which exposes some market participants, especially in jurisdictions with more stringent implementation, to unfair competition, it was claimed.

Concerns about variations in NCA fees were expressed by 50% (58% if those expressing no opinion are excluded). The interviewees confirmed that there are significant disparities in the level of fees imposed by NCAs as part of the marketing passport notification process or under the NPPRs. Coupled with the divergence of marketing requirements among Member States, this results in competitive disadvantages for foreign-domiciled funds. One interviewee noted that while for larger **private equity fund managers, the fees could be considered as an “annoyance”** rather than something that materially affects decision-making, smaller fund managers may be more affected, especially as the impact on investors in smaller funds is proportionately higher.

In this regard, the EC Cross-Border Distribution Proposal was generally deemed positive as it aims to increase transparency about fees by a greater supervisory empowerment of ESMA and by establishing some high-level common principles with regard to how regulatory fees are determined. However, as currently drafted, the proposals fall short of a harmonised fee regime, one interviewee responded.

40% (50% if those expressing no opinion are excluded) expressed concerns about required disclosures to investors – see also sub-section 4.3.3 e) below. Most interviewees shared the opinion that the current disclosure rules ensure that investors are sufficiently and adequately informed and facilitate proper investment decisions. The concerns centred on the inconsistent application of AIFMD. Additional national disclosure requirements do not help investors to select the most relevant information for their own monitoring purposes, it was said, thus undermining the **Directive’s** investor protection goals. It was also noted that experienced professional investors often have specific requirements regarding the information they wish to receive and that they should be able to opt out of the AIFMD requirements if they wish.

14% (34% if those expressing no opinion are excluded) expressed concerns about the asset stripping rules. The comments received were rather general in the sense that any deviation from a unified capital market defeats the purpose of the EU, i.e. strict harmonisation and a common level playing field is required to create an EU-wide capital market that is not detrimental to multi-jurisdictional funds. One interviewee criticised that even within one Member State legal experts may give different interpretations of the requirements – see also sub-section 4.4 below.

Other concerns were expressed by 30% (68% if those expressing no opinion are excluded), including:

- The liability of external valuers (see sub-section 4.3.3 b) below);
- ESMA’s interpretations of the interplay of the delegation and remuneration rules (see sub-sections 4.3.3 c) and 4.3.1 below);
- Widely different AIFM authorisation processes among NCAs (see sub-section 4.1.1 above);
- Insufficient alignment or convergence with other regulations, MiFID II in particular (see sub-section 4.8 below).

As far as the role of ESMA is concerned, a number of interviewees were critical of the fact that “Q&As”, which are published without prior consultation with the industry and without transition periods, can have significant policy and operational implications, years after the transposition of AIFMD into national law. Some respondents and

interviewees also expressed the view that some of ESMA's or NCAs' interpretations may go beyond the provisions in the Directive or the co-legislators' intent.

In terms of the interaction between AIFMD and MiFID II, it was suggested that further clarity is needed where an AIFM also provides MiFID services. Another uncertainty mentioned was the interplay between AIFMD and NPPRs, which may have slightly different definitions of what constitutes a professional or a semi-professional investor or client, and the associated marketing requirements that have to be fulfilled. The different definition of a material change in the marketing documents, which requires the AIFMs to notify the NCA, was also raised.

AIFMs, depositaries and their representative bodies from France, Germany and the Netherlands pointed out some factors that had enhanced the effectiveness of AIFMD. The French NCA, the AMF (Autorité des Marchés Financiers), was complemented for having provided support and clear guidance to market participants. One interviewee found this unsurprising given that French management companies were already subject to some of the most stringent national rules and therefore it took them less effort to come into compliance with AIFMD.

In particular, a proportionate approach in relation to the risk management function, the remuneration policy in general, or the distinction between systemic leverage and operational leverage were highlighted as enhancing factors for improving effectiveness. Also positively highlighted were new product rules for AIFs marketed to retail investors with regard to improved liquidity management and redemption schemes, and the introduction of depositary monitoring tasks (especially cash flow and compliance) in addition to the pre-existing safe-keeping tasks.

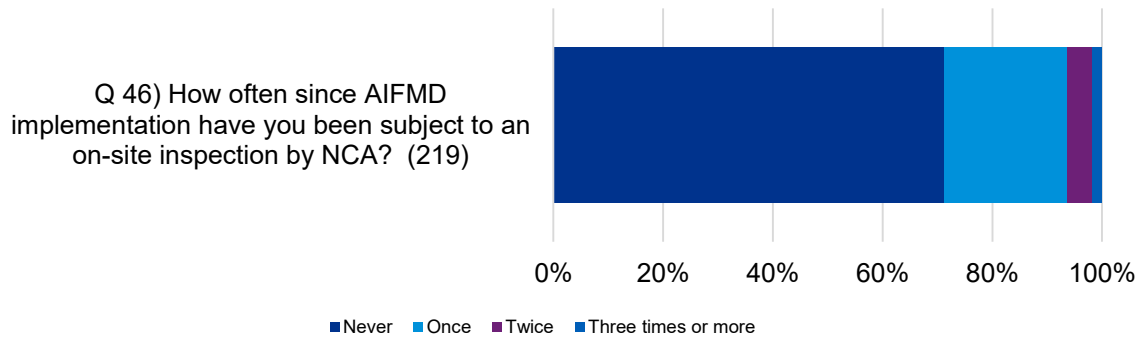
Comments on factors *impairing* the effectiveness of AIFMD were provided by a more diverse group, by both domicile and stakeholder type: about 20 interviewees representing AIFMs, depositaries, industry bodies and NCAs in about ten Member States. Many of them observed **distortions caused by national "gold-plating"**, which led to a lack of harmonisation. For example, different custody standards and interpretations were said to exist (e.g. segregation of assets, use of custody records and liability of the central securities depositary in the custody chain), which prevents depositary groups from operating a common model throughout the EU.

It was also commented that the lack of harmonised rules hinders the marketing of AIFs cross border because the definition of what constitutes an AIF varies between Member States. This is exacerbated by differences in interpretation of marketing and passporting requirements. Examples given were the lack of clarity around pre-marketing activities and **an ambiguous interpretation of "material change"**, which leads to fundraising activities being disrupted by a series of one-month delays before closings.

4.1.3. Supervision and sanctions

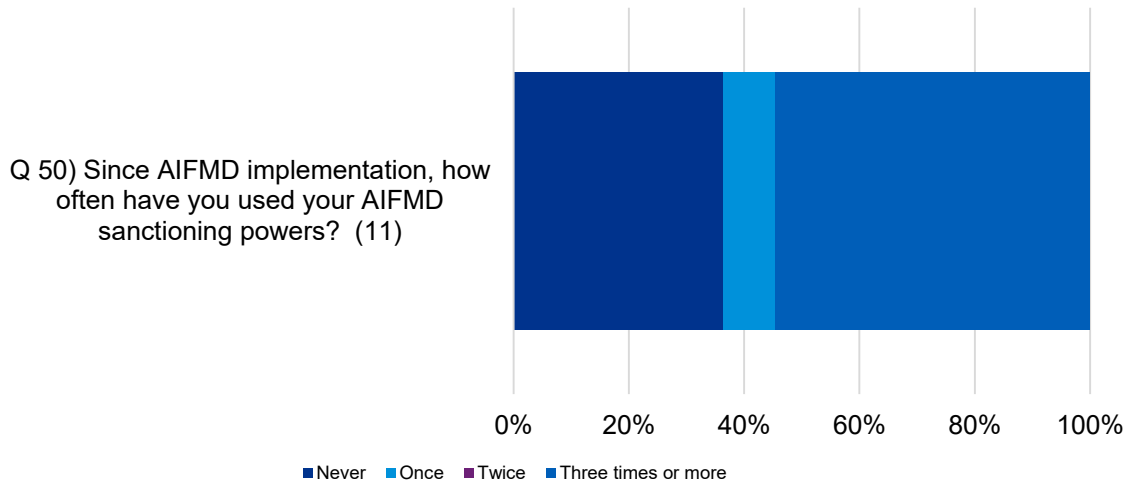
The frequency of on-site inspections by NCAs of AIFMs or AIF depositaries is depicted in Figure 22. The majority (71%) of survey participants had never been subject to an on-site inspection by the NCA and 22% had been subject only once to an on-site inspection. Only 5% had been subject to two on-site inspections and 2% to three or more. A detailed country-by-country analysis was not possible due to an insufficient number of respondents from some Member State. All NCA respondents reported that the frequency of on-site inspections of AIFMs or AIF depositaries depended on the size and activities of the firm.

Figure 22: On-site inspection by NCAs



Source: KPMG (2018). Note: This question above was posed only to stakeholders of type b, d or n (see Annex 2). The number of respondents was 219.

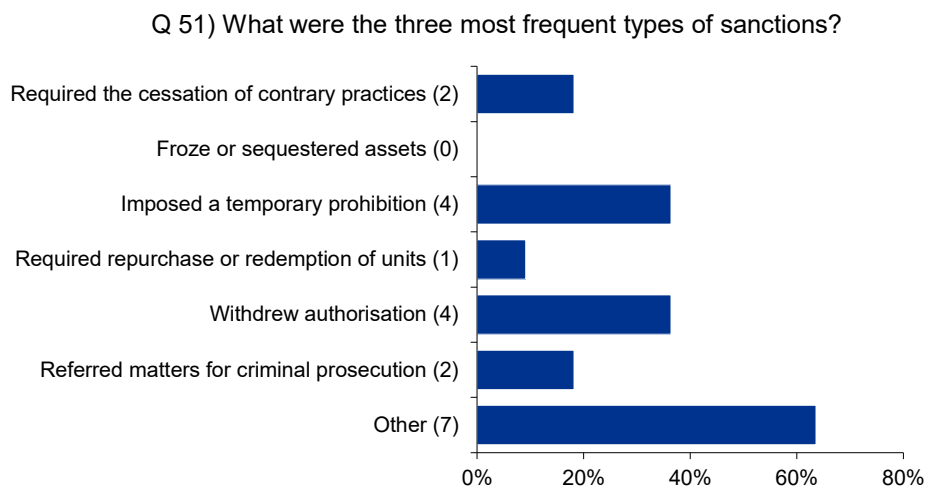
Figure 23: Sanctioning powers used by NCAs



Source: KPMG (2018). Note: This question was posed only to public authorities. The number of respondents was 11.

55% of the NCAs responsible for authorising AIFMs had used their AIFMD sanctioning powers three or more times, whereas 36% of them had not used a sanction power to date (see Figure 23). The most frequently used types of sanction (see Figure 24) were imposing a temporary prohibition (40%) and withdrawing authorisation (40%), followed by criminal prosecution (20%), cessation of contrary practices (20%) and redemption of units (9%).

Figure 24: Most frequent types of sanctions used by NCAs authorising AIFMs



Source: KPMG (2018). Note: This question was posed only to stakeholders of type b – h, j – l, or o (see Annex 2). The number of respondents was 20.

4.1.4. Scope and thresholds

This sub-section covers the scope, exemptions and definitions as per Articles 2-4 AIFMD.

38% of survey respondents were not aware of differences in the interpretation of the definition of an AIF or in the formation of investment vehicles that might adversely impact competitiveness within the industry or investor protection, but 28% were aware of such differences interpretation. The remaining respondents did not express an opinion.

Respondents did not tend to be specific, but the three most often reported differences related to:

- different definitions of what is an AIF;
- the criteria to define an AIF structure (e.g. number of investors);
- interpretation of the formation of investment vehicles and AIF structures (e.g. whether each sub-fund is an AIF).

Topics mentioned less frequently were the different marketing passport requirements, influence on private equity and venture capital (do co-investment vehicles qualify as AIFs?) and regulatory fees. Other things mentioned occasionally were risks related to AIFs, pre-marketing and national regulation of investors adversely impacting cross border distribution.

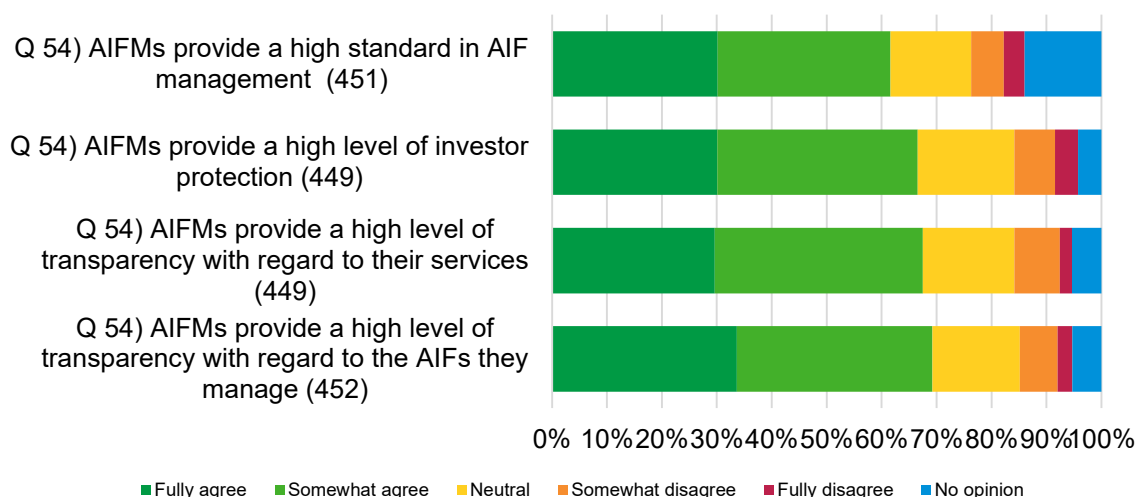
50% of survey respondents were not aware of market practices that enable AIFM-like firms not to be classified as AIFMs. However, 20% of respondents were aware of such practices. The remaining respondents expressed no opinion.

The majority of respondents largely affirmed the potential benefits of full-scope AIFMs, as seen by a high level of agreement to the four statements in Figure 25.

The majority of respondents agreed that full-scope AIFMs provide a high standard in AIF management (61%), and high levels of investor protection (67%), transparency with regard to services (68%) and transparency with regard to managed AIFs (70%).

As far as sub-threshold AIFMs are concerned, however, the results were quite different.

Figure 25: Assessment of potential benefits of full-scope AIFMs

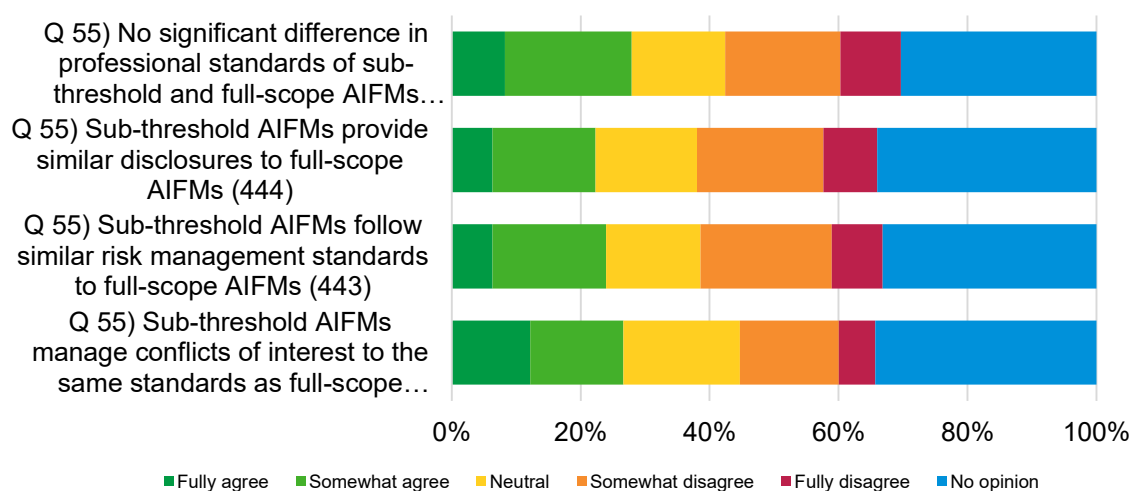


Source: KPMG (2018). Note: This question was posed to all survey respondents, except external valuers. The numbers of respondents varied from 449 to 452.

Figure 26 shows how respondents assessed the potential drawbacks of sub-threshold AIFMs being less regulated than full-scope AIFMs.

With regard to each of the four given statements in Question 55, on average one-third of respondents did not have any opinion. Among those that expressed an opinion, the level of answers ranging from full agreement to full disagreement was quite evenly distributed. Perhaps unsurprisingly, larger AIFMs were more likely to disagree with these statements than small AIFMs.

Figure 26: Potential drawbacks of sub-threshold AIFMs



Source: KPMG (2018). Note: This question was posed only to institutional investors and entities marketing, selling or selecting AIFs. The numbers of respondents varied from 443 to 448.

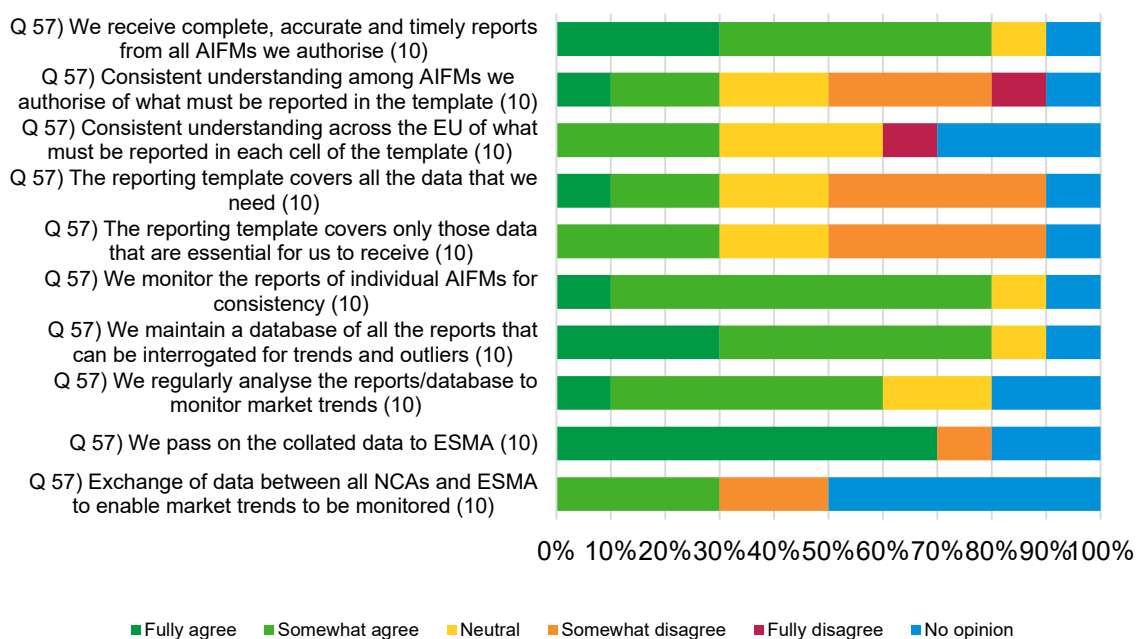
Importantly, 75% of institutional investors and entities marketing, selling or selecting AIFs confirmed that they were clear about whether AIFMs are full-scope or sub-threshold.

4.2. Enhanced transparency of macro-prudential risks

One of the primary objectives of AIFMD is the monitoring of macro-prudential risks⁴⁶ of AIFs by enhancing transparency (including use of leverage, monitoring of systemic risks, sharing of data at EU level) and ensuring better practices of risk and liquidity management. This sub-section summarises **survey participants'** assessment of whether and to what extent these requirements are met and covers reporting to NCAs and leverage.

4.2.1. Reporting to NCAs

Figure 27: Assessment of the reporting requirements by NCAs



Source: KPMG (2018). Note: This question was posed only to public authorities that authorise AIFMs. The number of respondents was 10.

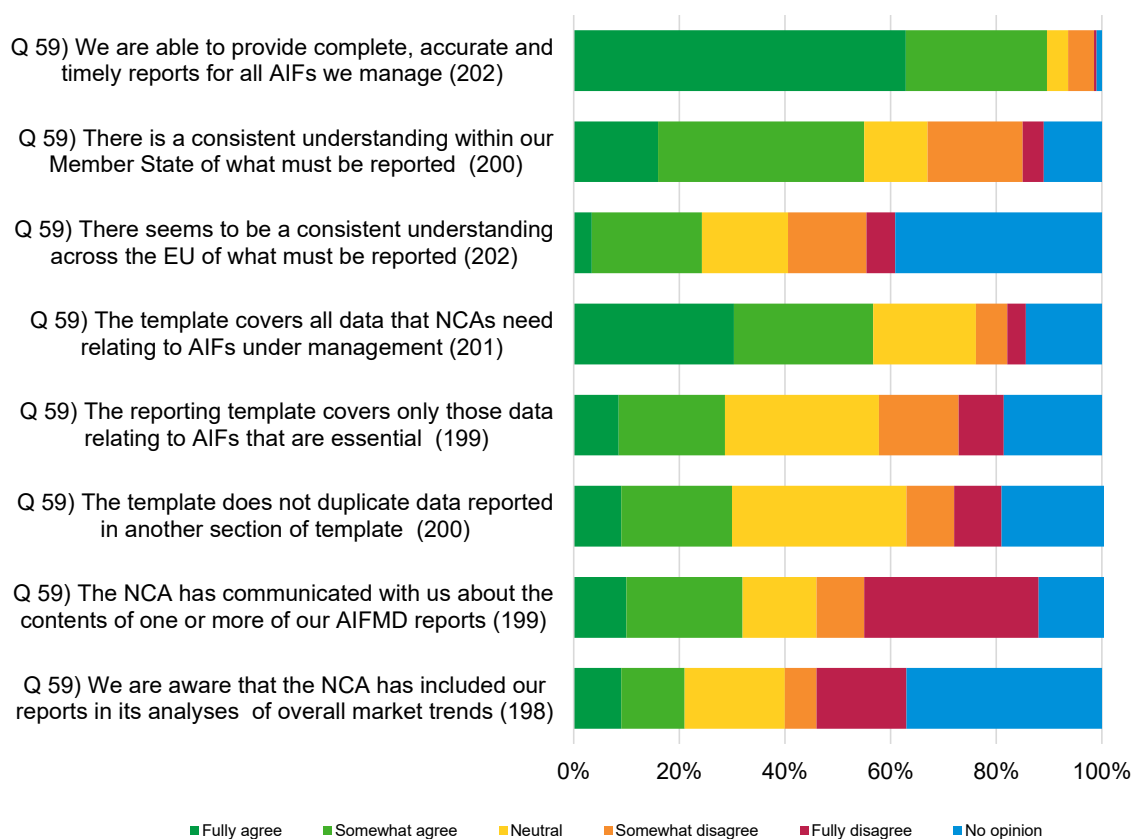
The majority (80%) of the NCAs authorising AIFMs agreed that they receive complete, accurate and timely reports from all AIFMs they authorise (see Figure 27). The remainder were either neutral or expressed no opinion (i.e. none of them disagreed). However, as far as consistent understanding among AIFMs and across the EU of what must be reported in each cell of the template is concerned, the level of agreement was far lower. Only a minority (30%) of the NCAs agreed, whereas a significant portion of

⁴⁶ cf. AIFMR Assessment: Commission Staff Working Document Accompanying the document "Commission Delegated Regulation" supplementing Directive 2011/61/EU of the European Parliament and of the Council with regards to exemptions, general operating conditions, depositaries, leverage, transparency and supervision, p.2 et seq.

the NCAs disagreed that there is a consistent understanding (10% with regard to consistent understanding among AIFMs and 40% with regard to consistent understanding across the EU). The remainder of 30% up to 60% were either neutral or expressed no opinion.

Similar responses were received to whether the reporting template covers all the data needed or are deemed essential by the NCAs. Here again, the level of agreement was at 30%, and the level of disagreement was at 40%. It is interesting to note that nearly 55% of respondents indicated that prior to AIFMD coming into force, they required AIFMs to report similar data. This might indicate that the problem of inconsistency and missing data is not driven solely by AIFMD but is a longer-standing issue between regulators and AIFMs.

Figure 28: Understanding of AIFMs about the reporting requirements to NCAs



Source: KPMG (2018). Note: This question was posed only to AIFMs. The number of respondents varied from 198 to 202.

In the semi-structured interviews, NCAs were explicitly asked what additional data they require from AIFMs. Most of the NCAs mentioned liquidity and leverage; for instance, data on appropriate liquidity stress tests on the basis of a common methodology, especially taking into account capital requirements, and more detailed data on the reported leverage figures. Data on loan origination, including a breakdown of country, the denominated currency and the type of lender, were also mentioned.

AIFMD allows for various types of leverage calculation, which makes it difficult to draw comparisons or to perform industry-level analyses. One NCA recommended the use of

only one type of leverage calculation and that it should be calculated consistently, in order to avoid misunderstanding and potentially misleading interpretations. Some NCAs asked for additional data in order to assess potential systemic risks, like the split of exposure per countries invested, for instance, or more detailed cost items **associated with a fund's underlying investments. Another NCA recommended that reporting of the legal entity identifier should be mandatory also for funds-of-funds and sub-funds.** Some criticised that the given options for investment strategies are not **sufficiently comprehensive, resulting in too many AIFs being described as "other".**

From a sub-sample of those NCAs maintaining a database, nearly 90% confirmed that they pass on the collected data to ESMA and 75% agreed that they regularly analyse the collected data to monitor market trends. More generally, in terms of monitoring reports and collecting data by maintaining a database, the level of agreement by the NCAs was again strong at 80%, with the remainder being neutral or expressing no opinion. However, the respondent NCAs saw potential efficiency gains by improving the exchange of data between all NCAs and ESMA, as only a minority of 30% agreed that this already happens, whereas 20% somewhat disagreed. But the remainder of 50% (i.e. exactly half of respondent NCAs) expressed no opinion.

We now turn to the responses of AIFMs to a similar set of questions and examine the extent to which they differ from the assessment of NCAs (see Figure 28).

90% of AIFMs said they were able to provide complete, accurate and timely reports for all AIFs they manage. However, only just over one half (55%) thought that there was consistent understanding within their Member State of what must be reported. There were no significant differences across respondent AIFM domiciles in the responses to this sub-question, other than in Italy. The Italian respondents selected **"somewhat disagree", but the sample was small so cannot be used to indicate a strong conclusion.**

20% of respondent AIFMs did not agree that there is a consistent understanding **across the EU of what must be reported. In particular, respondents who selected "fully disagree" were from Denmark, France, Ireland, Malta, the Netherlands, Sweden and the UK.**

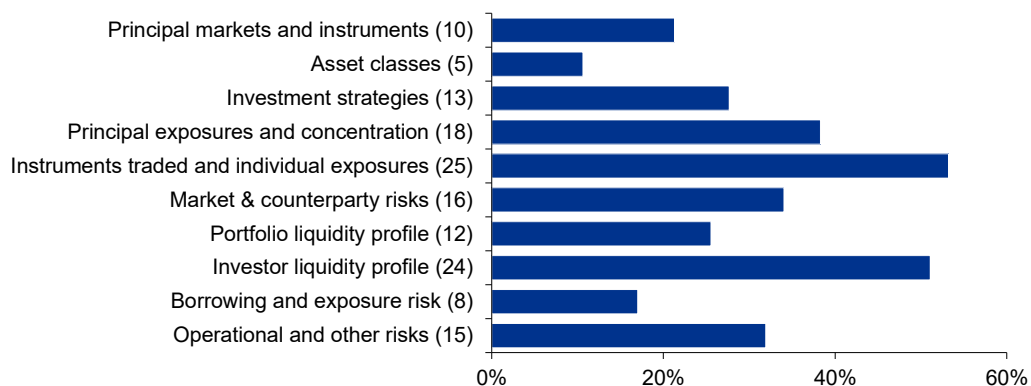
The majority of respondents agreed that the template covers all the data that NCAs need, but 29% responded neutrally on whether the reporting template covers only essential data and 9% fully disagreed. 33% of respondents were neutral to the statement that the reporting template does not duplicate data reported in other sections of the template, 9% fully disagreed, 21% agreed and 9% fully agreed. 33% of respondents fully disagreed that the NCA has communicated with them about the contents of one or more of their AIFMD reports. The majority of respondents expressed no opinion on whether they were aware that the NCA included their reports in its analyses of overall market trends.

For both the fifth and sixth statements, a further question asked respondent AIFMs about areas of the template that include data they think are not essential or are reported in another section of the template or elsewhere. The analysis of the responses is depicted in Figure 29.

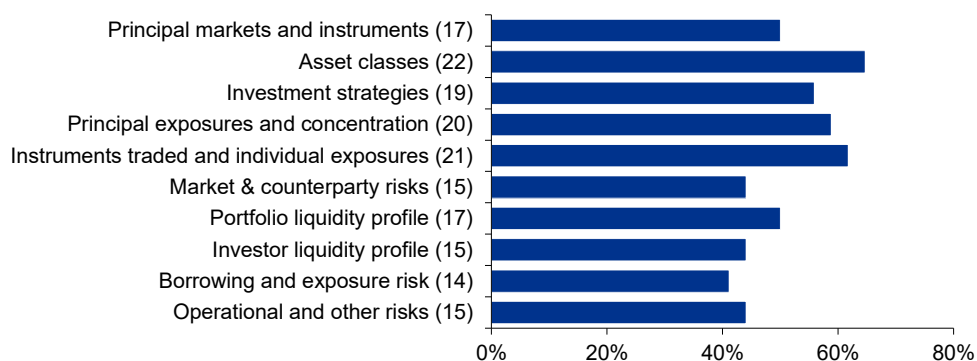
The areas of the template where AIFMs thought the data are not essential on a regular reporting basis were: instruments traded and individual exposures (53%), investor liquidity profile (51%), principal exposures and concentration (38%). The most mentioned area of the template that includes data reported elsewhere was asset classes (65%), followed by instruments traded and individual exposures. The least mentioned area was borrowing and exposure risk (41%).

Figure 29: Areas of the reporting template that include data AIFMs think are not essential or are reported in another section of the template or elsewhere

Q 59) Please indicate briefly which areas of the template include data that are not essential



Q 59) Please indicate which areas of the template include data that are reported elsewhere



Source: KPMG (2018). Note: This question was posed only to AIFMs. The number of respondents varied from 47 to 34.

NCA interviewees agreed that there are certain reporting overlaps relating to investments, exposures and markets, and ECB⁴⁷ investment fund statistics, although the NCAs noted that the data collected by the ECB are often used for different purposes. One NCA also noted certain overlaps with MiFID II disclosure requirements and commented that the co-legislators should define more clearly which data are relevant. In the opinion of the AIFM interviewees, reduction of regularly reported data is desirable in order to streamline reporting systems, which would reduce administrative efforts and, consequently, costs. AIFMs would welcome a rationalisation of reporting obligations and information on how the data are used. In particular, many

⁴⁷ European Central Bank

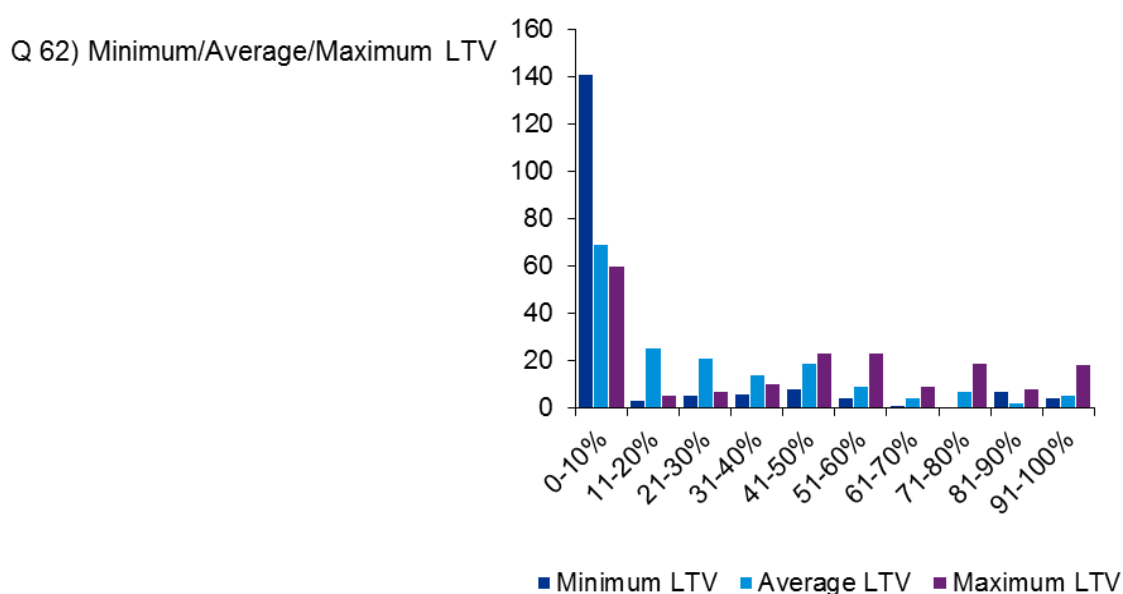
called for the reporting obligations under EMIR, SII,⁴⁸ CRR⁴⁹ and other EU requirements to be harmonised with AIFMD, and at international level.⁵⁰

4.2.2. Leverage

Loan-to-value (LTV) expresses debt capital in relation to total value (i.e. including debt capital). The leverage ratio expresses debt capital in relation only to equity capital. If, for example, the leverage ratio is one, then the LTV is 50%.

A high proportion (70%) of NCAs had not observed any trends regarding the levels of reported leverage since AIFMD implementation, but a significant ratio of 30% had done so. Figure 30 shows the minimum, “average” and maximum levels of LTVs of AIFs under management indicated by respondent AIFMs or overseen by respondent AIF depositaries.

Figure 30: Levels of leverage of AIFs indicated by AIFMs and AIF depositaries



Source: KPMG (2018). Note: This question was posed only to AIFMs and AIF depositaries. The number of respondents varied from 175 (Average LTV) to 182 (Maximum LTV).

Respondent AIFMs and depositaries indicated relatively low levels of LTV and there were no signs of excessive use of high LTV levels. The median of the maximum LTV was quite moderate at 42% and only double the median of the average LTV at 20%.

AIFMs and AIF depositaries were asked about their observed level of leverage among AIFs. As seen in Figure 31, the majority of respondents expressed no opinion on whether there have been changes to AIF leverage levels since AIFMD came into force. 42% of respondents thought the *level* of leverage in EU/EEA AIFs to be unchanged

⁴⁸ Solvency Directive, revised

⁴⁹ Capital Requirements Regulation

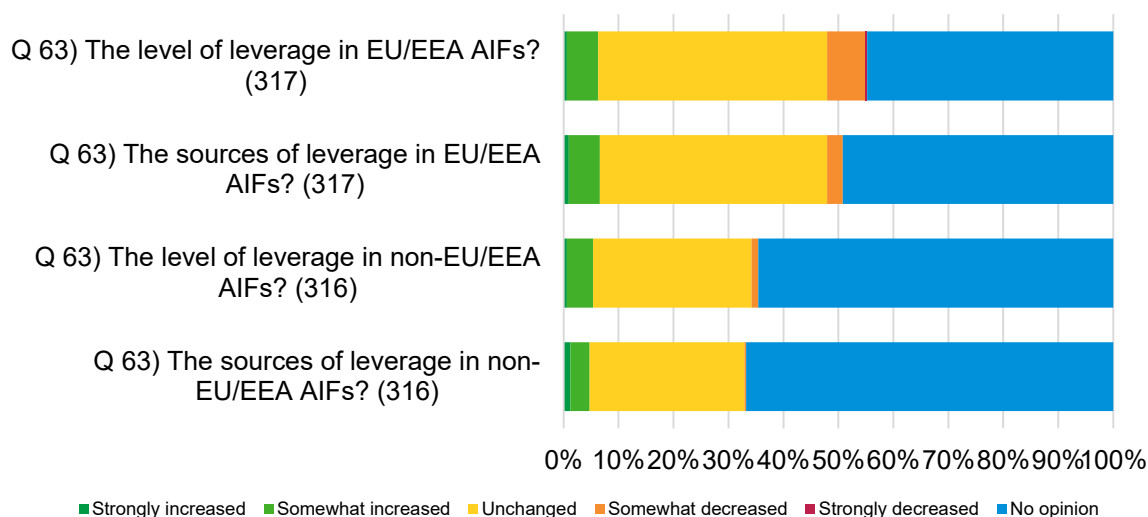
⁵⁰ cf. for further details European Security Market Authority - ESMA (2017). Questions and Answers: Application of the AIFMD, 40.

and 41% thought that the *sources* of leverage in EU/EEA AIFs was unchanged. Only 4% of respondents had observed an increase in the sources of leverage in non-EU/EEA AIFs.

In absolute terms, the survey results indicate that excessive leverage is rare in AIFs, with the vast majority (88%) of respondents indicating leverage ratios of below two (meaning LTVs of below 67%) within the AIFs they manage or oversee. A significantly high portion of 43% of respondents reported even lower leverage ratios of below 1.1 (i.e. LTV ratios below 52%).

Most respondent NCAs did not express any concerns about leverage levels they observed in AIFs in their jurisdictions. Given that the excessive use of leverage is widely seen by policy makers as an indicator of potential asset price bubbles and systemic crises, interviewees were asked about their views on the general contribution of AIFMs to the build-up of systemic risks or disorderly markets.

Figure 31: Changes since AIFMD implementation observed by market participants



Source: KPMG (2018). Note: This question was posed only to AIFMs and AIF depositaries. The number of respondents was 316.

Less than 10% thought that AIFMs generally contribute to these scenarios, albeit most of them thought that the effect was rather moderate in general. Only two NCA interviewees from smaller Member States shared the opinion that the contribution is rather significant. One argued that there have been prominent examples in the past where asset managers emerged as potential risk factors, citing a small number of high-profile cases in which excessive levels of leverage within a hedge fund had caused major problems. Furthermore, liquidity risks can potentially materialise from AIFs, such as seen during the crisis in open-ended real-estate funds, and can potentially increase systemic risks in certain markets. The second argued purely on the fact that AIFMs account for approximately two-thirds of the investment market in that country, i.e. the magnitude alone implies a major contribution to potential systemic risks, **in that NCA’s view**.

Industry interviewees called for more guidance on or changes to the calculation of leverage. Comments included that the requirements do not fit well with closed-ended funds or that the prescribed methods do not align with industry practice in some sectors. However, many of the interviewees that mentioned leverage also urged that

any changes be looked at in the round as part of the EU's consideration of IOSCO's guidance and not just for AIFs.

4.3. Limitation of micro-prudential risk and investor protection

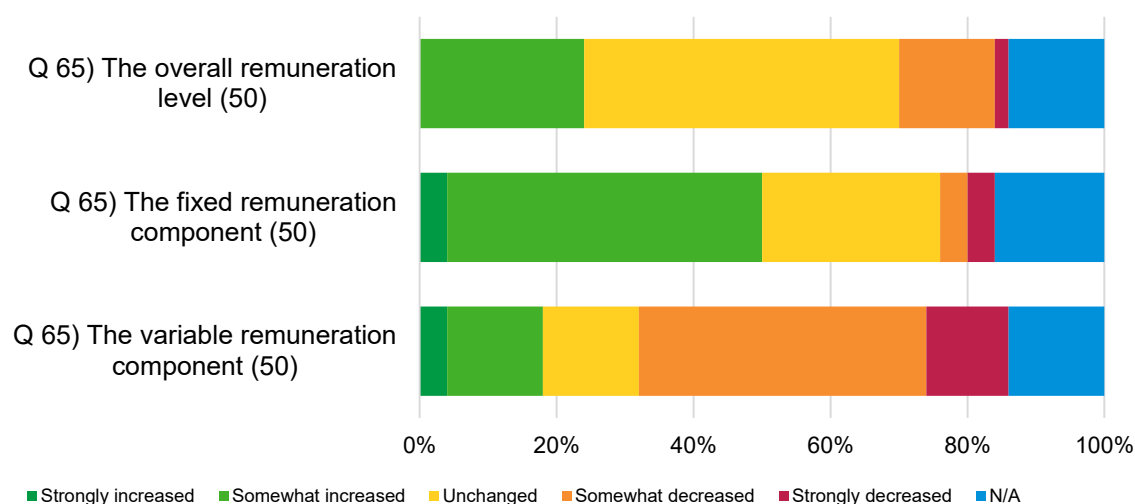
AIFMD aims to ensure monitoring and limitation of micro-prudential risks. To enable a common approach to investor protection, risk management controls are imposed on major AIF risks (market, liquidity, counterparty, operational). Appropriate disclosures to investors are required to enable effective due diligence by them of the AIF. AIFMs must ensure proper management of conflicts of interest, and have appropriate controls and processes in place for key areas, such as valuation. This sub-section summarises the assessment of survey respondents of whether and to what extent these requirements are met.

4.3.1. Remuneration

Nearly all (91%) of respondent NCAs indicated that they make use of the proportionality principle in applying the remuneration requirements.

46% of respondent AIFMs had observed no change in the overall remuneration level of risk-takers since the AIFMD came into force, with a further 37% having observed some increase or decrease. However, 50% of respondents had observed an increase in the fixed remuneration component and 54% indicated that the variable remuneration component had decreased (42% somewhat decreased, 12% strongly decreased) – see Figure 32.

Figure 32: Potential changes of remuneration of risk-takers because of AIFMD



Source: KPMG (2018). Note: This question was posed only to AIFMs. The number of respondents was 50.

It was noted by one interviewee that the consistency of application of the remuneration rules around the EU was not entirely due to differences in interpretation by the NCAs. Other factors were the interplay with the rules for UCITS and the fact that AIFMD covers a very wide range of types and structures of AIFMs and AIFs.

4.3.2. Conflict of Interests

20% of respondent AIFMs had undertaken significant adjustments to their procedures for managing conflicts of interest and another 74% had reviewed their procedures but not made significant adjustments. 6% of respondent AIFMs had not reviewed their procedures.

86% of AIFMs, institutional investors, distributors, depositaries, investment managers and industry bodies agreed with the statement that AIFMs are required to have appropriate conflicts of interest management.

4.3.3. Risk Management

AIFMs' responses to questions about their risk management processes were similar to the above results for conflicts of interest management procedures. The ratio of AIFMs that had reviewed their risk management processes after AIFMD came into force was at the same level of 94%, albeit a larger ratio (42%) of AIFMs had significantly adjusted some of their risk management processes. The AIFMs also strongly agreed (85%) that AIFMs are required to have appropriate risk management processes in place.

These results were supplemented by comments received through the semi-structured interviews. AIFM interviewees noted that the implementation of AIFMD had resulted in only minor changes in substance to the risk management for the majority of market participants, because their procedures essentially already met the AIFMD requirements because national rules already existed or they drew on their experience with UCITS. Changes were made primarily in the area of calculating leverage and describing internal governance processes.

However, the AIFMD requirements had greater impact in some sectors of the AIF universe. Implementation of a risk management system and corresponding documentation was newly-introduced in isolated cases for closed-end funds and money market funds. A more critical view was taken by the private equity sector because the risk focus is different from the focus of the AIFMD wording (which was drawn from UCITS requirements, i.e. for securities funds) and the separation of risk management and portfolio management is not considered appropriate. Market participants reported that as a result of AIFMD, AIFs and AIFMs are increasingly seeking to put in place letters of comfort, over and above standard contractual arrangements, and this puts pressure on depositaries to assume an extra level of responsibility for the service.

Most interviewees agreed that the risk management requirements, and specifically the need for functional and hierarchical separation, are challenging to implement where the underlying assets are not listed or are illiquid (such as private equity and real estate) because risk management and portfolio management processes are intrinsically linked. Also, small AIFMs do not usually have enough staff to meet the requirements. For hedge fund strategies, however, hierarchical and functional separation was considered sensible, although implementation of the detailed requirements proved to be more difficult than expected.

Therefore, there was no clear majority of supporters or opponents of the AIFMD risk management requirements, since the impact of the functional and hierarchical separation requirement impacts different firms differently. Interviewees noted that the interaction between AIFMD, MiFID II and PRIIP KID⁵¹ would not simplify the problem.

⁵¹ Key Information Document

a) *Liquidity Management*

Responses by AIFMs to questions about liquidity management processes closely correlated with the responses in the previous two sub-sections. The ratio of AIFMs that reviewed their liquidity risk management processes after AIFMD came into force was only slightly lower at 88% and also the ratio of AIFMs that had significantly adjusted some of their processes was relatively lower, at 20%.

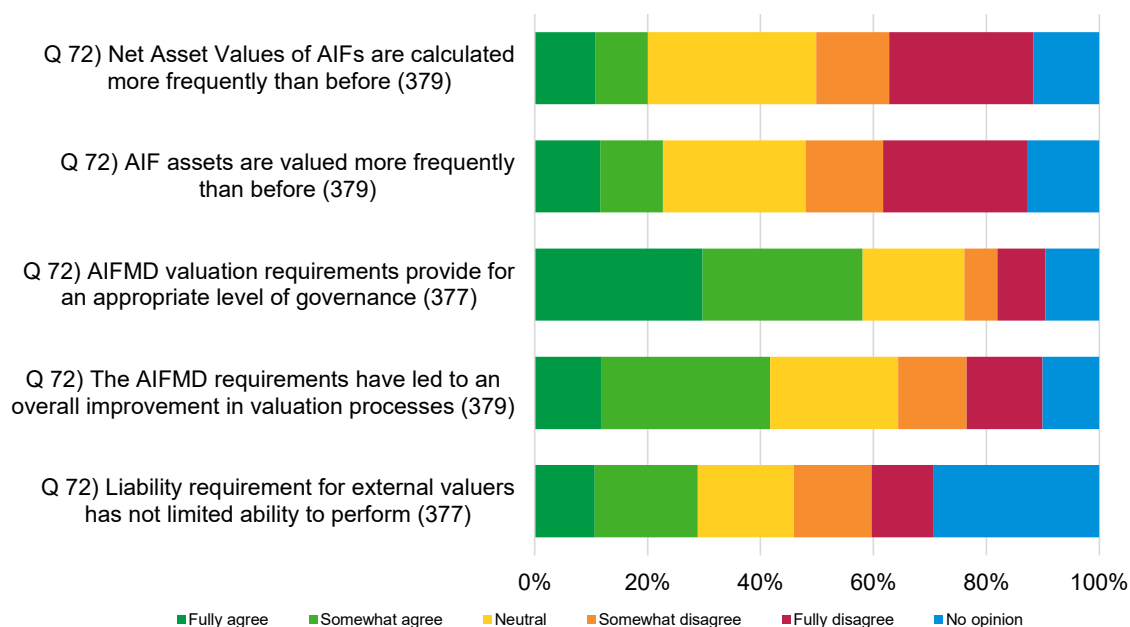
Agreement with the statement that AIFMs are required to have appropriate liquidity management processes was lower, at 75%. Finally, survey respondents had diverse views on whether the AIFMD requirements concerning liquidity risk management are operable or necessary in relation to closed-ended funds or for AIFs with only professional investors.

Again, by matching up this result with the comments received during the semi-structured interviews, the outcome was that about half the interviewees agreed that the AIFMD requirements are operable, but a number questioned whether they are necessary. For example, some thought that detailed liquidity management rules for funds available only to professional investors are unnecessary, because the investors are sufficiently qualified and experienced to be aware of any potential risk. A contrary argument, however, was that professional investors are more volatile clients, which necessitates the imposition of liquidity management rules on such funds.

b) *Valuation*

This sub-section covers questions that were posed to a wider group of institutional stakeholders.

Figure 33: Views of survey participants on the AIFMD valuation requirements



Source: KPMG (2018). Note: This question was posed to stakeholder types b – j, and m (see Annex 2). The number of respondents varied between 377 and 379.

There was consensus among survey respondents that NAV calculations and asset valuations are not carried out more frequently than prior to the AIFMD coming into force. However, it was also widely agreed that the AIFMD valuation requirements ensure an appropriate level of governance. The same holds true (albeit to a lesser extent, and if those being neutral and having no opinion are excluded) for the statement that the AIFMD requirements have led to an overall improvement in valuation. One interviewee noted that the requirement to value within 30 days could be challenging for more complex and illiquid investments.

In response to the statement that the liability requirements for external valuers has not limited their abilities or willingness to carry out this function, the number of those expressing an opinion were split: 30% agreed, 25% disagreed and 20% were neutral. The responses at country level exhibited significant differences:⁵² nearly 50% of German respondents and 35% of French respondents agreed; but over 40% of respondents from Luxembourg and 30% from the UK *disagreed*.

These questions were also discussed during the semi-structured interviews, with a rather similar outcome. Those interviewees who believe the requirements to be limiting, argued as follows:

- External valuation: valuation is now mostly carried out internally by the AIFMs themselves, in contrast to the time prior to AIFMD coming into force when external valuers were widely used in certain asset classes (e.g. real estate). The prevailing observation was that post-AIFMD, AIFMs are regarded as the valuer and occasionally buy support service from external service providers, if and where needed. This was said to run counter to the intention of AIFMD to introduce greater independency in the valuation process.
- Professional indemnity insurance required: the insurance risk premium charged for the unlimited liability, if the insurance policy is available at all, results in a higher cost base, which potentially forces some valuers out of the market. This especially holds true for smaller service providers.
- Complexity of assets: unlimited liability decreases the willingness of external valuers to offer and carry out valuation services for more complex assets. For example, one German respondent commented that the number of available specialists for alternative investments like solar has significantly reduced.
- Listed assets: one interviewee had major difficulties in finding an external valuer for listed assets that charges a reasonable fee.
- Binary focus of the Directive, *either* using an external valuer *or* carrying out the function entirely in-house: a combined operating model could potentially increase the supply of external valuers prepared to carry out selected tasks (e.g. periodic provision of typical valuation estimates).
- Interpretation of negligence: some interviewees with knowledge of the real estate sector noted that there is an issue of differing national interpretations of the term negligence. In some Member States, the courts distinguish between **gross negligence and "simple" negligence. If the former is proven, the erring party would be required to make full redress and might also be fined by the NCA. Incidents of the latter would usually be dealt with via corrections to the valuations. The industry and legal advisers in some Member States interpret the reference to "negligence" in AIFMD as applying only to incidents of gross negligence, whereas others regard it as covering all types of negligence. In the**

⁵² *Kruskal-Wallis test: p<0.05*

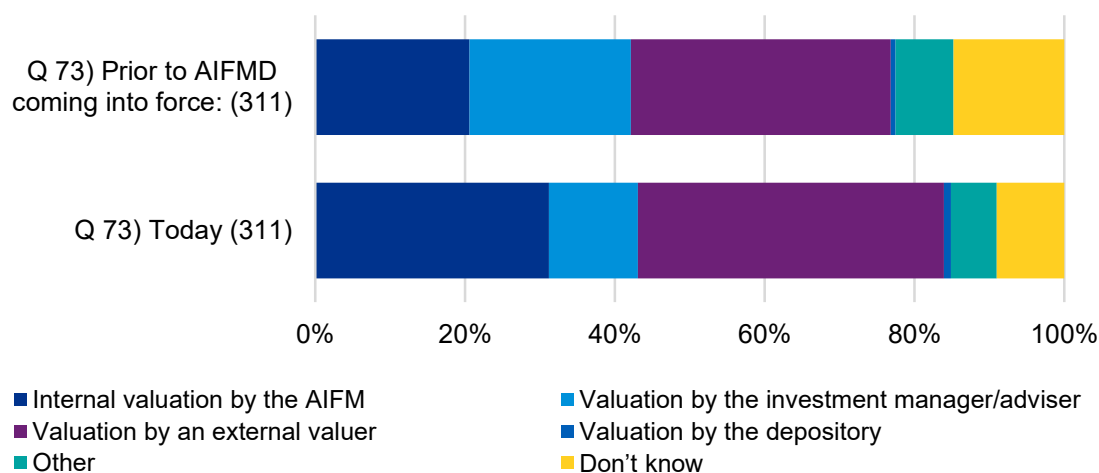
latter Member States, this results in external valuers not wishing to perform that role. Instead, they offer only input to an internal valuation process.

- Liability regime in general: one interviewee commented that it would be useful to consider whether the liability regime is the proportionate tool to address concerns about the external valuer’s negligence or intentional failure to perform its tasks.

In contrast, arguments that the requirements are not limiting were expressed as follows:

- Liability risk can be managed by professional and experienced valuation policies and procedures.
- Lack of external valuers only holds true with regard to some illiquid asset classes (i.e. airplanes, certain power plants). In such cases, the party that is best placed to perform the valuation may be the fund manager itself, as an Irish interviewee observed. Another interviewee added that the core information lies within the private equity firms and therefore the valuation function can be more efficiently exercised internally.
- No scarcity of external valuers was observed for real estate: these comments were expressed by German, French and Luxembourg respondents in particular.
- Lower demand for external valuers: many AIFMs made use of internal valuation and have adapted and worked out solutions in accordance with the provisions of AIFMD, which in turn lowers the demand for external valuers.
- Final sign-off on valuation is performed by the AIFM.

Figure 34: Leading market practice of valuation of non-listed assets



Source: KPMG (2018). Note: This question was posed only to stakeholder types b – e, h and j (see Annex2). The number of respondents was 311.

Prior to the implementation of AIFMD, valuation by an external valuer was the leading market practice (35%) for unlisted assets, followed by valuation carried out by investment managers or investment advisers (22%) and internal valuation by the AIFM (21%). Valuation by the depository was mentioned by a very small number (1%) of respondents. In particular, AIFMs managing real estate funds also reported that valuation by an external valuer was the leading market practice, but the ratio was

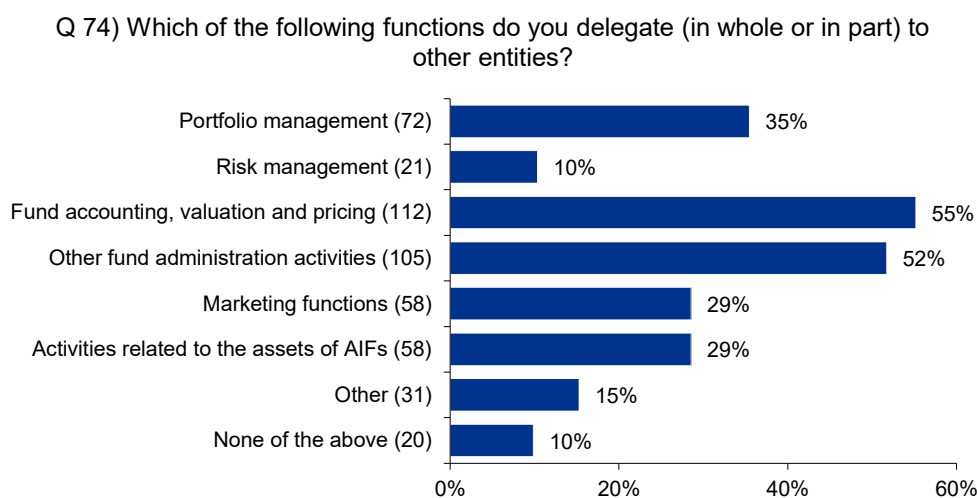
significantly higher at 51%. For AIFMs managing private equity funds, valuation by an external valuer was the market practice for only 18%, whereas valuation by an investment manager or investment advisor was the leading market practice with a ratio of 40%.

The valuation by an external valuer as the leading market practice has now increased from 35% to 41%. Internal valuation has increased even more strongly by 10 percentage points to 31%. For AIFMs managing real estate funds, valuation by an external valuer as the leading market practice has also increased, but only by two percentage points, up to 53%. For AIFMs managing private equity funds, valuation by an external valuer has increased to 23%, i.e. an increase of 5 percentage points, whereas valuation by an investment manager or investment advisor has fallen from 40% to 16%, and internal valuation has become the new leading market practice.

c) *Delegation*

As depicted in Figure 35, 55% of respondent AIFMs delegated fund accounting, valuation and pricing functions to other entities. A slightly lower ratio of 52% also delegated other fund administration activities, followed by portfolio management activities (35%), marketing functions (29%) and risk management (10%).

Figure 35: Delegation of functions by AIFMs to other entities



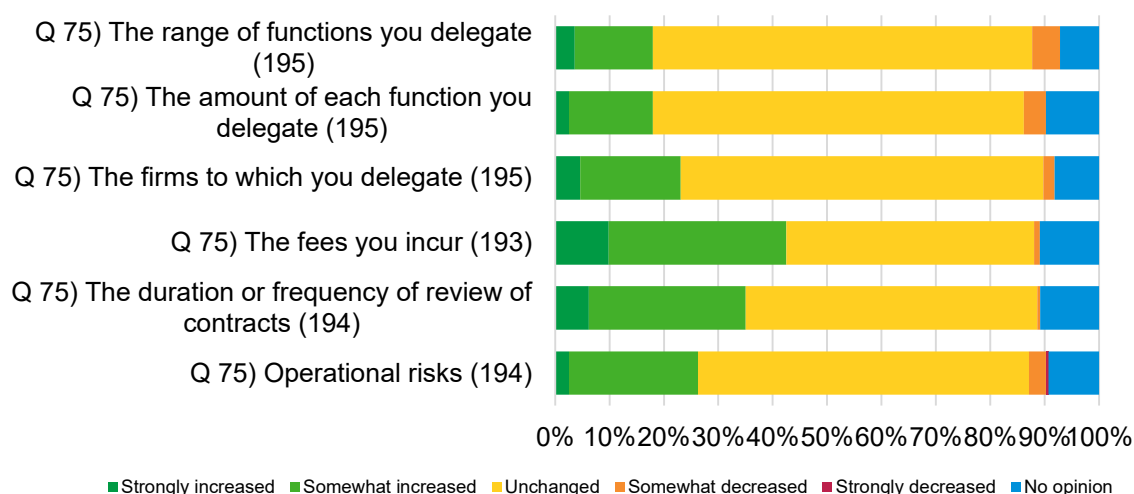
Source: KPMG (2018). Note: This question was posed only to AIFMs. The number of respondents was 203.

The extent to which delegation activities have been impacted by AIFMD is depicted in Figure 36. Smaller AIFMs were more likely than larger AIFMs to record that they delegated portfolio management.⁵³

Delegation activities were reported as having largely remained unchanged. Throughout all the sub-questions, this response was dominant, with a ratio ranging from 46% up to 70% (respondents from France and Luxembourg were slightly more likely to indicate that delegation had somewhat decreased). Nevertheless, it should be noted that a significant ratio of respondents reported that incurred fees (43%) and the duration or frequency of review of contracts (35%) has increased.

⁵³ The correlation is significant ($p < 0.05$): the amount of each function delegated ($r = -.16$)

Figure 36: Impact of AIFMD on the delegation activities of AIFMs



Source: KPMG (2018). Note: This question was posed only to AIFMs. The number of respondents varied between 193 and 195.

Respondents and interviewees noted that differences in national approaches had been amplified by recent debates about the “substance” requirements in both AIFMD and UCITSD, which had been prompted by the UK’s decision to leave the EU. Given the ongoing discussions by the co-legislators on the EC’s proposals to extend the powers of ESMA in this regard, survey respondents and interviewees tended to focus their comments on this debate rather than the AIFMD rules themselves.

d) *Depositary*

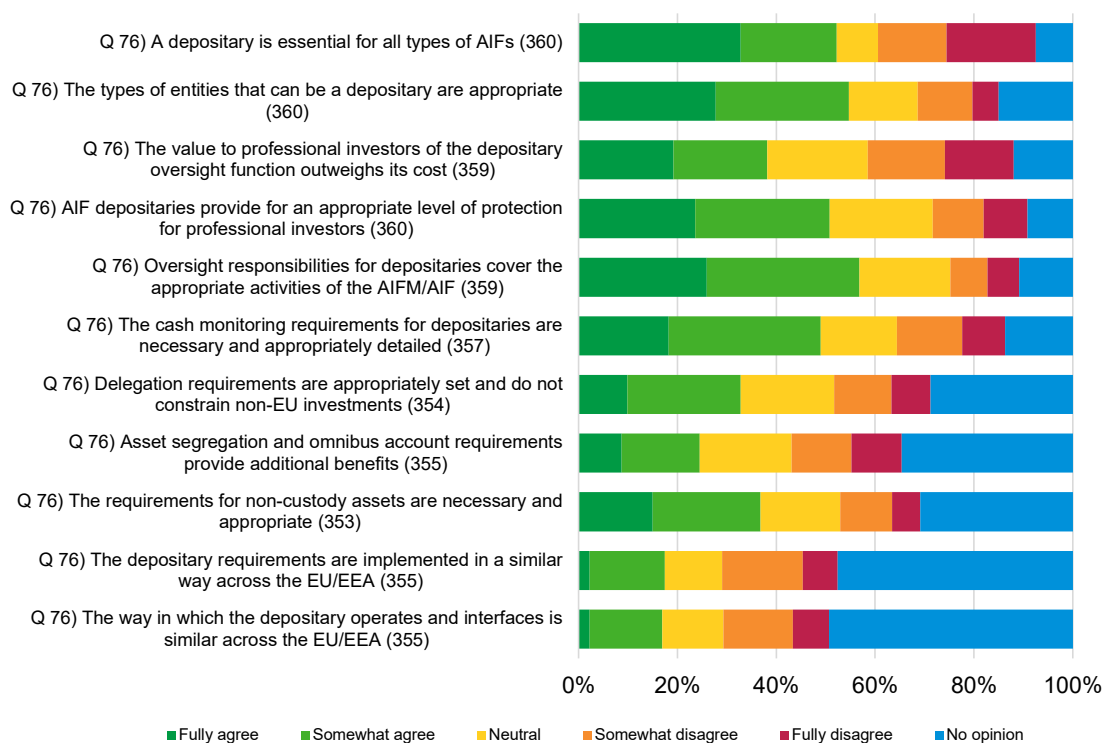
The majority of survey respondents agreed that depositaries are essential for all types of AIFs and that they provide for an appropriate level of protection for professional investors. Furthermore, there was strong consensus that the oversight responsibilities of depositaries cover the appropriate activities of the AIFM/AIF. For instance, the cash monitoring requirements for depositaries were thought, by most, to be necessary and appropriately detailed. In terms of the depositary requirements and the way in which the depositary operates and interfaces with the AIFM/AIF across the EU/EEA, however, responses were ambiguous and somewhat twofold, with a relatively high proportion of respondents expressing no opinion and the level of agreement balanced by the level of disagreement (see Figure 37).

Figure 38 illustrates the results regarding whether the domicile of the AIF is different to the domicile of the depositary of the AIF, which is allowed by the transitional provision in Article 61(5) AIFMD.

It can be seen that AIFMD does not appear to have significantly influenced further AIFs in their choice of depositary domicile. The proportion increased only slightly, by two percentage points, from 10% prior to implementation of AIFMD up to 12% afterwards. However, 35% of survey respondents nevertheless believed that the transitional provision, allowing the depositary to be in a different domicile to the AIF, should be extended. Looking at the responses by AIFM and depositary domicile, 50% of respondents in the Netherlands and the UK believed it essential that the transitional provision be extended. Also, during the semi-structured interviews, entities in Malta expressed strong support for continuation of this provision, which is especially

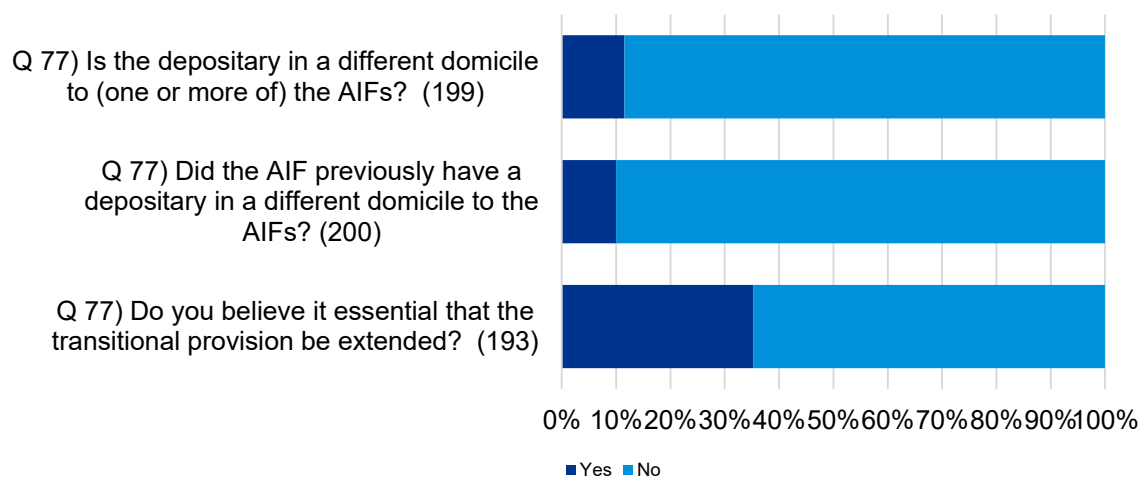
beneficial for smaller Member States. A small number of interviewees from a range of Member States called for the introduction of a depositary passport.

Figure 37: The regulatory function of AIF depositories



Source: KPMG (2018). Note: This question was posed only to stakeholder types b – d, f – j, m (see Annex 2). The number of respondents varied between 353 and 360.

Figure 38: Transitional provision allowing the domicile of the AIF to be different to that of the depositary



Source: KPMG (2018). Note: This question was posed only to AIFMs and AIF depositaries. The number of respondents varied between 193 and 200.

Some interviewees mentioned the asset segregation rules. In particular, it was noted that the requirement for multiple omnibus accounts to be held along the custody chain added costs but little additional benefit. The key investor protection safeguard is the requirement for each level of custodian to hold its own assets and the assets of each of its clients in separate accounts, it was said. Where that client is a **depository or another custodian, one account should hold any of that client's own assets** and another should hold all assets in the safekeeping of that client (on behalf of its own customers, which may include AIFs, UCITS or other types of customer). It was noted that IOSCO's guidelines adopt this approach.

Also mentioned were:

- Difficulties in operating the AIFMD requirements in jurisdictions with limited sub-custodians;
- Ongoing issues with US prime brokers, which operate under different rules and cannot provide the reporting to the depository that AIFMD requires;
- Overlapping duties with other financial institutions (i.e. banks);
- Interpretation of the provisions relating to delegation of custody (especially to a prime broker) varies or is unclear;
- In some Member States it is difficult to access a third party fund administrator that is independent from the depository, raising questions about conflicts of interest;
- The requirements to verify ownership of a venture capital investment do not recognise how difficult this can be in practice.

e) *Disclosures to the public and investors*

All survey participants were asked about the impact of AIFMD on the information provided to investors *prior* to undertaking an investment in AIFs (see Figure 39). The main topic mentioned by respondents was duplication of information (in particular for closed-ended funds, which are also subject to the Prospectus Directive), as the majority of the information already existed prior to AIFMD coming into force. For instance, the information was already included in the offering document, the annual report and, for real estate funds, in the European Association for Investors in Non-Listed Real Estate (INREV) due diligence questionnaire. Furthermore, there are some overlaps with UCITS rules for retail investors, it was said.

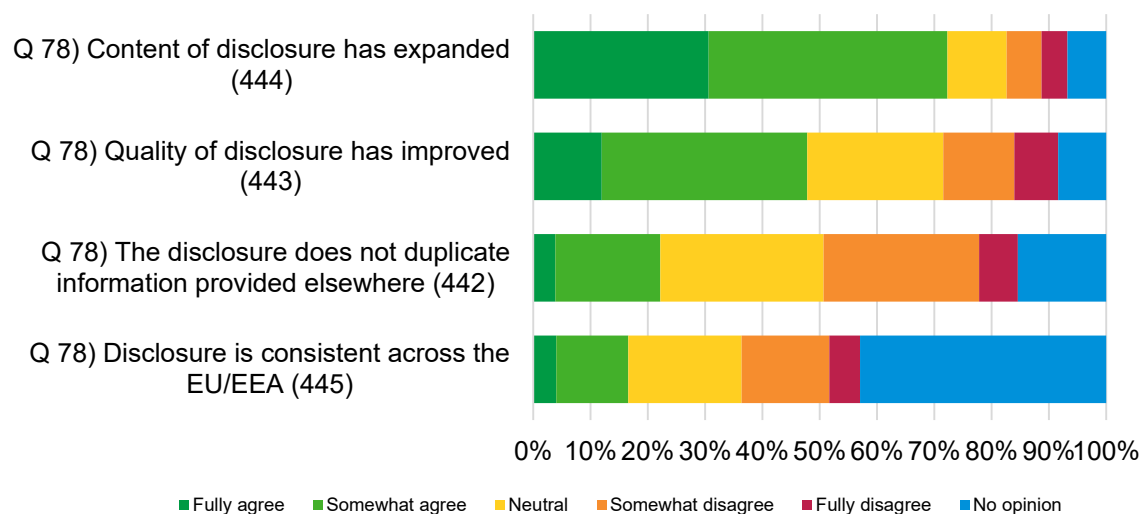
Other topics mentioned were the expansion of quantity and quality of disclosures and the value proposition to investors, in particular to professional investors. Issues commonly mentioned were:

- Insufficient standardisation in fee disclosures;
- Lack of clarity about the true costs of a private equity investment;
- Calculation of fund performance is not sufficiently aligned with MiFID II disclosure requirements.

Other issues mentioned were:

- Inconsistency of disclosures, e.g. different document formatting between Member States, legal forms, and inconsistencies between the PRIIP KID, MiFID II and AIFMD;
- Climate risk;
- National supervisory approaches and professional investors aiming at the highest level of disclosure.

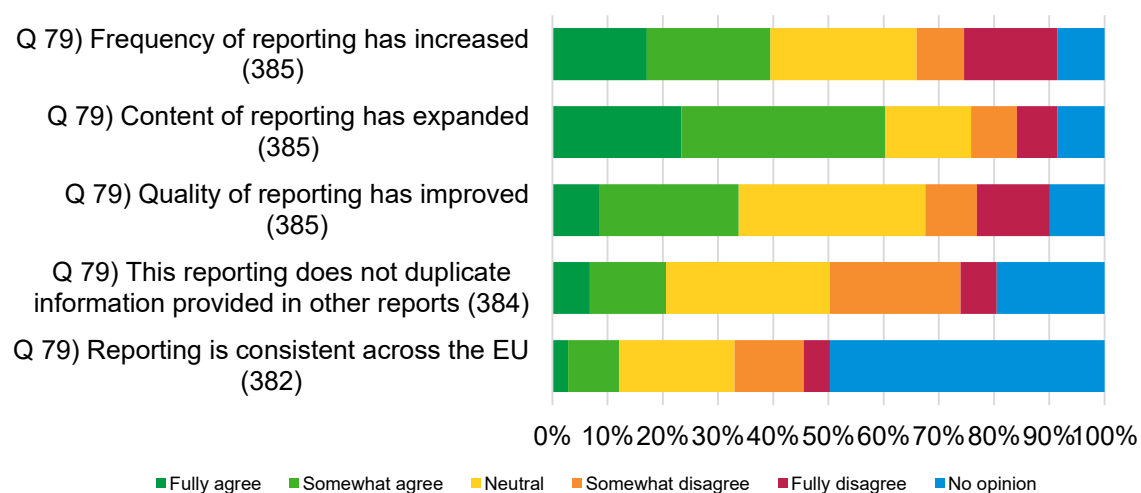
Figure 39: Impact of AIFMD on the information provided to investors before entering into an investment in AIFs



Source: KPMG (2018). Note: This question was posed to all survey participants, including individuals. The number of respondents varied between 442 and 445.

As far as the impact of AIFMD on *periodic* disclosures to investors is concerned, the majority of respondents agreed that the *content* of reporting has expanded (see Figure 40). Nearly half the respondents also agreed that the *frequency* of reporting has increased. Contrary to this, however, the statement that the *quality* of reporting has improved was not strongly supported. The same holds true for *consistency* of reporting, in terms of either duplication of information or use across the EU. The level of agreement is quite weak, along with a high proportion of respondents that did not express an opinion.

Figure 40: Impact of AIFMD on periodic disclosures to investors



Source: KPMG (2018). Note: This question was posed to all participants, including individuals who are invested in AIFs. The number of respondents varied between 382 and 385.

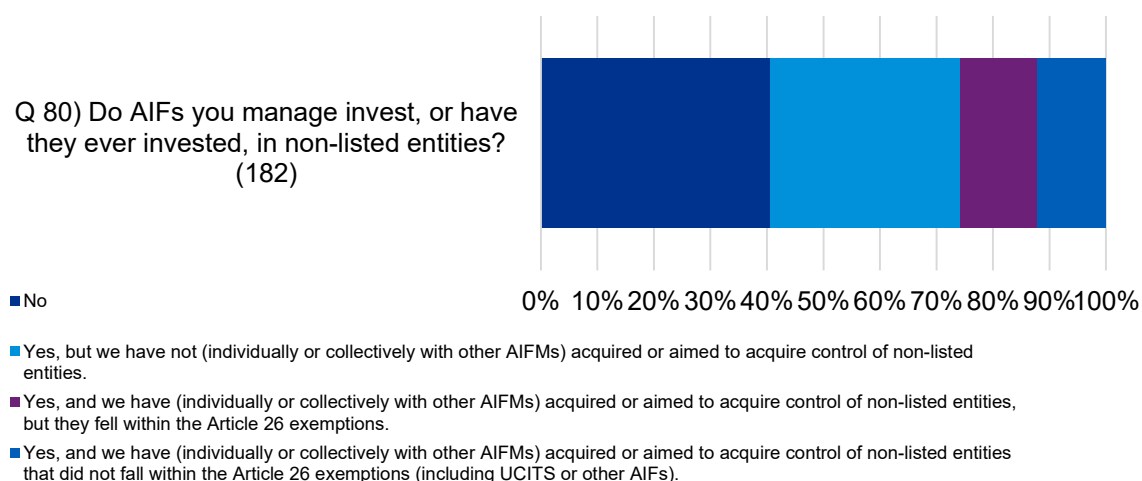
4.4. Investing in non-listed companies by private equity and venture capital funds

To ensure greater accountability of AIFMs/AIFs holding controlling stakes in non-listed companies and enterprises, AIFMD aims to ensure increased transparency when acquiring a controlling stake in and managing such companies and enterprises. This sub-section summarises the assessment of survey respondents on whether and to what extent these requirements are met.

Figure 41 shows to what extent respondent AIFMs had ever invested in non-listed entities on behalf of their managed AIFs.

41% of respondent AIFMs did not invest or had never invested in non-listed entities on behalf of their managed AIFs. Contrary to this, 34% of the AIFMs did so, but had not (individually or collectively with other AIFMs) acquired or aimed to acquire control of non-listed entities. 14% of respondent AIFMs had acquired or aimed to acquire control of non-listed entities, but fell within the exemptions of Article 26 AIFMD. Only 12% invested or had invested in non-listed entities on behalf of their managed AIFs and had also acquired or aimed to acquire control of non-listed entities, and did not fall within the Article 26 exemptions (including UCITS or other AIFs).

Figure 41: Actual and past investments by AIFs in non-listed entities



Source: KPMG (2018). Note: This question was posed only to AIFMs. The number of respondents was 182.

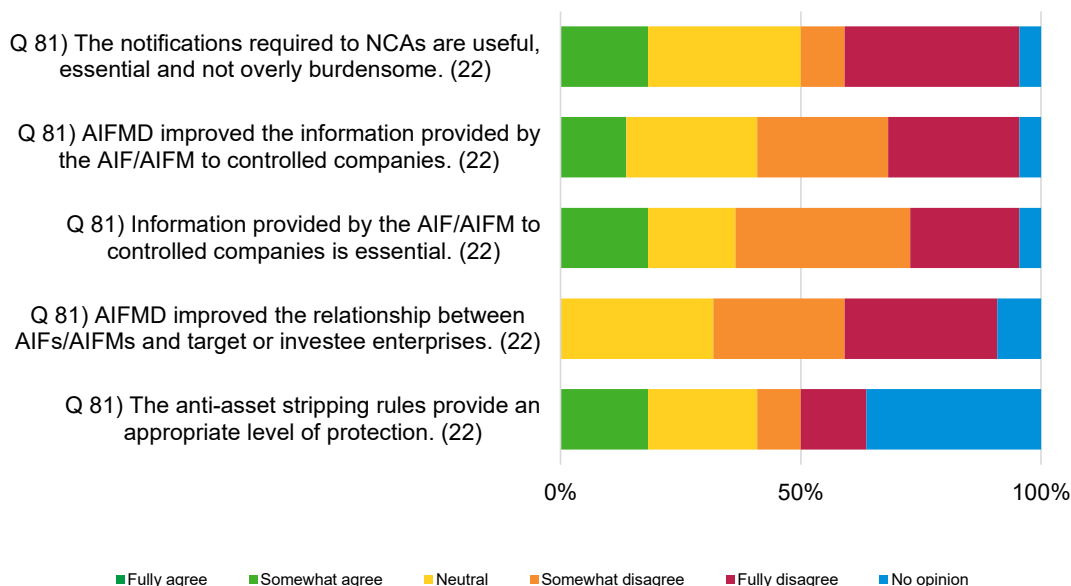
The view of AIFMs on the requirements of AIFMD regarding investments in non-listed entities is illustrated in Figure 42.

The statement that notifications required to NCAs are useful, essential and not overly burdensome was disagreed with by most respondents AIFMs. The level of **disagreement regarding AIFMD's improvement of information provided by the AIF/AIFM to controlled companies** was also strong, as was disagreement that AIFMD has had a positive impact on the relationship between AIFs/AIFMs and target or investee enterprises, with a majority of AIFMs rejecting this statement.

About 35% of respondent AIFMs expressed no opinion on whether the anti-asset stripping rules provide an appropriate level of protection, and the remaining 65% were equally distributed between agreement, disagreement or neutral.

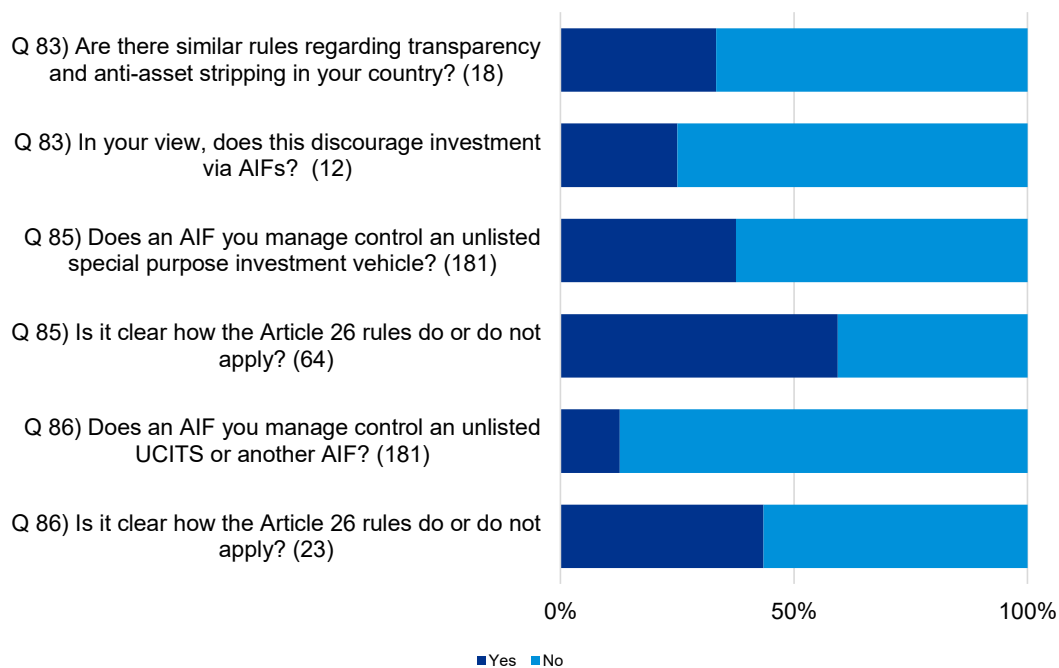
One interviewee said that it would be helpful to have guidance (perhaps a standardised template) for the disclosures that have to be made to the staff of investee enterprises.

Figure 42: AIFMD requirements on investments in non-listed entities



Source: KPMG (2018). Note: This question was posed only to AIFMs. The number of stakeholders who answered this question was 22.

Figure 43: Views of AIFMs investing in non-listed entities on the transparency provisions



Source: KPMG (2018). Note: This question was posed only to AIFMs. The number of respondents varied between 12 and 181.

An analysis of the same group of AIFMs and their observation on similar rules regarding transparency and anti-asset stripping for non-AIF investors in their respective countries is illustrated in Figure 43.

Nearly 70% of respondent AIFMs reported that there are not similar rules for non-AIFMs in their country regarding transparency and anti-asset stripping. However, for the majority this does not discourage investments via AIFs. Only less than half of respondent AIFMs managed an AIF that controls either an unlisted special purpose investment vehicle (38%) or an unlisted UCITS or another AIF (12%). For the former, the impact of the Article 26 rules was clear to the majority of them (60%), whereas for the latter the rules were largely unclear (58%).

It was observed by one interviewee that AIFMD's additional requirements for investment in non-listed entities create unnecessary burdens and impediments for the sector, in contrast to the aims of CMU and the various attempts to assist small enterprises in securing capital investment.

4.5. Single Market/European passport

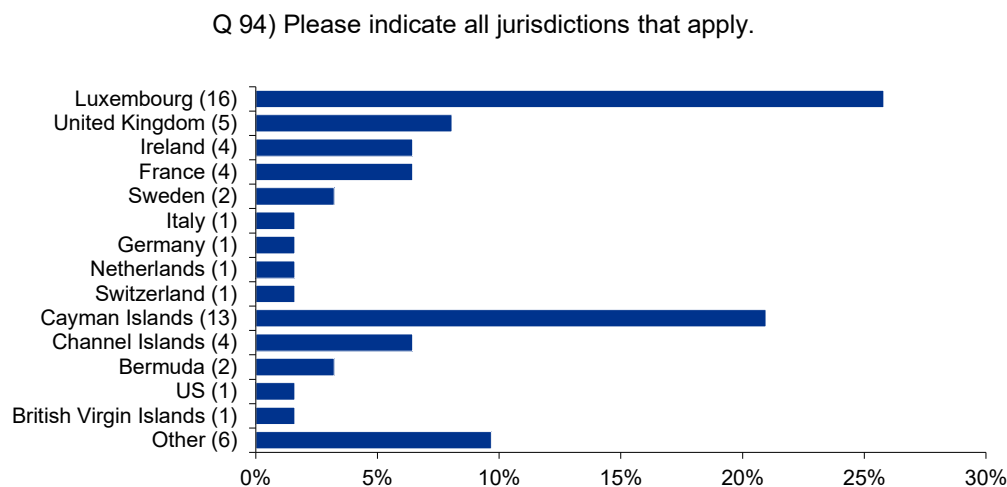
In order to develop the Single Market, AIFMD aims to remove barriers to the efficient cross-border distribution of AIFs to professional investors, without compromising the effectiveness of regulation and supervision. This sub-section summarises the assessment of survey respondents (including some from third countries) whether and to what extent these requirements are met.

The survey considered cross-border activities of the AIFMs regarding the management and marketing of EU/EEA and non-EU/EEA AIFs within the EU and abroad:

- As far as the marketing of EU/EEA AIFs is concerned, about 65% of respondent AIFMs marketed their AIFs to countries other than their domicile, including to non-EU/EEA countries for more than half of these AIFMs. Only about 30% of the AIFMs marketed their AIFs only within their own domicile.
- Looking at marketing activities to specific investor types, about 40% of the respondent AIFMs marketed their EU/EEA AIFs to EU retail or semi-professional investors. For 38% of these AIFMs, this included cross-border marketing to EU retail or semi-professional investors domiciled in other EU/EEA countries, whereas the majority of 62% of these AIFMs concentrated their marketing activities towards EU retail or semi-professional investors only within the country of their domicile.
- As far as the marketing of non-EU/EEA AIFs is concerned, 52% of the AIFMs did not manage non-EU/EEA AIFs. Of those that did, about 43% marketed non-EU/EEA AIFs into the EU.
- A significant ratio of 33% of the AIFMs managed AIFs domiciled in jurisdictions other than their own. Looking at country level responses, there are significant differences among the EU Member States. For example, the ratios for France and the UK were slightly more than 60% and about 55%, respectively. In stark contrast, the ratio for Germany was only 6%.

An interesting point in Figure 44 is that the most common domiciles of AIFs that are managed by AIFMs domiciled in a different jurisdiction to the AIF are Luxembourg (26%) and the Cayman Islands (21%).

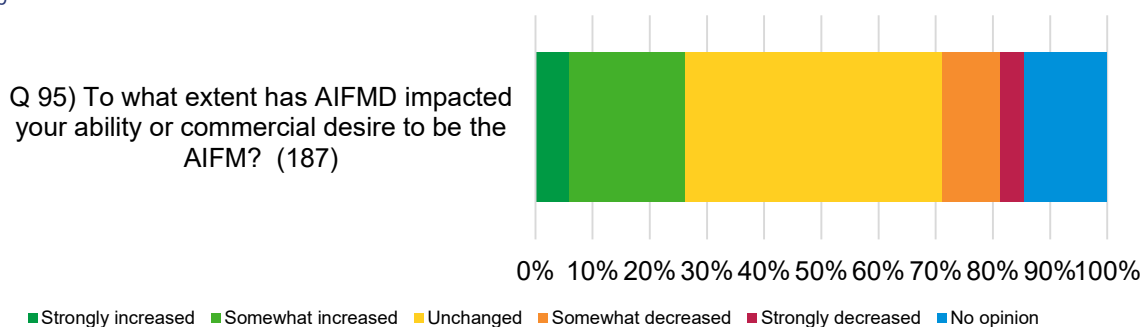
Figure 44: Domiciles of AIFs with an AIFM in a different domicile



Source: KPMG (2018). Note: This question was posed only to AIFMs. The number of respondents was 62.

Slightly more than one-quarter of respondent AIFMs indicated that their ability or commercial desire to be the AIFM for AIFs in jurisdictions other than their own has increased (see Figure 45). 45%, however, responded that their desire remained unchanged, i.e. had not been impacted by AIFMD. Smaller AIFMs were more likely to record a decrease in desire.⁵⁴

Figure 45: Ability or commercial desire to be the AIFM for AIFs in other jurisdictions



Source: KPMG (2018). Note: This question was posed only to AIFMs. The number of respondents was 187.

A small majority of AIFMs, public authorities and institutional investors agreed that access to national markets had increased as a consequence of AIFMD and about 34% agreed that the time to market has increased (see Figure 46). More than half of the respondents noted an increased complexity of registration or authorisation procedures. 36% expressed no opinion on the statement relating to the reliability of the process with the NCA. The remainder reported a slight increase.

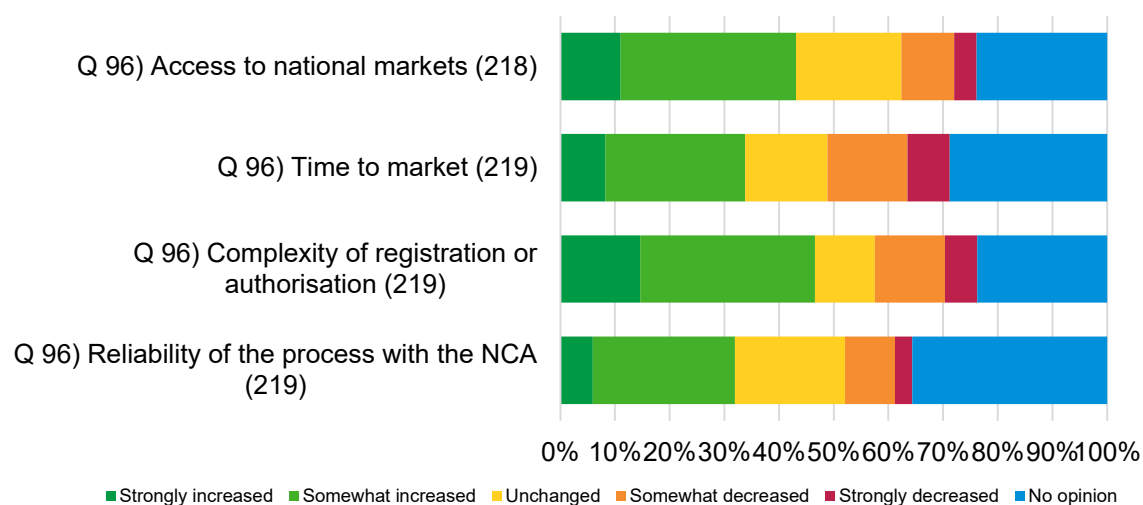
⁵⁴ The correlation is significant ($p < 0.05$): To what extent has AIFMD impacted your ability or commercial desire to be AIFM? ($r = .18$)

During the interviews, there were calls from a number of German interviewees for the EU AIF passport to be extended to semi-professional investors. This call was generally not supported by interviewees from any other Member State, who noted that those pieces of EU legislation that provide such a passport (ELTIFR, EuSEFR and EuVECAR) include product regulation.

An unusually high proportion of respondent AIFMs, public authorities and institutional investors expressed no opinion on any of the statements relating to the impact of AIFMD on the marketing of *non*-EU/EEA AIFs into the EU (see Figure 47). Of those that did express an opinion, views were mixed on the number of Member States that permit *non*-EU/EEA AIFs to be marketed into their jurisdiction. However, the majority agreed that restrictions on the type of *non*-EU/EEA AIFs that can be marketed into the EU have increased as a consequence of AIFMD. In particular, a majority agreed that the ability to market *non*-EU/EEA AIFs to *retail* investors was now more restricted. The majority of respondents expressing an opinion had experienced increases in the time taken to obtain approval under NPPRs.

Interviewees raised a number of other points relating to this general topic. Some interviewees called for the *non*-EU passports to be introduced and a significant number from a range of Member States and third countries called for the NPPRs to be retained, even if the *non*-EU passports are introduced.

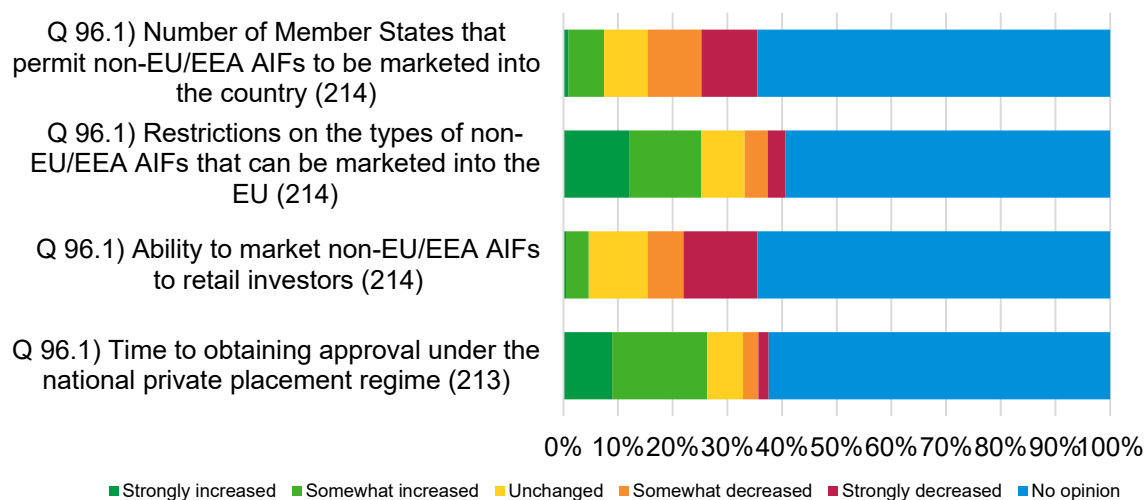
Figure 46: Impact of AIFMD on the cross-border marketing of EU/EEA AIFs into other Member States



Source: KPMG (2018). Note: This question was posed only to stakeholder types b, f and i (see Annex 2). The number of respondents varied from 218 to 219.

One trade association representing institutional investors said that NPPRs should be retained and improved, including after the *non*-EU passports are introduced, because **the passports are unknown and untested.** *“The removal of the NPPRs is likely to result in a chilling impact on international capital flows into and out of the EU, which would counteract the efforts under CMU.”*

Figure 47: Impact of AIFMD on the marketing of non-EU/EEA AIFs into the EU



Source: KPMG (2018). Note: This question was posed only to stakeholder types b, f and i (see Annex 2). The number of respondents varied from 213 to 214.

4.6. Specific investment types

All survey respondents⁵⁵ were asked their view on the extent to which AIFMD has impacted investment in private equity/venture capital, in or for the benefit of developing countries or in real assets. They had the opportunity to provide narrative comments on the main reasons for their view.

As can be seen from Figure 48, of those respondents that expressed an opinion, the clear majority view for each specific investment type was that AIFMD has had no impact (see also the statistical evidence in Annex 4 and Annex 5). The impact on investment in private equity/venture capital received the highest proportion of negative views of the three investment types.

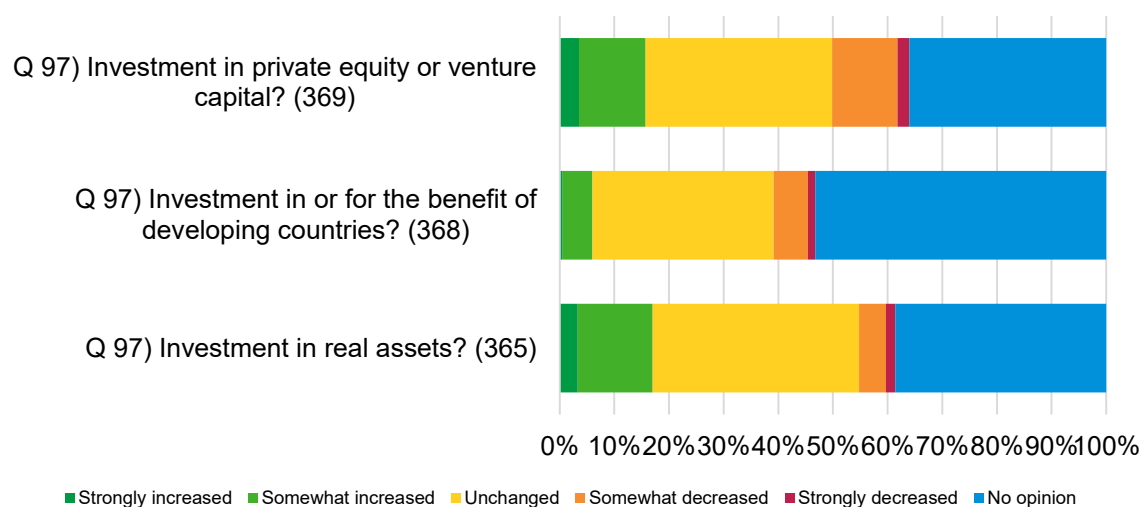
The narrative responses ranged across many different issues. Topics mentioned by respondents with a positive view of the impact of AIFMD on these investment types related to the AIF/AIFM label/brand (i.e. increase in investor protection and transparency, safety and confidence, governance, legal certainty etc.) and the EU marketing passport.

Topics frequently mentioned that were said to have had a negative impact were:

- higher costs (in particular, impacting small managers and funds, as well as start-up managers trying set up a track record). Respondents said that this limits the number of small private equity or venture capital funds offered to EU investors or operating in the EU;
- restricted access to the EU market for non-EU funds (including due to perceived administrative burden/additional costs for non-EU AIFMs with no similar requirements in non-EU jurisdictions, or limits on non-EU funds managed by an EU AIFM).

⁵⁵ Other than non-listed entities invested in by AIFs - as noted in sub-section 3.6 above, there were no respondents of this type.

Figure 48: Impact of AIFMD on selected aspects



Source: KPMG (2018). Note: This question was posed only to stakeholder types b-o (see Annex 2). The number of respondents varied from 365 to 369.

Other topics commonly mentioned were problems with the AIFMD’s “one-size-fits-all” approach (i.e. the same rules applying to fundamentally different sectors, such as private equity versus hedge funds), increased time to market, reduced investment opportunities / universe availability to investors (as a result of costs, restricted access etc.). Occasionally mentioned were the professional investor definition, investments in renewable energies in emerging markets, and the operating requirements (remuneration and its disclosure, depositary requirement, functional separation of risk management).

4.7. Market and commercial impacts

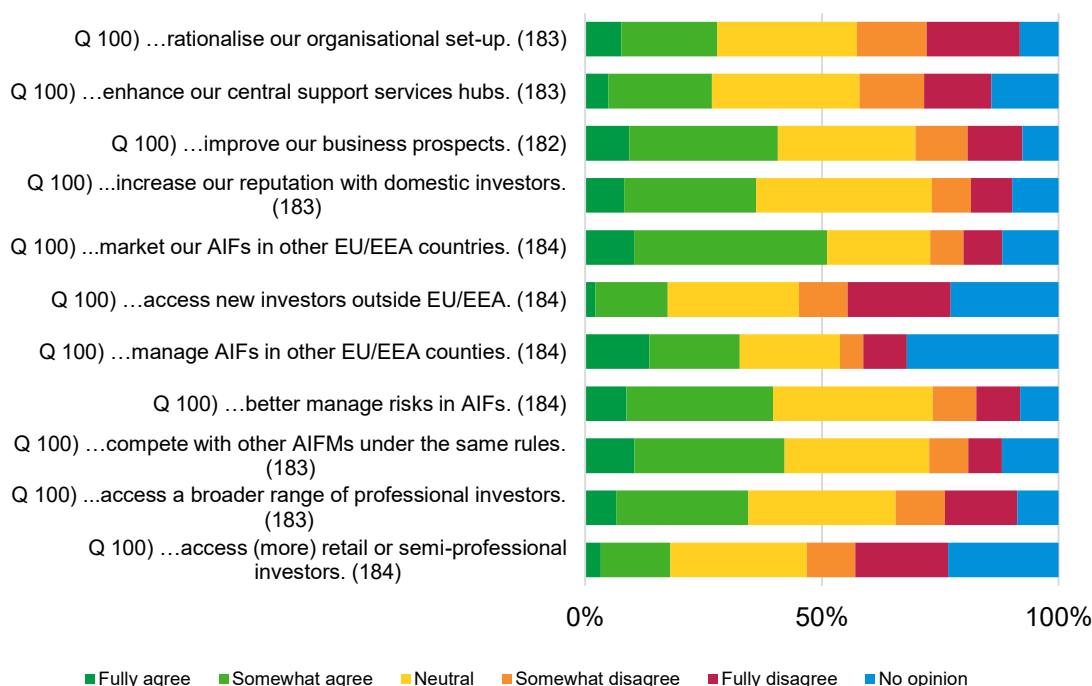
This sub-section of the survey sought to identify the main market impacts of AIFMD (see Figure 49 and Figure 50).

4.7.1. Impact on AIFMs’ operations

Respondent AIFMs had mixed views about whether acquiring AIFM authorisation had enabled them to rationalise their organisational set-up, to enhance central support service hubs, to access new investors outside the EU/EEA or to access more retail or semi-professional investors. Respondents were slightly more positive about the impact of AIFMD on improving their business prospects, increasing their reputation with domestic investors, managing AIFs in other EU/EEA countries, better managing risks in AIFs, competing with other AIFMs under the same rules and accessing a broader range of professional investors. The majority of respondent AIFMs were positive about the impact of AIFMD with respect to marketing their AIFs in other EU/EEA countries.

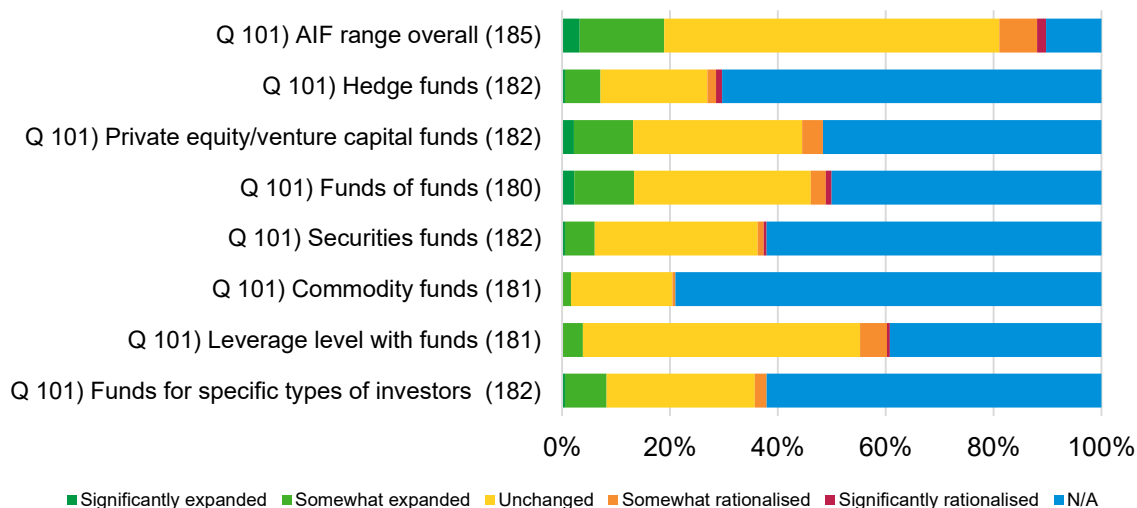
For the majority (62%) of respondent AIFMs, AIFMD had not caused them to change their overall AIF ranges. In contrast, 19% of the respondent AIFMs had expanded their AIF ranges, more than double of those who had rationalised their AIF product range (9%). The level of product change was low across the main AIF sub-sectors and there was an especially low impact on the leverage level within funds.

Figure 49: Extent to which AIFMD has improved AIFMs' businesses



Source: KPMG (2018). Note: This question was posed only to AIFMs. The number of respondents varied from 182 to 184.

Figure 50: Extent to which AIFMD caused AIFMs to rationalise or expand their product offerings

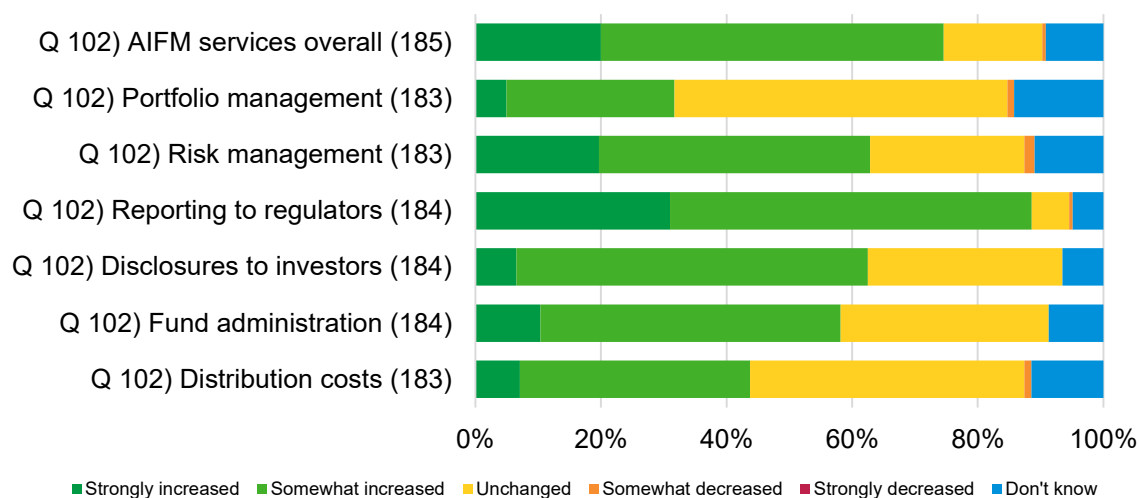


Source: KPMG (2018). Note: This question was posed only to AIFMs. The number of respondents varied from 180 to 185.

4.7.2. Impact on costs, services and competition

Costs for AIFM services overall have increased according to the majority (75%) of respondent AIFMs (see Figure 51). However, certain services were reported as having been more greatly impacted than others.

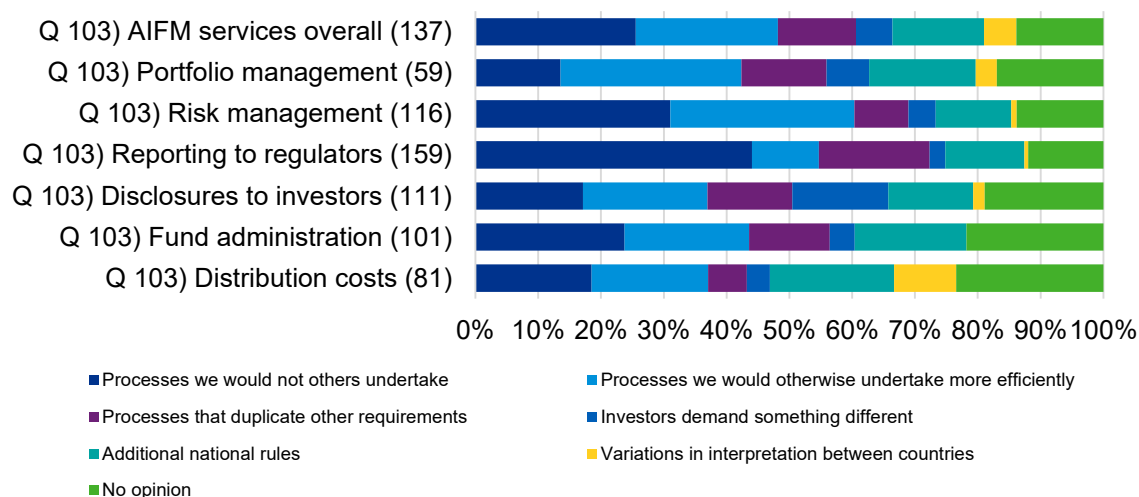
Figure 51: Impact of AIFMD on costs for services undertaken for or purchased by AIFMs



Source: KPMG (2018). Note: This question was posed only to AIFMs. The number of respondents varied from 183 to 185.

For 53% of the AIFMs, portfolio management costs have remained unchanged, whereas 32% of the AIFMs have seen an increase. Distribution costs were said to have increased for 43% of AIFMs, followed by costs for fund administration (58%), costs for disclosures to investors and risk management (62% each) and reporting to regulators (88%). In particular, smaller AIFMs were less likely to record increased costs relating to reporting and disclosures than were the larger AIFMs.⁵⁶

Figure 52: Views of AIFMs on the factors that most contributed to cost changes



Source: KPMG (2018). Note: This question was posed only to AIFMs. The number of respondents varied from 59 to 159.

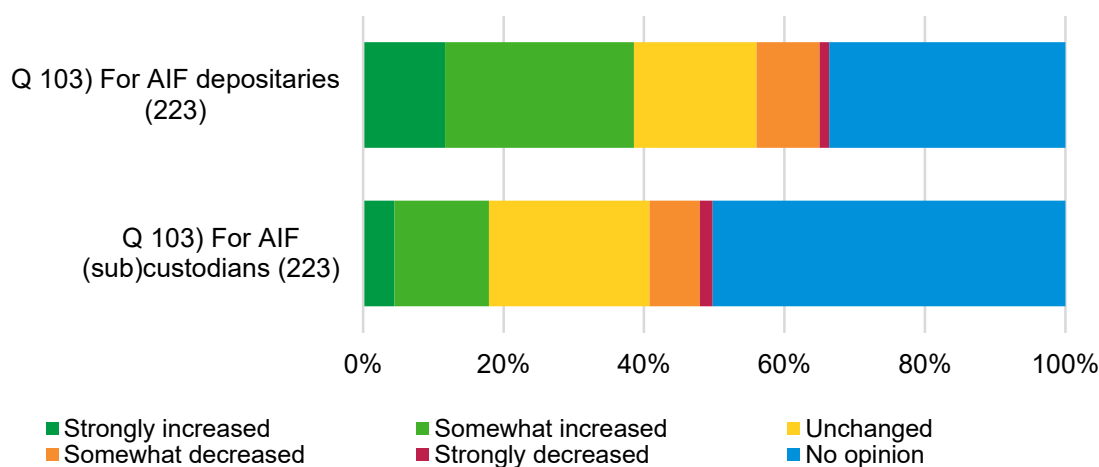
⁵⁶The correlation is significant ($p < 0.05$): Reporting to regulators ($r = .20$), Disclosures to investors ($r = .18$)

The factors impacting costs varied (as can be seen in Figure 52). 26% of respondent AIFMs answered that processes they would otherwise not undertake were the greatest contributing factor to the change in costs of AIFM services overall. Variations in interpretation between Member States, as well as investors demanding something different were the least mentioned.

For risk management services, processes that AIFMs would otherwise not undertake or would undertake more efficiently were selected by 60% of respondent AIFMs as most contributing to cost changes. In relation to reporting to regulators, nearly half the AIFMs selected processes that they would not otherwise undertake, but this sub-question also attracted a strong score for processes that duplicate other requirements.

The results against the other sub-questions were more mixed, but additional national rules were selected as a material factor against each of the questions.

Figure 53: Impact of AIFMD on competition in the AIF depositary and custody market



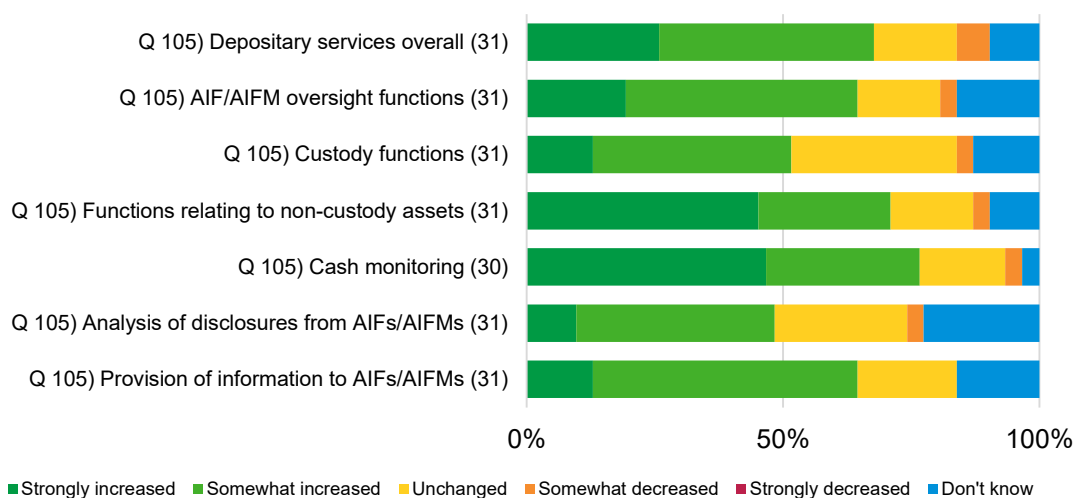
Source: KPMG (2018). Note: This question was posed only to stakeholder types b, d, i and n (see Annex 2). The number of respondents was 223.

AIFMs, depositaries and fund accountants were asked to rate the impact of AIFMD on costs for services undertaken or outsourced by depositaries (see Figure 54). 68% recorded an increase in the costs of overall depositary services. Only 16% did not observe any changes.

The costs of AIF/AIFM oversight functions, functions relating to non-custody assets, cash monitoring and provision of information to AIFs/AIFMs show a similar pattern of responses, with cost increases for cash monitoring receiving the highest scores. The costs of custody functions and analysis of disclosures from AIFs/AIFMs had the lowest scores overall, but even for these two categories, around half of respondents recorded that costs had increased. Larger depositaries were much more likely than smaller depositaries to record that the costs of custody to AIFs/AIFMs had increased.⁵⁷ This may be due in part to the fact that the larger depositaries cover a wider range of assets, and assets held in custody in particular.

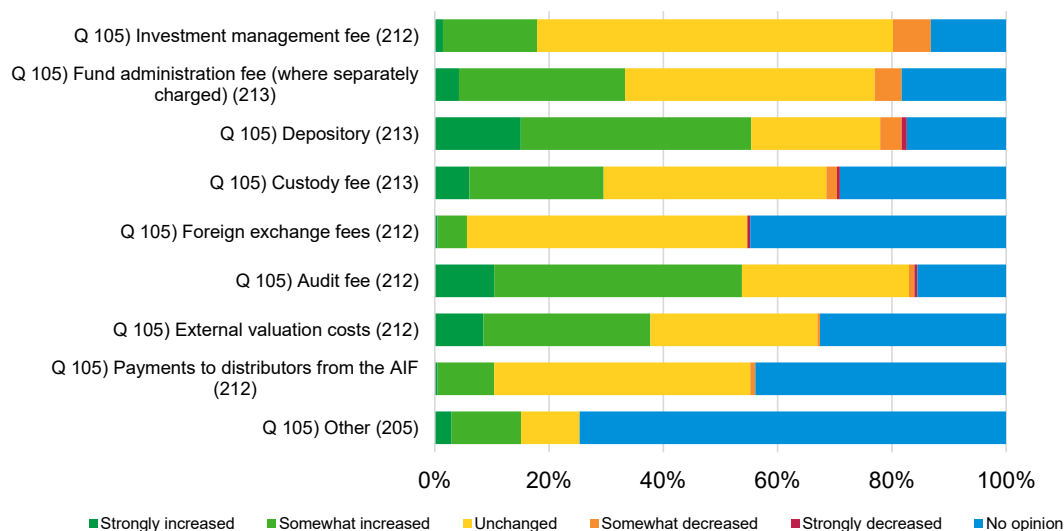
⁵⁷The correlation is significant ($p < 0.05$): Custody functions ($r = .46$)

Figure 54: Impact of AIFMD on costs for services undertaken or outsourced by depositaries



Source: KPMG (2018). Note: This question was posed only to AIF depositaries. The number of respondents varied from 30 to 31.

Figure 55: Impact of AIFMD on fees charged to AIFs



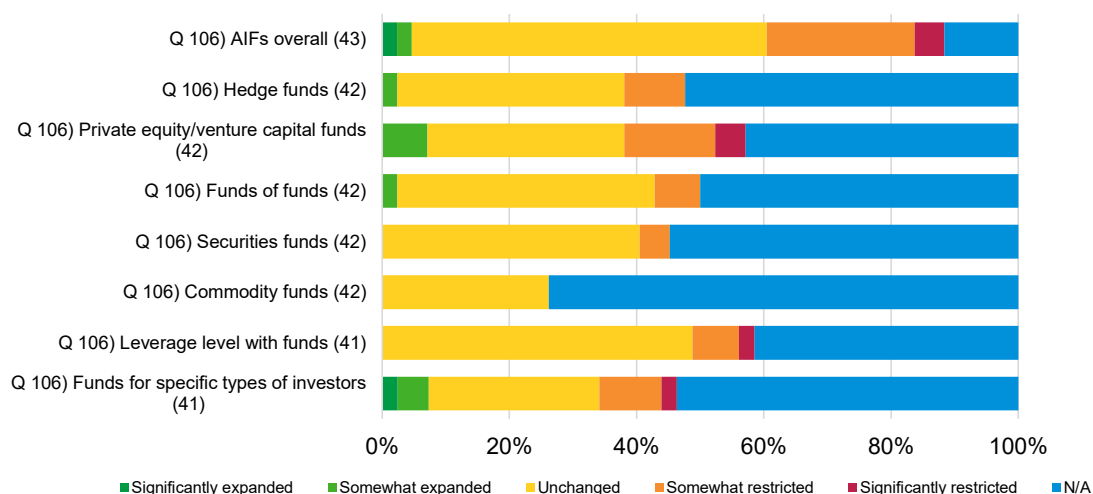
Source: KPMG (2018). Note: This question was posed only to AIF depositaries. The number of respondents varied from 205 to 213.

As regards fees charged to AIFs (see Figure 55), the majority (62%) of respondent AIFMs, depositaries and fund accountants recorded that investment management fees were unchanged, while a significant proportion (18%) recorded an increase. The greatest impacts were recorded for depository (55%) and audit (53%) fees, followed by fund administration (33%), custody (30%) and external valuation (36%). The least increases were recorded for foreign exchange fees (5%) and payments to distributors

(10%). As regards external valuer costs, the size of AIFM appears to affect the response, with the AIFs of smaller AIFMs less impacted by cost increases.⁵⁸

In general, investment managers and advisors did not record changes to investment management service offerings, for any type of investment strategy. In particular, service offerings provided to commodity funds was said not to have experienced any expansion or restriction at all. It is notable that the investment managers and advisors more often indicated that AIFMD had caused them somewhat to restrict their service offerings, especially to AIFs overall (23%) or to private equity funds (20%) in particular. Some restrictions were also reported for hedge funds, the level of leverage and funds for specific types of investors.

Figure 56: Impact of AIFMD on investment managers'/advisers' service offerings



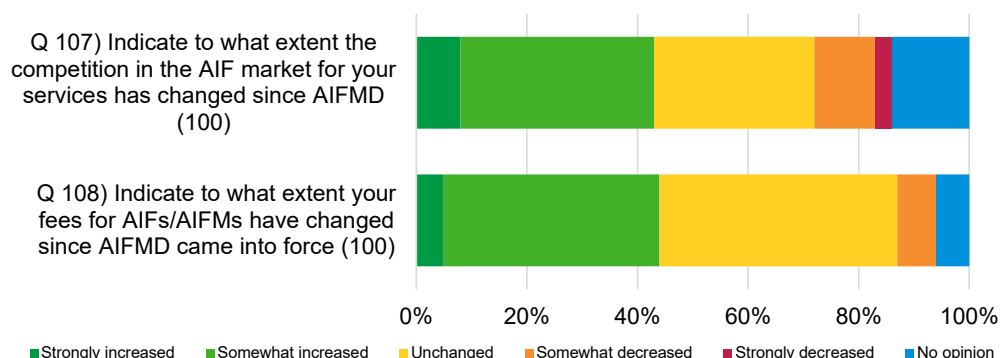
Source: KPMG (2018). Note: This question was posed only to AIFMs and AIF depositaries. The number of respondents varied from 41 to 43.

Sub-custodians, investment managers/advisors, prime brokers, fund administrators, fund accountants, external valuers and other entities involved in the operation of AIFs were asked to indicate the extent to which they believe that competition for their services and the associated fees have changed since AIFMD came into force (see Figure 57). 43% of them had seen increased competition in the AIF market for their services, with higher ratios for e.g. France (67%), Germany (65%) and Luxembourg (50%), but lower ones for e.g. the UK. By stakeholder type, a higher ratio of depositaries, sub-custodians and external valuers reported increased competition than did the other types of entities questioned.

For the fees charged to the AIFs, 44% of respondents had observed an increase. However, this view was equally balanced by respondents with a contrary view that there had been no change or even a decrease.

⁵⁸The correlation is significant ($p < 0.05$): External valuation costs ($r = .18$)

Figure 57: Impact of AIFMD on competition among service providers for their services and fees



Source: KPMG (2018). Note: This questions were posed only to stakeholder types e, h, j-k and n-o (see Annex 2). The number of respondents was 100.

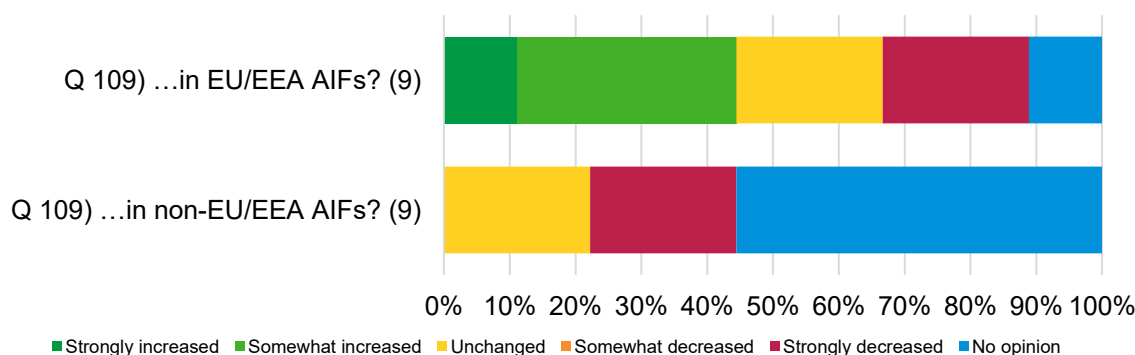
4.7.3. Impact on investors

For the majority (84%) of institutional investors and trade bodies representing institutional investors (including some bodies in third countries), AIFMD had not influenced their decisions to invest through AIFs, i.e. only 16% recorded that their investment decisions were influenced by AIFMD.

The same holds true for investment through EU/EEA AIFs rather than third country AIFs (or vice versa). For the majority (83%) of institutional investors and trade bodies representing institutional investors, AIFMD had not influenced their decisions to invest through EU/EEA AIFs rather than third country AIFs (or vice versa).

Interviewees noted that the landscape prior to AIFMD was not devoid of regulation. Many Member States regulated at least parts of the industry, and a number of jurisdictions outside the EU imposed rules on the equivalent of AIFMs and/or AIFs. AIFMD has provided some consistency around the EU, but professional investors continue to conduct their own due diligence on investments in AIFs of any sort.

Figure 58: Impact of AIFMD on the level of retail clients’ investment in AIFs



Source: KPMG (2018). Note: This question was posed only to stakeholder type m (see Annex 2). The number of respondents was nine.

Respondents' views were mixed about the impact of AIFMD on the level of retail clients' investment in EU/EEA AIFs (see

Figure 58). About 44% recorded an increased level of investment, while 22% saw no change and another 22% a strong decrease. Contrary to this, responses regarding the **impact of AIFMD on retail clients'** investment in non-EU/EEA AIFs were equally divided into unchanged and strongly decreased (22% each) for those who expressed an opinion, and 56% of respondents had no opinion.

Nearly two-thirds of respondents believed that retail investors are impacted by AIFMD – positively, negatively or both.

The key things most often mentioned as adversely impacting retail investors were:

- higher costs (fees, valuation cost, AIFM costs, indirect cost, protection costs, regulatory costs, compliance costs, reporting costs), which had resulted in products available to retail investors being more expensive to run and support;
- small managers finding it no longer viable to be an AIFM and to comply with all the requirements;
- local private placement regimes (lack of them, non-availability for retail investors, too restrictive or too onerous).

Topics less frequently mentioned were the new MiFID II professional investor definition (potential reclassification of some high net worth individuals and municipalities as retail clients and a more restrictive approach to opting up retail clients to professional), no marketing passport and limitation on distribution.

Topics mentioned occasionally were:

- that non-UCITS funds are automatically AIFs (e.g. French Fonds Commun de Placement d'Entreprise);
- the size of retail investments in AIFs is not sufficient in view of the compliance costs (i.e. the cost vs return ratio is not viable);
- **guidance by ESMA that all AIFs are "complex"**;
- investment restrictions imposed by some countries on AIFs targeting retail investors;
- a one-size-fits-all approach to regulation.

It was reported that the overall consequence has been less choice for retail investors, including for high net worth clients and semi-professional investors.

4.8. Impact of and interplay with other legislation

Figure 59 summarises respondents' views on the impact of other legislation or regulation on the achievement of AIFMD's objectives. A large proportion of respondents did not express a view on the selected topics.

100% of respondent NCAs that authorise and register AIFs apply product rules to retail AIFs in their jurisdictions. At least 60% of them had already registered incoming retail AIFs from other EU/EEA Member States.

Most of the narrative explanations related to other regulatory topics (rather than e.g. tax), which may reflect the dominant knowledge set of the department or individual that was assigned by an institution to complete the survey.

The key topics mentioned in relation to reporting (some of which related to disclosures to investors) were:

- lack of consistency and coherence (use of different reporting details, channels, data repositories and IT standards, problems of collection, issues for regulators in defining systemic risk, implication of ISO 20022, gold-plating and additional requirements by some EU Member States);
- the need for stronger integration in technological terms (problem of different data standards and formats);
- higher costs (compliance costs, distribution costs, running costs, increase in reporting volume and obligations); and
- duplication (overlap with EMIR, MiFID II, SFTR, the PRIIP KID; the need to rationalise and reduce the information requested).

Topics mentioned less frequently were:

- better transparency due to regulations increasing reliance on reporting;
- better insight / knowledge of investors about the financial soundness of the asset management industry;
- impact on smaller funds (raising their breakeven point).

Topics mentioned occasionally were:

- AIFMD reporting does not include information related to the financial situation and profitability of AIFMs;
- more information is needed on specific categories of AIF (real estate and private equity);
- reporting on remuneration is inconsistent with EU protection of personal privacy.

Other EU legislation or regulations mentioned as having an impact on AIFMD were MiFID II, UCITSD, the PRIIP KID, EMIR and SFTR. The perception of their impact differed, though.

Negative:

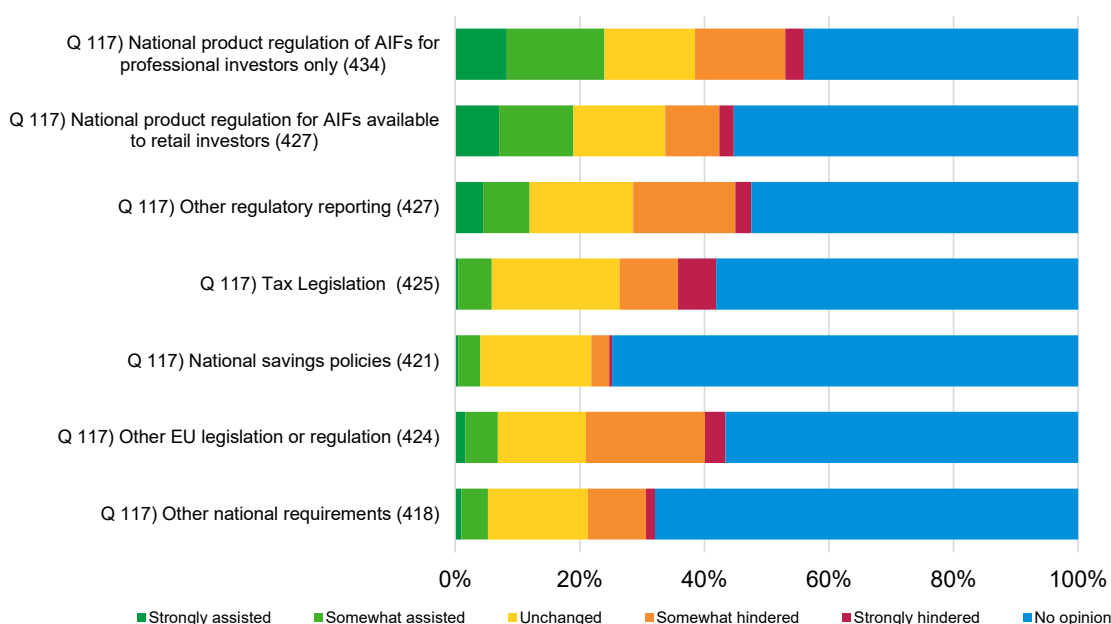
- MiFID II: (i) professional investor definition, i.e. problems for investors such as pension schemes, foundations, charities; (ii) scope of AIFMD vs MiFID II is unclear (application, references to CRD/CRR,⁵⁹ differences in prudential **treatment**); (iii) **ESMA's classification of all AIFs as complex products is** challenging (product governance rules), i.e. AIFs less attractive for retail distribution markets
- EMIR and SFTR: classification of investment funds and imposed operational and reporting burdens on AIFMs
- Prospectus: duplication of information standards for investors under AIFMD and the prospectus regime (affects publically offered AIFs of closed-ended type)
- PRIIP KID: impact on the information provided to retail investors (data for PRIIPs derived from past performance, which causes difficulty to compare it with different types of AIFs)

⁵⁹ Capital Requirements Directive/Capital Requirements Regulation

Positive:

- UCITS: (i) standardised operational requirements for managers that operate both types of funds; (ii) similarities between AIFMD and UCITS, where the AIFs are invested in similar assets to UCITS
- PRIIP KID: increased disclosures for AIFs marketed to retail
- CSDR:⁶⁰ AIFMD exempts CSDs from scope, which in the opinion of some industry representatives allows efficient functioning of the CSD-dedicated regulatory framework. However, there would be concerns if AIFMD rules applied to CSDs. This would adversely affect cross-CSD-linked operations and increase CSD liabilities

Figure 59: Whether other legislation has assisted or hindered achievement of the objectives of AIFMD



Source: KPMG (2018). Note: This question was posed only to stakeholder types b-o (see Annex 2). The number of respondents varied from 418 to 434.

As regards national requirements, key topics raised were:

- lack of supervisory convergence (on liquidity and reporting, for instance);
- lack of consistency/coherence (in terms of definitions, for instance, and language);
- duplication (e.g. with the PRIIP KID).

These were said to result in complexity, increased costs and regulatory arbitrage. Also, the volume of regulations creates higher barriers to entry to the market.

⁶⁰ Central Securities Depositories Regulation

5. Concluding remarks

A specific objective of AIFMD is that all AIFMs should be subject to appropriate authorisation and registration requirements. The general survey and interviews did not indicate any widespread concerns about the thresholds, capital requirements, fit and proper requirements. However, responses revealed that the authorisation and registration process for both AIFMs and depositaries is still not applied effectively and consistently within the EU, and that there is room for improvement in terms of time taken and fees.

Some of these extended times taken to secure a licence may be due to the application queues at NCAs when AIFMD was implemented, but they are nevertheless significantly higher than the timeframe envisaged in the Directive. The spreads in fees within a single Member State might be due to different levels of complexity of individual applications, but marked differences between Member States would appear to indicate a fragmented rather than harmonised market.

In respect to the comments that there are different interpretations of what constitutes an AIF or an AIFM, we note that Article 4(1) AIFMD provides definitions, to which in principle there is no national discretion. However, as also confirmed by some NCAs, Article 3 AIFMD (exemptions) could be subject to interpretation and could therefore lead to different interpretations by Member States and NCAs.

More generally, of those respondents who expressed an opinion, nearly half agreed that AIFMD is not applied consistently between Member States.

However, when asked to what extent interviewees were concerned about the inconsistencies, most interviewees indicated that a small number of areas need further harmonisation in order to prevent rule arbitrage and to ensure a common level playing field, with very few interviewees calling for harmonisation across the piece.

The main reasons for the majority view were:

- AIFMD is not product regulation. It specifically accommodates the very wide range of types of AIFs that exist around the EU and elsewhere. Therefore, there are bound to be some differences from Member State to Member State, which ought to be allowed to continue.
- Although there are a number of areas where the rules should be improved (clarified, rationalised or enhanced), the asset management industry continues to be impacted by a swathe of new rules and by regulatory uncertainty. Adding to that already considerable burden would not be welcome and could cause yet more disruption and costs for investors, the industry and regulators.
- In general, changes should not be made to AIFMD in isolation but as part of wider reviews and rationalisation of post-crisis regulation.

As regards the monitoring of macro-prudential risks, due to various issues with data exchange between NCAs and ESMA, there are insufficient data at EU level to provide a meaningful picture of post-AIFMD trends in the market. Also, the low use of sanctions means that there has been little scope to evidence supervisory co-operation in that regard. However, the survey data indicate that the use of high leverage is rare in AIFs.

The vast majority of survey respondents and interviewees did not express a clear opinion about the degree of achievement of AIFMD in containing macro-prudential risks, some citing a lack of comprehensive statistical evidence. Interviewees recognised that there may be risks affecting the system as a whole, e.g. new emerging financial instruments where the embedded risk potential cannot yet be assessed, but shared the opinion that AIFMD has yet to prove itself, as the period since AIFMD implementation is too short to draw well-evidenced conclusions, especially as stock market prices have generally risen over the period. Therefore, the AIF sector as a whole has not been subject to financial shocks since AIFMD. However, there have been volatile markets in a number of jurisdictions and in some asset classes, which the sector has managed. It was also noted that the vast majority of the sector was able to cope with the strains of the 2008 crisis.

Even though 90% of AIFMs agreed that they are able to provide complete, accurate and timely reports for all AIFs they manage, only just over half thought that there was consistent understanding within their Member State of what must be reported. The semi-structured interviews also revealed that the reporting requirements differ among NCAs, with different interpretations or additional requirements. AIFMD stipulates the essential reporting requirements for AIFMs and AIFs, which are further elaborated in AIFMR. Hence, there is generally no room for national discretion in this regard. However, the NCA of the home Member State of the AIFM may require additional information on a periodic or ad hoc basis.

A further concern was the extent of duplication within the AIFMD reports themselves and with other reporting obligations, with some NCAs noting areas of omission that should be addressed. Although respondent AIFMs were unanimous in agreeing that the AIFMD reports need to be rationalised and clarified, there was an over-riding concern about the high sunk costs in implementing reporting systems and the need to avoid yet more piecemeal and costly changes. They called for reporting to be reviewed across all relevant regulation and for better coordination and consistency in approach between the NCAs and ESMA.

Interviewees encouraged the NCAs to make greater use of the data they receive from **AIFMs' reports with regard to financial stability concerns within their own markets**. Also, they would welcome regular publication of aggregate figures, which would provide all market participants (including investors) with better information about the market. One interviewee cited the UK FCA⁶¹ Hedge Fund Survey by way of example. Similarly, there was concern that data should be collated and analysed at EU level. In this regard, **ESMA's recent report was welcomed**.

The survey and interview results indicate that AIFMD has generally had a positive influence on the limitation of micro-prudential risks as regards conflicts of interests and risk management. AIFMs reviewed and in many cases adjusted their governance, policies and procedures to meet the requirements of AIFMD. The overall level of remuneration of risk takers is little changed, but there has been a shift from variable to fixed remuneration. Regarding the differences in the interpretation by NCAs of the requirement for functional and hierarchical separation of risk and portfolio management, we note that Article 15(1) second sub-paragraph AIFMD explicitly introduced the proportionality principle regarding these aspects.

⁶¹ Financial Conduct Authority

The majority of survey respondents agreed that the content and frequency of disclosures to investors have increased, but there are concerns about misalignment with newer client reporting requirements in e.g. MiFID II and the PRIIP KID. Also, experienced and well-informed investors have different reporting needs. Article 23 AIFMD requires *all* fees, charges and expenses to be disclosed and does not provide any national discretion in this regard. However, AIFMD does not mandate the calculation or format of these disclosures. This may have an impact on the effectiveness of this provision (see 4.3.6.b)i) in Section 2). With respect to carried interest and partner remuneration, which were mentioned by certain survey respondents as not consistently disclosed by AIFMs, we note that Article 22 sets out the minimum requirements and therefore allows Member States or individual AIFMs to include additional information or to choose the precise format of the disclosures.

As regards delegation, differences in national approaches had been amplified by **recent debates about the “substance” requirements** in both AIFMD and UCITS, which **had been prompted by the UK’s decision to leave the EU**. Given the ongoing discussions by the co-legislators on the EC’s proposals to extend the powers of ESMA in this regard, survey respondents and interviewees tended to focus their comments on this debate rather than the AIFMD rules themselves. Of note is that AIFMD has not materially impacted the extent of delegation, other than in France and Luxembourg.

The depositary rules received wide-ranging comments from both AIFMs and depositaries. There was an overall sense that the rules adopted a one-size-fits-all approach, which does not accommodate different asset classes or geographies. Concerns include the asset segregation and cash monitoring requirements, and the potential loss of the temporary depositary passport. Furthermore, it was mentioned that the interpretation of the look-through provisions, the cash monitoring duties and delegation in respect of custody (especially to a prime broker) varies or is unclear. Generally, these differences appear to be due to different national interpretations of the relevant AIFMD and AIFMR provisions, rather than to additional Member State requirements.

For unlisted and real assets, interpretation of the external valuer rules (and in **particular the unlimited liability for “negligence”**) **cause considerable difficulties** in some Member States. We note that Article 19(10) second sub-paragraph AIFMD does not provide for a definition of negligence and thus allows for different concepts such as gross and simple negligence in the Member States.

As regards investment in non-listed entities, the majority of respondents did *not* agree that the notifications to NCAs are useful, essential and not overly burdensome, or that AIFMD has improved information provided by the AIF/AIFM to controlled companies, or that it has had a positive impact on the relationship between AIFs/AIFMs and target or investee enterprises. Regarding the survey comment that even within one Member State legal experts may give different interpretations of the asset stripping rules, the rules do not in principle provide room for different approaches by Member States. However, since the requirements interact with national corporate laws, **the meaning of “non-listed company”** could be interpreted differently. In contrast to the French and English versions of AIFMD, for example, it is not clear in the German translation of AIFMD if only non-listed entities in the legal form of a capital company are covered by the term “non-listed company”. **German legal commentaries have raised the issue that the term “company” in Articles 26–30 AIFMD could be interpreted in such a way that only entities qualifying as an “operating company” and with working employees are subject to the AIFMD provisions. The mere holding and managing of investments should not be sufficient to qualify the entity as a “company” within the meaning of Articles 26–30 AIFMD.** This implies uncertainty in the legal and practical application of these provisions around the EU and may have resulted in different interpretations.

The inconsistent application of the AIFMD marketing passport and marketing requirements received considerable criticism. Industry and regulators are of the opinion that the rules need clarification in order to create a level playing field and to strengthen the Single Market. Different Member States have adopted different **approaches as to which activities constitute "marketing"**, despite the definition in Article 4(1)(x) AIFMD, and there is a lack of transparency. This results in additional costs for the industry and investors, and undermines the benefits of the AIF passport and therefore the Single Market. The EC Cross-Border Distribution Proposal was welcomed in a number of regards but was said to need further work, e.g. the **"pre-marketing"** drafting does not sit well in the professional market space. Further, the fact that AIFMD does not provide any framework for notification fees and limits, results in heterogeneous notification fees on the administrative level among each NCA in the relevant Member State.

Some interviewees called for the non-EU passports to be introduced and a significant number, from a range of Member States, called for the NPPRs to be retained, even if the non-EU passports are introduced.

The impact of AIFMD on investors is salutary. It appears to have made little difference to institutional investors (in third countries as well as in the EU) as between EU AIFs and non-EU AIFs, or as regards asset classes. It is said that AIFMD has led to less choice in the retail market (with particular comments on the impact on semi-professional investors), but an even split between reported positive and negative effects.

Section 2: Evidence-based study

1. Background to the evidence-based study

1.1. Description of AIFMD and its objectives

Concerns about AIFs date back to market disruptions prior to the financial crisis in 2007/2008 and centred on the failure of Long-Term Capital Management in 1998. This case highlighted associated risk exposures, market concentrations and the lack of regulatory oversight and – on the basis of an isolated worst-case scenario – brought to regulatory attention that highly leveraged funds contributed to systemic risks.⁶²

As a reaction to similar particularities during the financial crisis in 2007/2008, the Bank of International Settlements asserted that hedge funds in particular played a key role in the contribution of systemic risks in the financial system.⁶³ Similarly, IOSCO concluded that, *inter alia*, the extensive use of leverage by investment funds amplified the final stages of the crisis.⁶⁴ Subsequently, the G20 Summit in Washington in 2008, as well as further summits,⁶⁵ pointed to the necessity of a harmonised and consistent regulation and supervision of every participant and product in financial markets.⁶⁶ Advancing this policy approach, the Financial Stability Board (FSB) captured the G20 rationale and propelled an action plan of reforms to the financial system, particularly emphasising the resilience, capabilities and trends in non-bank financial intermediation.⁶⁷

In the EU, the High-Level Group on Financial Supervision, chaired by Jacques de Larosière, considered these issues and recommended **to the EC** “*extending appropriate regulation, in a proportionate manner, to all entities conducting financial activities of a potentially systemic nature, even if they have no direct dealings with the public at*

⁶² For an extensive overview see D. Zetzsche (2015). *Introduction: Overview, Regulatory History and Technique, Transition*, in: D. Zetzsche (ed.), *The Alternative Investment Fund Managers Directive (2nd edn)*; T. Bernhardt (2013). *The European Alternative Investment Fund Managers Directive (AIFMD) - an appropriate approach to the global financial crisis?* Lohmar: Josef Eul Verlag.

⁶³ Bank of International Settlements (BIS) (2010). *Review of the Differentiated Nature and Scope of Financial Regulation*; McGuire, Patrick, & Kostas Tsatsaronis (2008). *Estimating hedge fund leverage*. BIS Working Papers No. 260. Bank for International Settlements. Retrieved from <https://www.bis.org/publ/work260.htm>; R. Zepeda (2014). *To EU, or not to EU: that is the AIFMD question*. *Journal of International Banking Law and Regulation* 29 (2), 82-102.

⁶⁴ IOSCO (2009). *Hedge Funds Oversight – Final Report*. Retrieved from <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD293.pdf>

⁶⁵ The Washington Summit Declaration (November 2008) advocated a holistic regulation of the financial industry. The London Summit Declaration (April 2009) included an extensive set of actions referring to regulation and supervision of systemically important financial institutions, markets, and instruments (in particular, a mandatory authorisation of asset managers) so as to promote a sound and resilient risk management. The Pittsburgh Summit Declaration (September 2009) and Toronto Summit Declaration (June 2010) paved the way for global financial services regulation and specifically mandated the regulation and supervision of the alternative investment fund industry; see D. Zetzsche (2015). *Introduction: Overview, Regulatory History and Technique, Transition*, in: D. Zetzsche (ed.), *The Alternative Investment Fund Managers Directive (2nd edn)* with various further references.

⁶⁶ Rf. see D. Zetzsche (2015). *Introduction: Overview, Regulatory History and Technique, Transition*, in: D. Zetzsche (ed.), *The Alternative Investment Fund Managers Directive (2nd edn)* with various further references.

⁶⁷ Rf. FSB (2011). *Progress in the Implementation of the G20 Recommendations for Strengthening Financial Stability: Report to G20 Finance Ministers and Central Bank Governors*. Retrieved from <http://www.fsb.org/2014/11/overview-of-progress-in-the-implementation-of-the-g20-recommendations-for-strengthening-financial-stability-5/>.

large".⁶⁸ The group emphasised the regulation of the managers rather than the funds and proposed relevant measures to prevent regulatory arbitrage.

In addition, the close connection of a UCITS with entities linked to Bernard Madoff's Ponzi scheme in the US called into question the adequacy of the depositary provision in UCITSD. This concern led to significantly enhanced provisions for UCITS, but prior to that gave rise to calls for AIFs also to be required to have a depositary.

Against this backdrop, in 2009 the EC issued a proposal to regulate AIFMs, which was adopted in June 2011.

The AIFMD Impact Assessment identified important gaps and weaknesses in European and national approaches to the regulation and supervision of the AIFM sector. The activities of AIFMs were considered by the EC to be associated with the following risks for AIF investors, counterparties, the financial markets and the wider economy:

Macro-prudential (systemic) risks

The financial crisis had exposed important weaknesses in existing systems of macro-prudential oversight, in particular in relation to those AIFMs that make systematic use of leverage and take large positions in key financial markets (primarily hedge funds and some commodity funds). Given the cross-border nature of these risks, the inability to piece together a comprehensive picture of AIF leverage and AIFM activities in all major European markets was a major flaw in existing systems of macro-prudential oversight.

Micro-prudential risks

The financial crisis had also highlighted failings in risk management and due diligence. The management of liquidity risks had posed a particular problem for some AIFs, where the combination of illiquid investments and pressure for deleveraging and investor redemption had exposed a severe liquidity mismatch. In the hedge fund sector in particular, counterparty risk management systems had been tested by the failure of significant counterparties. The illiquidity of key asset markets had exposed weaknesses in valuation processes and methodologies. Effective management of the cross-border dimension of these risks was thought to necessitate a common understanding of the obligations of AIFMs and clear arrangements to support supervisors in ensuring that risk management systems are sufficiently robust.

Market efficiency and integrity

AIFMs, in particular hedge fund managers, were central to the debate about the impact of certain trading practices on the integrity of financial markets. The activities of concern included short selling and the impact on commodity (especially food) prices of speculation in the futures markets.

Three further risks were considered by the EC:

Investor protection

Most Member States had in place NPPRs, but these varied as to who was eligible to invest and as to the products that could be promoted. The importance of ensuring an appropriate level of investor protection had grown as the investor base of AIFs had expanded to include pension funds, insurance companies and some public authorities, which invested on behalf of a very broad investor base. The quality and content of the information provided to investors varied considerably, depending in particular on the

⁶⁸ Report of the High-Level Group on Financial Supervision in the EU (February 2009). Retrieved from https://ec.europa.eu/info/system/files/de_larosiere_report_en.pdf, 25.

nature of the AIFM. Therefore, an increased demand for transparent information for investors emerged.

Impact on market for corporate control

Some AIF strategies entail the acquisition of stakes in listed companies and an active role in the governance of those companies. Some hedge fund activities include techniques that allowed investors to build stakes in listed companies in a manner that was thought not to be sufficiently transparent to company management and was detrimental to the interests of other stakeholders. Examples of such techniques included the practice of voting on borrowed stocks and the use of certain derivative instruments, such as contracts for difference. While such techniques were employed by certain categories of AIFM (notably, hedge funds), they were widely available to all market participants.

Acquisition of control of companies by AIFM

In the context of the financial crisis and tightening credit conditions, concerns had arisen in relation to the sustainability of debt assumed by private equity portfolio companies. This had been a particular concern for companies subject to leveraged buy-outs by private equity firms. Similar problems were experienced elsewhere in the financial system. An additional concern related to the treatment of employees when a company was acquired by private equity, namely that employees did not enjoy the same protection and rights as when a transfer of undertaking occurred. The existing regulatory framework and industry codes governing disclosure and information provisions of AIFMs did not sufficiently address the cross-border character of private equity transactions. Furthermore, there was no consistent standard for the level of transparency required in relation to such deals.

AIFMD aimed to provide a coherent approach to the risks identified in the preceding **AIF and AIFM market analysis. To this end and as the Directive's ultimate core objective**, AIFMD sought to establish a secure and harmonised EU framework for monitoring and supervising the risks that AIFs and AIFMs pose to their investors, counterparties, other financial market participants, financial integrity and stability.

These objectives are illustrated in the recitals of AIFMD:

"The impact of AIFMs on the markets in which they operate is largely beneficial, but recent financial difficulties have underlined how the activities of AIFMs may also serve to spread or amplify risks through the financial system. Uncoordinated national responses make the efficient management of those risks difficult."
(Recital 2)

"This Directive aims to provide for an internal market for AIFMs and a harmonized and stringent regulatory and supervisory framework for the activities within the Union of all AIFMs." **(Recital 4)**

In the light of these policy objectives, AIFMD may be seen as the provider for an internal market for AIFs and a harmonised single rulebook for AIFM activities within the EU/EEA, regardless of whether the AIFM has its registered office in a Member State (EU AIFM) or in a third country (non-EU AIFM).⁶⁹

Another goal of AIFMD was to permit AIFMs, subject to compliance with strict requirements, to provide services and to market their funds across the internal market.

⁶⁹ cf. G. Sagan (2014). *Alternative Investment Fund Managers Directive Impact on Non-EU Managers*. Rev. Banking & Financial Law, 34, 506 et seq.

In addition to these core objectives, AIFMD aimed to bring specific and operational objectives to the core of the EU alternative investment industry.

1.2. State of play and baseline scenario

The background to AIFMD was the global financial crisis in 2007/2008. As a result, the leaders of the large industrial countries formed the opinion that no financial service should remain unregulated.⁷⁰ AIFMD was drafted as a transposition of this political target within the EU.

When assessing the state of play and baseline scenario, this background must be taken into account. "State of play" in this context means the *status quo ante* implementation of AIFMD. The baseline scenario describes a hypothetical development of the AIFM market without AIFMD in an *ex ante* scenario (meaning the view on the development of the market with the knowledge before AIFMD).

1.2.1. State of play

Before implementation of AIFMD, there was no overarching regulation of AIFMs at a European level. Regarding collective investment vehicles, there was only UCITSD, which does not apply to AIFs or their managers.

AIFMs were subject to EU rules that apply to all market participants, such as anti-money laundering regulation or market abuse regulation, and listed funds were subject to disclosure requirements under the Prospectus Directive. The marketing or selling of AIFs was subject to the Investment Services Directive and its subsequent incarnation, MiFID – now MiFID II. Also, according to the AIFMD Impact Assessment, many Member States imposed regulations on AIFMs or on AIFs (especially those available to retail investors, i.e. product regulation) or both.

1.2.2. Baseline scenario

It is requested to develop a so-called baseline scenario, i.e. to project into the present day continuation of a state of **'no EU policy'**. This **'no EU policy'** scenario includes the expected effects of legislation that has been adopted but not yet implemented.

Given that AIFMD was implemented as a consequence of the financial crisis in 2007/2008, it makes it hard to assess any 'no EU policy' scenario: in reaction to the crisis, many international programmes had been established in order to save and strengthen the international financial system or to avoid another bankruptcy after the crash of Lehman Brothers.

Consequently, in the absence of a coherent EU-wide system, national improvements of any respective domestic AIFM or AIF regulation would almost certainly have been developed in a number of national markets. This would have led to the result that the already heterogeneous and diverse regulatory landscape of AIF regulations would have become even more diverse. A coordinated approach by all Member States to

⁷⁰ Mansfeld (2016). *Frankfurter Legal Commentary on the German "Kapitalanlagegesetzbuch"*. Introduction on KAGB, Recital 2; See also Commission of the European Communities (2009). *Commission Staff Working Document accompanying the Proposal for a Directive of the European Parliament and of the Council on Alternative Investment Fund Managers and amending Directives 2004/39/EC and 2009/.../EC – Impact Assessment*, 30 April 2009, SEC (2009) 576, p. 10, No. 1.6.

establish a common framework would have required an even greater effort and still would have had limited effects.⁷¹

The AIFMD impact assessment also assessed several scenarios (under point 5.4 of that document). One of those scenarios considered what would happen without any targeted action regarding the regulation of AIFMs. The impact assessment indicated that although the behaviour of some AIFMs would possibly change in the light of the financial crisis (also due to the loss of investor confidence), the underlying risks associated with the AIFM industry would remain. The impact assessment also pointed out that the incomplete and fragmented national regulatory framework would not be an appropriate foundation for the European financial market.

Furthermore, the impact **assessment examined a scenario of “self-regulation”** by the AIFM industry. Such self-regulation, at national, EU or international level, could, for example, include best practice lists, codes of conduct or guidelines. However, the impact assessment indicated that one of the main drawbacks of self-regulatory measures is that they are not legally binding and, therefore, are not as effective as regulation. In addition, the impact assessment indicated that the risks of the AIFM industry were not fully covered by the existing self-regulatory measures.

As a consequence, the EC concluded that either doing nothing or relying on self-regulation or national measures would be much less effective than a consistent, coherent approach of harmonisation of law at EU level.

2. Methods

Selecting the methods for the assessment of the impact of AIFMD has been a crucial part of this study. As the AIF sector was previously subjected to a high variation in the reporting requirements across Member States, the degree of detail in the data collected by the different Member States varied considerably.⁷² To address this challenge, the tender specifications stipulated that a triangulation method should be **used to assess AIFMD’s impact**.

Different sources of quantitative and qualitative information were collected and analysed, in order to cover the different aspects of the assessment. The different data sources and methods applied are outlined below. The information collected from these various sources was triangulated in order to assess whether specific AIFMD rules are effective, efficient, coherent and relevant and have EU added value.

Information regarding implementation of AIFMD was collected via desk research, scoping interviews with a small of selected stakeholders, the general survey (described in detail in Section 1), semi-structured interviews with a larger number of selected stakeholders and quantitative data collection. The general survey and semi-structured interviews involved various respondent groups in order to counter any potential structural bias stemming from the type of respondent. Information collated via desk research data was analysed using multiple empirical methods, in order to enable cumulative reasoning to be built upon prior stages of research.

Research questions and indicators, which are outlined in more detail in Annex 4, were developed based on the following four main questions:

1. How has AIFMD impacted the level of integration of the EU AIF market?
2. How has AIFMD impacted the structure of the EU depositories market?

⁷¹ EC Impact Assessment, p. 38, No. 5.4.

⁷² AIFMD Impact Assessment, p. 13 et seq, No. 2.2.

3. How has AIFMD impacted the cost structure of EU depository services?
4. How has AIFMD impacted the market share of AIFs available to EU retail investors?

As an additional element of the quantitative analysis, we used a regression model to analyse whether AIFMD had a measurable impact on the AIF market. We used pan-European association data to estimate a panel regression model, controlling for a number of factors, such as the national equity markets. A comprehensive overview of the method used and the results can be found in Annex 4.

With the caveat that the regression analysis was in some ways limited, including in particular by the sample size (see Annex 4 for more details), the overall finding of the regression was that *AIFMD has had no material impact on the size of the EU AIF market*.

2.1. Information sources

To address the different questions regarding the rules introduced by AIFMD, various sources of information were considered to cover the different aspects of this evaluation.

2.1.1. Desk research

In order to collect valuable sources to support the evidence-based study, we conducted research with regard to the specific rules to be assessed. To facilitate the research and create a common standard, we developed a questionnaire which was used by the local team in each of the 15 selected Member States. The responses to the questionnaire were important inputs to the evidence-based study (see the assessment sub-section for each rule assessed).

As sources, we used data publically available on the internet or to which we had access. In particular, we used sources from investment associations in Europe, legal databases and documents published by the EU institutions or the relevant NCAs. All sources of data are referenced in the report.

2.1.2. Scoping interviews

In addition to the requirements of the Tender Specifications, we conducted 17 scoping interviews with national, EU and international associations, and NCAs in France, Germany, Ireland and Luxembourg. The interviewer followed a structured format for the interview and the findings provided useful information as regards the wide range of issues to be included in the scope of the general survey.

2.1.3. General survey

The general survey (described in detail in Section 1) was conducted as task 1. The findings from the survey provided another important source of information for the study. The methods used for the general survey are described in Section 1.

2.1.4. Semi-structured interviews

To support our quantitative findings, we conducted 80 semi-structured interviews. The purpose of the semi-structured interviews was:

- to gain additional insights into the factors underlying key findings from the general survey;
- to validate findings from our desk research; and
- to identify important issues that complemented our research.

Table 6: Coverage of semi-structured interviews

Member State	Planned interviews	Scheduled interviews		Conducted interviews	
	Number	Number	Quota	Number	Quota
Austria	3	3	100%	3	100%
Belgium	3	2	67%	2	67%
Cyprus	3	4	133%	4	133%
Czech Republic	3	3	100%	3	100%
Germany	7	7	100%	7	100%
Denmark	3	3	100%	3	100%
Spain	7	3	43%	3	43%
France	7	7	100%	7	100%
Hungary	3	3	100%	3	100%
Ireland	7	7	100%	6	86%
Italy	3	3	100%	3	100%
Luxembourg	7	12	171%	12	171%
Malta	3	3	100%	3	100%
Netherlands	3	4	133%	4	133%
UK	10	10	100%	10	100%
EU/International	8	8	100%	7	88%
Total	80*	82		80	

Source: KPMG (2018). *Note: Number of planned interviews was indicatively set.

In each of the 15 Member States and at EU level, we focused on the most relevant stakeholder groups that are directly involved with AIFMD and its implementation, in particular NCAs, AIFMs and associations representing AIFMs and depositaries. The semi-structured interviews were targeted at selected key experts from the various stakeholder groups rather than at a representative quantity of stakeholders. This approach provided high quality additional input regarding the topics to be addressed in the evidence-based study.

We focused on the largest AIF markets and, therefore, conducted the largest number of interviews in Luxembourg (12 interviews), the UK (10 interviews), and Germany, Ireland and France (7 interviews each). The remaining ten Member States were mostly covered with two to four semi-structured interviews each. Table 6 provides an overview of the number of planned and conducted interviews.

In preparation for the semi-structured interviews, we developed a questionnaire on the basis of the main findings from the general survey and the desk research. The questionnaire focused on specific areas of the rules where survey responses diverged or the underlying factors were not fully clear. The questionnaire consisted of closed questions asking for a quantitative assessment (e.g. assessing different predefined aspects of performance, the relevance of single influencing factors and the potential of selected options for designing the delivery system) on a Likert-scale from one to five. The questionnaire also included open questions to ensure that interviewees could give further input in addition to the set questions.

In particular, we included the following aspects into the questionnaire:

- Links to sources of data or evidence, i.e. studies, databases;
- Facts (as opposed to opinions);
- Information on how things have changed because of AIFMD (its impact) on the interviewee or other stakeholders;
- Impact of other factors that might have interfered with AIFMD, for instance national tax or product regulation, or market developments, such as the euro-zone crisis;
- Role of other stakeholders.

The responses obtained during the semi-structured interviews were documented by **KPMG national and EU experts via KPMG’s survey tool, which is also capable of storing qualitative data.** We incorporated the results of the semi-structured interviews into the evidence-based study.

2.2. Quantitative data

Quantitative data were collected by engaging with ESMA, NCAs, national and EU associations, and member institutions of the Financial Dispute Resolution Network (FIN-NET). An overview of the data coverage for the different aspects to be analysed using quantitative data is shown in Table 7.

2.2.1. ESMA’s central AIFMD database

To complement the detailed requirements in Annex IV of the Commission Delegated Regulation (EU) No. 231/2013 (AIFMR), ESMA published guidelines to streamline the reporting in Member States⁷³ (**hereinafter called “ESMA AIFMD Reporting Guidelines”**). As part of the AIFMD reporting requirements and in accordance with the exchange of information set out in Article 53 AIFMD, ESMA established a central database to contain the reports submitted by AIFMs to the NCAs that have been transmitted to ESMA.

ESMA agreed to provide an anonymised copy of parts of this database for the purposes of evaluation. However, ESMA advised that the data were not yet sufficiently reliable or complete to be used in the context of a full policy evaluation, for the reasons set out in its 2018 report⁷⁴ (hereinafter called ESMA AIFMD Report 2018). In

⁷³ *Guidelines on reporting obligations under Articles 3(3)(d) and 24(1), (2) and (4) of the AIFMD.* ESMA/2014/869.

⁷⁴ ESMA (2018). *AIFMD – A Framework for risk monitoring. ESMA Report on Trends, Risks and Vulnerabilities (1).* Retrieved from https://www.esma.europa.eu/sites/default/files/library/esma50-165-538_report_on_trends_risks_and_vulnerabilities_no.1_2018.pdf#page=40.

particular, the data set included verified data only for 2016 and only from some Member States.

Nevertheless, given that ESMA's central database is the only source containing detailed and harmonised information on the European AIF sector for any period after implementation of AIFMD, we performed some analyses of the data to inform our assessment (see Annex 5).

2.2.2. National Competent Authorities

NCA's in the 15 selected Member States were contacted to obtain quantitative information on the AIF sector in their national market. Additionally, a comprehensive review of annual reports published by the NCA's was carried out to obtain high-level information. As the sector was not subject to streamlined EU-wide reporting requirements prior to implementation of AIFMD, only a few NCA's collected comprehensive information about the sector prior to that date. Furthermore, some NCA's did not respond to our request for legal reasons and, instead, referred us to **ESMA's centralised database**.

Table 7: Aspects covered by quantitative data, by Member State

Member State	EU Market integration	Structure of the AIF depositaries market	Cost structure of the AIF depositary market	Market share of AIFs available to retail investors
Austria	✓	✓		(✓)
Belgium	✓			(✓)
Cyprus	(✓)	(✓)		
Czech Republic	✓			(✓)
Denmark	✓*	(✓)		✓
France	✓			✓
Germany	(✓)	✓		(✓)
Hungary	✓	✓		✓
Ireland	✓	✓*		✓
Italy	(✓)	✓	✓	(✓)
Luxembourg	(✓)	✓*		(✓)
Malta	(✓)			✓
Netherlands	(✓)			(✓)
Spain	(✓)		✓	(✓)
United Kingdom	✓	✓		(✓)
Europe wide aggregated data ¹	✓		(✓) ²	

✓ Coverage for 2011–2017; (✓) partial coverage, either some years or individual sectors covered.

* No distinction between UCITS and AIF data.

¹ Aggregated form, not distinguished by the Member State.

² Available data are limited to the Real Estate sector and no time series data were available.

Source: KPMG (2018).

However, a number of NCAs provided some data, including the AuM of AIFMs, the number of funds and, in some cases, the proportion of AIF investment by investor type. A more extensive data set, containing anonymised data reported in line with Annex IV AIFMR, was provided by one NCA. The data set contained quarterly reports for 2016 and 2017, including detailed information on the ownership of funds and the investment strategy of AIFs.

Also, we obtained information on the funds managed by AIF depositaries from several NCAs (see Annex 5), which helped to assess potential structural changes in the EU depositaries market.

2.2.3. Pan-European and national trade associations

Associations covering a number of the different stakeholders involved in the AIF market were contacted with the intention to fill information gaps. In particular, it was **hoped that associations' quantitative data could close the gaps for the period prior to implementation of AIFMD**. However, since the official data sources mentioned above proved to be incomplete and inconsistent, data of pan-European associations was relied on to answer some of the research questions.

In addition to pan-European associations, national associations identified by KPMG's national sector experts were contacted. The research focussed on associations covering the respective national AIF sectors or particular areas thereof.

Some of the associations collected information on the non-UCITS sector prior to 2013, allowing us to use the data as a proxy for certain aspects of the AIF sector prior to implementation of AIFMD.

By combining the different quantitative data sources, we sought to establish a complete picture of the AIF sector and to assess the research questions.

2.2.4. Investor complaints data

Investor complaints data for AIFs was requested from the different FIN-NET members and affiliates, covering the number of investor complaints. An outline of the results can be found in Table 24, Annex 4.

National ombudsmen reported very few complaints, so that drawing overall conclusions on the impact of AIFMD was not possible. According to an EC study carried out by Deloitte Luxembourg, *"the majority of NCAs and consumer associations indicated that complaints from retail investors usually cover three areas: miss-selling of unsuitable products, the level of fees exceeding the expectations of the investor and biased advice."*⁷⁵

3. Data availability and reliability

Despite our many and considerable attempts to mitigate this data risk, data availability proved to be challenging. Indeed, we reluctantly had to conclude that the risk could not be sufficiently mitigated. Consequently, in many areas it was not possible to construct any sort of time series that enabled us to substantiate or contradict opinions expressed in the general survey and our desk research, or to make statistically well-evidenced findings against the core questions in the mandate.

⁷⁵ EC & Deloitte Luxembourg (2018), p. 118.

In summary, the only comprehensive data sets on the EU AIF market post-AIFMD are those collected by the NCAs via the AIFMD reporting. However, several NCAs had not passed on those data to ESMA (see Table 20, Annex 4) and only one NCA provided national data on its AIFMs and AIFs (in anonymised form). The other NCAs that responded to our request cited legal barriers for being unable to provide data.

ESMA and DG FISMA shared with us data they deemed reliable, but the data provided covered only 2016 and not all Member States in scope of the study.

Most, but not all, national associations and European federations collect some data, but in many cases these are at a high level (e.g. number of funds and AuM) and only from their members or the specific sector they represent. For example, there are no data in certain significant national markets for unlisted, unauthorised AIFs invested in securities.

The main reasons for this lack of comprehensive, comparable data for the period 2011–2017 are listed below.

3.1. Reporting requirements and legal definition of AIFMs

As one of the objectives of AIFMD, the introduction of harmonised reporting requirements⁷⁶ across Member States imposed the collection of data in a previously inconsistently regulated market in most Member States. According to the ESMA AIFMD Report 2018, in many Member States, statistics on the AIF sector were not collected at all, or not systematically and only on a voluntary basis, leading to a substantial lack of data for the period before AIFMD was implemented. Also, not all Member States implemented AIFMD in the same timeframe.

Moreover, the definition of what is considered an AIF today and what was considered a non-UCITS prior to AIFMD was divergent across Member States, as some funds were categorised differently in the course of transposition of the Directive into national law. Some of the managers now regulated by the Directive were not required to register with the competent authorities before it came into effect. This is reflected by some data sets showing a jump in the net assets around the intervention, caused by the reclassification.

The introduction of AIFMD also influenced the categorisation of UCITS and AIFs/non-UCITS used by some of the associations, and they adapted their methods to the legal definitions of UCITS and AIFs after the Directive came into effect.⁷⁷

3.2. Granularity and reporting frequency

For some of the analysis we had to rely on annual reports of NCAs, which commonly report certain data points. An annual reporting frequency is less than ideal for statistical modelling, as higher frequency data enables the capture of more events and helps to draw distinctions between short-term market events and structural changes in a market.

⁷⁶ In particular Art. 3(d), and 24(1), (2) and (4) AIFMD and the delegated measures.

⁷⁷ See e.g. EFAMA. 2015. *Trends in the European Investment Fund Industry in the First Quarter of 2015*. https://www.efama.org/Publications/Statistics/Quarterly/Quarterly%20Statistical%20Reports/150623_Quarterly%20Statistical%20Release%20Q1%202015.pdf [Retrieved 25 July 2018]. 2.

Another issue is the missing granularity in various statistics collected by NCAs. In some cases, data points are reported for UCITS and (retail) AIFs combined, allowing no distinction between the two, which makes the data unsuitable for further analyses.

Moreover, in some instances the data made public by NCAs is not aligned with the **data in ESMA's reports for that Member State. Differences arise due to the combining** of data for e.g. domestic AIFMs and foreign AIFMs managing domestic domiciled AIFs, or for authorised and registered AIFs.

3.3. Confidentiality of data

Another issue regards the confidentiality of some statistics. This is especially true for the cost structure of EU depositaries: depositaries usually do not share their fee structures regularly with representative bodies, due to competition law concerns. Therefore, the data on fee levels is generally unavailable with the exception of the real estate sector, where a pan-European association covers this as part of a bi-annual survey on management fee structures. However, the data cover only a small part of European non-listed real estate funds and are not suited for detailed comparative analysis over time, due to a sampling approach that does not rely on random sampling.

3.4. Time series and regression analyses

Although a number of data sources capture the same indicators, such as the net asset value (NAV) of AIFs in the different Member States, the categorisation of funds, e.g. into professional-investor and retail-investor funds, is not consistent across Member States. This is not surprising, as AIFMD does not regulate the funds themselves, which leaves the categorisation of funds up to the national regulators or industry conventions. However, the different treatment and categories of funds make it more difficult to present and analyse the different country data on a collective or comparative basis. Therefore, we analyse and present quantitative findings at country level, whenever the data sources are not suited for comparisons between countries.

Due to the lack of sufficient time series data for many of the data points of interest, the possibilities for applying in-depth analyses were rather limited. The comparability of data found on national level also amounted to one of the biggest limitations as many national associations and other institutions used varying calculation bases and classifications of funds when collecting their data on AIFs and AIFMs. The coverage of various asset classes was also not always very clear. This means that essentially it was possible reliably to compare data across Member States only on the basis of the data provided by some of the pan-European federations.

Using the only source of comparable data available for the period 2011 to 2018 that covers a number of (but not all) the sectors of the AIF market – EFAMA's⁷⁸ investment fund industry data – we performed a regression analysis to analyse whether AIFMD had a measurable impact on the size of the AIF market, controlling for a number of factors, such as the national equity markets. A comprehensive overview of the method used and the results can be found in Annex 4.

⁷⁸ *European Fund and Asset Management Association*

Table 8: The AIFMD rules pursuing the stated general, specific and operational objectives, assessed against the five key principles.

General objectives	Specific objectives	Operational objectives	Specific rules to be assessed	Effectiveness	Efficiency	Coherence	Relevance	EU added value
To provide an internal market for EU and non-EU AIFMs; harmonised and a stringent regulatory and supervisory framework for AIFMs.	All AIFMs are subject to appropriate authorisation and registration requirements	Ensure that all AIFMs satisfy a specific set of requirements (minimum capital, fit and proper, transparency) before operating across the EU	Thresholds determining the scope of AIFMD	4.1.1 c)	4.1.1 c)	4.1.1 c)	4.1.1 c)	4.1.1 c)
	Proper monitoring of macro- prudential risks	Enhance transparency of AIFM activity, including the systematic use of leverage, to enable the effective monitoring of systemic risks Ensure that relevant macro-prudential data is shared at European level	Reporting rules to monitor systemic risks: use of the reported information and ability to monitor systemic risk by the competent authorities	4.2.1 c)	4.2.1 c)	4.2.1 c)	4.2.1 c)	4.2.1 c)
			Supervisory cooperation among the NCAs and ESMA	4.2.2 c)	4.2.2 c)	4.2.2 c)	4.2.2 c)	4.2.2 c)
			Requirements for managing leveraged AIFs. Rules on imposing limits on leverage to monitor the concentration risk and leverage in the financial system	4.2.3 c)	4.2.3 c)	4.2.3 c)	4.2.3 c)	4.2.3 c)
To provide an internal market for EU and non-EU AIFMs; harmonised and a stringent regulatory and supervisory framework for AIFMs.	Proper monitoring and limitation of micro-prudential risks & Common approach to protect professional investors in AIFM-managed funds	Impose risk management controls on major risks to which AIFMs are exposed (market, liquidity, counterparty – credit and settlement - and operational)	Delegation rules	4.3.1 c)	4.3.1 c)	4.3.1 c)	4.3.1 c)	4.3.1 c)
			Valuation rules	4.3.2 c)	4.3.2 c)	4.3.2 c)	4.3.2 c)	4.3.2 c)
			Remuneration rules	4.3.3 c)	4.3.3 c)	4.3.3 c)	4.3.3 c)	4.3.3 c)
			Risk and liquidity management rules	4.3.4 c)	4.3.4 c)	4.3.4 c)	4.3.4 c)	4.3.4 c)
			Depositary rules	4.3.5 c)	4.3.5 c)	4.3.5 c)	4.3.5 c)	4.3.5 c)
	Reduce potential for weakness in investor disclosures as barrier to effective due diligence	Disclosure rules: information provided to guide investment decisions, understand risks and strategies of different AIFs, and to monitor investments.	4.3.6 c)	4.3.6 c)	4.3.6 c)	4.3.6 c)	4.3.6 c)	
	Ensure proper management of conflicts	Asset segregation rules	4.3.7 c)	4.3.7 c)	4.3.7 c)	4.3.7 c)	4.3.7 c)	

General objectives	Specific objectives	Operational objectives	Specific rules to be assessed	Effectiveness	Efficiency	Coherence	Relevance	EU added value
		of interest. Impose appropriate controls and processes in key risk areas, such as valuation & custody	Rules on investor disclosures	4.3.8 c)	4.3.8 c)	4.3.8 c)	4.3.8 c)	4.3.8 c)
	Greater public accountability of AIFMs holding controlling stakes in companies	Increase transparency of AIFMs when acquiring a controlling stake in, and managing, companies	Rules for investing in non-listed companies by private equity and venture capital funds	4.4.1 c)	4.4.1 c)	4.4.1 c)	4.4.1 c)	4.4.1 c)
	Develop the Single Market in AIFs	Remove barriers to the efficient cross-border distribution of AIFs to professional investors without compromising the effectiveness of regulation and supervision	The rules on managing EU AIFs and/or non-EU AIFs by EU AIFMs with the passport	4.5.2 c)	4.5.2 c)	4.5.2 c)	4.5.2 c)	4.5.2 c)
The rules on cross-border marketing of EU AIFs by EU AIFMs with the passport			4.5.3 c)	4.5.3 c)	4.5.3 c)	4.5.3 c)	4.5.3 c)	
Applicable rules on marketing and/or managing non-EU AIFs by EU or non-EU AIFMs without a passport			4.5.4 c)	4.5.4 c)	4.5.4 c)	4.5.4 c)	4.5.4 c)	

4. Study of to what extent the AIFMD objectives have been achieved

This sub-section follows the structure of Table 1 on page 22 of the Tender Specifications (FISMA/2016/105(02)/C) (replicated in Table 1 of this report). It assesses 16 sets of rules against the five key principles set out on pages 20 and 21 of the Tender Specifications (replicated in Table 2 of this report) and their contribution to the achievement of the general, operational and specific objectives of AIFMD. Where relevant, consideration of a set of rules includes related articles in AIFMR.

Table 8 provides a summary of the objectives, rules and principles with sub-section numbering, for ease of navigation.

The assessments are based on a triangulation of information sources, as described in sub-section 2 above. Where relevant, the principle of proportionality is considered.

The principle of proportionality is laid down in Article 5 of the Treaty on European Union. The criteria for applying it are set out in the Protocol (No 2) on the application of the principles of subsidiarity and proportionality annexed to the Treaties.⁷⁹ It requires that the content and form of European actions should not go beyond what is necessary to achieve the objectives of the Treaties. In other words, the content and form of the action must be in keeping with the aim pursued. Therefore, the measures must be proportionate, i.e. that the relevant political measure serves a legitimate purpose and is appropriate, necessary and proportionate as a legitimate means for achieving that purpose.

Sub-sections 4.1–4.5 (below) each consider the rules relating to one of the five specific objectives. One to three operational objectives relate to each specific objective, and one to five sets of rules relate to each operational objective.

Sub-section 4.6 considers certain other commercial and market impacts.

Sub-section 5 provides an overall assessment of the contribution of the rules assessed, together with the additional analysis in sub-section 4.6, to achievement of the general objective.

4.1. Specific objective: All AIFMs are subject to appropriate authorisation and registration requirements

Under this specific objective, we consider the AIFMD thresholds and one operational objective: to ensure that all AIFMs satisfy a specific set of requirements (minimum capital, fit and proper, transparency) before operating across the EU. In the light of other information received, we also include commentary on the scope of AIFMD and inconsistency of approach in the authorisation process.

All provisions serve the specific objective that AIFM are subject to appropriate authorisation and registration requirements.

4.1.1. Thresholds determining the scope of AIFMD

The general survey and interviews provided evidence on experience with the thresholds and also of differences in national authorisation processes (time and costs)

⁷⁹ EUR-lex Glossary of summaries (2018). Proportionality principle. Retrieved from <https://eur-lex.europa.eu/summary/glossary/proportionality.html>

and differences in the interpretation of AIF and AIFM (i.e. scope). See 4.1.1, 4.1.2 and 4.1.4 in Section 1. In addition, information was obtained from desk research conducted by the central team on the implementation and impact of these rules, and we asked for specific information from the 15 Member States (see Annex 6).

a) *Description of the rules*

AIFMD established a harmonised framework of AIFM authorisation and registration. AIFMs have to apply to their NCA for permission to provide the business of collective asset management for AIFs. In accordance with Article 3(3)(a) AIFMD, AIFMs managing AIFs with AuM below certain thresholds can be exempted from the authorisation requirement if the home Member State has established a *de minimis* registration regime. The thresholds differ depending on whether the AIFs employ leverage or not.

Article 3(2) AIFMD sets the thresholds as:

- (1) *AIFMs which 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 AuM, including any assets acquired through the use of leverage, in total do not exceed a threshold of EUR 100 mn;*
- (2) *AIFMs which 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 AuM in total do not exceed a threshold of EUR 500 mn when the portfolios of AIFs consist of AIFs that are unleveraged and have no redemption rights exercisable during a period of 5 years following the date of initial investment in each AIF.*

The specifications on how, *inter alia*, to calculate the thresholds are stipulated in Articles 2-5 AIFMR.

Although, sub-threshold AIFMs do not have to seek authorisation as a full-scope AIFM (unless the NCA applies such a requirement – see c) below), they must comply with the requirements to provide regular reports to the NCAs. This specific objective relates to the proper monitoring of *macro-prudential* (systemic) risks.

b) *Assessment against the five key principles*

i) *Effectiveness*

Article 3 AIFMD provides for "small" market participants to operate as an AIFM under a "**lighter** regime"⁸⁰ by seeking registration rather than a full licence and by complying with a *de minimis* regime of only certain of the AIFMD requirements, which is not as costly as full compliance.

The *de minimis* rule under Article 3 AIFMD is based on the principle of proportionality. The co-legislators determined that for AIFMs managing a portfolio with AuM of less than EUR 100 million, it would be disproportionate to require them to meet the full

⁸⁰ Recital 17 AIFMD.

requirements of AIFMD as they are unlikely to pose significant risks to financial stability and market efficiency.⁸¹

However, the absence of a consistent approach to the collection of macro-prudential data (e.g. on leverage or risk concentrations) and of effective mechanisms for sharing this information between prudential authorities at the European or global level was thought to be a significant barrier to robust macro-prudential oversight. AIFMD intended to address this, including for sub-threshold AIFMs.

Recital 17 AIFMD summarises the position of sub-threshold AIFMs as follows:

".....Although the activities of the AIFMs concerned are unlikely to have individually significant consequences for financial stability, it is possible that aggregation causes their activities to give rise to systemic risks. Consequently, those AIFMs should not be subject to full authorisation but to registration in their home Member States and should, inter alia, provide their NCAs with relevant information regarding the main instruments in which they are trading and on the principal exposures and most important concentrations of the AIFs they manage. However, in order to be able to benefit from the rights granted under this Directive, those smaller AIFMs should be allowed to be treated as AIFMs subject to the opt-in procedure provided for by this Directive. That exemption should not limit the ability of Member States to impose stricter requirements on those AIFMs that have not opted in."

AIFMD also aims to counteract *micro*-prudential risks. Greater assurance for domestic and cross-border investors and counterparties and a reduction of opportunities for regulatory arbitrage were intended to be achieved.

Although the majority of investors in AIFs are professional investors, AIFMD aims to establish a certain degree of investor protection. In addition, the AIFMD Impact Assessment states that it was the intention that efficiency and integrity of the markets in which AIFMs and AIFs operate, irrespective of the location of those markets, should be improved.

It further states that the exemptions in AIFMD seek to balance these risks and objectives with the costs and the appropriateness of addressing them for the potential AIFMs and AIFs that would otherwise be caught by the **Directive's requirements**.

The differentiation between full-scope and sub-threshold AIFMs is based on the degree to which an AIF employs leverage because the co-legislators believed that the use of leverage contributes to the build-up of systemic risk in the financial system and leads to disorderly markets. There is no publicly available information disclosing registered sub-threshold AIFMs allocated under either the threshold of 100 mn or the threshold of 500 mn. Notwithstanding, the assessment under the key principles made herein has not come to different statements and conclusions between these two sub-thresholds.

However, the approach of applying a lighter regime to smaller AIFMs has been criticised, with the argument that the financial crisis showed that systemic risks emanate not only from large players, but also from many small players who - following the "herd instinct" - pursue comparable investment strategies.⁸² Also, desk research shows that some Member States require all AIFMs to be licenced or make use of the national discretion to set stricter rules for sub-threshold AIFMs. This would seem to call into question the effectiveness and proportionality of the thresholds.

For example, all AIFMs that have their registered seat in Hungary must obtain a preliminary licence issued by the NCA prior to offering collective portfolio management

⁸¹ Proposal for a Directive of the European Parliament and of the Council on AIFMs (...), COM(200)207 final, 2009/0064 (COD), p. 5 – 6.

⁸² Cf. Tollmann in: Dornseifer/Jesch/Klebeck/Kunschke/Machhausen, AIFM-RL Art. 3, margin no. 19.

services. In Malta, a valid investment services licence is required in order to perform any licensable activities (including AIF management). This was the case even before implementation of AIFMD. In view of this requirement, the possibility of registration has not been adopted in Malta. French sub-threshold AIFMs, too, are subject to full AIFMD requirements.

A number of other Member States have taken up the right to adopt stricter rules, especially (but not exclusively) where AIFs can be marketed to non-professional investors. In the Netherlands, for example, in the case of offerings to non-professional investors (retail or semi-professional investors), the following additional requirements apply to AIFMs that wish to benefit from the registration regime:

- the AIFM offers units or shares of the AIF to less than 150 people;
- the market price per unit or share of the AIF is at least EUR 100,000; or
- the nominal value per unit or share of the AIF is at least EUR 100,000.

The regime impacts managers of numerous types of funds. Amongst them are many managers that previously operated under an exemption and were not subject to supervision. Fund managers that offered participation rights solely to qualified investors were exempted from the licence obligation until 22 July 2013. With implementation of AIFMD, these managers have had to obtain a licence and became subject to ongoing regulatory supervision by the AFM and the Dutch Central Bank (DNB). AIFMD thus led to the introduction of a licence requirement for managers that were previously not subject to supervision. Neither AFM nor DNB kept any record of the managers that were exempted before the introduction of AIFMD.⁸³

In its legislative draft of the AIFM Implementation Act, the German legislator initially adopted the provisions on registration as provided by AIFMD without any changes. However, in the course of the legislative procedure it was requested by some parliamentary groups to exceed the European requirements for registration (so-called "gold-plating").⁸⁴ Hence, the final version of the relevant registration requirements in Germany now also applies to AIFMs managing mutual AIFs (Publikums-AIF) for non-professional investors.⁸⁵

In Ireland, most non-UCITS have become authorised AIFs and have appointed EU AIFMs. However, not all non-UCITS became authorised AIFs after 2013 and some funds still have a non-EU AIFM under the transitional arrangements in AIFMD (which apply until a determination on the non-EU passports is made). The non-UCITS notices still apply to these funds.

French AIF industry participants enjoyed a head start on transposition since they were already subject to a regulatory framework that is very similar to the requirements of AIFMD, in particular with regard to provisions on risk management system and reporting.

The population of French management companies has more than doubled in ten years and is continuing to grow, with start-ups, mergers, restructuring and consolidation of existing participants. 32 AIFMs were authorised in 2013 (at the beginning of the one-year transitional period for authorisation as an AIFM in France) and 353 in 2016.⁸⁶ Interestingly, as pointed out in 2014 by Natasha Cazenave of the AMF, "AIFMD seems

⁸³ AFM, *nieuwsbrief AIFM-Richtlijn*, March 2015, <http://afm.m13.mailplus.nl/archief/mailling-463530.html>.

⁸⁴ BT-Drs 17/13395, 650.

⁸⁵ Cf. § 44 KAGB.

⁸⁶ *Instruction n° 2008-03 of 8 February 2008; Report of the AIFMD Stakeholder's Committee on the Transposition of the AIFM Directive and the Development of French Innovative Asset Management – 26 July 2012 page 4, page 6, page 7, page 8, page 14, page 15.*

*to present more opportunities than hurdles as we see quite a few entities that are below the thresholds, choosing to opt in”.*⁸⁷

The French AIF industry is significant (see Table 10 below and EFAMA statistics⁸⁸) but primarily concentrated on two segments of the market: UCITS-like funds and private equity funds. In addition to its considerable expertise in private equity and real-estate fund management, France also has strengths in innovative management (hedge funds and funds of hedge funds). The French regulator approved a large number of programs of operations for the indirect management of AIFs. Even if the AuM in such funds (EUR 15 bn at the end of 2011, for a total of 250 funds) and the average size of French AIFs (EUR 60 mn) are still relatively small, French AIFMs are posting strong growth rates.⁸⁹

In Germany, the number of licenced AIFMs has been steadily increasing (see Table 10). At the same time, the number of registrations has increased significantly. This indicates that many managers do not choose to opt in to full-scope authorisation in order to use the cross-border passport, and so avoid the more extensive rules and higher attendant costs under the AIFMD authorisation regime. Hence, it also indicates that initial concerns that AIFs managed by registered AIFMs could be less attractive to institutional investors due to the lack of procedural requirements (e.g. with regard to internal company compliance) seem not to have materialised.⁹⁰ Germany does, however, have the highest number of authorised AIFs – “**Spezialfonds**” – which traditionally have been subject to authorisation at fund level since well before implementation of AIFMD.

In the UK, on the other hand, AIFMs of authorised, open-ended AIFs have been authorised since the first Financial Services Act 1986,⁹¹ but not all open-ended AIFs are authorised (unauthorised unit trusts, for example, have for several decades been a collective investment vehicle of choice for pension funds and charities). The AIFMs of authorised funds were subject to rules across all aspects now covered by AIFMD, although the technical detail of some of those rules had to be reviewed and updated when AIFMD was implemented.⁹²

Also, for over a century, there have been incorporated, listed, closed-ended investment vehicles in the UK, which did not have an AIFM (the board of the company was the key governance body), but which commonly appointed a discretionary investment manager, usually authorised under MiFID, **to manage the company’s** portfolio. In many, but not all, cases the investment manager became the AIFM. The board remains and has duties under both Company Law and the special listing rules for investment companies, which can create an awkwardness *vis-à-vis* the responsibilities of the AIFM. This issue is likely to be common in other Member States that have incorporated listed, closed-ended investment vehicles.

⁸⁷ *Natasha Cazenave (Head of the Investment Management Policy Division, Regulatory Policy and International Affairs Directorate, AMF) (10 June 2014). Speech at IBA conference - 25th Annual Conference on Globalisation – Paris. Retrieved from https://www.amf-france.org/technique/multimedia?docId=workspace://SpacesStore/5b43a5c5-f466-4394-bfea-9f53f731d1a8_en_1.0_rendition, p. 4.*

⁸⁸ See <https://www.efama.org/statistics/SitePages/Statistics.aspx>.

⁸⁹ AFG – *Panorama du marché français de la gestion pour compte de tiers / Overview of French market third-party management March 2017, Page 4*

⁹⁰ Cf. Hartrott, in *Frankfurter Kommentar, KAGB (Frankfurt Legal Commentary for the German transformation Act of AIFMD)*, § 44, margin no. 70.

⁹¹ See http://www.legislation.gov.uk/ukpga/1986/60/pdfs/ukpga_19860060_en.pdf.

⁹² See <http://www.fsa.gov.uk/library/policy/cp/2013/13-09.shtml>.

Table 9: Numbers of AIFMs (full-scope authorisation vs. registration)

Member State	Numbers of licenced AIFMs		Number of registered AIFMs
	ESMA ⁹³	National Numbers	
Austria	26	24 ⁹⁴	20 ⁹⁵
Belgium	11	12 ⁹⁶	75 ⁹⁷
Cyprus	22	22 ⁹⁸	89 ⁹⁹
Czech Republic	32	55 ¹⁰⁰	31 ¹⁰¹
Denmark	32	40 ¹⁰²	102 ¹⁰²
France	430	353 ¹⁰³	243 ¹⁰³
Germany	130	136 ¹⁰⁴	342 ¹⁰⁴
Hungary	80	79 ¹⁰⁵	n/a ¹⁰⁶
Ireland	95	94 ¹⁰⁷	70 ¹⁰⁷
Italy	89	87 ¹⁰⁸	- ¹⁰⁹
Luxembourg	267	246 ¹¹⁰	599 ¹¹⁰

⁹³ Data gathered from ESMA's web pages as of 31 August 2018, which shows only fully licenced AIFMs.

⁹⁴ FMA, list of AIFM (licenced), <https://www.fma.gv.at/investmentfonds-und-verwaltungsgesellschaften/aif-verwalter-alternativer-investmentfonds/auswertungen/>; retrieved 31 August 2018.

⁹⁵ FMA, list of AIFM (registered), retrieved from <https://www.fma.gv.at/wp-content/uploads/dynamic-downloads/regAIF.pdf>.

⁹⁶ FSMA, Managers of AIF, Retrieved from <https://www.fsma.be/en/node/7278>. In this respect, the requirements for "Small Manager of AIF" as published by the Belgian regulator FSMA corresponds to the requirements of registered AIFMs within the meaning of Art. 3(3) (a) AIFMD, cf. Articles 106, 109, 117 and 121 of the Belgian Law of 19 April 2014 on alternative investment funds and their managers. The Belgian legislator has transposed the stipulations of the AIFM Directive in this respect.

⁹⁷ FSMA, Belgian Small Manager of AIF, retrieved from <https://www.fsma.be/en/node/7278>; retrieved 31 August 2018.

⁹⁸ CySEC, list of authorised AIFMs, retrieved from <https://www.cysec.gov.cy/en-GB/entities/aifm/authorised/>.

⁹⁹ CySEC, list of registered AIFMs, retrieved from <https://www.cysec.gov.cy/en-GB/entities/aifm/registered/>, /.

¹⁰⁰ CNB, retrieved from https://www.cnb.cz/en/statistics/money_and_banking_stat/lists_mbs/list_fki/.

¹⁰¹ Source of the information: https://apl.cnb.cz/apljerrsdad/JERRS.WEB24.SUBJECTS_COUNTS_2.

¹⁰² Finastilsynet, database, retrieved from <http://vut.finastilsynet.dk/da/Tal-og-fakta/Virksomheder-under-tilsyn/VUT-database.aspx>. Four AIFMs could not be further classified in the table

¹⁰³ AMF. (2017 June 21). Annual Report 2016. Paris: AMF, P 45.

¹⁰⁴ BaFin, database, retrieved from <https://portal.mvp.bafin.de/database/InstInfo/sucheForm.do>.

¹⁰⁵ MNB, as of 30 June 2018, retrieved from <https://www.mnb.hu/letoltes/befalap-idosor.xls>, Sheet: "1_alapkez és alapok száma".

¹⁰⁶ Hungarian law does not provide for registration.

¹⁰⁷ CBI, list of AIFM, Retrieved from <http://registers.centralbank.ie/DownloadsPage.aspx>.

¹⁰⁸ CONSOB, Retrieved from <http://www.consob.it/web/consob-and-its-activities/register-of-italian-investment-firms-sims->; NCA Register: Retrieved from <http://www.consob.it/web/area-pubblica/societa-di-gestione-del-risparmio-sgr->

¹⁰⁹ The file is filtered to have evidence only on the AIFMD authorised AIFMs. If you remove the filters from column O, there is a total of 135, but 48 of them are not authorised under AIFMD, cf. CONSOB, Retrieved from <http://www.consob.it/web/consob-and-its-activities/register-of-italian-investment-firms-sims->; NCA Register: Retrieved from <http://www.consob.it/web/area-pubblica/societa-di-gestione-del-risparmio-sgr->

Member State	Numbers of licenced AIFMs		Number of registered AIFMs
	ESMA ⁹³	National Numbers	
Malta	59	55 ¹¹¹	130 ¹¹¹
Netherlands	98	97 ¹¹²	421 ¹¹²
Spain	249	93 ¹¹³	- ¹¹⁴
United Kingdom	704	- ¹¹⁵	144 ¹¹⁶

Source: KPMG (2018).

The UK uses the discretion to set stricter rules in order to maintain its historical position of applying product regulation to open-ended non-UCITS. Such AIFs fall into two categories: non-UCITS Retail Schemes (NURS) and Qualified Investor Schemes (QIS).¹¹⁷ The latter are available only to professional investors.

In Luxembourg, there were no thresholds in place prior to AIFMD. All Luxembourg Managers of AIFs were required to register with the CSSF¹¹⁸ as a Chapter 16 Management Company under the law of 2010 on UCITS.

As regards quantitative data on the numbers of full-scope and sub-threshold AIFMs in the different Member States, given the absence of time series data in the ESMA database, we sought statistics at national level. It was not possible to obtain precise **and comparable time series data in all cases. Often, the relevant Member States' NCAs, professional bodies and/or associations have not historically differentiated between the – often times – simultaneously authorised managers under the UCITSD and national pre-AIFMD equivalents. Also, they may not have distinguished in publically-available information between authorised full-scope AIFMs and registered sub-threshold AIFMs (either a pre-AIFMD equivalent or, even, post-AIFMD). Moreover, where national data were available, in some instances they do not concur with ESMA's data.**

Table 9 shows the numbers of AIFMs authorised or registered in the Member States. For those Member States for which data were available, Table 10 shows the trend in the number of licenced AIFMs.

It can be seen from Table 9 and Table 10 that in all those Member States for which data were available prior to AIFMD, the numbers of licenced AIFMs increased sharply when AIFMD was implemented. However, data are not generally available on existing AIFMs that were not licenced or whether they had to comply with some other form of regulation (e.g. MiFID, Prospectus Directive/national listing rules, product regulation etc.).

¹¹⁰ CSSF, retrieved from <https://supervisedentities.apps.cssf.lu/index.html?language=fr#Extraction>.

¹¹¹ MFSA, Database, retrieved from <https://www.mfsa.com.mt/pages/licenceholders.aspx>.

¹¹² AFM, Overview of licenced AIFMs, retrieved from <https://www.afm.nl/nl-professionals/registers/vergunningenregisters/beleggingsinstellingen>.

¹¹³ CNMV, retrieved from <http://www.cnmv.es/Portal/Consultas/Busqueda.aspx?id=13>.

¹¹⁴ No public register of sub-threshold AIFMs available.

¹¹⁵ FCA does not provide publicly available information on the number of licenced AIFMs.

¹¹⁶ FCA, retrieved from <https://www.fca.org.uk/publication/systems-information/aifmd-small-register.pdf>.

¹¹⁷ See Investment Funds Sourcebook. Available at <https://www.handbook.fca.org.uk/handbook/FUND.pdf>.

¹¹⁸ Commission de Surveillance du Secteur Financier

Table 10: Trend in (full) AIFM authorisations in Member States

Member State	Before 2013			2013 and later		
	Year	NCA	ESMA ¹¹⁹	Year	NCA	ESMA ¹¹⁸
Austria ¹²⁰				2014	22	26
				2015	27	
				2016	27	
				2017	27	
				2018	24	
Belgium ¹²¹				2014	4	11
				2015	7	
				2016	9	
				2017	9	
				2018	12	
Cyprus ¹²²				2014	5	22
				2015	13	
				2016	13	
				2017	18	
				2018	22	
Czech Republic ¹²³				2013	34	32
				2014	35	
				2015	33	
				2016	33	
				2017	32	
				2018	55	
Denmark ¹²⁴	2006	9		2013	9	32
	2007	9		2014	21	
	2008	9		2015	31	
	2009	9		2016	33	
	2010	9		2017	32	
	2011	9		2018	40	
	2012	9				
France ¹²⁵	2008	1		2013	33	
	2009	1		2014	314	
	2010	1		2015	334	
	2011	1		2016	353	

¹¹⁹ Data retrieved from ESMA's web pages as of 31. August 2018.

¹²⁰ FMA, list of AIFM (licenced), <https://www.fma.gv.at/investmentfonds-und-verwaltungsgesellschaften/aif-verwalter-alternativer-investmentfonds/auswertungen/>; retrieved 31 August 2018.

¹²⁰ FMA, list of AIFM (registered), retrieved from <https://www.fma.gv.at/wp-content/uploads/dynamic-downloads/regAIF.pdf>

¹²¹ FSMA Annual Reports 2014 et seq.; National Competent Authority: Financial Services & Markets Authority (FSMA), List of Belgian domiciled management companies of AIF, retrievable from <https://www.fsma.be/nl/file/54148/download?token=qVFP8dNL>; FSMA_2013_11-1 of 2/07/2013: Q&A on the transitional period provided for by Directive 2011/61/EU, and on the Belgian national provisions for transposing this Directive retrievable from <https://www.fsma.be/en/file/52019/download?token=dsW988->.

¹²² CySEC, list of authorised AIFMs, retrieved from <https://www.cysec.gov.cy/en-GB/entities/aifm/authorised/>.

CySEC, list of registered AIFMs, retrieved from <https://www.cysec.gov.cy/en-GB/entities/aifm/registered/>.

¹²³ Data gathered by CNB: Basic indicators on the financial market sectors, can be downloaded under: https://www.cnb.cz/en/supervision_financial_market/aggregate_information_financial_sector/basic_indicators_financial_market/

¹²⁴ Finastilsynet, database, retrieved from <http://vut.finanstilsynet.dk/da/Tal-og-fakta/Virksomheder-under-tilsyn/VUT-database.aspx>. Four AIFMs could not be further classified in the table

¹²⁵ AMF, Annual Report 2013; AMF, Annual Report 2014; AMF, Annual Report 2015 and AMF, Annual Report 2016 and website of AMF: Authorisation of Management Companies by the AMF. Retrieved from https://www.amf-france.org/en_US/Acteurs-et-produits/Societes-de-gestion/Agreement-de-la-societe.

Member State	Before 2013			2013 and later		
	2012	1		2017 2018	411 353	430
Germany ¹²⁶	2012	78	92	2013	90	85
				2014	113	114
				2015	138	126
				2016	136	129
				2017	136	130
Hungary ¹²⁷	2012	63	57	2013	69	64
				2014	70	65
				2015	67	69
				2016	68	70
				2017	71	77
Ireland ¹²⁸				2018	79	80
				2013	7	
				2014	81	
				2015	90	
				2016	92	
Italy ¹²⁹				2017	94	
				2018	94	95
				2013	1	
				2014	86	
				2015	88	
Luxembourg ¹³⁰				2016	88	
				2017	86	
				2018	87	89
				2013	32	15
				2014	119	173
Malta ¹³¹				2015	193	222
				2016	211	244
				2017	226	258
				2018	246	267
		2007	1		2013	19
	2008	4		2014	34	
	2009	6		2015	443	
	2010	9		2016	47	
	2011	12		2017	54	59
	2012	15		2018	55	59
Netherlands ¹³²				2014	93	
				2015	104	

¹²⁶ BaFin, Annual Report 2012-2017.

¹²⁷ MNB Annual Report 2012-2017; MNB, as of 31 December 2017, retrieved from <https://www.mnb.hu/letoltes/befalap-idosor.xls>, Sheet: "1_alapkez és alapok száma".

¹²⁸ CBI, Database, retrieved from

<http://registers.centralbank.ie/FirmSearchResultsPage.aspx?searchEntity=Institution&searchType=Name&searchText=®isters=32%2c33%2c58%2c59&firmType=InvestmentFirms> last viewed on 15.08.2018;

<https://www.centralbank.ie/eregulate/industry-market-sectors/funds-service-providers/aifm/authorisation>.

¹²⁹ CONSOB, Retrieved from <http://www.consob.it/web/consob-and-its-activities/register-of-italian-investment-firms-sims->; NCA Register: Retrieved from <http://www.consob.it/web/area-pubblica/societa-di-gestione-del-risparmio-sgr->

The file is filtered to have evidence only on the AIFMD authorised AIFMs. If you remove the filters from column O, there is a total of 135, but 48 of them are not authorised under AIFMD, cf. CONSOB, Retrieved from <http://www.consob.it/web/consob-and-its-activities/register-of-italian-investment-firms-sims->; NCA Register: Retrieved from <http://www.consob.it/web/area-pubblica/societa-di-gestione-del-risparmio-sgr->

¹³⁰ CSSF (2013), Newsletter No 152; CSSF (2017), Newsletter No 200; CSSF (2016), Newsletter No 188; CSSF (2015), Newsletter No 176; CSSF (2014), Newsletter No 164.

¹³¹ Maltese Financial Services Register 2017; Malta Implementation Process; The AIFMD Transition in Malta, HedgeWeek 2014.

Member State	Before 2013			2013 and later		
				2016	107	98
				2017	110	
				2018	97	
Spain ¹³³	2002	60	67	2013	134	249
	2003	67	71	2014	138	
	2004	71	73	2015	205	
	2005	80		2016	221	
	2006	89		2017	238	
	2007	106		2018	93	
	2008	113				
	2009	117				
	2010	123				
	2011	125				
	2012	130				
UK ¹³⁴				2013	135	704
				2014		
				2015		
				2016		
				2017		
				2018		

Source: KPMG (2018).

After implementation of AIFMD, the Luxembourg fund management market for AIFs increased markedly from 32 AIFMs in 2013 to 246 fully licenced AIFM in 2018.¹³⁶

In the Czech Republic, the number of managers is divided approximately one-third licenced AIFMs and two-thirds registered AIFMs. There were 66 registered AIFMs, in comparison to 31 licenced AIFMs, as of 12 September 2018.¹³⁷

In Cyprus, statistics show that the number of authorised AIFMs has grown steadily since 2014. After 2014, existing Cypriot Investment Firms (i.e. authorised under national law transposing MiFID) converted into AIFMs or set up separate AIFM entities to manage AIFs.

Other than in Austria, the Czech Republic, Hungary and Italy, in the majority of Member States, the numbers of licenced AIFMs have continued to increase. This would seem to indicate that sub-threshold AIFMs are not deterred from increasing their AIF AuM and becoming full-scope AIFMs, or new firms directly becoming full-scope AIFMs.

It is also noteworthy that 56% of survey respondents (66% if those expressing no opinion are excluded) were concerned about inconsistent definitions of an AIF or an AIFM (see 4.1.2 in Section 1). It was reported that Article 3 AIFMD (exemptions) is somewhat unclear and therefore is interpreted differently by Member States. In particular, the different interpretations of the AIF definition make it difficult to assess the full scope of AIFMD. Cyprus, for example, provides in a circular a non-exhaustive list of the relevant "persons" that are obliged to register by specifying the general

¹³² AFM, *overzicht geregistreerde AIFMs*, 6 November 2017; AFM, *overzicht vergunninghoudende AIFMs*, 8 November 2017.

¹³³ CNMV, *listado complete de instituciones de inversion colectiva*, www.cnmv.es

¹³⁴ No public register of sub-threshold AIFMs available.

¹³⁴ FCA does not provide publicly available information on the number of licenced AIFMs.

FCA, retrieved from <https://www.fca.org.uk/publication/systems-information/aifmd-small-register.pdf>.

¹³⁵ The FCA does not provide publicly available information on the number of licences in each year.

¹³⁶ Cf. web link: <https://supervisedentities.apps.cssf.lu/index.html?language=fr#AdvancedSearch>.

¹³⁷ Source of the information: https://apl.cnb.cz/apljersdad/JERRS.WEB24.SUBJECTS_COUNTS_2

qualification of AIFM,¹³⁸ to assist the industry in understanding which Cypriot companies are in scope.

Also, there are market participants that have both UCITS and AIFM licences, which requires them to meet both regulatory frameworks. This can lead to potential conflicts in the case of contradictory requirements, leaving it unclear which regulatory framework primarily to comply with.

This rises a prior question about the effectiveness of the scope of AIFMD, whether or not thresholds are applicable.

Furthermore, a commentary¹³⁹ regards as very short the 30-day period within which an AIFM, for which the *de minimis* conditions set out in Article 3(2) AIFMD are no longer met, has to apply for authorisation. It observes that an AIFM that has so far complied only with the minimum requirements of Article 3(3) AIFMD would not be in a position to meet the full requirements of AIFMD within this period. In particular, it notes that the appointment of a depositary and, if necessary, an external valuer might require more time.

However, as stated by ESMA in its advice to the EC on AIFMD delegated measures (**hereinafter called "ESMA AIFMR Advice"**),¹⁴⁰ the registration requirements for entities falling below the thresholds addresses macro- and micro-prudential risks as well as investor protection issues, through ensuring effectively that all AIFMs satisfy a minimum set of requirements before operating anywhere within the EU and through ensuring the principle of proportionality at a European level.

Moreover, the authorisation regime allows an overview of the AIF market in the EU via the reporting regime, which allows for the development and the risks of the AIF to be observed and estimated to a certain degree. It also creates a unified standard of regulation and requirements, which lead, together with the passport regime, to a unified market.

As part of the notification system, the registration-only regime for sub-threshold AIFMs is an adequate tool to make AIFMD a more flexible legal framework. The significant increase of registered AIFMs in Member States with large AIF markets suggests that for many AIFMs the lighter registration requirements are more appropriate than the additional operational cost burdens and administrative burdens for a full-scope licence. These lighter registration requirements of the sub-threshold regime allow for easier market entry, specifically of smaller and medium undertakings, rendering AIFMD a more proportionate legislative act.

Given the rather steady increase of fully authorised AIFMs as well as (sub-threshold) licenced AIFMs, as seen in detail above, one would have to conclude that the thresholds are not a material deterrent to firms wishing to manage AIFs. Rather, it seems, firms are willing to subordinate to the regulatory regime in order to participate in a growing market place. Therefore, it seems that the specific rule concerning the thresholds is effective.

However, the qualitative effects are not certain. Only firms that feel able to comply with the full regulatory regime coming with an authorisation have been willing to be subject to this regime.

¹³⁸ No. Circular C052 "Arrangements for the registration of AIFMs which do not exceed the threshold in section 4(2) of Law of 2013" (which replaces circular CI56-2013-01):

<https://www.cysec.gov.cy/CMSPages/GetFile.aspx?guid=64d17acb-9851-4b0a-bf3c-f124c47b193c>

¹³⁹ Cf. Tollmann, in Dornseifer/Jesch/Klebeck/Tollmann, AIFM-RL, Art. 3, margin no. 43.

¹⁴⁰ ESMA (16 November 2011). Final Report, ESMA's technical advice to the European Commission on possible implementing measures of the Alternative Investment Fund Managers Directive, ESMA/2011/379, p. 238.

Also, it seems from the investors' and other market participants' perspective that there is room for improvement regarding the transparency of the *de minimis* regime, since 25% of institutional investors and entities marketing, selling or selecting AIFs did not confirm that they were clear about whether AIFMs are authorised as full-scope or registered as sub-threshold (see 4.1.4 in Section 1).

Furthermore, some inconsistencies in the EU-wide application of AIFMD were noted by survey respondents and interviewees.

According to the answers to survey question 45 (see Figure 20 and Figure 21 in 4.1.2 in Section 1) almost one-quarter of all respondents did not have any opinion on the consistency of application of AIFMD across the EU. However, more than one-third of respondents that had an opinion on this question held the view that AIFMD is not applied consistently across the EU. Overall, only one-fifth of respondents regarded the application of AIFMD across the EU as more or less consistent.

The main areas of inconsistency and variation in the application of AIFMD were identified during the semi-structured interviews as marketing requirements, reporting requirements and passporting. With regard to AIFM authorisation in particular, only 30% of interviewees voiced concerns. It has not been possible to pinpoint the sources of those concerns to one particular area. Concerns may be linked to costs (see below under *ii) Efficiency*), but also with a potential lack of differentiation in regulatory standards concerning authorised AIFMs on the one hand and registered sub-threshold AIFMs on the other.

However, as can be seen from Figure 21, about one-quarter of all respondents were of the opinion that as between full-scope and sub-threshold AIFMs there are no significant differences in the applicable professional standards, in the disclosures provided to investors, or in the standards concerning risk management and conflicts of interests. That said, with an overall 75% of interviewees not raising any concerns, it can be concluded that the majority of the industry (including professional investors) agree that all AIFMs satisfy good standards in their operating models.

It can, therefore, be concluded in general that the specific objective of subjecting all AIFMs to appropriate authorisation and registration requirements is also met. Furthermore, regarding effectiveness, also the general objective of providing an internal market and a harmonised and stringent regulatory and supervisory framework for AIFMs is met.

ii) Efficiency

The data we obtained via desk research and requests to Member States are shown in Table 11. It includes, in particular, the fees prescribed by law or by NCA rules. Data regarding other costs incurred in obtaining a full-scope licence could not be gathered adequately through the desk research. This problem has been recognised in EC Cross-Border Distribution Proposal.

The data for time taken to obtain an AIFM licence are shown in Table 12. As can be seen, there is a wide range of costs for obtaining an AIFM licence across Member States. Some NCAs demand lower fees than EUR 10,000 or no fees (they recoup their costs via an annual supervisory fee), while other NCAs' fees clearly exceed EUR 10,000. Also, the costs shown in Table 11 are only part of the total costs for firms, which include costs of legal services and staff time.¹⁴¹

¹⁴¹ Even from a non-EU perspective it has been estimated that AIFMD authorisation and reporting would be ranking highest in terms of cost of compliance, cf. KPMG/AIMA/MFA, 2013 Global Hedge Fund Survey, *The cost of compliance*, p. 11.

Table 11: Fees charged by NCAs and other costs for obtaining a licence

Member State	Costs for obtaining a licence
Austria	Pursuant to the Austrian Federal Banking Act, costs incurred amount to EUR 10,000 ¹⁴²
Belgium	The cost of an AIFM licence in Belgium is EUR 2,500. ¹⁴³ The cost of registration of small managers pursuant to Art. 3(3)(a) AIFMD are much lower and were initially set at EUR 300 by way of Royal Decree. As per 1 January 2017, the indexed amount was EUR 392. ¹⁴⁴
Czech Republic	The administrative costs for an AIFM licence amount to CZK 100,000. ¹⁴⁵
Cyprus	The application fee to obtain a licence is EUR 2,000 (plus additional fees if the licence is extended to cover additional services under MiFID) ¹⁴⁶
Denmark	No fee ¹⁴⁷
France	The AMF does not charge an explicit fee to obtain a licence (authorisation costs are, in effect, recouped by the AMF via the annual fee to the regulator, which is circa EUR 2,000). AMF stresses that the level of fees remains 'very limited' since authorisation is not intermediated . However, in practice, fees are related to the preparation of the authorisation file, which are often prepared by law firms in France. It is hard to provide an 'average' cost since it will greatly depend on the size of the AIFM/complexity of strategies . ¹⁴⁸
Germany	EUR 10,000 – EUR 40,000 ¹⁴⁹
Hungary	EUR 3,550 ¹⁵⁰
Ireland	There is no fee for applying to the Central Bank of Ireland (CBI) for authorisation. Typically, if an applicant seeks professional assistance with the application, costs can be in the region of EUR 50,000 depending on the "nature, scale and complexity" of the application . Industry funding levies (to pay for the operation of the CBI) apply to regulated firms. The amount of the levy depends on the risk impact

¹⁴² FMA, *Information licence and registration*, retrieved from <https://www.fma.gv.at/investmentfonds-und-verwaltungsgesellschaften/aif-verwalter-alternativer-investmentfonds/konzession-und-registrierung/>; Law, retrieved from <https://www.fma.gv.at/en/national/supervisory-laws/#54>; *Konzessionsinfo ohne BWG Konzession_2014-04-15; Konzessionsinfo mit BWG Konzession_2014-04-02*

¹⁴³ Art. 28 § 1 of the Royal Decree of 17 May 2012.

¹⁴⁴ FSMA, *Circular FSMA_2017_07 dd. 27/03/2017 on registration of small managers of non-public AIF (Registrierung van kleinschlige beheerders naar Belgisch recht von niet-openbare AICB's)*, *FSMA_2017_07 dd. 27/03/2017*, can be downloaded under: <https://www.fsma.be/nl/file/51989/download?token=qgjz7cAA>; *Q&A on the Law of 19 April 2014 on alternative investment funds and their managers*, retrieved from <https://www.fsma.be/en/file/52017/download?token=77V8BkwO>.

¹⁴⁵ Annex to the Act 634/2004 Coll., on Administrative Fees, as amended, Item 65(2)(h).

¹⁴⁶ CySEC, *Official Gazette, Appendix III(I) No. 5036, 25.8.2017 No.279 (Directive 313/56-2014-01 of the securities and exchange commission on the payable fees and annual contributions of alternative investment funds and their managers; DIRECTIVE 131/56-2014-01 OF THE SECURITIES AND EXCHANGE COMMISSION ON THE FEES PAYABLE AND ANNUAL CONTRIBUTIONS OF ALTERNATIVE INVESTMENT FUNDS AND THEIR MANAGERS - Appendix I*

¹⁴⁷ KPMG Denmark.

¹⁴⁸ KPMG France.

¹⁴⁹ BaFin, *Appendix ad FinDAGKostV (ad Sec. 2 para. 1) in the version effective as of 26 June 2017*, retrieved from

https://www.bafin.de/SharedDocs/Downloads/DE/Aufsichtsrecht/dl_findagkostv_gebuehrenverzeichnis.html

¹⁵⁰ Art. 59 Act CXXXIX of 2013 on the MNB, <https://www.mnb.hu/letoltes/mnb-torveny-2017-06-26-en.pdf>, *Regulation 2015/14 MNB Section 10. (1)*, retrieved from http://njt.hu/cgi_bin/njt_doc.cgi?docid=175562.318502

Member State	Costs for obtaining a licence
	category assigned by the Central Bank to the firm in accordance with its PRISM risk rating system – the rates for 2017 for AIFMs ranged from EUR 9,675 (for low risk firms) to EUR 391,544 (for medium to high risk firms). ¹⁵¹
Luxembourg	The average fee charged by CSSF is EUR 10,000 ¹⁵²
Malta	For a Category 2 licence, which is required for fund managers, the application fee payable to MFSA is EUR 5,000, whereas the application fee for a self-managed scheme is EUR 2,000 for the scheme and EUR 1,000 for each sub-fund/compartment established. ¹⁵³
Netherlands	The average cost for obtaining a licence from the AFM is EUR 5,500. In addition, the average cost to ensure that the persons who effectively conduct the business of the AIFM are of good repute and are sufficiency experienced is between EUR 1,500 and EUR 1,000 per person ¹⁵⁴ . Additional (consultancy) costs for support with the licence application and the implementation of the AIFMD requirements are out-of-scope of the AFM's application tool . ¹⁵⁵
Spain	EUR 10,000 fee ¹⁵⁶
UK	The fee for a new authorisation is GBP 5,000. (Additional fees are charged for each non-EU AIF marketed into the UK under the NPPR). ¹⁵⁷

Source: KPMG (2018).

Table 12: Time to obtain a licence/statutory time frame in Member States

Member State	Time to obtain a licence
Austria	Three months (plus additional three months, if required) ¹⁵⁸
Belgium	The FSMA will inform the applicant in writing within three months of the submission of a complete application whether the licence has been granted or refused. The FSMA can extend this period by a maximum of three months if, in view of the specific circumstances of the case, it considers this to be necessary and has informed the applicant accordingly. ¹⁵⁹
Cyprus	An AIFM licence is granted within a period of three to six months. ¹⁶⁰

¹⁵¹ Retrieved from <https://www.centralbank.ie/docs/default-source/Regulation/how-we-regulate/fees-levies/industry-funding-levy/guidance/a-guide-to-industry-funding-regulations-2017.pdf?sfvrsn=2>.

¹⁵² CSSF, Grand-Ducal regulation of 28 October 2013 relating to the fees to be levied by the CSSF, retrieved from https://www.cssf.lu/fileadmin/files/Lois_reglements/Legislation/RG_NAT/GDR_281013_CSSF_fees.pdf.

¹⁵³ MFSA, retrieved from

<http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=10492>

¹⁵⁴ AFM, Information of costs, retrieved from <http://www.digitaal.loket.afm.nl/nl-NL/Diensten/aifm-beleggingsinstellingen/vergunning/Pages/vergunningaanvraag-aifm.aspx?tab=3>.

¹⁵⁵ AFM (15 November 2017). Information regarding the AIFMD application tool, Costs For Obtaining A License.

¹⁵⁶ Law resume of fees, Tarifa 4.1.1, retrieved from

https://www.cnmv.es/DocPortal/legislacion/leyes/Resumen_tasas_Ley_16_2014.pdf.

¹⁵⁷ FCA, AIFM and NPPR fees, 19 August 2016, retrieved from <https://www.fca.org.uk/firms/aifmd/fees>.

¹⁵⁸ Art. 6(5) AIFMA, retrieved from <https://www.fma.gv.at/investmentfonds-und-verwaltungsgesellschaften/aif-verwalter-alternativer-investmentfonds/konzession-und-registrierung/>.

¹⁵⁹ Art. 16 § 1 WET BETREFFENDE DE ALTERNATIEVE INSTELLINGEN VOOR COLLECTIEVE BELEGGING EN HUN BEHEERDERS.

¹⁶⁰ CySEC, s.8(6)(a) timeframe for authorisation, retrieved from

<https://www.cysec.gov.cy/CMSPages/GetFile.aspx?guid=35243749-5541-4685-8b69-5fe754ae208f>.

Member State	Time to obtain a licence
France	<p>The regulatory deadline to obtain authorisation as an AIFM is three months with a potential addition of three months.¹⁶¹</p> <p>In practice, and as per AMF’s website, the average time is around two months. AMF is regarded as a very responsive and efficient regulator by market participants as regards authorisation process.</p> <p>Fast track authorisation processing time for equivalent funds is eight days (“procedure par analogie”); average times are 20 days for new collective investment schemes, two months for new AIFMs and one month for extension of an AIFM’s programme of operations (averages in 2011).</p>
Germany	The regulatory deadline to obtain an AIFM licence is three months, plus an additional three months, if required. ¹⁶²
Hungary	The deadline for administration in the process of granting/obtaining a licence is three months, which can be extended once where appropriate/justified by another three months maximum. ¹⁶³
Ireland	There is no statutory timeframe or service standard set out by the CBI in relation to authorising an AIFM. Typically, the normal timeframe for obtaining authorisation as an AIFM is four to six months from the submission of a complete application. The overall timing is dependent on the response times of the CBI, whether any material issues arise during the application process and the response times of the parties involved.
Luxembourg	Three to six months ¹⁶⁴
Malta	Within six months from the date of submission of complete documentation, the MFSA has to inform the applicant of its decision to grant a licence or not. ¹⁶⁵
Netherlands	The AFM must decide within 13 weeks after receiving the licence application. The AFM can extend the decision-making period by another eight weeks, but only once. The decision-making period is suspended if the AFM requires more information from the applicant. ¹⁶⁶
Spain	Spanish law prescribes that a licence should be granted within three months. The deadline can be extended by three more months if specific circumstances of the case require it and if the prolongation is notified previously to the potential AIFM. ¹⁶⁷

¹⁶¹ AMF, Art. 2 Instruction DOC-2008-03, retrieved from http://www.amf-france.org/en_US/Reglementation/Doctrine/Doctrine-list/Doctrine?docId=workspace%3A%2F%2FSpacesStore%2Fe83896e9-1f67-4076-9fe5-4b72e29969fc&category=III+-+Providers.

¹⁶² Sec. 22 KAGB.

¹⁶³ Act CXXXIX of 2013 on the MNB Section 61 (2), <https://www.mnb.hu/letoltes/mnb-torveny-2017-06-26-en.pdf>.

¹⁶⁴ Based on KPMG Luxembourg experience.

¹⁶⁵ Investment Service Act, retrieved from <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8839>.

¹⁶⁶ AMF, Information licence, retrieved from <http://www.digitaal.loket.afm.nl/nl-NL/Diensten/aifm-beleggingsinstellingen/vergunning/Pages/vergunningaanvraag-aifm.aspx?tab=2>; AFM, Information regarding the AIFMD application tool, 15 November 2017 / Lead Time For Licence Application.

¹⁶⁷ Art. 46 Ley 35/2003, de 4 de noviembre, modificado por Ley 22/2014, de 12 de noviembre, retrieved from <https://www.boe.es/buscar/act.php?id=BOE-A-2014-11714&p=20150729&tn=1#a46>.

Member State	Time to obtain a licence
UK	Firms have a legal right to have their complete full-scope AIFM application determined within three months (or six months where the FCA considers it necessary due to the specific circumstances of the case). ¹⁶⁸

Source: KPMG (2018).

The results of the desk research are broadly in line with responses to the general survey (see 4.1 in Section 1), but with some important variations. Respondent NCAs indicated that they charge a minimum average of EUR 8,300 and a maximum average of EUR 10,900 for a new full-scope licence (see Table 5 in 4.1.1 in Section 1).

Adding to the NCA fees, the median and mean average of other costs – such as contributions to ombudsmen, fees for advisors, contributions to other parties and other cost items (see 4.1.1 in Section 1) – the mean average cost to obtain a (full) AIFM licence across the EU is approximately EUR 290,000, with the median being considerably lower at about EUR 73,000.

It is not clear from all information obtained to what extent AIFMs incurred further costs specifically for human resources, IT or additional organisational or governance matters. These factors appear in some cases to have been included in the figures provided by survey respondents, but not in all.

The average cost of obtaining a licence is generally incurred only once (although see Table 5 for the average costs of changes to licences), but at more than one-quarter of a million Euros is a significant financial burden, especially for smaller firms. However, as noted in sub-section i) above, it has not deterred many firms from seeking an AIFM licence. The additional cost and administrative burdens have not lead to a deterioration of the amount of market participants and in the leading AIF jurisdictions an increase of authorised AIFMs can be observed.

The general survey results indicate that depositories entering the AIF market incur mean average licencing costs of approximately EUR 500,000 (see 4.1.1 in Section 1). Again, this does not appear to hinder firms from entering the AIF depository market.

Article 8(5) AIFMD prescribes that a licence should be granted within three months. This period can be extended by an additional three months if specific circumstances of **the case require it and if the prolongation is notified to the applicant AIFM (“3 plus 3”)**. Whether this statutory time frame provides enough time for the NCAs to meet the requirements of the authorisation procedure is a main factor in assessing the efficiency of the rules regarding the licence regime.

As can be seen from Table 12, most Member States have implemented “3 plus 3”, with only Ireland, the Netherlands and Malta¹⁶⁹ appearing not to have implemented it into their laws or rule books. However, it proved difficult to obtain data on the time taken in practice to complete the authorisation procedures.

The data from the general survey (see 4.1.1 in Section 1) show that over 60% of authorisations were granted within six months, including about 33% within the first three months. However, more than 35% of the authorisation processes exceeded six months. Moreover, in 10% of the cases the authorisation process took longer than one year.

¹⁶⁸ Part 2, 5. (4) (5) STATUTORY INSTRUMENTS 2013 No. 1773, FINANCIAL SERVICES AND MARKETS, *The Alternative Investment Fund Managers Regulations 2013*, retrieved from http://www.legislation.gov.uk/uksi/2013/1773/pdfs/uksi_20131773_en.pdf.

¹⁶⁹ Cf. *Loan funds, cell companies, de minimis regime: Malta fastest growing EU fund jurisdiction; Opalesque Roundtable Series 15, Malta*.

One reason for these discrepancies could be the starting point of time of calculating the time periods. Whereas market participants normally calculate the time from submitting an application to receiving the licence, NCAs start **their “clocks”** from when they regard that all the necessary information and documentation has been received from the applicant.

Taking into consideration the results from the semi-structured interviews as another source of information or evidence (see 4.1.1 in Section 1), the outcome depicted above was supported by the majority of 56% of all the AIFMs and NCAs with which this topic was discussed during the interviews. Nearly 10% of the interviewees had no opinion about whether the outcome from the general survey is reasonable or not. When **just looking at those interviewees who replied with either “Yes” or “No”**, the outcome depicted above is supported more strongly, namely by 62% of the interviewees.

The interviewees which thought the outcome of the survey reasonable (i.e. that obtaining an AIFM authorisation takes longer than three months) gave different views as to why. One argument was that the outcome may be due to the poor quality of the initial application documents sent to the NCAs. As one NCA representative commented, even though they apply the statutory **“3 plus 3”** requirement, the timeframe mostly cannot be met if a request for additional information arises. This requires the NCAs to request additional information, which typically entails a time-consuming back and forth communication with the applicant. NCAs urged that applicants should, in the first instance, seek fully to understand the complete set of information needed, before submitting an application. The counter-argument from firms was that clearer and publically-available guidance from NCAs on precisely what they require would in most cases considerably speed up the application process.

Sometimes, the time delay is caused by third parties, i.e. those acting as contractors for the AIFMs, as new contractual agreements may have to be agreed, which in some cases can take longer than expected.

A common view was that the survey result may be driven by the fact that most respondent AIFMs sought authorisation when AIFMD was implemented, at which time most NCAs experienced a queue of applications. This view was complemented by one NCA who observed that when any new legislation is implemented, it takes more time for NCAs and firms to understand the specific requirements of the authorisation process. After some time has passed, understanding of the requirements matures and both the NCAs and applicant firms become more familiar with the process, reducing the time taken to complete the process.

Other interviewees either had experienced no delays so were satisfied with the outcome or, on the contrary, were concerned because of their own experiences. Examples of the latter (with times taken between six months and more than one year) included AIFMs from Germany, Luxembourg and the Czech Republic (among which were well-established and experienced firms). The general view was that a process of more than six months is not business-friendly and may jeopardise investor and supplier relationships.

More than one-half of respondent AIFMs were concerned about variations in NCAs' fees and authorisation requirements (see 4.1.2 in Section 1). Interviewees confirmed that there are significant disparities in both authorisation and NPPR registration fees. One interviewee noted, for example, that while the fees could be considered as an **“annoyance” for larger private equity fund managers, rather than something that materially affects decision-making**, smaller fund managers are more affected.

In summary, it can be argued that the variations in and scale of NCA fees, and the differences in time taken to complete the application process, give rise to an

inefficiency for the Single Market, which could be addressed by improved information from NCAs and a more consistent approach among NCAs in the setting of licencing fees. However, there is no indication that the current position has deterred firms from entering either the AIFM or depositary market, which would indicate that the general level of fees is proportionate to the benefits of ensuring that all AIFMs around the EU are subject to appropriate authorisation and registration requirements.

In this specific regard, the EC Cross-Border Distribution Proposal was said to be positive as they aim to increase transparency about fees by a greater supervisory empowerment of ESMA and by establishing some high-level common principles with regard to how regulatory fees are determined. However, as currently drafted, the proposals fall short of a harmonised fee regime, one interviewee responded.

As regards proportionality, arguably the implementation of thresholds at EU level in general would seem appropriate when assessed against the purpose of exempting AIFMs from full authorisation. Such *de minimis* rules can be seen as a legitimate means to achieve two goals: to prevent unnecessary regulatory and administrative burdens on AIFMs and NCAs on the one hand and, on the other hand, providing for the monitoring of systemic risk stemming from (larger and potentially leveraged) AIFs/AIFMs.

The EC considered the *de minimis* rule under Article 3(2) AIFMD a necessity in view of the principle of proportionality.¹⁷⁰ It noted that the management of AIF portfolios with total assets of less than EUR 100 mn is “*unlikely to pose significant risks to financial stability and market efficiency. Hence, extending these regulatory requirements to small managers would impose costs and administrative burden which would not be justified by the benefits.*” Similarly, it is argued that the higher threshold of EUR 500 mn for AIFMs that only manage AIFs that are not leveraged and that do not grant investors redemption rights during a period of five years following the date of constitution of each AIF is justified by the fact that managers of unleveraged funds are not likely to cause systemic risks.¹⁷¹ Although this assessment had been met by criticism with regard to the prevention or containment of systemic risk, since actions from smaller market participants – following the “herd instinct” with comparable investment strategies – may also lead to systemic risks, the conclusion that the *de minimis* rules are proportionate at least to a certain degree seems reasonable.¹⁷²

In principle, the aims of reduced burdens as well as containment of systemic risk can be best achieved at EU level to achieve at least some kind of level playing field for market participants. It would not seem plausible that a similar outcome could be reached with regulation only at Member State level.

The fact that there has not been growth in fully licenced AIFMs in all Member States, and that the number of registered AIFMs is not insignificant, indicates that the levels of the thresholds are reasonable and appropriate and would not seem to go beyond what is necessary to achieve the goals of minimising regulatory and administrative burdens and containing systemic risk. Hence, the overall assessment of the measures taken can be regarded as proportionate.

¹⁷⁰ EC Explanatory Memorandum to the Proposal for a Directive of the European Parliament and of the Council on AIFMs and amending Directives 2004/39/EC and 2009/.../EC 30.4.2009 COM(2009) 207 final, 2009/0064 (COD).

¹⁷¹ EC Explanatory Memorandum, *ibid.*

¹⁷² See Tollmann in: Dornseifer/Jesch/Klebeck/Kunschke/Machhausen, Directive 2011/61/EU, Art. 3 margin no. 19.

iii) Coherence

With regard to *internal* coherence of the AIFMD provisions on authorisation and thresholds, it seems reasonable to assert that the requirements are coherent with other parts of the Directive. We have identified no evidence or commentary that suggests otherwise.

The coherence of Article 3(2) AIFMD is more appropriately assessed against other EU legislation (i.e. *external* coherence), because AIFMD promulgates an equivalent market entry barrier to other substantial EU legislative acts on regulated industries. Such *de minimis* regimes¹⁷³ are common within EU regulatory policies. The rationale of these policies may differ from case to case but most often relate to the principle of proportionality and subsidiarity, and the factual economic circumstance that most often the regulated industries are heterogeneous.

The most direct comparators of AIFMD are the requirements under UCITSD and MiFID II. UCITSD does not include exemptions or exclusions for small UCITS ManCos. Likewise, in MiFID II there is no authorisation exemption for small investment firms, but there is an exemption – at national discretion – for firms that provide only the service of receipt and transmission of orders. In the Member States that apply this exemption, firms are generally still subject to national authorisation requirements that mirror MiFID II.

Both UCITSD and MiFID II cover retail (as well as professional) clients or investors. It is therefore more relevant to consider legislation such as IORPD II.¹⁷⁴ Article 5 IORPD II provides that “....Member States may choose not to apply this Directive, in whole or in part, to any IORP registered or authorised in their territories which operates pension schemes which together have less than 100 members in total. Subject to Article 2(2), such IORPs shall nevertheless be given the right to apply this Directive on a voluntary basis.” **The chosen indicator** (number of members) and value (100) that differentiate between EU authorised and nationally regulated IORPs are different to those in AIFMD, but the principle is the same, and AIFMD and IORPD II can be regarded as coherent.

iv) Relevance

The registration-only or sub-threshold AIFM provisions appear to remain relevant several years after implementation of AIFMD. As shown in the quantitative data discussed above, as well as the perception of the survey responses of full-scope and sub-threshold AIFMs (see in particular Figure 25 and Figure 26 in 4.1.4 in Section 1), the policy rationale of introducing a *de minimis* regime for AIFMs within the EU remains valid. Although many NCAs apply additional provisions to sub-threshold AIFMs, these often relate to AIFMs of AIFs marketed to non-professional investors. Such AIFMs and AIFs cannot avail of the AIFMD passports, so it seems appropriate and proportionate that it is a matter left to national discretion. They can, however, chose to opt up to a full licence in order to gain the passports.

As mentioned with regard to coherence above, this also holds true for the respective objectives of AIFMD.

¹⁷³ Recital 17 AIFMD.

¹⁷⁴ Directive (EU) 2016/2341 of the European Parliament and of the Council of 14 December 2016 on the activities and supervision of institutions for occupational retirement provision (IORPs)

v) *EU added value*

The sub-threshold AIFM regime provides for NCAs to allow a lowered market entry barrier into domestic markets for smaller AIFMs. Besides the proportional application of operating conditions, the initial lighter registration regime makes AIFMD a more proportionate EU legislative act. Again, this can be regarded favourably against the respective objectives of AIFMD.

However, given that a number of NCAs do not provide for the registration option or apply additional requirements (in some cases, the full AIFMD requirements) to registered AIFs, the causality relationship between the AIFMD sub-threshold regime and what has happened in practice cannot easily be assessed. Indeed, in some Member States it is likely that the impact of the national provisions is the over-riding driver of the current position in those markets.

c) *Summary*

Effectiveness: The evidence indicates that Article 3 AIFMD appears effectively to facilitate a unified standard of regulation and requirements, which leads, together with the passport regime, to a unified market. The registration-only regime for sub-threshold AIFMs can be considered an adequate tool to provide a flexible and proportionate legal framework. The lighter registration requirements are more effective than the additional operational cost burdens and administrative burdens of a full-scope licence.

However, the difficulties in obtaining quantitative data from some NCA websites indicate that the transparency goals and a full market overview are not fully achieved, including for investors. Also, the differences in national interpretation of an AIF and an AIFM might in some cases make redundant the distinction between authorised and registered AIFMs.

Efficiency: The fact that the number of registered AIFMs remains significant indicates that the levels of the thresholds are efficient and appropriate in relation to the relevant costs and would not seem to go beyond what is necessary to achieve the goals of minimising regulatory and administrative burdens and containing systemic risk. However, we have not been able to assess whether this efficiency has been impaired by the fact that some NCAs apply full authorisation or additional requirements to sub-threshold AIFMs.

Coherence: The provisions are coherent as between the various components of AIFMD. Although such a *de minimis* regime is not found in either UCITSD or MiFID II (which cover retail markets), such regimes are a common regulatory tool of the EU, such as in IORPD II. The AIFMD sub-threshold regime is coherent vis-à-vis other EU measures with similar objectives.

Relevance: The implementation of certain EU wide standards for licensing and registration remains relevant in order to ensure financial stability and to facilitate a proportional access to the financial market for smaller market participants, which remains relevant for a competitive and functional European financial market.

EU added value: Besides the proportional application of operating conditions, the initial lighter registration regime makes AIFMD a more proportionate legislative act for market participants in the EU. However, its impact cannot easily be assessed in some markets where NCAs do not provide the registration option or apply additional national provisions.

4.2. Specific objective: Proper monitoring of macro-prudential risks

This sub-section considers the AIFMD reporting and monitoring requirements, the provisions on supervisory cooperation among the NCAs and ESMA, and the rules for leveraged AIFs. The rules are assessed against the five key principles and against two operational objectives:

- To enhance transparency of AIFM activity, including the systematic use of leverage, to enable the effective risk monitoring of systemic risks;
- To ensure that relevant macro-prudential data are shared at European level.

All provisions serve the general goal of an adequate supervision of systemic risk within Member States and at EU level (as described in the opening of sub-sections 4.2.1-4.2.3 below).

4.2.1. Reporting to NCAs

The general survey and interview results provided information and views from AIFMs and NCAs on the reporting requirements (see 4.1.2, 4.2.1 and 4.8 in Section 1). In addition, information was obtained from desk research conducted by the central team on the implementation and impact of these rules, and we sought specific information from the 15 Member States (see Annex 6).

a) *Description of the rules*

AIFMD aims for a harmonised approach to national mechanisms, processes and systems so that systemic risks can be effectively monitored at EU level. It seeks to ensure that NCAs are enabled to understand, validate and appropriately monitor the activities and impacts of AIFMs and AIFs in their jurisdictions and to share that information with ESMA, so as to ensure a stable and resilient European financial market that counteracts and prevents the build-up of systemic risks. In order to achieve this policy goal of transparency and stability, AIFMs must comply with specific reporting requirements.

Articles 24 and 25(1) AIFMD stipulate, *inter alia*, the essential reporting requirements for AIFMs and AIFs, which are further elaborated in Article 110 and Annex IV AIFMR, and in ESMA Q&As.¹⁷⁵ Systemic relevance as far as leverage is concerned is also addressed in Article 25(3) AIFMD. These singular (supervisory) measures at Member State level are complemented by supervisory cooperation between NCAs, as stipulated under Articles 50-55 AIFMD.

Articles 24(5) and 25(1) AIFMD apply *mutatis mutandis* to all full-scope AIFMs. Article 24(5)(1) extends the frequency of the reporting obligations under Article 24(1)-(4) on the grounds of the necessity for an effective supervision of systemic risks. In accordance with this provision, the NCA of the home Member State of the AIFM may require additional information on a periodic or *ad hoc* basis.¹⁷⁶ Article 24(5)(2) empowers ESMA to require NCAs to impose additional reporting requirements, but only in exceptional circumstances and where required in order to ensure the stability and integrity of the financial system, or to promote long-term sustainable growth.

¹⁷⁵ Retrieved from https://www.esma.europa.eu/sites/default/files/library/esma34-32-352_qa_aifmd.pdf

¹⁷⁶ If such additional information requests have been implemented domestically, the relevant NCA must report this to ESMA.

In the same vein, Article 25(1) AIFMD requires the NCA of the home Member State of the AIFM to use the information gathered under Article 24 for the particular purposes of identifying the extent to which the use of leverage contributes to the build-up of systemic risk in the financial system, risks of disorderly markets or risks to the long-term growth of the economy.

Articles 3(3)(d) and 3(6)(b) AIFMD impose the same reporting obligations on sub-threshold AIFMs (see sub-sub-section 4.1.1 a) above), as elaborated in Article 5 AIFMR. Such AIFMs must regularly provide to the NCA of their home Member State information on:

- the main instruments in which they are trading;
- the principal exposures; and
- the most important concentrations of the AIFs that they manage

in order to enable the NCA to monitor systemic risk effectively.

b) Assessment against the five key principles

i) Effectiveness

Prior to implementation of AIFMD, NCAs pursued different measures on Member State level, which provided a certain degree of transparency of domestic collective investment management activities as well as the monitoring of macro-prudential risks. The responsibility for implementation and application of such measures rested with the NCAs at domestic level, which resulted in different types and scales of mechanisms throughout the EU.

A key objective of AIFMD was to increase the transparency of AIFMs and AIFs for investors, NCAs and other official bodies. In the light of the experiences of the financial crisis and increased recognition of the range of risks to which AIF investors and markets were exposed, AIFMD introduced safeguards to ensure that, in addition to enhanced disclosures to investors, the NCAs and ESMA are provided with sufficient information in order to monitor systemic risks at national and EU level. The consultation on reporting obligations published by ESMA¹⁷⁷ received many supportive comments by associations and market participants.¹⁷⁸

In particular, AIFMD requires AIFMs that employ leverage on a substantial basis at the level of AIFs managed to report additional information to NCAs, *"so as to facilitate a collective analysis of the impact of leverage of AIFs managed by AIFMs on the financial system in the Union"*.¹⁷⁹

All Member States surveyed had implemented the ESMA AIFMD Reporting Guidelines. It can, therefore, be presumed that AIFMs report the required data to their respective NCAs, on both the AIFM itself and the AIFs it manages.

This presumption is supported by the general survey results (see 4.2.1 in Section 1). None of the respondent NCAs disagreed with the statement that they receive complete, accurate and timely reports from all AIFMs they authorise (see Figure 27). This is mirrored by the overwhelming majority of respondent AIFMs agreeing with the

¹⁷⁷ Consultation Paper on Guidelines on reporting obligations under Art. 3 and 24 of the AIFMD, ESMA/2013/592.

¹⁷⁸ Responses to Consultation ESMA/2013/592, retrievable from

<https://www.esma.europa.eu/press-news/consultations/consultation-guidelines-aifmd-reporting-obligations>.

¹⁷⁹ Recital 49 AIFMD.

statement that they are able to provide complete, accurate and timely reports for all AIFs they manage (see Figure 28).

Thus, part of the legislative purpose appears to be fulfilled: the harmonised requirements on reporting have increased, to at least some extent, the transparency to NCAs of AIFM and AIF activities. However, more than half of respondent NCAs indicated that before AIFMD they required AIFMs to report data similar to that in the AIFMD reports. This would indicate that, in isolation, the improvement in transparency to NCAs brought about by AIFMD is limited. In assessing the effectiveness of this measure, therefore, the more pertinent questions are whether the data are appropriate, systematically analysed by NCAs, and shared and analysed at EU level, and whether those analyses are publically available to inform the market.

The *appropriateness* of the data is impacted by both what is required to be reported and whether all have a common understanding of what data are required. As regards the latter, the survey results are salient. Figure 27 shows that between 30% and 40% of respondents NCAs disagreed that there is a consistent understanding among AIFMs and across the EU of what must be reported. **Again, this is mirrored by the AIFMs' views** – only half of AIFM respondents were of the opinion that there is consistent understanding within their Member State of what must be reported, and 20% disagreed outright that there is any consistency (see Figure 28).

This is despite the various forms of guidance at EU (ESMA) and national level. More than half of the NCAs had placed some kind of information into the public domain concerning reporting obligations.¹⁸⁰ This information was generally in the form of circulars and guidelines.¹⁸¹ In the Czech Republic, for example, it is provided by a national regulation.¹⁸² Member States like Denmark and France offer some information with hindsight contained in yearly reports.¹⁸³

In the early days of AIFMD implementation, it would not have been surprising to have found some uncertainty among both regulators and the regulated about how certain provisions should be complied with in practice. Five years after implementation,

¹⁸⁰ E.g. BaFin, *Guidance Notice on the reporting obligations of AIF-Management Companies pursuant to section 35 of the German Investment Code (Kapitalanlagegesetzbuch - KAGB), WA 41-Wp 2137-2013/0035; Circular FSMA_2014_09 dd. 1/09/2014 on reporting obligations for AIFM, retrieved from https://www.fsma.be/nl/file/28894/download?token=AKdhk_Pu.*

¹⁸¹ For example, Austria: FMA, *Information on the content and the submission of the AIFMD Reporting*, 15 December 2015; Germany: BaFin, *Guidance Notice on the reporting obligations of AIF-Management Companies pursuant to section 35 of the German Investment Code, 16 July 2014*; Italy: Banca d'Italia, *Manuale delle Segnalazioni Statistiche e di Vigilanza per gli Organismi di Investimento Collettivo del Risparmio*, last amended as of 28 December 2017; Malta: MFSA, *FAQs on AIFMD, guidance on the transparency reporting requirements of the AIFMD as contained in various documents mentioned in answer 86 to question 87, and MFSA, Alternative Investment Fund Managers Directive – Frequently Asked Questions –*; Cyprus: Circular C037, *Implementation of the Risk Based Supervision Framework - Request for the electronic submission of information*, retrieved from <https://www.cysec.gov.cy/en-GB/public-info/circulars/supervised/aif/?page=3>: C1144-2014-27, *Development of a Risk Based Supervision Framework- A brief description*, retrieved from <https://www.cysec.gov.cy/CMSPages/GetFile.aspx?guid=97a4083f-7830-4813-aece-9d5296c75faa>; Czech Republic: *Reporting data of Czech National Bank and guidelines for reporting* (https://www.cnb.cz/cs/dohled_financni_trh/vykon_dohledu/informac-ni_povinnosti/vykaznictvi_invest_spol_fondy_ko_invest/index.html); Denmark: *Yearly report Markedsudvikling kollektive investinger 2014-2017*; <https://www.finanstilsynet.dk/da/Lovgivning/Information-om-udvalgte-tilsynsomraader/Kollektive-investeringer/FAIF/Spoergsmaal-og-svar>.

¹⁸² Decree No. 249/2013 on reporting by a manager and an administrator of an investment fund or foreign fund to the **Česká Národní Banka**.

¹⁸³ For example, the Danish NCA has published a report describing the overall development in the market under <https://www.finanstilsynet.dk/-/media/Tal-og-fakta/2017/MU/Market-development-in-2016-for-collective-investments-pdf.pdf?la=en>.

however, and given the various forms of guidance provided at EU (by ESMA) and national level, the survey results might be thought concerning.

As regards the data that are required to be reported, the survey and desk research findings are also concerning. Figure 27 shows that 40% of respondents NCAs disagreed that the template contains all the data they need or that it contains only essential data. AIFMs, on the other hand, while also disagreeing that the template includes only essential data, believed that it covers all the data that NCAs need to monitor the market (see Figure 28). Half of respondent AIFMs stated, for instance, that instruments traded and individual exposures are not essential to the reporting. Also, 60% or more noted that data regarding asset classes, investment strategies, exposures and concentration are reported elsewhere. To a certain degree, NCAs agreed with this while noting the different purposes, for instance, of ECB data collection.

It is already the case that further data is requested from AIFMs, beyond the ECB and other EU legislative requirements. Some NCAs ask for additional data such as the split of exposure per countries invested or more detailed cost items associated with a **fund's underlying investments**. Also, NCAs interviewed said they would like to receive more information on liquidity and leverage; for instance, data on appropriate liquidity stress tests on the basis of a common methodology, especially taking into account capital requirements, and more detailed data on the reported leverage figures. Data on loan origination, including a breakdown of country, the denominated currency and the type of lender, were also mentioned (see 4.2.1 in Section 1).

The ESMA AIFMD Reporting Guidelines indicate that further measures of risk, for both legal and operational reasons, should be reported to NCAs on a regular basis. **However, since the majority of respondents to ESMA's prior consultation believed that this would lead to an additional burden for AIFMs, which already face significant reporting obligations, ESMA decided to limit the final guidelines to the measures of risk set out in AIFMD, but remains convinced that, where relevant, according to the predominant AIF type of the AIFM, information on the Value of Risk (VaR) of AIFs should be collected by NCAs.** According to ESMA, such information would be particularly relevant for AIFs pursuing hedge fund strategies.

Moreover, where relevant to the investment strategy of the AIF, ESMA believes that further information should be provided to NCAs, including:

- **the portfolio's sensitivity to a change in** foreign exchange rates or commodity prices; the total number of transactions carried out using a high frequency algorithmic trading technique, as defined in MiFID II, together with the corresponding market value of buys and sells in the base currency of the AIF over the reporting period;
- the geographical focus expressed as a percentage of the total value of AuM, so **"that the impact of financial derivative instruments is better taken into account"**; and
- the extent of hedging through long/short positions by an AIFM/AIF expressed as a percentage.

ESMA also remarked that, in principle, the AIFMD reporting obligations cover only EU AIFs or AIFs marketed in the EU. Consequently, AIFMs are not required under AIFMD to report information on non-EU AIFs that are not marketed into the EU. Therefore, in order to have a comprehensive set of information for a proper assessment of systemic risk, ESMA considers it desirable for NCAs to require AIFMs to report on non-EU master AIFs they manage and that are not marketed into the EU, but which have an

EU feeder AIF or a non-EU feeder marketed into the EU.¹⁸⁴ However, ESMA does not consider this additional reporting to be necessary if the non-EU master AIFs and the feeder AIFs do not have the same AIFM.

Hence, the AIFMD reporting requirements are assessed as effective only to a certain degree as regards the *appropriateness* of the data.

Moreover, in regard to the “unrestricted” right of ESMA to request more information from NCAs “in exceptional circumstances and where required in order to ensure the stability and integrity of the financial system, or to promote long-term sustainable growth”, pursuant to Article 24(5) AIFMD, a legal commentary of one major Member State remarks that such entitlement under the vague provision of indifferent and non-defined events such as “exceptional circumstances”, “stability and integrity of the financial system” or “long-term sustainable growth”, and without further restrictions on the eligible scope of such requests, would be questionable from a constitutional perspective.¹⁸⁵

Turning to analyses by NCAs of AIFMD reported data, as noted in sub-section 2.2.2 above the NCAs were not able to provide us with or to give us access to anonymised AIFMD reported data (for different reasons). It was, therefore, not possible to assess, *inter alia*, the extent of national databases or the number of years of reports they contain. Also, it was difficult to pinpoint the NCAs’ efforts in building processes and competences with regard to monitoring systemic risk and using the mandatory reports.

In the majority of cases, the desk research did not identify *ad hoc* or regular reports on the national AIF/AIFM markets issued by the NCAs. It was, therefore, not possible to obtain supporting evidence of the fact or extent of market analyses performed by the NCAs. Moreover, it was not possible independently to corroborate whether NCAs make use of the data to inform national warning systems on leverage activities (as per Article 25 AIFMD).

The results of the general survey, however, indicate that 80% of the respondent NCAs check individual AIFM reports for consistency and maintain a database of reports that enables them to interrogate outliers. 60% said that they produce regular analyses of the reported data to monitor market trends.

From desk research it would seem that very few such analyses (in any form) are made publically available, so the overall market place is not better informed as a result of the AIFMD reporting requirements. Also, there is no clear indication or reassurance to the market (in particular, to investors) that the reported data are being used systematically by the NCAs to implement processes that measure, monitor and manage macro-prudential risk exposures.¹⁸⁶

As noted in sub-section 2.2.1 above, ESMA advised that the data it has received from NCAs from the AIFM reports were not sufficiently reliable or complete at that time to be used in the context of a full policy evaluation, for the reasons set out in the ESMA AIFMD Report 2018. In particular, the data set included verified data only for 2016 and only from some Member States.

It can be seen from Figure 27 that 70% of respondent NCAs said they passed the AIFMD reported data to ESMA. This is higher than the approximately 50% level indicated by ESMA. This difference could be due to survey sample size and/or that

¹⁸⁴ ESMA, *Opinion, Collection of information for the effective monitoring of systemic risk under Article 24(5), first sub-paragraph, of the AIFMD, dated 01 October 2013, ESMA/2013/1340, margin 11-12.*

¹⁸⁵ Dornseifer, in Dornseifer/Jesch/Klebeck/Tollmann, *AIFM-RL, Art. 24, margin no. 42.*

¹⁸⁶ Cf. Speech of Natasha Cazenave AMF-IBA, Head of the Investment Management Policy Division, *Regulatory Policy and International Affairs, Pages 1-4*

more NCAs are now passing their data to ESMA than a year ago. Nevertheless, the intention of the AIFMD reporting requirements is to ensure that a complete set of market data is collated and analysed regularly by ESMA. In this regard, what has happened in practice is not fully effective.

In conclusion, large volumes of data are regularly submitted by AIFMs, not all of which may be essential, some of which may be insufficient and most of which are considered by the NCAs, but their analyses are not generally made publically available and only a small subset of the data has, until recently, been collated and analysed at EU level. These impairments to the efficiency of the AIFMD reporting requirements are partly due to issues with the prescribed template in AIMR and partly due to NCA processes.

ii) Efficiency

Regarding costs borne by the industry in complying with Article 24 AIFMD, establishing the processes, systems and other measures were universally reported by AIFMs to have brought with it significant associated costs. **These are large “sunk” costs.** However, no reliable data in terms of absolute numbers or figures could be obtained.

Most respondents also reported that the costs and human resources expended by AIFMs on ongoing compliance with the reporting requirements are significant components of the overall transaction and operational costs, for example because more personnel are employed to maintain the processes and sense check the reports. Also, different NCAs employ different IT arrangements and formats for receipt of the reports. Therefore, firms needing to report to more than one NCA cannot fully centralise and standardise their reporting systems. Again, however, no quantifiable data were provided.

Given that 40% of the survey respondents reported that the *frequency* of reporting has increased as a result of AIFMD and that 60% reported that the *content* of reporting has increased, it can be concluded that the costs of complying with the reporting obligations has increased.

French respondents, for example, highlighted that the inconsistencies in NCA reporting requirements have led to an increase in external costs, in particular for proper data management (see 4.2.1 in Section 1). It was mentioned that some of the costs of data migration are due to the specific business operating model of AIFMs, whereby each level in the chain has to bear the costs for what it uses or when it transfers data. It was asserted that the end-investor eventually bears transaction costs several times over for the same data.

No study has been found that gives details of the costs of implementing each requirement. Only for two Member States has information on the costs been provided. The Austrian Ministry of Finance estimated in May 2013 that the additional reporting requirements introduced by AIFMD in total gave rise to additional annual costs of EUR 1,683,000 for the undertakings affected.¹⁸⁷ The German legislator, in its cost assessment within the statutory draft of the law implementing AIFMD, gave an estimate of approximately EUR 1,400,000 for initial costs and of approximately EUR 280,000 for recurring cost – based on 86 hours and 26 hours of labour, respectively.¹⁸⁸

Regarding enlargement of AIFM workforces, Cypriot and Irish interviewees commented that domestic AIFMs often outsource reporting obligations to third party operators

¹⁸⁷ *Legislator impact assessment, AIFMG-MR-MAT*, retrieved from <https://www.bmf.gv.at/rechtsnews/AIFMG-MR-MAT.pdf?63xgjm>, p. 1.

¹⁸⁸ *Deutscher Bundestag (German Parliament), Drucksache (Publication) 17/12294*, p. 196, 197.

such as fund administrators. However, further information on detailed costs for human resources, for instance, is not available.

In order to mitigate costs, the ESMA AIFMR Advice suggested that where possible, including under any future framework for reporting that may be developed, NCAs should require reporting by electronic means. Given the need to avoid excessive administrative burden, the specific modalities and forms of data transmission for any additional information requirements under AIFMD have not been prescribed.

The financial overhead for the AIF industry to provide reports to enable the monitoring of systemic risk needs to be put into perspective when considering the implications of leaving this matter unattended. There was no indication from respondents that the costs of implementing the AIFMD requirements were unacceptable or significantly disproportionate relative to the potential impacts if systemic risks were to go undetected due to the lack of a proper reporting and monitoring system.

Moreover, there were no qualitative and/or quantitative data from which a detrimental effect on the cost-benefit-relationship of the AIFMD reporting obligations could be derived. In fact, the provisions generally provide increased transparency of the activities of AIFMs, which result in a better monitoring of systemic risks. The same applies for qualitative data (e.g. trends and expectations) in Articles 22-24 AIFMD, which would – on an aggregated level – give insights on the overall transparency cost ratio of AIFMs in the different Member States. However, a small number of respondents indicated increases in transparency costs and workforce enlargements since implementation of AIFMD.

Aggregated and consolidated data were not available either on the collection and monitoring costs of reporting under Article 24 AIFMD or on the enlargement of workforces of NCAs in the EU with regard to the monitoring and analysis of reports made under Article 24 AIFMD. The large majority of Member States only indicated potential trends that have been observed *since* implementation of AIFMD as regards estimates of the costs borne by the NCA, or of the numbers of full time employees (or equivalents – FTEs) responsible for monitoring the reporting.

Respondents from Cyprus observed that CySEC's Supervision Department enlarged its workforce from twelve to twenty FTEs during the period 2014 to 2016 due to the increase in report monitoring. Respondents from France noted only that there had been an increase in the numbers of FTEs since 2013, without providing quantitative information in relation to AIFMD reporting.

Only a few Member States pointed out concrete developments. For instance, the Austrian government reported that the cost estimation of the regulatory burden caused by oversight due to Article 24 AIFMD is about EUR 6 mn.¹⁸⁹

The content-related data requirements at the level of the AIFM and its AIFs are administratively extensive and standardisation is necessary for comparative analysis. The templates provided by the various NCAs differ in terms of content, so EU-wide standardisation of reported data is not guaranteed in every aspect. It was noted by survey respondents and interviewees that there are idiosyncrasies in the AIFMD reporting requirements of each Member State, with many using different template layouts and different software versions of the ESMA reporting requirements (see 4.1.2 in Section 1).

This has led to the industry having to take into account each country specific, which creates additional inefficiencies for cross-border participants.¹⁹⁰ Industry participants

¹⁸⁹ *Legislator impact assessment, AIFMG-MR-MAT*, retrieved from <https://www.bmf.gv.at/rechtsnews/AIFMG-MR-MAT.pdf?63xgjm>.

(especially from France) noted forcibly that the NCA reporting is extensively time- and resource-depleting as each AIF report requires – on a quarterly basis – numerous data to be aggregated. Some of the data fields are varied and prone to interpretation and calculation whereas others are required to be converted to a specific file format for transmission to the NCA, which validates the data and passes it on to ESMA, in some but not all cases.

AIFM interviewees were of the opinion that reporting systems should be streamlined to reduce unnecessary administrative efforts and costs (see 4.1.2 and 4.2.1 in Section 1). This is a strong indicator that at present the reporting regime is not fully efficient. The points summarised in the previous sub-section about unnecessary, duplicative or insufficient data also bear on the assessment of efficiency. This issue is compounded when other EU reporting requirements are also taken into account.

In general, the interviewees shared the opinion that the differences in terms of interpretation and filing procedures further exacerbate the imposed regulatory costs which are not compensated for by the availability or provision of analysed market data.

Translation costs also matter, especially if AIFMs have a reporting obligation to NCAs located in jurisdictions other than the home Member State of the AIFM. This may be the case for groups with AIFMs or AIFs in different Member States, as they cannot centralise the reporting, even where the investment strategies are identical. Also, if the AIFM is invested in a target company located in that specific jurisdiction, for example. In such cases there can be further duplication of data reporting, over and above that already described.

A contrary perspective provided by survey respondents and interviews was that one common and uniform set of rules might tend to result in less sector-specific data, which would not fully reflect the different natures of the underlying funds. Some interviewees, therefore, proposed a **move away from a "one size fits all" approach**.¹⁹¹

As regards proportionality, Articles 3(3)(d), (6)(b), 24(5) and 25(1) AIFMD appear to comply with the purpose-means ratio, because the measures required by these articles do not go beyond what is necessary to achieve the aforementioned objective. The provisions of AIFMD in this regard are limited to those aspects that could not have been regulated by the individual Member States themselves and had to be regulated by the EU against the objectives of a level playing field and comparable data. However, it should be ensured that the relevant data are collected only where the NCAs and ESMA have identified a clear use for it in mitigating a particular risk (see ESMA AIFMR Advice). The discussion above and under *i) Effectiveness* would indicate that additional costs could arise for ESMA, NCAs and AIFMs that are not in line to the core aim of the reporting requirements.

There is no publicly available information on the costs of compliance with the AIFMD reporting requirements in order to assess the proportionality of the financial or administrative costs for the EU, national governments, regional or local authorities, economic operators or citizens.

The provisions of Articles 3(3)(d), (6)(b), 24(5) and 25(1) AIFMD are held as appropriate to and coherent with the satisfactory achievement of the relevant objectives, and are therefore appropriate. Even if the reporting obligations set out in

¹⁹⁰ Cf. in addition the BaFin Annual Report 2015, p. 255 et seq which refers to the relevant reporting requirements; cf. for the Disclosure requirements in Ireland for Retail Investor AIF, Central Bank AIF Rulebook, p.62 et seq.

¹⁹¹ See also the LSEG Response to the ECON Public Consultation – Questionnaire for the public consultation on enhancing the coherence of EU financial services legislation, p.4.

Annex IV AIFMR can be burdensome for some market participants, the relevance (see iv) below) of an increase in transparency of AIFMs and AIFs for investors, NCAs and other official bodies appears to be a solid justification in the light of the last financial crisis.

In conclusion, it can be said that because the activities of AIFMs can have effects across borders and on financial actors around them, it seems appropriate that NCAs are in the position to monitor these entities in a similar manner to their monitoring of other financial institutions. The increased transparency achieved and the information received through the provisions on reporting to NCAs under AIFMD should make it easier for regulators to detect and respond to risks in the relevant markets. AIFMD has led, to a significant degree, to the standardisation of such mechanisms, processes and systems so that systemic risks can be monitored on a harmonised level in the EU, via the reporting obligations of AIFMs.

However, achievement of the principle of efficiency could be improved by addressing: the issues discussed above around appropriateness of certain of the data specified in Annex IV AIFMR; that ESMA has not received from NCAs all reported data, so has not been able to analyse post-AIFMD market trends; and that the market does not generally have access to NCA analyses. It should also be considered that the increased costs of running an AIFM business are ultimately borne to some extent by AIF investors and that generally they are not benefitting from public information flow from the NCAs.

iii) Coherence

As described above, the reporting obligations for AIFMs partly do not give a consistent picture of the data. The data requested may vary in quantity and content depending on the Member State, because of the differing national legislation or rules that further articulate the reporting requirements under AIFMD. Also, the survey and interview results highlight that even within the AIFMD reporting template there is duplication (see 4.1.2 and 4.2.1 in Section 1).

Reporting obligations to NCAs under AIFMD have also been assessed with regard to *external* coherence, i.e. their interplay with other relevant EU legislation. Articles 9 and 31 EMIR contain reporting obligations for counterparties and CCPs.¹⁹² Similar reporting obligations to NCAs can be found in Article 4 SFTR. However, ESMA is of the view that it would be appropriate for NCAs to require additional information on (i) the total number of transactions carried out using a high frequency algorithmic trading technique, as defined in MiFID II, together with (ii) the corresponding market value of buys and sells in the base currency.¹⁹³

A lack of consistency and coherence and the need for stronger integration in technological terms has clearly been pointed out in the general survey (see 4.8 in Section 1). In particular, overlapping reporting obligations in other legislation is seen as deviating from a coherent approach.

iv) Relevance

The FSB states that the lack of consistent and accessible data acts as a significant **barrier to assessing the extent to which funds' use of leverage could contribute to**

¹⁹² *Central counterparties*

¹⁹³ *ESMA, Opinion, Collection of information for the effective monitoring of systemic risk under Article 24(5), first sub-paragraph, of the AIFMD, dated 01 October 2013, ESMA/2013/1340, margin 5.*

global financial instability and whether existing mitigants are appropriate in addressing such financial stability risks.¹⁹⁴ It notes the need for improved systems for aggregating and analysing information provided to supervisory authorities.

The AIFMD reporting obligations are intended primarily to make the activities of the AIFMs more transparent in order to advance financial stability on domestic and European level. This has been materially (though not fully) achieved, including – and importantly – with regard to the use of leverage in AIFs (see 4.2.2 in Section 1).

The overarching goal of exposing and/or making available important data sets in connection with systemic risk at the European level continues to be the focus of attention. In order to ensure financial stability in the EU and minimise systemic risk, it remains relevant and essential that the intended sharing and aggregation of data be fully implemented. Also, it is important that the wider market, including investors, can readily access EU-wide analyses, as recently provided by ESMA.

v) *EU added value*

Prior to the introduction of AIFMD, there was no consistent picture of reporting requirements for AIFMs. The reporting obligations were implemented by the NCAs with respect to national law, so there were differences between the NCAs in the data requested. Furthermore, the pre-AIFMD status lacked standardisation, and therefore comparability, between the different Member States' **data sets**.

Post-AIFMD, the same reporting requirements apply to all AIFMs and AIFs. In order to achieve or maintain financial stability, the AIFM reporting can be used to positive effects, not only at national level, but also at supra-national level. Therefore, it can be asserted that, based on the fact that the AIFMD reporting requirements have been implemented into national law and the required information is provided by the AIFMs to the NCAs on a regular basis, the AIFMD reporting regime has directly caused a significant improvement in increased transparency at the EU level.

However, apart from national legislation, the measures would have to be further harmonised, if it is thought necessary and proportionate to avoid *all* differences at Member State level.

c) *Summary*

Effectiveness: The evidence indicates that the AIFMD reporting regime provides for an increased transparency regime. There are, however, certain aspects of the reporting regime that could be addressed, which would further enhance its effectiveness.

Efficiency: The provisions generally provide an increased transparency of the activities of AIFMs and facilitate a better monitoring of systemic risks. Therefore, the described regulatory and administrative costs appear to be proportionate and efficient in relation to the overall achieved benefits. There are, however, certain aspects of the reporting regime that could be addressed, which would further enhance its efficiency.

Coherence: The provisions also facilitate an early crisis identification, which is coherent between the various components of AIFMD and vis-à-vis other EU measures with similar objectives. However, the provisions overlap – yet are slightly different – in various areas.

¹⁹⁴ Retrieved from <http://www.fsb.org/wp-content/uploads/FSB-Policy-Recommendations-on-Asset-Management-Structural-Vulnerabilities.pdf>, p.26

Relevance: The implementation of certain EU wide standards remains relevant in order to monitor potential systemic risk.

EU added value: The AIFMD reporting regime has directly caused a significant improvement in increased transparency at the EU level. The collection of information through the AIFM reports to NCAs makes it easier for regulators to detect and respond to risks in the relevant markets on a harmonised level in the EU. This strengthens the monitoring of cross-border activities of AIFMs and enables the NCAs to identify systemic risks to the financial system, thereby contributing to financial market stability. However, ESMA needs to have received data from all Member States and for a number of years, before market trends can sensibly be examined. Meanwhile, the industry and investors would welcome more publically available national analyses.

4.2.2. Supervisory cooperation among the NCAs and ESMA

In addition to information gleaned during interviews with NCAs, during the desk research we looked for information on the extent to which NCAs have adopted relevant ESMA guidelines and for any NCA reports about co-operation activities with ESMA or other NCAs (see also Annex 6).

a) Description of the rules

One of the main objectives of AIFMD is to prevent systemic risks to the stability of the financial system arising from the business activities of AIFMs through cross-border market supervision.¹⁹⁵ The early identification of crises may require cooperation between NCAs and the exchange and dissemination of systemically relevant information. Therefore, AIFMD aims to ensure effective monitoring by the NCAs of the risks that might arise from the activities of AIFMs, in order to secure the stability of the pan-European financial market.

The provisions of Articles 50-55 AIFMD seek to provide for a stringent and effective regulatory and supervisory framework, which leaves no gaps in financial regulation. The measures are provided for in Articles 50-55 AIFMD, which are predominantly of a procedural nature:

- Article 50 stipulates the general principles on the obligation to cooperate.
- Article 51 provides clarification on the handling of data exchanged in the course of supervisory cooperation.
- Article 52 governs provisions on the disclosure of information to third countries, which is supplemented by Memoranda of Understanding (MoUs) between individual NCAs and the relevant supervisory authorities in third countries.
- Article 53 stipulates the exchange of information relating to the potential systemic consequences of AIFM activities, which is clarified by further measures in Article 116 AIFMD.
- Article 54 regulates the procedural aspects of the precise (and generally possible) supervisory cooperation activities.
- Article 55 includes measures on dispute settlement between the relevant NCAs.

¹⁹⁵ Recitals 2, 3 and 72 AIFMD.

Submissions to ESMA by the NCAs of data collected via the AIFMD reporting requirements are covered in the previous sub-section and are not repeated in the assessment in this sub-section.

b) Assessment against the five key principles

i) Effectiveness

The provisions of Articles 50-55 AIFMD define the essential parameters for the exchange of information in the course of monitoring and responding to the potential impact of the transactions of individual or all AIFMs on the stability of systemically important financial institutions and the proper functioning of the markets in which AIFMs operate. This provision forms the basis of a cross-border systemic market surveillance. It is a central instrument for the early detection of emerging and accelerating risks.

Of particular importance for effective EU-wide financial market supervision is the inclusion of the European System of Financial Supervision (ESFS). The functions of ESMA and the European Systemic Risk Board (ESRB) are in this regard particularly noteworthy.¹⁹⁶ The ESMA AIFMR Advice recognised that the ESFS and EU-wide **supervisory cooperation** “*are relevant to regulatory oversight*” and that systemic risk information obtained should be made available to fellow NCAs, ESMA and the ESRB in order to monitor and mitigate substantial risk to the stability and integrity of the financial system.

The combination of cooperation of the NCAs with ESMA, macro-prudential supervision by the ESRB with the participation of other Member States and exchange of information underlines the important objective of AIFMD to control systemic risks across borders.¹⁹⁷ AIFMD recognises ESMA's prominent position in the ESFS and strengthens that position by involvement in the conciliation procedure in conjunction with Article 19 of Regulation (EU) No. 1095/2010 in the event of disputes in the context of on-site inspections and investigations, and by giving it the opportunity to influence the structure of the procedure within the framework of technical implementation standards.

NCAs are obliged by AIFMD to cooperate with other NCAs. The overwhelming majority of NCAs have asserted that they comply with the AIFMD Cooperation Guidelines.^{198,199} ESMA is tasked with gathering data received by NCAs via the AIFMD reporting requirements, and aggregating and analysing those data in order to provide for and foster supervisory convergence and proper monitoring.²⁰⁰

It was observed during interviews (e.g. in France) that AMF interacts with ESMA and other authorities through regular (even monthly) meetings. In this particular case, the proximity of the respective offices of the two authorities may be an important factor, **but bilateral meetings between ESMA and other NCAs, and meetings at ESMA's offices** of the NCAs as a collective, are commonly mentioned by other NCAs and ESMA to market participants.

¹⁹⁶ Cf. Haar, in *Frankfurter Kommentar, KAGB (Frankfurt Legal Commentary for the German transformation Act of AIFMD)*, § 9, margin no. 11.

¹⁹⁷ Recital 2 AIFMD.

¹⁹⁸ ESMA, *Guidelines compliance table*, 16 July 2014, ESMA/2014/264 and ESMA, *Guidelines compliance table*, 4 October 2017, ESMA/2016/675.

¹⁹⁹ ESMA, *Guidelines on the model MoU concerning consultation, cooperation and the exchange of information related to the supervision of AIFMD entities*, 18 July 2013, ESMA/2013/998.

²⁰⁰ ESMA, *ESMA Risk Assessment Work Programme 2018*, 9 February 2018, ESMA20-95-839.

For example, the Czech NCA, the CNB, stated in 2016²⁰¹ that it continued to be actively involved in the activities of European and international institutions engaged in financial market regulation and supervision and highlighted **the "importance" of "the work within the European Supervisory Authorities"**. Further, it highlighted the *"ongoing cooperation with other national supervisory authorities of EU Member States, which takes place primarily within supervisory colleges for banking and insurance groups", which becomes "increasingly important"*. It would appear, therefore, that there are effective channels of communication between ESMA and the NCAs.

Given the very low number of reported cases where any form of cross border supervisory cooperation has been necessary (see below), the full range of measures in Articles 50-55 have not yet been tested. Some legal commentators have expressed reservations about the provisions in these articles.

For example, in respect of the provision in Article 50(3) AIFMD, which requires the NCAs to use their powers for the purpose of cooperation, even if the conduct under investigation does not constitute an infringement of a provision in force in their own Member State, a legal commentary criticises that the scope of the provision is unclear.²⁰² In the event of an unrestricted application of the wording in this article, the commentary raises the issue of constitutional concerns. In particular, monitoring and investigation measures should be subject to (national) legal reservation. The provision should therefore be interpreted restrictively on a national level, in such a way that the NCAs provide mutual administrative assistance and, if necessary, permit investigations on their own territory in accordance with Article 54 under further conditions set out in national law.

The information to be provided by the NCAs is not (and cannot) be specified in detail in AIFMD. According to a legal commentary,²⁰³ there would be reason to fear divergences in the practice of the individual Member States with regard to the information collected, in the absence of express provisions in AIFMD.

The **core source of evidence as to what has happened in practice is ESMA's thematic study of NCAs, published in April 2017, on notification frameworks and home-host responsibilities under UCITS and AIFMD²⁰⁴ (hereinafter called "ESMA Notification Study")**. As reported in the ESMA Notification Study, by the end of the reporting period on 30 June 2016 most NCAs stated that in respect of their supervisory function under AIFMD, they generally followed the same supervisory approaches as for UCITS ManCos, namely on-site and off-site supervision.

A large number of NCAs reported that they had not implemented specific supervisory measures tailored to cross-border activities, but instead relied on the same set of supervisory tools used to supervise entities domiciled in their home Member State. The evaluation of responses by ESMA showed that where NCAs had implemented a system of risk-based supervision, cross-border activities were seen as a contributing factor in the risk assessment of the AIFM.

According to ESMA, NCAs performed off-site supervisory activities in various forms, such as examining audits and business plans of supervised entities, evaluation of governance memoranda, communication with supervised entities through their senior

²⁰¹ CNB, *Reports on the performance of financial market supervision 2016*, page 7.

²⁰² Kunschke/Machhausen, in: Dornseifer/Jesch/Klebeck/Tollmann, *AIFM Directive*, Art. 50 margin no. 6.

²⁰³ Cf. in respect to risks in connection with cooperation and restrictions on leverage financing under Art. 25 AIFMD, Dornseifer, in: Dornseifer/Jesch/Klebeck/Tollmann, *AIFM Directive*, Art. 25 margin no. 34; Cf. Haar, in *Frankfurter Kommentar, KAGB (Frankfurt Legal Commentary for the German transformation Act of AIFMD)*, § 9, margin no. 72.

²⁰⁴ ESMA, *Notification frameworks and home-host responsibilities under UCITS and AIFMD, ESMA Thematic Study among National Competent Authorities, / April 2017, ESMA34-43-340.*

management, and cooperation with competent authorities in other EU Member States. In addition, one NCA commented that with regard to AIFMs that are not authorised as a UCITS ManCo, day-to-day supervision also makes use of the periodic reporting under Article 24 AIFMD.

NCAs were asked by ESMA whether, between 1 January 2014 and 30 June 2016, they had taken any such action against any AIFM, specifically with regard to services provided on a cross-border basis. In the event that they had taken such action, NCAs were further asked to state the total figure, as well as the cause and the action taken, including a brief overview of individual cases. Two NCAs reported that they had taken supervisory action on a cross-border matter. Cases reported by one NCA focused on providing assistance for proper notification of activities in other Member States further to the national implementation of the AIFMD framework. Another NCA presented a case which dealt with whistleblowing in regard to a potential conflict of interest.

In respect to supervisory actions between 1 January 2014 and 30 June 2016 by only *host* Member State NCAs and regarding cross-border activities by AIFMs, one NCA reported a case in which it had investigated issues around individual portfolio management carried out by an AIFM on a cross-border basis.

In conclusion, Articles 50-55 AIFMD appear to mitigate systemic risks of the financial system by ensuring financial market stability and consequently strengthening the cross-border activities of AIFMs. The provisions also facilitate an early crisis identification by implementing an effective cooperation between the competent EU authorities and NCAs.

In so far as there has to date been any activity conducted under Articles 50-55 AIFMD, it would seem that the relevant NCAs have not encountered difficulties in operating in accordance with them, which would indicate that they are effective. Moreover, the **NCAs have signed up to ESMA's guidelines. This provides positive evidence of effectiveness.**

However, given the very low number of reported cases where any form of cross-border supervisory cooperation has been necessary, the full range of measures in Articles 50-55 have not yet been fully tested.

ii) Efficiency

When AIFMs carry out cross-border activities, the responsibility for prudential supervision is sometimes split between the home and host NCAs. This might incur more costs than a sole responsibility of the home NCA. However, as reported in the ESMA Notification Study, most NCAs reported that in respect of their supervisory function under AIFMD, they generally followed the same supervisory approaches as in the case of supervision of UCITS ManCos. Therefore, the supervisory function of AIFMD generally does not incur substantially more costs than under UCITSD.

As a benchmark, Germany calculated for the contemplated obligations of the administration (including BaFin) set-up costs of EUR 4.5 mn and annual costs of EUR 5 mn to cover the expected overall ongoing costs for performing the supervisory tasks under AIFMD by BaFin.²⁰⁵

The requirements of Articles 50-55 AIFMD can be regarded as proportionate because the measures serve a legitimate purpose and are appropriate. In particular, Article 51 ensures in a proportionate way that personal data collected and subsequently

²⁰⁵ See German National Legal-Controlling Committee, *Stellungnahme des Nationalen Normenkontrollrates, Drucksache 791/12*, p. 4.

transmitted by the NCAs and ESMA in the course of their supervisory activities will be protected in compliance with the right to informational self-determination of the persons concerned.²⁰⁶

Furthermore, on the EU level, the articles comply with the purpose-means ratio, because the measures do not go beyond what is necessary to achieve the aforementioned objective. The provisions of these articles are limited to those aspects that could not have been regulated by the individual Member States themselves and had to be regulated at EU level in order to provide effective EU-wide financial market supervision. The involvement of ESMA and the ESRB is also seen as essential in this regard.

Consistent with the ESMA AIFMR Advice, it is not considered appropriate to limit the information sharing only to *ad hoc* requests on the grounds that systemic risks trends can arise quickly or gradually, and can be identified and monitored effectively only if information is provided on a regular basis.

Furthermore, there is no evidence to indicate that the requirements of Articles 50-55 AIFMD lead to disproportionate financial or administrative costs for the EU, national governments, regional or local authorities, economic operators or citizens.

iii) Coherence

Uncoordinated national responses make the efficient management of financial risks difficult. As a consequence, AIFMD established common requirements governing the authorisation and supervision of AIFMs in order to provide a coherent approach to the related risks and their impact on investors and markets in the EU.²⁰⁷ To this end, AIFMD obliges NCAs to cooperate with each other and with ESMA and the ESRB.

The AIFMD provisions are coherent with other components of AIFMD. They are also coherent with the parallel provision for UCITS in Article 101(1)(1) UCITSD (although the relevant provisions refer only to the NCAs).

Articles 50-55 AIFMD are incorporated into the ESFS, which provides an additional **degree of "external" coherence**. It is of note, though, that on-site investigations are subject to the overall control of the NCA on whose territory the on-site verification or investigation is carried out (Article 54(2)). This interlock of different levels of implementation and competence might give rise to difficult coordination issues and might affect different levels of competence when it comes to cross-border supervisory cooperation, on-site verification and investigations, which cannot be fully covered by regulation in advance.²⁰⁸ Therefore, only when there are pressing cross-border activity concerns will the coherence of Articles 50-55 with the ESFS and European Regulation No. 1095/2010 be fully tested.²⁰⁹

iv) Relevance

Economic interdependencies among Member States and across the EU, as well as overarching global developments, point to the conclusion that alignment and cooperation of the NCAs and ESMA are essential and still relevant. Ensuring the

²⁰⁶ Kunschke/Machhausen, in: Dornseifer/Jesch/Klebeck/Tollmann, AIFM Directive, Art. 51 margin no. 2.

²⁰⁷ Recital 2 AIFMD.

²⁰⁸ As noted by Haar, in Frankfurter Kommentar, KAGB (Frankfurt Legal Commentary for the German transformation Act of AIFMD), § 10, margin no. 26.

²⁰⁹ Recital 11 of Regulation (EU) No. 1095/2010.

effective monitoring by NCAs and ESMA of risks that might arise from the activities of AIFMs is of relevance for the stability of the pan-European financial market.

As reported in the ESMA Notification Study, AIFMs had notified the management of EU AIFs on a cross-border basis through direct provision of services, and in nine Member States, AIFMs had notified the establishment of one or more branches in other Member States to carry out this activity. This evidences the cross-border nature of a significant proportion of AIFM activities and the continuing relevance of cross-border cooperation of NCAs and European authorities, which Articles 50-55 AIFMD enable.

v) *EU added value*

By definition, cooperation is a key element of the constitution and practices of the EU. Consequently, it is vital to an effective and efficient supervisory mechanism of a heavily intertwined industry such as financial services, and of fund management in particular. AIFMD clarifies the powers and duties of the NCAs and ESMA, and strengthens the mechanisms necessary to ensure effective cross-border supervisory cooperation within the EU. NCAs are facilitated under predefined circumstances to take direct action to supervise compliance with provisions for which they are responsible. Further, host NCAs can under certain circumstances request action by the home NCA and may intervene if no such action is undertaken.

An important value for the EU of AIFMD is the sustainable and practical framework for cooperation among the NCAs, facilitating better multinational supervision. The provisions of Articles 50-55 AIFMD qualify as an integral part of the “early warning system” of systemic market surveillance with cross-border effects by ensuring a proper information exchange in respect of AIFMs’ activities and their impact on the stability of financial institutions and on the functioning of financial markets.

Based on the evidence available, the provisions directly and enable the relevant NCAs and ESMA collectively to gather and exchange data via the AIFMD reporting requirements (i.e. the provisions directly give rise to the intended outcome – causality). Further, the provisions regarding cooperation among the NCAs enable these data to be analysed and monitored and, where necessary, for the NCAs to perform supervisory cooperation activities within the EU. Hence, the AIFMD provisions facilitate macro-prudential supervision.

c) *Summary*

Effectiveness: The evidence indicates that Articles 50-55 AIFMD appear effectively to mitigate systemic risks to the financial system by strengthening the monitoring of cross-border activities of AIFMs. The provisions also facilitate an early crisis identification by implementing an effective cooperation between the competent EU authorities and NCAs. They therefore contribute to financial market stability within the EU. They are not yet, though, fully tested.

Efficiency: The fact that most NCAs generally follow the same supervisory approaches as for the supervision of UCITS ManCos means that the supervisory function of AIFMD generally does not incur significantly higher costs than under UCITSD. It can therefore be inferred that the AIFMD requirements are efficient and appropriate in relation to the relevant costs and would not seem to go beyond what is necessary to achieve effective cross-border supervisory cooperation within the EU.

Coherence: The provisions are coherent between the various components of AIFMD and vis-à-vis other EU measures with similar objectives, since AIFMD obliges NCAs to cooperate with each other and with ESMA and the ESRB. In particular, the provisions

are coherent with the parallel provision for UCITS in Article 101(1)(1) UCITSD (although the relevant provisions refer only to the NCAs).

Relevance: Effective monitoring by NCAs and ESMA of risks that might arise from the activities of AIFMs remains of great relevance for the stability of the EU financial market.

EU added value: The provisions provide a sustainable and practical framework for cooperation among the NCAs and ESMA, and therefore facilitate a better multinational supervision within the EU and across borders (i.e. causality is indicated).

4.2.3. Managing leveraged AIFs

The general survey and interview results provided information and views on the leverage requirements and the levels of leverage in AIFs (see 4.2.2 in Section 1). In addition, information was obtained from desk research conducted by the central team on the implementation and impact of these rules, and we sought specific information from the 15 Member States (see Annex 6).

a) Description of the rules

An AIFM may choose to employ leverage in the AIFs it manages. It is possible that under certain conditions such leverage could be the cause of systemic risk for the financial market or at least lead to disorderly markets. Therefore, AIFMD seeks to enhance transparency of AIFM activity, including the systematic use of leverage, to enable the effective monitoring of systemic risks and to ensure that relevant macro-prudential data is shared at European level.

Instead of stipulating fixed maximum leverage ratios, the co-legislators decided upon a more flexible obligation for AIFMs. However, where the stability and integrity of the financial system may be threatened, the competent authorities of the home Member State of the AIFM may impose limits on the level of leverage that an AIFM can employ in AIFs under its management. ESMA and the ESRB should be informed about any actions taken in this respect.

The requirements for leveraged AIFs are two-fold.

Article 25(3) AIFMD (and Article 112 AIFMR) requires AIFMs to demonstrate that the leverage limits set by them for each AIF they manage are reasonable and that they comply with those limits at all times. This provides the basis for NCAs to assess the risks that the use of leverage on behalf of AIFs could entail, as amplified by ESMA.²¹⁰ Where deemed necessary in order to ensure the stability and integrity of the financial system, the NCAs of the relevant AIFMs, the ESRB – after notification by ESMA – and the NCAs of the relevant AIFs may impose limits on the level of leverage that an AIFM is entitled to employ or other restrictions with respect to the AIFs under their management, in order to limit the extent to which the use of leverage contributes to the build-up of systemic risk in the financial system or risks of disorderly markets. The multilateral supervisory procedure shall be performed in accordance with Article 50 AIFMD.

These procedural requirements on supervisory level are complemented by reporting requirements set out in Article 24(4) AIFMD. This article is further clarified in Article 110(5) AIFMR, which specifies that an AIFM managing AIFs employing leverage on a substantial basis (as defined in Article 111 AIFMR) shall make available to the

²¹⁰ See also ESMA/2011/379, Box 111 on policy considerations.

NCA of its home Member State information about: (i) the overall level of leverage employed by each AIF it manages; (ii) a break-down between leverage arising from borrowing of cash or securities; (iii) leverage embedded in financial derivatives; and **(iv) the extent to which the AIF's assets have been reused under leveraging arrangements.**

b) Assessment against the five key principles

i) Effectiveness

One of the main objectives of AIFMD was to increase the transparency of AIFMs vis-à-vis investors and competent authorities. Because of the experiences from the financial crisis and the range of risks to which investors in investment funds were exposed, the provisions of AIFMD introduced safeguards to ensure that not only investors in alternative investment funds but, most importantly, the relevant NCAs were provided with sufficient information in order to monitor systemic risks within the EU.

Prior to implementation of AIFMD, NCAs pursued different measures on Member State level so as to provide a certain degree of transparency of collective investment management activities, as well as the monitoring of macro-prudential risk exposures. The AIFMD Impact Assessment notes that the responsibility for implementation and application of such measures rested with the NCAs on domestic regulatory level, which led to different types of mechanisms throughout the EU/EEA.

For example, Austria imposed a limit on the leverage ratio of 1:2, which remains in effect.²¹¹ Spain used to impose limits on leverage and indebtedness of registered AIFs,²¹² but these limits fell away when AIFMD was implemented. In Germany, leverage requirements were imposed on regulated open-ended retail real estate funds (up to 50% of NAV) and mixed asset funds (up to 10% of the NAV) and open-ended Spezialfonds (up to 20% of NAV).²¹³ These limits remain in place. Similarly, the UK imposed (and still imposes) leverage limits on authorised open-ended funds, both retail and professional-only, and listed closed-ended AIFs were (and are) subject to leverage limits under their special tax code.

From 2012, the Bank of Italy²¹⁴ required management companies to provide information on (i) the financial leverage limits and (ii) the procedures defined in order constantly to monitor and assess the risk of derivative positions, the contribution of those positions to the overall risk profile of the portfolio, and the monitoring and evaluation of the risk associated with the use of leverage. Before implementation of AIFMD in Luxembourg, regulated retail real estate funds were allowed to borrow up to 50% of the value of the properties.²¹⁵ Further, limits were in place in Luxembourg for futures funds (non-UCITS) with a maximum cash margin of 70% of NAV.²¹⁶

²¹¹ Implemented via InvFA and REIFA, which still apply.

²¹² Rule 19 of Circular 1/2006, of 3 May, of the Comisión Nacional del Mercado de Valores, on Alternative Collective Investment Schemes, retrieved from http://www.cnmv.es/DocPortal/legislacion/circulares/1_2006_e.pdf.

²¹³ Cf. Sec. 53, 80a, 90h InvG; however these limits primarily refer to a "borrowing quota" instead of a real "leverage" ratio.

²¹⁴ Bank of Italy, Regolamento sulla gestione collettiva updated on May 2012, Annex IV.4.1 and Annex IV.6.1.

²¹⁵ Cf. IML Circular 91/75 section III.4.3.

²¹⁶ Cf. IML Circular 91/75 section II.2.4.

A study by Europe Economics for the private equity fund market²¹⁷ reported that 75% of interviewed AIFMs did not use in-fund leverage at all, and none of the respondents **“typically” used leverage resulting in a debt-to-equity ratio above a ratio of three.** Europe Economics noted that, unlike for hedge funds, private equity funds generally do not use leverage and do not tend to have large volumes of debt at the fund level, but rather on the portfolio company level. Therefore, the impact of the AIFMD leverage requirements in the private equity fund sector is “small or non-existent” because they are rarely applicable. Indeed, the vast majority of the interviewed AIFMs **stated that the leverage rules had “close to no effect” on them.**

According to the AIFMD Impact Assessment, certain types of AIFM have, however, **exhibited “considerable appetite”** for credit derivatives and asset-backed securities **(including mortgage backed securities) and “thus have contributed to the rapid growth of these markets”.** The EC further stressed that in the period to mid-2007, AIFMs managing large, leveraged AIFs contributed to asset price inflation in many markets where they were active momentum traders. After the consequential market correction during 2008, AIFs on average lost a significant amount of value. In addition to adverse market conditions, many AIFMs were faced with increased redemption requests from investors, according to the AIFMD Impact Assessment. Hence, leveraged funds were forced to liquidate positions and to reduce leverage ratios (e.g. from around 3 to 1.5). As a consequence, funds (particularly hedge funds) had to sell assets into declining markets and realised losses pursuant to declining asset prices. This pro-cyclical behaviour may have undermined financial stability and contributed to a deepening of the crisis, according to the EC.

More generally, AIFMD led to a harmonised approach to the calculation of leverage, to the processes and systems AIFMs must have in place to ensure that the leverage limits for each AIF they manage are reasonable and are complied with at all times, and to the reporting of leverage levels to the NCAs. Moreover, according to ESMA, all NCAs have implemented the ESMA AIFMD Reporting Guidelines concerning leverage. As a consequence, systemic risks can be monitored in a harmonised manner at domestic level by the NCAs and at EU level by ESMA. NCAs are able to monitor if an AIFM manages AIFs that could potentially constitute an important source of counterparty risk to a credit institution or other systemically relevant institution in other Member States or to investors.

Thus, the legislative purpose is effectively fulfilled as transparency of AIFM and AIF activities have increased. **Indeed, in 2013 IOSCO recognised, that “the AIFMD provides a common framework on the macroprudential oversight of the sector allowing coordinated actions as necessary to ensure the proper functioning of financial markets”.**²¹⁸

The assessment of systemic risk is likely to vary depending on the economic environment, whereby any AIFM, with respect to the AIFs it manages, has the potential to be systemically relevant.²¹⁹ AIFMD therefore requires NCAs to monitor the reasonableness of the leverage limits and compliance by the AIFM with those limits, and to take appropriate measures if necessary to avoid risks to the stability and integrity of the financial system.

Information on the levels and trends in leverage were obtained from the general survey (see 4.2.2 in Section 1). In summary:

²¹⁷ Europe Economics, *Evaluation of the Alternative Investment Fund Managers Directive*, December 2017, p. 25.

²¹⁸ IOSCO, *Report on the second hedge funds survey*, October 2013, p. 9.

²¹⁹ Recital 133 AIFMR

- 70% of respondent NCAs had not observed any trends regarding the levels of reported leverage since AIFMD implementation and most did not express any concerns about leverage levels they observed in AIFs in their jurisdictions.
- Respondent AIFMs and depositaries indicated relatively low levels of LTV and there were no signs of excessive use of high LTV levels. 88% indicated leverage ratios of below two (i.e. LTVs of below 67%) and 43% leverage ratios of below one (i.e. LTV ratios below 52%).
- The majority of respondents expressed no opinion on whether there have been changes to AIF leverage levels since AIFMD came into force. 42% of respondents thought the level of leverage in EU/EEA AIFs to be unchanged and 41% thought that the sources of leverage in EU/EEA AIFs was unchanged.

In line with these findings, there were no reports from either market participants or NCAs of an AIFM being subject to any official measurements forcing them to reduce the leverage ratio in an AIF it manages.

90% of NCA interviewees recognised that AIFMs could contribute to the build-up of systemic risks or disorderly markets if use of leverage is high, but most NCAs that responded to the survey did not express any concerns about the leverage levels they observe in AIFs in their jurisdictions. This evidence indicates that the AIFMD requirements on reporting leverage ratios to NCAs and disclosing them to investors is having the intended effect – i.e. the provisions are effective.

It is noted, though, that both the reporting of leverage ratios and the demonstration by the AIFM that its leverage limits are reasonable and that it complies with those limits at all times are submitted only to the relevant NCA. Unlike the publicly available prospectuses for UCITS, the information documents of AIFs, which describe *inter alia* the maximum level of leverage and the use of derivative trades incurring leverage, may not be accessible to non-investors.

As a consequence, it is possible that counterparties trading with an AIFM or AIF may not be immediately or fully aware of the possible leverage risk and possible changes of any predetermined and disclosed leverage ratios of the relevant AIFs.²²⁰ Further, measurements taken by the relevant NCA against a particular AIFM/AIF, which were necessary to avoid risks to the stability and integrity of the financial system, may not be publicly disclosed. Therefore, potential counterparties of an AIFM/AIF may not be aware of any measurements imposed by the NCAs. Consequently, if the counterparty does not perform proper due diligence and require specific disclosures, it could subject itself to unidentified risks.

ii) Efficiency

According to an AMIC²²¹/EFAMA report²²² there is no single measure that can capture **all the risks in nature, size and characteristics associated with an AIF's underlying assets and strategies**. It is, however, the expressed opinion of AMIC/EFAMA that the existing regulatory standards at the EU level could be the basis for developing leverage and risk measurements in order to allow a meaningful representation of an **AIF's exposure**. Further, AMIC/EFAMA noted that **this wider regulatory framework governing European investment funds has not led to potential systemic risk occurring in EU-domiciled investment funds since the last financial crisis**. These views can be

²²⁰ Raised issue for the German market, cf. Decker, in *Frankfurter Kommentar, KAGB (Frankfurt Legal Commentary for the German transformation Act of AIFMD)*, § 274, margin no. 8.

²²¹ Asset Management and Investors Council of the International Capital Market Association (ICMA)

²²² AMIC/EFAMA, *Use of Leverage in Investment Funds in Europe AMIC/EFAMA Joint Paper*, July 2017, p. 16.

read as meaning that the associations' members regard the AIFMD leverage provisions as proportionate as well as effective.

As regards the principle of proportionality, arguably the variety of AIFs and their underlying assets may deem an efficient regulatory approach at EU level, by way of prescribing detailed conditions, rather difficult. Hence, the European co-legislators chose to provide principles, including reporting measures, and refrained from imposing too detailed rules, but left it to the NCAs more closely to consider leverage use and potential risks. This fulfils the condition of proportionality since the AIFMD measures do not go beyond what is necessary to create an EU framework.

Implementation of AIFMD will have resulted in one-off and additional costs due to additional staffing and processes. We found no qualitative and/or quantitative data from which estimates can be made of the cost-benefit relationship of the AIFMD leverage provisions. However, it is noted that many AIFMs were already subject to similar national requirements. (Note that the costs associated with the reporting of leverage to NCAs is covered under the assessment of the reporting rules and is therefore not repeated here – see sub-section 4.2.1 above.)

iii) Coherence

Within AIFMD, the leverage, reporting, risk management and investor disclosure requirements appear to operate coherently. We have found no evidence that points to the contrary view and no opinions were expressed in this regard by either survey respondents or interviewees.

The use of leverage in investment funds in the EU is comprehensively regulated for AIFs in AIFMD, and for UCITS in UCITSD and the CESR Guidelines on Risk Measurement and the Calculation of Global Exposure and Counterparty Risk for UCITS, as well as in the ESMA Guidelines on ETFs and other UCITS issues.²²³ These regulations and guidelines are generally coherent with each other.

ESRB acknowledged in its report on shadow banking in Europe²²⁴ the important progress made in improving **the monitoring and risk assessment of “synthetic leverage” through the collection of** data reported under AIFMD. These data can be aggregated with data collected under the coherent obligations in EMIR and SFTR, in order to provide NCAs, ESMA and ESRB a sufficient and thorough overview of the overall leverage and leverage risks in the European financial markets.

However, the AMIC/EFAMA report on leverage remarks that in respect to the determination of leverage, the treatment of cash assets in UCITS and AIFs could be harmonised. Moreover, AMIC/EFAMA noted that in order to ensure consistency between UCITSD and AIFMD it would be helpful to harmonise the calculation method of the gross leverage for UCITS using VaR approaches based on the gross method that applies for AIFs under AIFMD. **In the light of IOSCO’s work on common leverage** measures, survey respondents and interviewees urged that the outcome of this work be considered and any changes to EU requirements be introduced simultaneously for UCITS and AIFs (see 4.2.2 in Section 1).

²²³ CESR Guidelines on Risk Measurement and the Calculation of Global Exposure and Counterparty Risk for UCITS CESR/10-788 28 July 2010 (hereafter referred to as the CESR Guidelines); ESMA Final Report, Peer review on the Guidelines on ETFs and other UCITS issues 30 July 2018.

²²⁴ ESRB, EU Shadow Banking Monitor No 2 / May 2017, pages 33-35.

iv) Relevance

As noted in sub-section 4.2.1 above, the FSB states that the lack of consistent and accessible data on leverage acts as a significant barrier to assessing the extent to which funds' use of leverage could contribute to global financial instability and whether existing mitigants are appropriate in addressing such financial stability risks.²²⁵ For this reason it has mandated ISOCO to propose common leverage measures. Therefore, the AIFMD leverage provisions remain relevant.

The use and level of leverage in each AIF are reported by AIFMs to the NCAs. The AIFMD reporting requirements therefore make it possible for regulators to observe trends and capture outliers. This enables the NCAs and ESMA to monitor potential financial stability risks and to ensure that the leverage limits for each AIF managed by an AIFM are reasonable and complied with at all times.

v) EU added value

AIFMD provides a consistent and standardised regulation for the calculation, reporting and risk-mitigation of leverage. As a consequence, AIFMs are able to determine on the basis of standardised methods the relevant leverage ratio of an AIF, the relevant NCAs can receive data on a standardised basis in order to gain a sufficient overview about the overall leverage risk in their domestic financial markets, and ESMA can aggregate submissions from NCAs to form an overall view of the level of leverage in the European financial market as a whole.

Therefore, AIFMD has directly caused an improvement in the use and management of leverage in a consistent manner across the EU. Also, NCAs and ESMA are able to determine the reasonableness of the leverage limits set for each AIF by the relevant AIFM. Furthermore, they have the powers to introduce limits on leverage for a particular AIF or set of AIFs if they believe they potentially give rise to heightened systemic risks or pose a threat to financial stability.

c) Summary

Effectiveness: The evidence shows that the AIFMD leverage provisions appear effective in the monitoring and mitigation of systemic risks as a result of leverage as an important source of counterparty risk to a credit institution or other systemically relevant institution in other Member States or to investors. Thus, the legislative purpose is effectively fulfilled as transparency of AIFM and AIF activities have increased.

Efficiency: Compliance with the AIFMD leverage requirements will have resulted in one-off and additional costs due to additional staffing and processes. However, the increased transparency of the leverage employed by AIFMs facilitates a better monitoring of systemic risks. Therefore, the described costs appear to be proportionate and efficient in relation to the overall achieved benefits.

Coherence: The provisions are internally coherent between the various components of AIFMD. They are also externally coherent vis-à-vis other EU measures with similar objectives, as for UCITS in UCITSD and the CESR Guidelines on Risk Measurement and the Calculation of Global Exposure and Counterparty Risk for UCITS, as well as in the ESMA Guidelines on ETFs and other UCITS issues, but the methodologies differ.

²²⁵ Retrieved from <http://www.fsb.org/wp-content/uploads/FSB-Policy-Recommendations-on-Asset-Management-Structural-Vulnerabilities.pdf>, p.26

Relevance: Effective monitoring by NCAs and ESMA of leverage levels remains of great relevance for the stability of the European financial market. The AIFMD provisions remain relevant in order to ensure that the leverage limits for each AIF managed by an AIFM are reasonable and are complied with at all times, and will be reported to the relevant NCAs on a regular basis.

EU added value: The AIFMD leverage provisions provide a consistent and standardised regulation in respect to the calculation, reporting and risk-mitigation of leverage within the EU. As a consequence, AIFMs are able to determine on the basis of standardised methods the relevant leverage ratio of a fund and the relevant NCAs can receive data on a standardised basis in order to gain a sufficient overview about the overall leverage risk in their domestic financial markets. Further, ESMA receives via the aggregate submissions from NCAs an overall view of the level of leverage in the European financial market as a whole.

4.3. Specific objective: Proper monitoring and limitation of micro-prudential risks & common approach to protect professional investors

This sub-section considers three sets of rules, each of which is assessed against the five key principles and a different operational objective:

- The delegation, valuation, remuneration, risk and liquidity management, and (some of the) depositary rules are considered against the operational objective to impose risk management controls on major risks to which AIFMs are exposed (market, liquidity, counterparty – credit and settlement (especially in the case of short selling) – and operational risks).
- The rules on disclosures to investors to guide investment decisions, understand **different AIFs' risks and strategies, and monitor investments are considered** against the operational objective to reduce the potential for weakness in investor disclosures as a barrier to effective due diligence.
- The asset segregation rules and other disclosures rules to investors are considered against the operational objective to ensure proper management of conflicts of interest and to impose appropriate controls and processes in key risk areas, such as valuation and custody.

All provisions serve the specific objective of proper monitoring and limitation of micro-prudential risks and a common approach to protect professional investors in AIFM-managed funds.

Operational objective: to impose risk management controls on major risks to which AIFMs are exposed (market, liquidity, counterparty – credit and settlement (especially in the case of short selling) – and operational risks)

AIFMs have to implement certain risk management mechanisms, such as on delegation, valuation, remuneration, and risk and liquidity management. Also, AIFMD introduced rules for depositaries.

The picture of pre-existing governance rules for AIFMs and depositary requirements in the Member States is heterogeneous. Some Member States already imposed a wide-ranging set of provisions, regulating both the internal organisation and micro-management of AIFMs (in particular, for open-ended funds) and the depositary function of – mostly – credit institutions.

Listed closed-ended AIFs were (and still are) subject to national listing rules and the Prospectus Directive, but might have appointed only a custodian (i.e. not a depositary with oversight duties). In almost every Member State, governance and custody provisions were implemented in various legal acts, some of them transposing UCITSD requirements, others providing domestic legal particularities.

At EU level, pre-AIFMD governance rules were already in place for asset managers under MiFID I and for UCITS ManCos under UCITSD. However, some operators did not fall under these regimes, such as asset managers of unlisted and real assets. Also, some specific national structures were not subject to domestic rules (e.g. initiators of German closed-ended limited partnerships in the form of a *Kommanditgesellschaft*).

Only a few Member States already imposed a single rule book that adopted a formal approach and coverage of central provisions on remuneration, valuation and delegation on both fund managers and depositaries. A significant number of Member States had no or very rudimentary provisions on governance mechanisms.

This diverse regulatory network within the EU/EEU was considered a hindrance to the evolution of a Single Market for AIFs in the EU. AIFMD introduced an overarching and harmonised approach to governance and depositary rules, achieving the objective to provide a single rule book for managing AIFs within the EU.

The co-legislators recognised the wide-range of EU AIF structures and chose to regulate only the manager – in contrast to UCITSD, which regulates both the manager and the product. Pursuant to Recital 22 AIFMD, the European co-legislators aimed at providing robust governance controls for the day-to-day operations of licenced AIFMs. While such organisational requirements are without prejudice to systems and controls established by national law, AIFMD stipulates a key set of organisational prerequisites in order to provide a harmonised framework of governance, risk and investor protection rules. The vast majority of these provisions seek to enhance market stability and integrity as well as appropriate protection for professional investors, but some provisions were introduced to meet the specific intentions of the co-legislators.

In principle, implementation of the AIFMD governance measures led to significant adjustments of the internal organisation of AIFMs within the EU. However, we were unable to identify any reliable and/or universally valid impact analysis on the impact of the AIFMD governance measures on the level of investor protection. The vast majority of Member States reported no applicable data on improvements to the investor protection regime in general and/or findings from scientific resources.

Also, we could identify no consolidated evidence regarding the costs borne by AIFMs in implementing the governance, risk and investor protection obligations. It was observed during the semi-structured interviews that there had been a general increase in costs and staffing of AIFMs in the course of implementing and operating the new AIFMD governance framework, but none reported a detrimental effect of the obligations. Neither the large majority of stakeholders in the various Member States nor European bodies could provide quantifiable data on costs occurred by AIFMs in implementing the governance rules.

However, some respondents provided estimates and/or general trends, as well as indications. For instance, the Dutch legislator, estimated (prior to implementation of AIFMD) that the costs for implementing the governance, risk and investor protection requirements would be EUR 50,000 for a pre-AIFMD licenced AIFM and EUR 100,000 for AIFMs that filed for a licence after the AIFMD enactment.²²⁶ The Austrian Ministry of Finance estimated that the overall regulatory costs, including the NCA's supervisory

²²⁶ Governmental explanatory memorandum, Kamerstukken II, 2011/2012, 33 235, Nr. 3 (Memorie van Toelichting), p. 29.

costs as well as AIFMs' initial and recurring costs, would amount to a total of around EUR 6 mn.²²⁷

Interviewees from Cyprus indicated that custodians incurred additional costs to adjust their internal governance and AIFMs in relation to the need for expert personnel recruitment, in particular as regards the valuation rules and the risk and liquidity management obligations. In France, it was reported that there had been a general and steady increase in the workforce, in particular with regard to the compliance function, IT and the risk control function. The French trade association, AFG²²⁸ gave the example of a global France-based asset manager that indicated a doubling in compliance personnel and IT costs between 2010 and 2015.²²⁹ This example, however, included other regulatory regimes beyond AIFMD, hence no clear attribution to the AIFMD governance rules is possible.

4.3.1. Delegation rules

The general survey and interview results provided information and views on the delegation rules (see 4.3.3 c) in Section 1). In addition, information was obtained from desk research conducted by the central team on the implementation and impact of these rules, and we sought specific information from the 15 Member States (see Annex 6).

a) Description of the rules

A core element of the AIFMD governance, risk and investor protection requirements are the provisions relating to delegation. An AIFM is able to delegate the carrying out of certain (management) functions²³⁰ on its behalf only when limitations and a range of strict requirements are met, so as to further increase the efficiency of the conduct **of the AIFM's business.**²³¹ At all times, the AIFM remains fully responsible and liable to the AIF's investors for the provision of management functions.

The AIFMD delegation rules for AIFMs comprise Article 20 and Annex II AIFMD and Articles 75-82 AIFMR. The rules on delegation of the valuation task and the custody function (as part of the depositary tasks) are assessed separately in sub-sections 4.3.2 and 4.3.7 respectively (see below).

Under Article 20(1) AIFMD, if AIFMs intend to delegate to third parties the task of carrying out functions on their behalf, they must generally notify the relevant NCA before the delegation arrangements become effective and must provide objective reasons justifying the entire delegation structure. Any delegation arrangements must comply with the criteria set out in Article 20(1)(a)-(f), which include, *inter alia*, the delegation of portfolio management or risk management tasks only, i.e. both functions cannot be delegated jointly.

BaFin, for example, published guidance on this aspect, stating that both functions cannot be entirely delegated to the extent that the management company solely

²²⁷ Legislator impact assessment, AIFMG-MR-MAT, retrieved from <https://www.bmf.gv.at/rechtsnews/AIFMG-MR-MAT.pdf?63xgjm>, p. 1.

²²⁸ Association Française de la Gestion Financière

²²⁹ AFG's response to Call for evidence on the EU regulatory framework for Financial Service, January 2016, p. 25

²³⁰ Supporting functions (i.e. administrative and/or technical activities) are not subject to the strict delegation requirements of AIFMD, see Recital 31.

²³¹ Recital 30 AIFMD. Those requirements are also valid vis-à-vis sub-delegation.

carries out fund administration activities,²³² i.e. even though these services are recognised to be core competencies, they cannot compensate the full delegation of portfolio and risk management functions.²³³ Furthermore, Article 20(1) includes requirements on sufficient resources of the delegate in order to perform the delegated tasks and functions and requires that responsibility for the tasks and their supervision must remain at the AIFM, irrespective of any delegation arrangements.

In particular, regarding the core regulatory activities of AIFMs, i.e. the provision of portfolio management and risk management, Article 20(2) sets prohibitive limits. For instance, pursuant to Article 20(2)(a) the functions of portfolio management or risk management may not be delegated to the depositary, a delegate of the depositary or any other entity whose interests may conflict with those of the AIFM or the investors of the AIF. However, if for the last type of entity the conflict of interests are appropriately mitigated as per Article 20(2)(b), the delegation may be allowed.

A core feature of the AIFMD's delegation rules refers to the potential circumvention of the AIFM's liability towards the AIF managed and/or its investors. Under Article 20(3), an AIFM may not employ a delegation structure to the extent that the AIFM becomes a letter-box entity.²³⁴

In furtherance of the central delegation provisions, AIFMD also addresses sub-delegation structures (Article 20(4)) and delegations from sub-delegates to further sub-delegates (Article 20(6)), as well as imposing prohibitive provisions on sub-delegation of portfolio management and risk management (Article 20(5)).

b) Assessment against the five key principles

i) Effectiveness

According to one legal expert, recent studies pointed out that in the aftermath of the financial crisis the asset management industry was forced not only to develop new market strategies but also structurally to adjust by focusing on core competencies in order to grow profitably.²³⁵ The delegation rules require AIFMs, in their outsourcing process, to pay increased attention to fulfil the requirements of AIFMD.

Delegation of parts of portfolio management (to specialists within the Member State, elsewhere in the EU/EEA or to third countries) remains a predominant business model **for the European AIF industry, as recognised by ESMA's Chair, Steven Maijoor.**²³⁶ Administrative and supporting activities are also commonly outsourced, but do not generally fall under the AIFMD delegation provisions.

According to the survey results (see 4.3.3 c) in Section 1), 55% of respondent AIFMs delegated fund accounting, valuation and pricing functions to other entities. A slightly lower ratio of 52% also delegated other fund administration activities, followed by portfolio management activities (35%), marketing functions (29%) and risk management (10%). Smaller AIFMs were more likely than larger AIFMs to record that they delegate portfolio management.

²³² "Investment management functions" are defined in AIFMD to include both portfolio and risk management, so it is expected that the AIFM would retain one of these functions to ensure it meets this requirement. See the paper "Delegation of Investment Management under the AIFMD", Mark Browne, Partner at Mason, Hayes & Curran

²³³ Frequently asked questions with regard to delegation as per sec. 36 GCIA, BaFin, 2017, p. 7

²³⁴ Article 82 AIFMR.

²³⁵ Auslagerung von Anlageverwaltungsfunktionen, Dr. Ulf Klebeck, 2012, p. 226

²³⁶ Speech by Steven Maijoor, Chair of ESMA, retrieved from https://www.esma.europa.eu/sites/default/files/library/esma34-45-438-efama_investment_management_forum_2017_-_the_square_brussels_meeting_centre.pdf, p. 7

The majority of respondents reported no material change in their delegation activity due to AIFMD.

Among the six largest fund management jurisdictions – France, Germany, Ireland, Luxembourg, the Netherlands and the UK – the reported ratio of outsourcing activities varied significantly, especially with regard to the portfolio management function, with France and Luxembourg at the higher end. More than half of respondent AIFMs from France, for instance, delegated portfolio management, and more than three-quarters delegated other fund administration activities, whereas the ratio in other Member States was considerably lower.

The survey results would indicate that the AIFMD delegation requirements are effective in applying appropriate governance and risk management obligations on AIFMs without adversely impacting their ability to delegate key functions to specialists (e.g. as regards asset classes, geographies or investment strategies; or as regards fund administration and fund accounting). Reasons given for the delegation of mostly operational and administrative tasks are to access specialist expertise and/or cost savings.²³⁷ Typically, specialised delegates capitalise on greater economies of scale and thus are able to exploit further cost saving potentials, especially in relation to activities with low fee margins.

One-third of survey respondents had seen an increase in the duration or frequency of the review of delegation contracts, implying a significant proportion of AIFMs have in place stricter controls on outsourcing arrangements as a direct result of AIFMD, which is underpinned by additional national requirements in some Member States.²³⁸ FMA, for instance, imposes a strict obligation on Austrian AIFMs to carry out a thorough due diligence during the delegate selection and mandating process.²³⁹

Questions have been raised, though, about how consistently and assiduously the NCAs regulate delegation arrangements. ESMA has stated²⁴⁰ that *“the use of delegation arrangements may be an efficient way to perform some functions or activities. However, such arrangements (in particular when the service provider is outside the EU) are not without their risks both for authorised entities and for their NCAs and must be subject to appropriate oversight”*. **Further**, *“NCAs should give special consideration to authorised entities engaged in the white-label business (i.e. fund managers that provide a platform to business partners by setting up funds at the initiative of the latter and typically delegating investment management functions to those initiators/business partners or appointing them as investment advisers)”*. **Therefore**, *“NCAs should assess whether the structures put in place by such entities and the resources they employ remain appropriate taking into account the principles set out in this opinion and the additional business acquired by such entities”*.

However, ESMA has not called for the AIFMD delegation provisions to be amended. Its remarks appear primarily to be targeted at UCITS ManCos. This supports the assessment that the AIFMD delegation rules have been effectively implemented in Member States.

²³⁷ Cf. Koch, in *Frankfurter Kommentar, KAGB (Frankfurt Legal Commentary for the German transformation Act of AIFMD)*, § 36, margin no. 37, p. 923.

²³⁸ Cf. e.g. *Texto Consolidado, Article 98, Ministerio de Economía y Competitividad, 2015, p. 82 sqf.*

²³⁹ *FMA-Mindeststandards für Sonderkreditinstitute und AIFM für die Vornahme einer Due Diligence, FMA, 2016, p. 3 sqf.*

²⁴⁰ Retrieved from https://www.esma.europa.eu/sites/default/files/library/esma34-45-344_opinion_to_support_supervisory_convergence_in_the_area_of_investment_management_in_the_context_of_the_united_kingdom_withdrawing_from_the_european_union.pdf, p.9

ii) Efficiency

43% of AIFM survey respondents reported that they had incurred a fee increase related to their delegated activities (see 4.3.3 c) in Section 1). Other than this finding and some anecdotal information received during the interviews, we have found no other evidence that attempts specifically to quantify the benefits of the AIFMD delegation rules versus the cost of complying with them. However, taking into account that there apparently emerged no substantial changes in delegation activities after the AIFMD came into force, but at the same time there is evidence of improved frequency of monitoring of delegation arrangements and of contractual reviews, this might indicate that the benefits of the rules outweigh their costs, and the rules are therefore efficient.

Similarly, concerning proportionality, Article 20 AIFMD sets the framework for the delegation of services in a way that allows for potential achievement of a level playing field, especially when considering the objective of a Single Market in AIFs (and respective services provided), but also gives a degree of flexibility to Member States and AIFMs. The co-legislators decided not to adopt requirements for initial authorisation by NCAs of delegation arrangements, the limitation of delegation to authorised AIFMs and the prohibition on sub-delegation, thereby enshrining proportionality in the AIFMD delegation rules. The notification of delegation arrangements to NCAs still allows for proper monitoring of such arrangements. Moreover, allowing discretion by, as well as assigning ultimate responsibility to, the delegating AIFM would seem more efficient. It allows AIFMs to adopt the most economic business models and to access the best expertise to the benefit of AIF investors. Therefore, the rules on delegation do not go beyond what is necessary to ensure effective supervision and the requirement of proportionality is fulfilled.

iii) Coherence

With regard to the *internal* coherence of AIFMD, in addition to the main articles on delegation, there are specific rules on delegation of the valuation function (see sub-section 4.3.2 below). The survey and interview results relating to the main delegation rules and the further desk research did not raise any issues or questions as to their internal coherence with the delegation provisions for the valuation function. Neither did they raise any questions as regards to coherence of these rules with the broader set of rules on governance and risk management, or with the delegation rules for depositaries.

With regard to *external* coherence of the Directive, AIFMD sits alongside a multitude of other relevant EU/EEA legislative acts. On the basis of available quantitative and qualitative data, the coherence of AIFMD and similar provisions in other EU legislative acts is a mixed picture. It has been possible to detect both similarities and differences.

As far as the delegation of portfolio management and risk management is concerned, Article 20(1)(c) AIFMD requires the delegate to be an authorised or registered undertaking, able to provide the business of asset management, and subject to supervision or, where that condition cannot be met, prior approval by the relevant NCA of the home Member State of the AIFM. According to the ESMA AIFMR Advice, UCITS ManCos and MiFID investment firms are eligible counterparties in AIFMD delegation structures as these are considered to be authorised to provide asset management services and subject to supervision. The same standards apply under Article 13(1)(c) UCITSD.

As noted by ESMA and reflected above in the assessment against the principle of effectiveness, there are some differences between the comparable AIFMD and UCITSD provisions, but there is a reasonable degree of coherence of AIFMD with MiFID II and

UCITSD. This is evidenced by ESMA often referring to MiFID II and UCITSD provisions when publishing clarifications on the application of the AIFMD delegation rules.²⁴¹

Indeed, the survey and interview results did not indicate that any incoherencies with other legislation materially impact compliance with or the benefits of the AIFMD delegation rules. Anecdotally, groups with both an AIFM and a UCITS ManCo (or one entity that is both) apply the same delegation controls across both their AIFs and their UCITS.

iv) Relevance

ESMA supports the view that the AIFMD delegation provisions remain relevant and form an important part of the AIFMD governance regime. Moreover, survey respondents and interviewees, having questioned some selected areas of the AIFMD regime, did not raise any critical issue of the AIFMD severely impacting delegation activities of the AIFMs, i.e. both parties do not doubt the relevance and need for the general delegation provisions.

This supports a conclusion that the AIFMD delegation rules are aligned with the general objective of EU market integration, along with the other objectives of consumer protection and financial stability, and are still relevant.

v) EU added value

Given that delegation by AIFMs of certain functions is a common activity in the EU, there is a significant amount of cross-border provision of delegated services. Therefore, a harmonised set of delegation provisions is a reasonable response from a regulatory point of view and is important for the benefits of EU market integration, which national measures alone could not achieve.

Also, it is clear from the survey evidence that the AIFMD delegation provisions have directly caused an increase in the number of delegation arrangements subject to scrutiny by the NCAs and in the duration and frequency of delegation reviews by AIFMs and their delegates. The fact that full liability remains with the AIFM, irrespective of the degree of delegation activities, together with the required functional and hierarchical separation of risk management from portfolio management, are positive examples of investor protection benefits and provide EU added value.

c) Summary

Effectiveness: The evidence indicates that the AIFMD delegation provisions have imposed effective controls on the activity of delegating AIFM functions, thereby limiting and managing key operational risks for AIFs and AIF investors, and have done so in an efficient manner. Moreover, the delegation rules generally meet the goal of being effectively applied and taken into account by AIFMs when taking decisions about the delegation of management activities. The provisions especially assure that effective and appropriate governance and risk management obligations with respect to the delegation of functions are imposed on AIFMs.

Efficiency: Given the lack of available data on the additional costs for AIFMs to be compliant with the provisions, efficiency cannot specifically be assessed. However, the fact that there is no reported reduction in the delegation of activities implies that the

²⁴¹ *Auslagerung von Anlageverwaltungsfunktionen*, Dr. Ulf Klebeck, 2012, p. 230

cost-benefit relation is at least neutral, if not positive, which supports a conclusion that the criterion of efficiency is met by AIFMD.

Coherence: The AIFMD delegation rules are both internally and externally coherent. Although there are differences in detail between the AIFMD provisions and those in EU legislation with similar objectives – UCITS and MiFID II – they are largely similar in both intent and practical application, due to NCA interpretation or industry practice.

Relevance: Delegation of management functions and operational tasks, especially those which AIFMs are not highly specialised in, while focusing on key core competencies, remains a common business models for AIFMs around the EU (see Figure 35). Therefore, the AIFMD delegation provisions remain relevant.

EU added value: Given the assessments against the first four principles and the fact that delegation of parts of the management activities is common market practice of the AIFMs, it can be concluded that the AIFMD provisions represent a harmonised and stringent framework that has directly led to a significant proportion of existing AIFMs having enhanced their controls, and that they have therefore led to EU added value.

4.3.2. Valuation rules

The general survey and interview results provided information and views on the valuation rules (see 4.3.3 b) in Section 1). In addition, information was obtained from desk research conducted by the central team on the implementation and impact of these rules, and we sought specific information from the 15 Member States (see Annex 6).

a) Description of the specific rules

The co-legislators deemed it essential for AIFMs to put in place a reliable and objective asset valuation process (Recital 29 AIFMD). The valuation rules are in Article 19 AIFMD and Articles 67-74 AIFMR.

Notwithstanding the differences in the valuation methodologies of the various asset classes, AIFMD requires AIFMs to establish and implement valuation policies and procedures, which should result in a proper valuation of the individual assets of an AIF. The AIFM can decide whether to carry out the valuation function internally or externally, with different applicable provisions.

If the valuation function is performed by the AIFM itself, it has to ensure that conflicts of interest are mitigated and undue influence by employees is prevented by means of an appropriate remuneration policy (see sub-section 4.3.3 below), and that there is functional separation of the valuation function from the portfolio management function (see sub-section 4.3.4 below). If valuation is delegated to an external valuer, the valuer must meet certain criteria, such as independency, qualification, guarantees and professional registration requirements.

Pursuant to Article 19(1) AIFMD, AIFMs shall ensure that for each AIF they manage, appropriate and consistent procedures are established so that a proper and independent valuation of the assets of the AIF can be performed. The valuation should be performed impartially and with all due skill, care and diligence (Article 19(8) AIFMD).

The rules applicable to the valuation of assets and the calculation of the NAV per unit or share of the AIF shall – in accordance with Article 19(2) AIFMD – be laid down in the law of the home Member State in which the respective AIF is established and/or in the AIF rules or instruments of incorporation.

Under Article 19 (3) AIFMD, the calculated NAV as well as the valuation procedure itself has to be disclosed to investors pursuant to the relevant AIFMD provisions, applicable **national law and the AIF's constitutional documents**. **Calculations have to be assured and provided at least once a year**, but the provision sets out different valuation and calculation frequencies for AIFs of the open-ended and closed-ended type.

Article 19(4) AIFMD stipulates an exhaustive list of entities as well as restrictions on who may perform the function of valuation. Article 19(5)-(7) AIFMD adds specific requirements on external valuers.

In accordance with Article 19(10) AIFMD, AIFMs remain responsible for the proper valuation of AIF assets, the calculation of the net asset value (NAV) and the publication of that NAV, irrespective of whether the AIFM appoints an external valuer. The second sub-paragraph of Article 19(10) AIFMD provides further clarifications as to the extent that an external valuer shall be liable to the AIFM for any losses suffered by **the AIFM as a result of the external valuer's negligence or intentional failure** to perform its tasks.

Articles 67-74 AIFMR require AIFMs, *inter alia*, to establish a written policy specifying the criteria concerning the procedures for the proper valuation of assets and the calculation of the NAV per unit or share as required in Article 19 (1) AIFMD. The articles also specify the professional guarantees the external valuer must be able to provide, the frequency of valuation of assets carried out by open-ended AIFs, the requirements for using a valuation model, the review of the valuation policy and the individual valuation of assets.

b) Assessment against the five key principles

i) Effectiveness

The survey results (see 4.3.3 b) in Section 1) indicate wide agreement that the AIFMD valuation requirements ensure an appropriate level of governance. However, the majority of survey respondents believed that AIFMD has had no real impact on the frequency or quality of valuations, although there appeared to be differences in view between asset classes.

AIFMD has had a marked effect on the valuation process for non-listed assets. Prior to AIFMD, external valuation was the leading market practice (35%) for non-listed assets. Post-AIFMD, external valuation has increased from 35% to 41%, and internal valuation from 21% to 31%, while valuation by investment managers has fallen (most markedly in the private equity/venture capital sector, for which internal valuation has become the leading practice).

A number of survey respondents and interviewees disputed that the shifts to external or internal valuation have resulted in improvements to the overall quality of valuations. In particular, the appropriateness or necessity of the strict binary approach of the AIFMD provisions, in terms of carrying out the valuation function either internally or externally, was questioned. Some interviewees suggested that a combined internal and external operating model could potentially increase the supply of external valuers prepared to carry out selected tasks like periodic provision of typical valuation estimates.

Also, the specific characteristics of real estate funds have been viewed as not sufficiently covered at EU level and have been dealt with in some national

transformation laws, e.g. with regard to the frequency of valuation,²⁴² including frequency of rotation and cool-off period for external valuers.²⁴³

The unlimited liability of the external valuer for any losses suffered by the AIFM as a result of the **external valuer's negligence or intentional failure**, coupled with the professional guarantees that external valuers have to provide before performing the valuation task on behalf of the AIFM, was reported by survey respondents and interviewees to be a significant issue for the real estate sector in some EU Member States. It was said that this has reduced the numbers of external valuers prepared to supply valuation services to AIFMs/AIFs and has led to increased use of an internal valuation process, thereby undermining the limitation of micro-prudential risks as one of the specific objectives of AIFMD.

In response to the statement that the liability requirements for external valuers has not limited their abilities or willingness to carry out this function, the number of those expressing an opinion were split. The responses at country level exhibited significant differences:²⁴⁴ nearly 50% of German respondents and 35% of French respondents agreed; but over 40% of respondents from Luxembourg and 30% from the UK *disagreed*.

Interviewees reported that the main underlying reason for this mixed picture relates to **the differing national interpretations of the term "negligence" and what would happen** in the event of a valuation failure. Some real estate experts shared the opinion that AIFMD can be interpreted as distinguishing between "gross negligence" and simple errors. In the former case, the erring party would typically be required to make full redress and might also be fined by the NCA, whereas the latter would usually be dealt with via corrections to the valuation.

However, some market participants, especially potential external valuation service providers, understand AIFMD as requiring the former measures of full liability to be applied to *all* forms of negligence, i.e. also to incidents of simple errors. This dissuades external valuers from offering their services, it was reported.

The impact of this divergence of legal interpretations, coupled with excessively high insurance premia, if any insurance is available at all, tends to result in external valuers only being willing to provide input to an **AIFM's** internal valuation process rather than carrying out the function themselves. This runs counter to the intention of AIFMD to introduce greater independency in the valuation process.

Another reason potentially hindering external valuers from offering their services are funds dealing with complex or specialist assets, such as solar, airplanes, certain types of power plant etc. However, in these cases respondents argued that the party most suitable to perform the valuation may be the AIFM itself.

Apart from the issues noted above, the AIFMD valuation rules, especially with regard to the implementation of an internal valuation policy, in general ensure that AIFMs are required to establish valuation procedures and processes in a more disciplined and structured manner. This improves transparency within the AIFM (internally) and for investors (externally).²⁴⁵

Furthermore, the requirement for potential external valuers to demonstrate their capabilities adequately to perform the valuation function and to provide relevant

²⁴² *Report of the AIFMD Stakeholders' Committee on the Transposition of the AIFM Directive and the Development of French Innovative Asset Management*, AMF, 2012, Recommendation 11, p. 31.

²⁴³ See Section 250 of the German transformation law (KAGB), for example

²⁴⁴ Kruskal-Wallis test: $p < 0.05$

²⁴⁵ Cf. Patzner/Schneider-Deters in *Frankfurter Kommentar, KAGB (Frankfurt Legal Commentary for the German transformation Act of AIFMD)*, § 169, margin no. 4, 5.

professional registrations and guarantees as per Article 19(5) AIFMD and Article 73 AIFMR,²⁴⁶ is an additional safeguard, aimed at strengthening the quality of external valuations. Some of the required certificates refer to the external valuer itself in the sense of the legal entity, whereas other certificates refer to the specific individual who is entrusted with the valuation task.²⁴⁷ The external valuer must monitor, and on a regular basis evaluate, the adequacy and effectiveness of its systems in accordance with ESMA guidelines,²⁴⁸ and its internal control mechanism and arrangements, and must take appropriate measures to address any deficiencies.²⁴⁹

A further sub-delegation by the external valuer of the valuation function to another third party (which is typically allowed for various other operational functions and regulated through Article 20 AIFMD and Articles 75-77 AIFMR) is explicitly prohibited in Article 19(6) AIFMD and has consistently been adopted in the respective national transformation laws.²⁵⁰

Taking into consideration the elements of discipline and transparency, in conjunction with the safeguard mechanism with regard to professional guarantees and the prohibition of a sub-delegation to another third party as outlined above, it can be concluded that the principle of effectiveness has generally been achieved. However, the differing national interpretations of the liability of the external valuer has resulted in a greater reliance on internal valuation in e.g. real estate, which appears to run counter to the intention of the AIFMD valuation rules.

ii) Efficiency

AIFMD provides a choice for AIFMs to operate internal or external valuation processes. This, in turn, allows AIFMs to establish and operate an efficient internal process, provided they are equipped with sufficient human resources with the appropriate capabilities and experience for the valuation task and can absorb the additional costs in implementing and maintaining the valuation process functionally independent from the portfolio management function, and in the ongoing costs of conducting regular and *ad hoc* reviews of the valuation policy. Depending on the size of the AIFM and the number, size and characteristics of the asset classes in which it invests, these costs might be less than or comparable to the cost of contracting and monitoring an external valuer.

Regarding proportionality, the alternative approach of merely prescribing general valuation guidelines at EU level might be considered, but this would not lead to a level playing field in investor protection, transparency and governance, so would not appear to achieve the specific and operational objectives. The principles outlined in Article 19 AIFMD prepare the ground for a level playing field among Member States and AIFMs, as well as ensuring a minimum level of avoidance and management of conflicts of interest. These principles are further articulated in Articles 67-74 AIFMR and there is room for further specification at Member State level to address national specifics. In particular, the fact that valuation can be undertaken internally by the AIFM (which may be crucial depending on market conditions and the supply of qualified valuers in a

²⁴⁶ See also e.g. the circular 07/2015 (WA) of the BaFin with further specifications with regard to professional guarantees.

²⁴⁷ Cf. Kretzschmann in *Frankfurter Kommentar, KAGB (Frankfurt Legal Commentary for the German transformation Act of AIFMD)*, § 216, margin no. 69.

²⁴⁸ See ESMA guidelines on "Systems and controls in an automated trading environment for trading platforms, investment firms and competent authorities", 2012.

²⁴⁹ Cf. e.g. *Investment services rules for investment services providers*, MFSA, 2017, 1.19.

²⁵⁰ Cf. e.g. *Texto Consolidado, Article 106, Ministerio de Economía y Competitividad, 2015*, p. 89 sqf.

Member State) indicates that proportionality had been acknowledged and the AIFMD valuation rules are generally proportionate.

Reliable quantitative evidence of the relative costs between an external or an internal valuation process could not be found, on which a concrete judgement could be based. However, observations that the premia charged for professional indemnity insurance policies for external valuers has substantially increased (see 4.3.3 b) in Section 1), at least in some Member States, raise a question about the efficiency of the AIFMD provisions. Furthermore, fewer available external valuers lower the level of competition, which could result in higher fees charged to AIFMs.

iii) Coherence

There are tentative connections between the AIFMD valuation, delegation and conflicts of interest rules (see sub-sections 4.3.1 above and 4.3.8 below), but the rules do not contradict each other and can be viewed as standalone. Therefore, *internal* coherence within the AIFMD is not an issue.

Extensive provisions on valuation do not exist in other EU regulations targeting alternative asset or fund managers. An example of evidence of external coherence is given by the EMIR reporting obligation enacted in August 2014, albeit only constrained to data relating to the valuation of over-the-counter financial derivatives.²⁵¹ In general, it can be presumed that the AIFMD valuation provisions do not lack *external* coherence with other EU regulations. Coherence of the AIFMD provisions with national transformation laws can also be attested, especially with regard to the provision to make use of an appropriate valuation model in accordance with Article 71 AIFMR, which has been incorporated into respective national transformation laws²⁵² or were already in place. In none of the national transformation laws examined was evidence detected that respective valuation rules significantly deviate from and did not harmonise with the AIFMD and the Level II provisions.

iv) Relevance

As evidenced by the comments of survey respondent and interviewees (see 4.3.3 b) in Section 1), the AIFMD valuation rules introduced greater consistency **among AIFMs'** valuation processes. Furthermore, the rules require the appropriate level of expertise needed to value the underlying assets and provide measures for managing potential conflict of interests. The establishment of a valuation policy provides greater assurance to investors that the valuation of individual assets will be carried out with due care and in a stringent and disciplined manner.

Thus, with respect to the operational objective to impose risk management controls on major risks to which AIFMs are exposed, the AIFMD valuation rules may be judged as relevant.

v) EU added value

Many, but not all, AIFs were and still are subject to local GAAPs²⁵³ and selectively also to IFRS²⁵⁴ and to external audit. Thus, elements of the detailed valuation provisions,

²⁵¹ EMIR for AIFMs: application to offshore funds with European investment managers, Dechert LLP, June 2014

²⁵² Cf. Kapitalanlage-Rechnungslegungs- und -Bewertungsverordnung, 2013, § 28

²⁵³ Generally-accepted accounting principles

especially some outlined in the AIFMR, at least to some extent may not have added much value. Indeed, interviewees noted that the use of certain terminologies was not in line with the common parlance or practices of fund accountants. This led, initially, to some uncertainty as to how the provisions were to be interpreted and whether they were intended to be completely new provisions. During the course of implementation, however, practitioners have come to an understanding of how the rules are meant to operate and survey respondents and interviewees did not highlight this as an on-going issue.

AIFMD has EU added value in setting out a common understanding of the need to mitigate and manage conflicts of interest via the functional independence of the valuation function from the portfolio management function. This requirement can be difficult to implement for smaller AIFMs, which is taken into account by the threshold provisions (see sub-section 4.1.1 above), which exempt sub-threshold firms from this requirement, unless they choose to opt up to full AIFM authorisation in order to access the passport.

With respect to causality, the regulatory purpose of the AIFMD valuation rules appears to be fulfilled as they have led to enhanced transparency to investors on **how an AIF's** assets are valued.

c) *Summary*

Effectiveness: The AIFMD valuation requirements are generally agreed to have led to an overall improvement in valuation processes and to represent good internal governance practices, although they have not had a material impact on the frequency or quality of valuations. They have helped to ensure that uniform requirements are placed on the valuation process and the valuers in the EU, but the binary choice between internal or external valuation, and the differing interpretations of the liability of external valuers appears to have impaired the effectiveness of the rules for some asset classes.

Efficiency: Prior to AIFMD, AIFMs generally were required to operate valuation procedures that minimised and managed conflicts of interest. The AIFMD valuation rules appear to meet the principle of proportionality: generally, they have not led to significantly greater costs, while creating a more level playing field in the EU. However, observations that the premia charged for professional indemnity insurance policies for external valuers has substantially increased, at least for some asset classes and in some Member States, raise a question about the efficiency of the AIFMD provisions.

Coherence: The AIFMD rules relating to the separation of the valuation and portfolio management functions, delegation and conflicts of interest are connected with the valuation rules but do not conflict with each other. Also, there are no closely related rules on valuation in other EU legislation, so external coherence can be presumed.

Relevance: In order to minimise risks and to strengthen investor confidence in the EU AIF market and in the processes of AIFMs, the AIFMD valuation rules remain of importance and are relevant.

EU added value: Although AIFMs were subject to valuation requirements prior to AIFMD and some technical uncertainties arose when AIFMD was implemented, some value has been added for the EU by the AIFMD rules (indicating causality), but there are a couple of areas where effectiveness and efficiency could be improved.

²⁵⁴ *International Financial Reporting Standards*

4.3.3. Remuneration rules

The general survey and interview results provided information and views on the remuneration rules (see 4.3.1 in Section 1). In addition, information was obtained from desk research conducted by the central team on the implementation and impact of these rules, and we sought specific information from the 15 Member States (see Annex 6).

a) *Description of the rules*

Recital 24 AIFMD describes the general impetus of the rules. The legislative rationale aims at an adequate management of risks and control of risk-taking behaviour by key personnel of AIFMs, and the alignment of remuneration practices and policies with effective risk management. AIFMD refrains, however, from stipulating static remuneration requirements, but instead provides for a proportionate approach. Under this principle, the remuneration policies shall recognise the size of the AIFMs as well as **the size of the AIFs they manage, the complexity, nature and scope of the AIFM's activities** as well as the internal organisation (Recital 25 AIFMD).

Article 13(1) AIFMD, in conjunction with Annex II, lays down the general requirement that AIFMs need to implement remuneration policies and practices for certain categories of staff whose professional activities have a material impact on the risk profiles of the AIFMs or of the AIFs they manage, that are consistent with and promote sound and effective risk management, and that do not encourage risk-taking that is inconsistent with the risk profiles, rules or instruments of incorporation of the AIFs they manage.

Article 13(2) AIFMD empowers ESMA – in close cooperation with the EBA²⁵⁵ – to issue and monitor adherence to guidelines on sound remuneration policies. Furthermore, it stipulates that the guidelines shall take into account the principles on sound remuneration policies set out in Recommendation 2009/384/EC (hereinafter called the **“EC Remuneration Recommendation”**),²⁵⁶ the size of the AIFMs and the size of AIFs they manage, their internal organisation and the nature, scope and complexity of their activities.

ESMA has issued extensive supervisory guidance²⁵⁷ (hereinafter called **“ESMA Remuneration Guidelines”**), in particular with regard to proportionality, the remuneration committee, risk alignment of sound remuneration policies and disclosure. The ESMA Remuneration Guidelines ensure that AIFMs comply with the requirements of remuneration across the Member States. They seek to limit the incentive for AIFM personnel to manipulate or influence the economic and risk parameters of AIFs.

²⁵⁵ European Banking Authority

²⁵⁶ EC Recommendation of 30 April 2009 on remuneration policies in the financial services sector (2009/384/EC), OJ L 120, 15.05.2009, 22.

²⁵⁷ ESMA, *Guidelines on sound remuneration policies under the AIFMD*, 3 July 2013, ESMA/2013/232 as well as subsequent amendments, i.e. ESMA, *Guidelines on sound remuneration policies under the AIFMD*, 14 October 2016, ESMA/2016/579.

b) Assessment against the five key principles

i) Effectiveness

Prior to implementation of AIFMD, remuneration had been the focus of regulation in only eight²⁵⁸ of the 15 Member States. After the financial crisis of 2008, attention was drawn to the fact that wrongly-set incentives resulting from remuneration schemes can potentially have a lasting effect on misconduct and adverse behaviour within corporations, and that adequate remuneration policies can be used as a defensive instrument.²⁵⁹ The FSB (and its predecessor, the Financial Stability Forum) issued principles for sound compensation practices.²⁶⁰ These principles provide for an alignment of remuneration to sustainable corporate interests and an obligation to embed appropriate risk management.

The remuneration practices of some AIFMs were viewed by policy makers as having created conflicts of interest and unguarded risks in AIFs, which had contributed to the financial crisis. AIFMD therefore requires regulation of the remuneration policies of AIFMs and has introduced requirements for some firms that were not previously subject to specific remuneration provisions. In doing so, they have created an EU-wide remuneration standard.

French management companies, for example, already complied with remuneration principles, following the adoption of provisions relating to management companies' remuneration policies that were drafted by industry associations and approved by the AMF in November 2010. On 26 July 2012, the AMF published a report of the AIFMD Stakeholders' Committee,²⁶¹ which noted that the legal and tax rules applying to private equity are a major factor in the competitiveness of that sector. Consequently, **the Committee proposed the establishment of provisions on managers' remuneration for all funds, to ensure alignment of managers' and investors' interests, modelled notably on private equity industry practices.**

Given that the eight Member States referred to above cover most of the largest fund management domiciles, it is perhaps unsurprising that almost one half of AIFMs that responded to the survey had observed no change in the overall remuneration level of risk takers since AIFMD came into force (see 4.3.1 in Section 1). Half of respondents indicated, though, an increase in fixed remuneration and a decrease in variable remuneration, which evidences a more risk-averse approach to remuneration among AIFMs.

There has been a criticism that, whilst the fixed and variable remuneration paid to each member of identified staff are ordinarily discussed during *ad hoc* or periodic board meetings, the proceedings are not always adequately recorded.²⁶² It is important to note that "*ancillary payments or benefits that are part of a general, non-discretionary, management company-wide policy and pose no incentive effects in terms of risk assumption can be excluded from this definition of remuneration*", as per the ESMA Remuneration Guidelines.

The ESMA Remuneration Guidelines are not legally binding for AIFMs, but NCAs and AIFMs are expected to make every effort to comply with the Guidelines on a

²⁵⁸ Austria, France, Ireland, Luxembourg, Malta, the Netherlands, Spain and the UK.

²⁵⁹ Cf. Rieble in *Frankfurter Kommentar, KAGB (Frankfurt Legal Commentary for the German transformation Act of AIFMD)*, § 37, margin no. 1.

²⁶⁰ "Principles for Sound Compensation Practices" of 2 April 2009 and "Principles for Sound Compensation Practices - Implementation Standards" of 25 September 2009

²⁶¹ AMF, *Report of the AIFMD Stakeholders' Committee on the Transposition of the AIFM Directive and the Development of French Innovative Asset Management*, p. 18.

²⁶² See e.g. *Thematic Review focusing on Compliance with the Remuneration Provisions in terms of the AIFM Directive*, MFSA, November 2016, p. 2.

comply-or-explain basis. NCAs were expected to declare within two months of the final guidelines being issued whether or not they would implement the Guidelines in their Member State, or give reasons if not. Therefore, although the Guidelines seek to ensure a coherent approach, ultimately it is a matter for the NCAs and AIFMs. The overwhelming majority of NCAs state that they comply with the ESMA Remuneration Guidelines.²⁶³ The Danish NCA does not fully comply with the Guidelines because it does not impose any threshold regarding minor severance payments.²⁶⁴

It can be concluded that the AIFMD remuneration rules have effectively introduced a common approach to remuneration practices across the EU.

ii) Efficiency

The evidence in 4.3.1 in Section 1 indicates that overall remuneration levels have remained broadly unchanged, but that there has been a shift towards fixed remuneration and away from variable remuneration. It was argued by some respondents and interviewees that this shift is not necessarily in the interests of AIF investors as it means that AIFMs' fixed costs are higher and that there is a lesser degree of alignment between the interests of investors and AIFMs.

We have not found reliable evidence to support or refute this view. We note, however, that the objective of AIFMD is not to regulate the salary structure of AIFMs, but to ensure a general reduction of excessive risk-taking by key personnel, in order to facilitate a prevention of systemic risk and an enhancement of investor protection.²⁶⁵ In principle, well-designed and well-implemented variable remuneration that incentivises investor-focussed behaviours of employees is a powerful management tool, which has the added advantage of not increasing fixed costs.

The measures required by Article 13 AIFMD do not, in isolation, go beyond what is necessary to achieve the objective. Hence, the legislative approach of guidance instead of detailed rules can be regarded as sufficiently taking into account the principle of proportionality. The rules provide for an EU-wide approach but allow for flexibility on the side of Member States, especially when considering national macro-economic matters like average salaries and other standards that may differ between Member States.

More than 90% of NCA respondents reported that they make use of the proportionality principles as far as remuneration policies are concerned. This matches the responses from AIF industry stakeholders (see Figure 32).

²⁶³ See for instance the adoption of the guidelines by FSMA in Belgium, retrieved from <https://www.fsma.be/nl/file/42082/download?token=EY4wDP5i>, Cyprus, retrieved from <https://www.cysec.gov.cy/CMSPages/GetFile.aspx?guid=bfb46f74-5cb8-4de0-bf10-24d352e1b65c>, Germany (BaFin letter WA 41-Wp 2137-2013/0037, Spain, retrieved from <https://www.cnmv.es/portal/verDoc.axd?t={472fd3b4-992e-4ec7-9320-29634f9f410a}>) and Hungary, retrieved from (<https://www.mnb.hu/letoltes/3-2017-jav-politika.pdf>)

²⁶⁴ ESMA (2017) Guidelines Compliance table. Retrieved from <https://www.esma.europa.eu/document/compliance-table-guidelines-sound-remuneration-policies-under-aifmd-esma2013232>.

²⁶⁵ **Recital 24 AIFMD:** "In order to address the potentially detrimental effect of poorly designed remuneration structures on the sound management of risk and control of risk-taking behaviour by individuals, there should be an express obligation for AIFMs to establish and maintain, for those categories of staff whose professional activities have a material impact on the risk profiles of AIFs they manage, remuneration policies and practices that are consistent with sound and effective risk management. Those categories of staff should at least include senior management, risk takers, control functions, and any employees receiving total remuneration that takes them into the same remuneration bracket as senior management and risk takers." Also, ESMA Remuneration Guidelines.

According to the ESMA Remuneration Guidelines, Member States should take into **account the size, nature and scope of financial undertakings' activities**, when taking measures to implement remuneration principles (i.e. proportionality). In designing their remuneration policies, AIFMs are obliged to comply with the guidelines to the **extent that is "appropriate to their size, internal organisation and the nature scope and complexity of their activities"**.

This would indicate that AIFMs can adopt an efficient approach. However, the comments below regarding coherence (or not) with other requirements may reduce efficiency. Concerns were also expressed by **some interviewees about ESMA's approach to "look through" to delegates, which can cause particular issues for delegates in third countries.**

AIFMs are also required to make remuneration disclosures to AIF investors. We could find no comments about or evidence of the costs of producing these disclosures separate from the overall costs of the various AIFMD disclosures to investors.

iii) Coherence

As regards *internal* coherence, the remuneration provisions are one element of risk management measures but do not appear to be in conflict with the other provisions.

As regards *external* coherence, UCITS ManCos and MiFID investment firms are also subject to requirements on remuneration. However, the rationale for the MiFID provisions differ. As noted above, according to Recital 24 AIFMD, the AIFMD remuneration provisions focus on a general reduction of excessive risk-taking by key personnel of AIFMs in order to facilitate a prevention of systemic risk and an enhancement of investor protection. The UCITSD provisions have a similar focus. **Recital 9 UCITSD V states that "in order to promote supervisory convergence in the assessment of remuneration policies and practices", ESMA should ensure the existence of guidelines on sound remuneration policies and practices in the asset management sector, which "should, where appropriate, be aligned, to the extent possible, with those for funds regulated under [AIFMD]."**

Driven by the proportionality principle, AIFMD provides full exemption from the scope of the remuneration rules for sub-threshold AIFMs,²⁶⁶ whereas UCITSD offers no such size-based exemption, which supports the argument of those who observed that the AIFMD remuneration provisions are less demanding than those in UCITSD.²⁶⁷

Rather than addressing key personnel, material risk-takers or similar staff, with a view to reducing systemic risk exposures, the MiFID II remuneration regime targets the entire sales and distribution departments. The MiFID II requirements mainly focus on the effectiveness and monitoring of sales activities and the conduct of business rules for the benefit of individual clients, as well as compliance with certain conflict of interest requirements.²⁶⁸

AIFMs' remuneration policies must meet both sets of aims where (a) they offer investment services in accordance with an ancillary services authorisation pursuant to MiFID II and (b) a MiFID investment firm acts as a delegate for regulatory core functions of an AIFM (i.e. portfolio management and/or risk management).

²⁶⁶ AIFMs either with (i) less than EUR 100 mn of assets under management in AIF(s) or with (ii) less than EUR 500 mn of assets under management in AIF(s) when the portfolios of AIFs consist of AIFs that are unleveraged and have no redemption rights

²⁶⁷ AFG answer Call for Evidence on the EU regulatory framework for Financial Service, January 2016, p. 22.

²⁶⁸ Recitals 54 and 77, Art. 9(3)(c), 23(1), 24(10) MiFID II

The AIFMD remuneration provisions are generally speaking coherent with the EC Remuneration Recommendation, but the different policy rationales and the detailed requirements of the various remuneration policy standards may give rise to coherence issues for AIFMs that are part of a corporate group or conglomerate with MiFID firms or CRR institutions. Such AIFMs may be required to adhere to MiFID II and/or CRR remuneration policies in addition to the AIFMD requirements, simply because of their ownership. This can create difficulties when application of the disparate requirements can be viewed as creating conflicts.

There is also a question about coherence with the EBA Remuneration Guidelines,²⁶⁹ which per Article 4(1)(3) CRR apply to all investment firms within a group. Article 92(1) CRD requires the application of the remuneration rules to subsidiaries of registered institutions. The potential incentive for good (or bad) conduct are of a different nature in a fiduciary business to a principle business. For the former, it is suggested that aligning remuneration levels with the level of return for investors over an extended period directly aligns the interests of AIFM employees with AIF investors.

There exist additional national regulations on remuneration, in particular for incorporated, listed AIFs. For instance, the German Act on the Appropriateness of Management Board Remuneration²⁷⁰ seeks to counteract remuneration-related disincentives on the level of the management board of a German corporation. Thus, German limited investment companies (*Investmentaktiengesellschaften*) are subject to both regimes, which could give rise to conflicting requirements.²⁷¹

iv) *Relevance*

The area of remuneration is as relevant as at the inception of AIFMD. In classic incentives theories,²⁷² remuneration is a practical instrument of incentive or deterrence used by the principal in order to influence the actions and decisions taken by risk-takers within an organisation, in order to ensure a strong alignment of the actions and decisions of each risk-taker and the interest of the principal for whom they act. In this regard, conflicting objectives and decentralised information are two basic reasons why the interests of the principal and of the agents (here in the meaning of risk takers) may not be aligned.

Thus, provisions on remuneration policy are generally accepted instruments of the regulatory tool box and valuable safeguards for the purpose of the risk management function.

v) *EU added value*

On the basis of the evidence in 4.3.1 in Section 1 and desk research (as described above), it can be concluded that the AIFMD remuneration rules represent an effective and relevant part of the governance rules of AIFMD that have created an EU-wide standard for remuneration policies. However, there are question marks about their coherence with other pieces of legislation and guidelines (especially for AIFMs that are part of corporate groups with interfaces to more than one regulatory regime), which in

²⁶⁹ Retrieved from https://www.eba.europa.eu/documents/10180/1314839/EBA-GL-2015-22+Guidelines+on+Sound+Remuneration+Policies_EN.pdf

²⁷⁰ Gesetz zur Angemessenheit der Vorstandsvergütung - VorstAG

²⁷¹ Jesch, in *Frankfurter Kommentar, KAGB (Frankfurt Legal Commentary for the German transformation Act of AIFMD)*, § 37, margin no. 31.

²⁷² See "*The theory of Incentives: The Principal-Agent model*", Jean-Jacques Laffont and David Martimort, 2001

turn reduces the potential efficiency of the regime. Also, for some AIFs there remain additional national provisions.

Nevertheless, it can be argued that the potential lack of coherence with other pieces of legislation and guidelines is outweighed by the creation of an EU-wide standard for AIFM remuneration policies. After the AIFMD came into force, it was observed that remuneration policies were reviewed with regard to potential incentives facilitating or even stimulating excessive risk-oriented behaviour, which runs counter to the interests of the investors, for whom the AIFM acts. This has increased awareness of the need for proper remuneration systems,²⁷³ which has itself provided EU added value that can be ascribed to AIFMD (i.e. causality).

c) Summary

Effectiveness: The AIFMD remuneration provisions have produced a harmonised EU-wide framework, which relates directly to the specific and operational objectives and is supported by the ESMA Remuneration Guidelines. The Guidelines have been adopted by NCAs, so a common approach to remuneration practices across the EU has effectively been introduced. No evidence has been found, though, on which to assess the extent to which the AIFMD remuneration rules have led to a general reduction of excessive risk-taking by key personnel. Also, there are issues with the number of slightly different remuneration standards to which an AIFM might be subject, directly or via its group.

Efficiency: The legislative approach of guidance rather than detailed rules can be regarded as efficient and complying with the principle of proportionality, in the sense that it allows for flexible remuneration schemes in order to cope with individual features and peculiarities in each Member State. However, a lack of data on costs (relative to the pre-AIFMD position) and benefits renders a concrete assessment difficult.

Coherence: Internal coherence is fulfilled, but there is a lack of coherence between the application of the AIFMD remuneration rules and of the remuneration requirements in other EU legislation, which might impact AIFMs that are part of a corporate group or conglomerate with MiFID firms or CRR institutions.

Relevance: Consumer protection remains a reasonable and relevant objective for financial services regulation. The avoidance of disproportionately high risks, due to remuneration policies creating a misalignment between **risk-takers' and investors'** interests, is an important regulatory concern. In this respect, the AIFMD remuneration rules achieve the specific and operational objectives without imposing unnecessarily detailed and prescriptive requirements, and remain relevant.

EU added value: It can be concluded that the AIFMD remuneration rules represent an effective and relevant part of the governance rules of AIFMD and have created an EU-wide standard for remuneration policies (i.e. causality is indicated), but that their effectiveness and coherence is impaired by potentially conflicting requirements in other closely-connected EU legislation.

²⁷³ See the study *"Angekommen in der neuen regulierten Welt – Auswirkungen des KAGB auf die Branche der alternativen Investments"*, PwC, Bundesverband Sachwerte und Investmentvermögen (bsi), Zentraler Immobilienausschuss (ZIA), 2014, figure 22, p. 30, stating that the application of the remuneration rules were indicated by more than one-third of the interview participants to be the greatest internal challenge during the licensing and authorisation process.

4.3.4. Risk and liquidity management rules

The general survey and interview results provided information and views on the risk and liquidity management rules (see 4.3.3, 4.3.3 a) and 4.7.3 in Section 1). In addition, information was obtained from desk research conducted by the central team on the implementation and impact of these rules, and we sought specific information from the 15 Member States (see Annex 6).

a) *Description of the rules*

Based on the objectives of adequate risk and liquidity management controls and limitation of micro-prudential risks, AIFMD aims to control the most important risks faced by AIFMs and AIFs (market, liquidity, counterparty and operational risks). AIFMs are therefore required to establish appropriate controls and processes.²⁷⁴

Articles 15-16 AIFMD, supplemented by Articles 38-49 AIMR, require AIFMs:

- to implement adequate risk management systems in order to identify, measure, manage and monitor appropriately all risks relevant to each AIF investment strategy and to which each AIF is or may be exposed;
- functionally and hierarchically to separate the functions of risk management from the operating units, including from the functions of portfolio management; and
- to employ an appropriate liquidity management system and adopt procedures that enable them to monitor the liquidity risk of the AIF and to ensure that the liquidity profile of the investments of the AIF complies with its underlying obligations.

Article 15 AIFMD stipulates the organisational and procedural requirements for the risk management process of AIFMs, and Articles 38-45 AIMFR clarify the central provisions of the Directive.

The requirement for functional and hierarchical separation is subject to specific supervisory review by the NCA of the home Member State of the AIFM in accordance with the principle of proportionality, but the AIFM shall, at least, be able to demonstrate that specific safeguards against conflicts of interest provide for independence risk management activities and that the risk management process satisfies the requirements of Article 15 AIFMD and is consistently applied.

An AIFM's risk management system must be reviewed at least once a year and be adapted whenever necessary. A set of minimum requirements for an adequate risk management system is stipulated under Article 15(3) AIFMD. In addition, some specifying measures are stipulated under Articles 39-42 AIFMR with regard to the risk management systems, the frequency of their review, and the functional and hierarchical separation of the risk management function from the operating units.

Further, Article 15(4) AIFMD requires AIFMs to set a maximum level of leverage, which they may employ on behalf of each AIF they manage, and the extent of the right to reuse collateral or guarantee that could be granted under the leveraging arrangement, taking into account an exhaustive list of parameters. (This aspect is considered in sub-section 4.2.3 above.)

²⁷⁴ Cf. for further details Deloitte, *Risk management within AIFMD for private equity and real estate funds (2014)*.; PwC, *Risk management, AIFMD Newsbrief: A closer look at the Impact of AIFMD on Risk and Liquidity Management (2013)*, p. 1 et seq.

In line with the organisational approach of Article 15 AIFMD, the liquidity management provisions under Article 16 AIFMD (supplemented by Articles 46-49 AIFMR) foremost set organisational and procedural requirements for AIFMs.

In accordance with Article 16(1) AIFMD, AIFMs shall, for each AIF they manage that is not an unleveraged closed-ended AIF, employ an appropriate liquidity management system and adopt procedures that enable them to monitor the liquidity risk of the AIF and to ensure that the liquidity profile of the investments of the AIF complies with its underlying obligations. Further measures specifying the liquidity management systems and procedures are stipulated under Article 47(1)(a)-(e) AIFMR.

This requirement is supplemented by a duty regularly to conduct stress tests, under normal and exceptional liquidity conditions, which enable AIFMs to assess and monitor the liquidity risk of the AIFs.

AIFMs need to ensure that – for each AIF they manage – the investment strategy, the liquidity profile and the redemption policy are consistent, as per Article 16(2) AIFMD. Article 49 AIFMR further requires that these aspects are aligned when investors have the ability to redeem their investments in a manner consistent with the fair treatment **of all AIF investors and in accordance with the AIF’s redemption policy** and its obligations, having regard to the impact that redemptions may have on the underlying **prices or spreads of the AIF’s assets**.

b) Assessment against the five key principles

i) Effectiveness

Almost all AIFM respondents (94%) reviewed their risk management processes when AIFMD came into force and 42% significantly adjusted some of their risk management processes (see 4.3.3 in Section 1). Also, AIFMs strongly agreed (85%) that AIFMs are required to have appropriate risk management processes in place.

These results were supplemented by comments received through the semi-structured interviews. The majority of AIFMD interviewees in nearly all the Member States noted that implementation of AIFMD had resulted in only minor changes in substance to risk management processes, because national rules already existed or because they drew on their experience with UCITS requirements (to which a majority of the interviewees were already subject). Changes were said to have been made primarily in the area of calculating leverage and articulating internal governance processes.

However, the survey and interviews revealed that AIFMD requirements had had a greater impact in some sectors of the AIF universe. Implementation of a risk management system and corresponding documentation was newly-introduced in isolated cases for closed-ended funds and money market funds, for example. A more critical view was taken by the private equity fund industry, for which the risk focus was said to be generally different from the focus of the AIFMD wording (which was drawn from the general UCITS requirements, i.e. for securities funds). Further, the separation of risk management and portfolio management was not considered appropriate for most of the former non-regulated entities that participated in the survey.

In respect of the requirement of Article 15(3)(b) AIFMD, to ensure that the risks associated with each investment position of the AIF and their overall effect on the **AIF’s portfolio** are monitored through the use of appropriate stress testing procedures, AMIC/EFAMA noted that AIFMD does not prescribe how these tests must be

conducted,²⁷⁵ and, therefore, that there is no coherent and comparable standard within the EU. This could result in different risk assessments among AIFMs across the European financial market.

Survey participants reported that as a result of AIFMD, AIFs and AIFMs are increasingly seeking to put in place letters of comfort, over and above standard contractual arrangements, and this puts pressure on depositaries to assume an extra level of responsibility for the service (see 4.3.3 in Section 1).

Most interviewees agreed that the risk management requirements, and specifically the need for functional and hierarchical separation, are challenging to implement where the underlying assets are not listed or are illiquid, in particular, in the private equity and real estate sector. In these sectors, the risk management and portfolio management processes are intrinsically linked. Further, it was reported that small AIFMs usually do not have enough staff to meet the requirements. For hedge fund strategies, however, hierarchical and functional separation was considered sensible, although implementation of the detailed requirements proved to be more difficult than expected.

Some Member States surveyed reported that the number of employees dealing with risk management of AIFs has increased in the last few years.

Among respondents and interviewees there was no clear majority of supporters or opponents of the AIFMD risk management requirements, since the impact of the functional and hierarchical separation requirement differs between types of market participants. However, there was broad agreement that the requirement for a functional and hierarchical separation set out in AIFMD sets a strong framework for ensuring an appropriate degree of independence in relation to the risk management function, which is sufficiently tailored for the heterogeneous population of AIFMs, in accordance with the ESMA AIFMR Advice.

Responses by AIFMs to the general survey questions about liquidity management indicated that the proportion of AIFMs that reviewed their processes after AIFMD came into force was high at 88% and one-fifth of the AIFMs significantly adjusted some of their processes (see 4.3.3 a) in Section 1).

Overall agreement with the statement that AIFMs are required to have appropriate liquidity management processes was lower, at 75%. Survey respondents had diverse views on whether the AIFMD liquidity risk management requirements are necessary for closed-ended AIFs or for AIFs with only professional investors.

Similarly, about one-half of interviewees agreed that the AIFMD requirements are operable, but a larger number questioned whether they are necessary. For example, some thought that detailed liquidity management rules for funds available only to professional investors are unnecessary, because the investors are sufficiently qualified and experienced to be aware of any potential risk.

A contrary argument expressed, however, was that professional investors can be more volatile clients, which necessitates the imposition of liquidity management rules on such funds. As argued in the ESMA AIFMR Advice, the illiquidity of major financial markets during the financial crisis placed considerable strain on the liquidity of many types of AIF and, therefore, on their ability to meet redemption requests.

During the consultation phase of AIFMD, respondents commented on the requirement for AIFMs investing in other collective investment undertakings (CIUs) to monitor the approach to liquidity management adopted by the manager(s) of those CIUs, arguing that these requirements may impede some AIFs from investing in certain highly-liquid

²⁷⁵ AMIC/EFAMA, *Use of Leverage in Investment Funds in Europe AMIC/EFAMA Joint Paper, July 2017, p. 15.*

underlying investments, where it would be impractical for them to undertake such monitoring. ESMA was not convinced by this argument and strongly believed that AIFMs should also carry out specific due diligence in relation to the liquidity of underlying CIUs, including monitoring of their liquidity profile.

Consistent with the findings of an IOSCO survey,²⁷⁶ AMIC and EFAMA considered the existing EU regulations under AIFMD and tools available in most Member States as both comprehensive and appropriate for liquidity management in both normal and exceptional circumstances.²⁷⁷ However, there are still some areas where AMIC and **EFAMA believe that “some specific actions might lead to improvements” in the general** liquidity management environment. As a consequence, AMIC and EFAMA suggested that ESMA should play a more active role in encouraging the appropriate use of non-regulatory liquidity management tools at national level, in particular swing pricing, dual pricing and redemption fees, dilution levies, in-kind redemptions, out-of-the-money gates, suspensions of dealings, side-pockets or temporary borrowing from non-government sources.

While not mandatory under the AIFM or UCITS frameworks, these mechanisms are considered by AMIC and EFAMA to be useful liquidity management tools for fund management companies. They are already used and recognised in many Member States and, according to AMIC and EFAMA, could be considered by other Member States, with the encouragement of ESMA, thereby enhancing the management of liquidity risk. It is interesting to note that according to AMIC and EFAMA the US Securities and Exchange Commission made positive reference to some national fund market practices, such as swing pricing.²⁷⁸

In general, AIFMD ensures that AIFMs implement for each AIF under their management appropriate liquidity management systems and procedures to ensure that the liquidity profile of the investments of the AIF is consistent with the underlying obligations towards investors. The requirement to put in place tools and arrangements to manage liquidity risks are not applied to AIFMs managing AIFs of the closed-ended type. This exemption appears appropriate, because, as noted in the ESMA AIMR Advice, it reflects the differences in the general redemption terms of investors in a closed-ended AIF compared to those in an open-ended AIF.

Further, the requirement of Article 15(4) AIFMD for AIFMs to provide information about the right to reuse collateral is recognised among experts, for example in the UK and Germany, as an appropriate way for NCAs to monitor and mitigate risks arising from re-hypothecations. It limits the so-called “**velocity of collateral**” created by the re-using, re-pledging or selling securities for, or to, third parties, which could result in redemption delays or defaults for AIFM/AIFs.²⁷⁹ However, some national industries, for example in France, advocated a wider scope of liquidity management tools (e.g. gates), which are currently lacking in the ambit of AIFMD.²⁸⁰

²⁷⁶ IOSCO Final Report on Liquidity Management Tools in Collective Investment Schemes: Results from an IOSCO Committee 5 survey to members of December 2015, FR 28/2015. Retrieved from <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD517.pdf>.

²⁷⁷ Cf. AMIC/EFAMA, *Managing fund liquidity risk in Europe - an AMIC/EFAMA report*, April 2016, p. 19 et seq.

²⁷⁸ *Consultation on CIS Liquidity Risk Management Recommendations*, IOSCO, July 2017, p. 3.

²⁷⁹ Cf. Decker, *Segregation und Ausfallrisiko nach EMIR und KAGB*, *Zeitschrift für Bank- und Kapitalmarktrecht*, p. 397 et seq.; Decker, *Sicherheitenstellung nach EMIR und AIFMD und die Auswirkung auf deutsche Investmentfonds und deren Depotbanken*, *Recht der Finanzinstrumente*, p. 23 et seq.; Ronald W. Anderson, Karin Joeveer, *The Economics of Collateral*, April 2014, p. 22 et seq; Singh, M. *Velocity of Pledged Collateral Analysis and Implications*, *IMF Working Paper 11/256*.

²⁸⁰ See F.1 AFG Code of Practice on Liquidity Management. See also, for instance, *widening of the liquidity risk management tools available to French investments funds; a first example on gates: AMF Instruction conditions for setting up redemption gate mechanisms – F2. AMF Instruction DOC-2017-05*

Given negative experiences in the past with liquidity shortages in German real-estate funds and the consequent suspension of redemption rights for investors, Germany imposed additional liquidity restrictions for real-estate funds.²⁸¹ Also, in implementing AIFMD in its transformation Act,²⁸² Germany stipulated that similar liquidity management requirements be applied to UCITS ManCos.²⁸³ BaFin argued that the standards in respect to liquidity management for German UCITS should not fall behind the new standards for AIFMs.²⁸⁴ BaFin advises that the effort spent on the stress test should be in proportionate to the volume and the complexity of the risk profile of each AIF.²⁸⁵ Accordingly, BaFin has lower requirements for sub-threshold AIFMs, as long as the objectives are fulfilled.²⁸⁶ Thus, AIFMD had an indirect impact on the national UCITS regime.²⁸⁷

In relative terms, most of the changes were marginal for those fund management companies that were already regulated before AIFMD became effective, as some of the AIFMD requirements were already in national regulation or were market practice, and implementation of AIFMD by market participants was based on existing UCITS experience or compliance with similar national requirements.

In conclusion, based on the responses and comments received during this study, the provisions on risk and liquidity management, whose intent derives from the specific objective to monitor and limit micro-prudential risks, are effective. The provisions achieve a robust risk management framework, under which AIFMs have to establish a permanent risk management function and provide regular reports to the NCAs on risks the AIFs bear. Consequently, the advice of ESMA has been brought into effect and the NCAs have a supervisory focus on matters pertaining to compliance with limits set for the AIFs and managed by the AIFMs.

Further, given that the specific objective includes also the protection of investors, it is intended that investors should be able to redeem their investments in accordance with the AIF policy. The requirements in Articles 15 and 16 AIFMD allow for conditions for redemption in both normal and exceptional circumstances, and in a manner consistent with the fair treatment of investors.²⁸⁸ In this regard AMIC/EFAMA noted in 2016 that **the liquidity risk management requirements of AIFMD and its implementing acts "have proven their merit since their implementation three years ago, in particular in the context of several significant market dislocations which have occurred since then".**²⁸⁹

ii) Efficiency

We could find no reliable information on whether the AIFMD's provisions on credit, collateral and derivative risk management have impacted the numbers of job offers to

²⁸¹ See § 253 KAGB, Cf. Geurts/Schubert, in *Frankfurter Kommentar, KAGB (Frankfurt Legal Commentary for the German transformation Act of AIFMD)*, § 29, margin no. 8.

²⁸² *Kapitalanlagegesetzbuch – KAGB*

²⁸³ Cf. Geurts/Schubert, in *Frankfurter Kommentar, KAGB (Frankfurt Legal Commentary for the German transformation Act of AIFMD)*, § 29, margin no. 8.

²⁸⁴ BaFin, *Begründung zur Kapitalanlage-Verhaltens- und -Organisationsverordnung – KAVerOV*, 22 July 2013, recital to § 6, can be downloaded under https://www.bafin.de/SharedDocs/Veroeffentlichungen/DE/Aufsichtsrecht/Verordnung/KAVerOV_Begr%C3%BCndung.html.

²⁸⁵ BaFin, *Liquiditätsstresstests deutscher Kapitalverwaltungsgesellschaften*, WA 46-AZB 1130-2017/0002, 2017, p. 15.

²⁸⁶ BaFin, *Rundschreiben 01/2017 (WA) – Mindestanforderungen an das Risikomanagement von Kapitalverwaltungsgesellschaften – „KAMaRisk“*, 10.01.2017, p. 3.

²⁸⁷ Cf. § 30(5) KAGB in conjunction with § 6 KAVerOV, Cf. Geurts/Schubert, in *Frankfurter Kommentar, KAGB (Frankfurt Legal Commentary for the German transformation Act of AIFMD)*, § 29, margin no. 8.

²⁸⁸ ESMA AIFMR Advice, p. 81.

²⁸⁹ Cf. AMIC/EFAMA, *Managing fund liquidity risk in Europe - an AMIC/EFAMA report*, April 2016, p. 5.

qualified personnel in the Member States surveyed. However, the survey results indicate that in a few of the Member States, the number of employees dealing with risk management of AIFs has increased (see 4.7.2 in Section 1).

Also, over 60% of respondents said that costs had increased due to the AIFMD risk management requirements, with about 70% reporting that the provisions require AIFMs to do things they would not otherwise do or would do more efficiently, or duplicate other requirements, or do not match the requirements of their AIF investors (see Figure 52 in 4.7.2 in Section 1).

A differentiated picture emerged from survey responses and interviews, in particular from the private equity and real estate sectors. In these sectors, the necessity of full functional and hierarchical separation of risk and portfolio management is not regarded as efficient from a cost perspective. Note also the example given from one Member State that attempts are therefore being made to issue letters of comfort beyond the usual contractual agreements, which in turn can lead to additional costs.

The operational objective of the rules on risk and liquidity management pursuant to Articles 15 and 16 AIFMD is to impose risk management controls on major risks to which AIFMs/AIFs are exposed, in particular market, liquidity, counterparty and operational risks.

Article 15(1) AIFMD explicitly requires that the functional separation arrangements shall be reviewed by the NCA of the home Member State of the AIFM in accordance with the principle of proportionality. It is assumed that the NCAs comply with this requirement. Survey feedback, however, was that small AIFMs do not usually have enough staff to meet the functional separation requirements, which is a barrier to entry for e.g. small venture capital fund managers for whom risk management usually is an integral part of the portfolio management function and consequently is carried out by the same team.

This issue was highlighted before AIFMD implementation. An **AIFMD stakeholders'** committee chaired by AMF expressed its concerns well before the transposition of AIFMD into French law and proposed adherence to the proportionality principle, i.e. to take a pragmatic approach designed to facilitate the establishment of the risk control function in small specialised asset management companies or in start-ups.²⁹⁰

Articles 15 and 16 AIFMD comply with the purpose-means ratio, because the requirements do not go beyond what is necessary to achieve the specific and operational objective. The provisions of AIFMD are limited to those aspects that could not have been regulated by the individual Member States and had to be regulated by EU requirements to ensure a level playing field. Since the primary role of the liquidity **management framework is to limit the risk that the liquidity profile of the AIF's investments does not align with its underlying obligations**, the ESMA AIFMR Advice **states that "such an approach is consistent with the request from the Commission to specify rules that are proportionate and necessary" for specifying the general obligations placed on AIFMs by Article 16(1)-(2) AIFMD.**

It can therefore be concluded that the principle of efficiency is achieved. The onus is on NCAs to ensure appropriate application of the proportionality principle.

²⁹⁰ *Report of the AIFMD Stakeholder's Committee on the Transposition of the AIFM Directive and the Development of French Innovative Asset Management, AMF Report, 26 July 2012, p. 15.*

iii) Coherence

The AIFMD risk and liquidity management requirements are linked to a number of other AIFMD provisions, including valuation, delegation and leverage. During the course of this study, no evidence came to light that suggests a lack of coherence between the risk and liquidity management requirements and other AIFMD provisions. In fact, as noted in *i) Effectiveness* above, the large majority of respondents agreed that AIFMs must establish appropriate risk and liquidity management processes. Therefore, *internal* coherence can be assumed.

As regards *external* coherence, the picture is more mixed. While in the most corresponding legislative acts (UCITSD and MiFID II), risk management is an operating condition, i.e. a requirement that must be met in order to secure authorisation, AIFMD renders risk management to be an authorisation criterion, i.e. a regulated activity. An AIFM is defined as providing at least portfolio management and risk management. However, we found no evidence that, in practice, the industry regards this legislative difference as a determinant of business models.

The AIFMD risk and liquidity management provisions are largely based on UCITSD, thereby ensuring coherence with e.g. Article 51(1) UCITSD.²⁹¹ Articles 15 and 16 AIFMD enhanced the governance structures envisioned under UCITSD require robust controls that ensure delivery of the risk profile disclosed to investors. Consequently, the regulatory requirements for AIFs and UCITS were aligned. Furthermore, the provisions of Articles 15 and 16 AIFMD align with the risk mitigation requirements for OTC derivative contracts under EMIR.²⁹²

Thus, the AIFMD risk and liquidity management rules can be deemed generally coherent. Indeed, as noted in *i) Effectiveness* above, three-quarters of the survey respondents agreed that an AIFM must have both adequate risk management processes and adequate liquidity management processes.

iv) Relevance

The ongoing relevance of risk and liquidity management regulation is confirmed by global regulatory bodies, as illustrated by recent recommendations of the FSB²⁹³ and IOSCO.²⁹⁴ Also, as evidenced in 4.3.3 in Section 1, AIFMD continues to be considered by market participants as generally relevant in terms of its risk management provisions, including the hierarchical separation of risk management and portfolio management.

However, some respondents questioned the rationale for the full application of Articles 15 and 16 AIFMD across all sectors of the AIF industry. In particular, application by NCAs of the proportionality principle to the requirement for hierarchical separation of risk and portfolio management was seen as essential for smaller AIFMs. Also, while some questioned the application of the liquidity management rules to AIFs available only to professional investors, others expressed a contrary view.

It can therefore be concluded that the AIFMD risk and liquidity management provisions remain generally relevant. They exert a harmonised discipline in striking a balance between honouring investor redemptions in a timely and fair manner with the objective of offering investors access to higher risk premia from investing in less-liquid

²⁹¹ Cf. Geurts/Schubert, in *Frankfurter Kommentar, KAGB (Frankfurt Legal Commentary for the German transformation Act of AIFMD)*, § 29, margin no. 6.

²⁹² EU Regulation 648/2012 of 4 July 2012 on OTC derivatives, central counterparties and trade repositories

²⁹³ See <http://www.fsb.org/2017/01/policy-recommendations-to-address-structural-vulnerabilities-from-asset-management-activities/>.

²⁹⁴ See <http://www.iosco.org/news/pdf/IOSCONEWS486.pdf>.

assets.²⁹⁵ Especially in times of distortive effects of expansive monetary policies and low interest rates, resulting into a yield compression on various assets, illiquid assets will remain a target investment of investors with mid- to long-term asset allocations.

v) *EU added value*

The AIFMD risk and liquidity management requirements were a robust response to the 2008 financial crisis.²⁹⁶ They aimed to strengthen the European investment fund market by addressing liquidity management issues in an appropriate manner.²⁹⁷

Furthermore, and as noted in *i) Effectiveness* above, the provisions provide necessary safeguards for investors. They thereby promote investor confidence in investments in the broad universe of assets, including less liquid or illiquid investment, and facilitate increased access to capital markets and greater financing options for enterprises seeking to raise capital. These two outcomes are **in accordance with the EU's aims** under CMU and would seem to imply that AIFMD has resulted in positive outcomes for the EU (i.e. causality is indicated). However, the degree of influence is not clear given the results of the statistical research, which do not indicate that AIFMD has had a significant effect on growth in the EU AIF market (see Annex 4).

c) *Summary*

Effectiveness: The AIFMD provisions are effective and created a uniform standard in AIFMs risk and liquidity management. This enables NCAs to assess whether AIFMs have appropriate risk management controls and manage major risks. They also provide assurance for investors that the liquidity profile of an AIF is aligned with their redemption rights.

Efficiency: The AIFMD risk and liquidity management provisions are efficient and fulfil the principle of proportionality given the pragmatic approach to application of the rules to small specialised AIFMs, which are typically constrained by limited human resources. The onus is on NCAs to ensure appropriate application of the proportionality principle in these cases.

Coherence: The provisions of risk and liquidity management in the AIFMD are internally coherent with a number of other AIFMD provisions, including valuation, delegation and leverage. They are also generally externally coherent with corresponding provisions in related EU legislation.

Relevance: The ongoing relevance of risk and liquidity management regulation is confirmed by the FSB and IOSCO. Also, the AIFMD risk management provisions continue to be considered by market participants as relevant, including the hierarchical separation of risk management and portfolio management.

EU added value: The AIFMD provisions promote investor confidence in the broad universe of investments and facilitate increased access to capital markets for capital-seeking enterprises, which offer positive outcomes for the EU (i.e. causality is indicated). However, the degree of influence is not clear.

²⁹⁵ Cf. EFAMA Response to the IOSCO Consultation on CIS Liquidity Risk Management Recommendations (CR04/2017), EFAMA, 2017, p. 1 sqf.

²⁹⁶ See the collapse and bankruptcy of the US investment bank Lehman Brothers on 15 September 2008.

²⁹⁷ Cf. AMIC/EFAMA, Managing fund liquidity risk in Europe - an AMIC/EFAMA report, April 2016, p. 3.

4.3.5. Depositary rules

The general survey and interviews provided information and views on these rules (see 4.1.2 and 4.3.3 d) in Section 1). In addition, information was obtained from desk research conducted by the central team on the implementation and impact of these rules, and we sought specific information from the 15 Member States (see Annex 6).

a) Description of the rules

The rules on depositaries in Articles 21 AIFMD (supplemented by Art. 61(5) AIFMD and Articles 83-84 and 100-102 AIFMR) aim to increase investor protection by imposing independent oversight of certain activities of the **AIFMs and security of AIFs' assets**.

Pursuant to Article 21(1) AIFMD, AIFMs need to appoint a single depositary for each AIF they manage, which must be evidenced by a written contract (Article 21(2)). Article 21(3) AIFMD provides a list of entities eligible to be AIF depositaries, which is supplemented with certain requirements on the domiciliation of depositaries in Article 21(5) AIFMD. For EU AIFs the home Member State of the AIF is stipulated in Article 21(5)(a), and Article 24(6) sets out criteria for the appointment of a depositary established in a third country.

Article 21(4) AIFMD clarifies measures for the avoidance of conflicts of interest between the depositary, the AIFM and/or the AIF and/or its investors.

Articles 21(7) and (9) AIFMD stipulate the general rights and duties of a depositary. In accordance with Article 21(10), and in the context of their respective roles, the AIFM and the depositary shall act honestly, fairly, professionally, independently and in the interest of the AIF and the investors of the AIF. In particular, a depositary shall not carry out activities with regard to the AIF or the AIFM on behalf of the AIF that may create conflicts of interest between the AIF, the investors in the AIF, the AIFM and itself, unless the depositary has functionally and hierarchically separated the performance of its depositary tasks from its other potentially conflicting tasks, and the potential conflicts of interest are properly identified, managed, monitored and disclosed to the investors of the AIF.

The delegation of custody functions is more restrictive and prohibitive than the general delegation requirements of Article 20 AIFMD. Article 21(11) AIFMD provides for delegation of the safe-keeping role to third parties, provided a set of prerequisites are met. Pursuant to Article 21(12), the depositary is liable to the AIF or to the investors of the AIF for the loss of AIF assets by the depositary or a third party to whom the custody of financial instruments has been delegated. Further, in the case of such a loss, the depositary shall return a financial instrument of identical type or the corresponding amount to the AIF or the AIFM acting on behalf of the AIF, without undue delay. Finally, the depositary shall not be liable if it can prove that the loss has arisen as a result of an external event beyond its reasonable control, the consequences of which would have been unavoidable despite all reasonable efforts to the contrary.

Ultimately, and in line with the general delegation regime of Article 20 AIFMD, the **depositary's liability** shall generally not be affected by any delegation (Article 21(13) AIFMD). A potential liability discharge is possible if the depositary can prove a certain set of facts, in particular well-designed written documentation (Article 21(13) second subparagraph). Further requirements for a discharge of liability by the depositary are provided in Article 21(14).

Article 21(15) AIFMD stipulates that liability to the AIF investors could be invoked directly or indirectly through the AIFM, depending on the legal nature of the relationship between the depositary, the AIFM and the investors.

Finally, Article 21(16) AIFMD requires the depositary to make available to its NCA on request all information that the depositary has obtained while performing its duties and that may be necessary for the NCA of the AIF or of the AIFM.

In addition, Article 61(5) allows for EU credit institutions within the meaning of Art 21(3)(a), **established in another (i.e. not the AIF's home) Member State**, to be appointed as depositary until 22 July 2017.

b) Assessment against the five key principles

i) Effectiveness

Although most of the Member States assessed had some kind of depositary regime in place prior to implementation of AIFMD,²⁹⁸ the (for many, new) focal point of the AIFMD was the mandatory appointment of a depositary for each AIF an AIFM manages.

Referring to developments during the legislative procedure of AIFMD, the European Parliament and the Council pointed to the crucial need to separate asset safe-keeping and management functions, which made it essential that a depositary is appointed separate to the AIFM and for all business models in order to exercise the safe-keeping function with regard to the AIFs.²⁹⁹

One of the main functions assigned to AIF depositaries is the responsibility for proper **monitoring of the AIF's cash flows and assurance that investor money and cash** belonging to the AIF is correctly booked.³⁰⁰ While the depositary may also delegate its custody functions under certain requirements,³⁰¹ the depositary remains responsible and liable for the safe-keeping function at all times³⁰² and provides for insolvency risk of an AIFM.³⁰³

AIF depositaries may be of different types, e.g. even tax consultants or individual trustees for specific AIF of the closed-ended type, provided they are appropriately authorised. Aside from data collected and held by NCAs (which is not publically available in all cases), there are no aggregated quantitative data available that cast light on the overall EU/EEA depositary landscape in the EU/EEA.

On the basis of survey responses and the semi-structured interviews (see 4.1.2 and 4.3.3 d) in Section 1) – for example, the consensus that depositaries appropriately oversee the AIFM – the AIFMD regulatory framework for depositaries appears to remain valid and effective. Indeed, the fundamental principle of separating investment decisions from **custody of the AIFs' assets** was not challenged. However, concerns were expressed by 52% of respondents (68% of those expressing no opinion are excluded). For example, there are differing national approaches to the total look-through provision and to the cash monitoring duties.

²⁹⁸ See Annex 9 and Circular CSSF 08/372 – “Guidelines for depositaries of specialized investment funds adopting alternative investment strategies, where those funds use the services of a prime broker” for particular depositary regulation in Luxembourg.

²⁹⁹ See Recital 32 AIFMD. A major concern was certainly the appearance of Ponzi-schemes and related fraud (e.g., the Madoff-Case) whose nucleus has been vaporised by the introduction of a harmonised (while in some Member States recently developed) investment triangle consisting of a checks-and-balances approach between management company and custodian. For further references, see S.N. Hooghiemstra, *Depositary Regulation*, in: D. Zetzsche (ed.), *The AIFMD (2nd edn 2015)*, 479 et seq.

³⁰⁰ See Recital 37 AIFMD.

³⁰¹ For the policy objective see Recitals 39 and 42 AIFMD.

³⁰² See Recital 44 and 45 AIFMD.

³⁰³ Cf. Schäfer in *Frankfurter Kommentar, KAGB (Frankfurt Legal Commentary for the German transformation Act of AIFMD)*, § 81, margin no. 1.

The realisation and implementation of details of the AIFMD depositary regulation (e.g. in relation to sub-custodians and depositary liability) was the subject of extensive discussion at the time.³⁰⁴ Some of the AIFMD depositary rules are interpreted differently in different Member States,³⁰⁵ which may impact the effectiveness of the harmonised framework. (With regard to the requirement for omnibus accounts, please refer to the assessment of the asset segregation rules in sub-section 4.3.7 below).

As regards the rules on the domicile of the depositary, specifically the transitional provision in Article 61(5) AIFMD that allows the domiciles of the AIF and the depositary to be different (when the latter is an EU credit institution), the survey results indicate that the provision is generally used by AIFs that existed prior to AIFMD and has not materially influenced further AIFs to have a depositary in a different domicile (see Figure 38).

One-third of survey respondents favoured an extension of the (already terminated) transitional period. Support for an extension was higher (50%) in some highly developed markets such as the Netherlands and the UK, and in smaller Member States like Malta and Cyprus. Interviewees in the latter Member States specifically highlighted this.

The transitional provision was vital for small Member States that did not initially have the depositary infrastructure, such as Cyprus. Even now, despite the growth of service providers and the establishment of international names on the island, there is in some cases no bank in Cyprus willing to assume the role of depositary for certain types of AIFs, such as algorithmic hedge funds, which require the processing of hundreds of trades during the day.

Thus, the transitional provision is effective in allowing smaller Member States to develop AIF markets by using experienced depositaries in other Member States.

ii) Efficiency

Due to market competition rules and the sensitivity of commercial information about depositary fees, only little relevant data regarding the cost structure of depositary services and its evolution could be retrieved.³⁰⁶

Data collected by INREV for the real estate sector were not sufficient to make a general statement on the EU depositary market. The data show that, for real estate funds, the average custodian fee was 0.0544% of NAV in 2013, 0.0431% in 2014 and 0.0295% in 2016. This is, however, based on a rather small sample from a bi-annual questionnaire of INREV and does not allow us to come to overall conclusions regarding depositary fees.

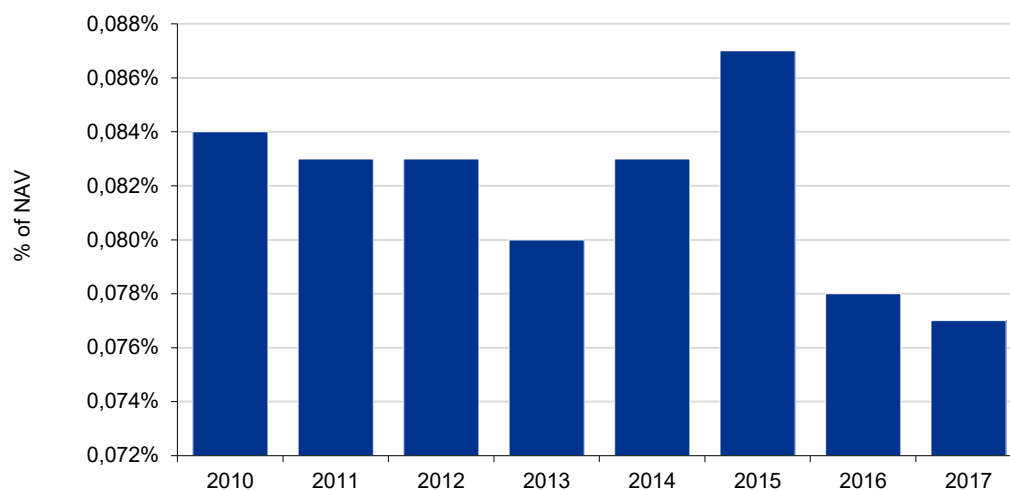
For two major Member States, Italy and Spain, however, data were retrieved.

³⁰⁴ See J. Siena (2015). *Depositary Liability: A Fine Mess and How to Get Out of It*, in: D. Zetzsche (ed.), *The AIFMD (2nd edn)*, 531 et seq. with further references to debates in the legislative procedure.

³⁰⁵ See study by EY: *Depositaries under the AIFMD – Safekeeping of non-custodial assets and look through principle, naming in the conclusion the look-through principle, record-keeping of non-custodial assets and the level of reliance of the information provided by the AIFM*; for example in Germany, BaFin clarified its view on rights and duties of the depositaries in their circular 08/2015; in Spain, *Boletín Oficial del Estado*, *Circula 4/2016*, in regard to the functions of the depositaries of collective investment schemes and entities regulated by Law 22/2014, of November 12.

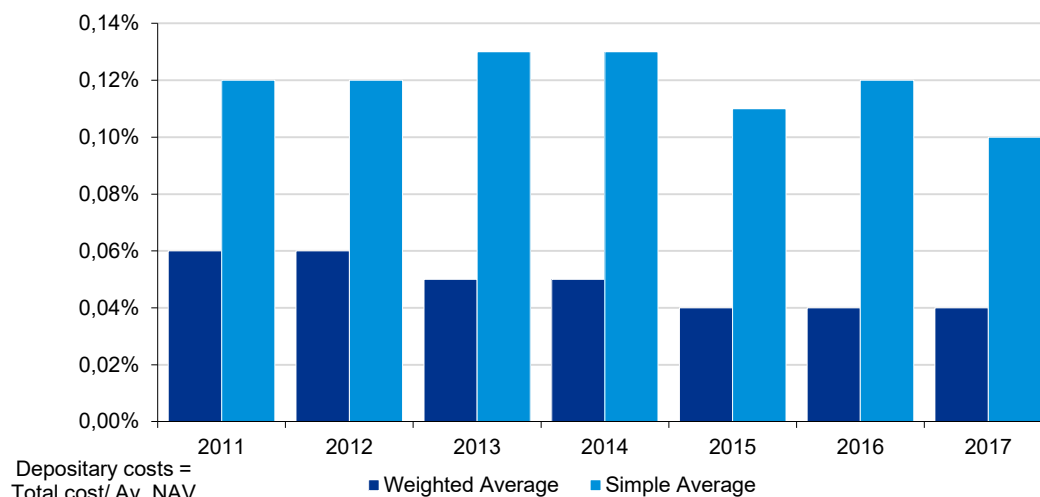
³⁰⁶ An early impact assessment from a global consulting firm in 2009 estimated costs for the depositary requirements to be around 1-2 basis points for larger AIFMs and significantly more (up to 10 basis points) for smaller AIFMs and AIFMs specialising in Private Equity and Venture Capital; Charles River Associates, *Impact of the proposed AIFM Directive across Europe (prepared for the Financial Services Authority, UK)*, October 2009, p.102.

Figure 60: Average depositary fees in Spain



Source: CNMV (2018).

Figure 61: Average depositary fees in Italy



Source: CONSOB (2018).

Data on depositary fees from Spain, received from CNMV, indicate a marked increase from 8.3 basis points in 2014 to 8.7 basis points in 2015, but then a sharp decrease. AIFMD was transposed in Spain at the beginning of 2015, which is likely to be the main cause of this jump in fees. However, AuM fluctuated considerably in this timeframe, which means that it is difficult to assess how far AIFMD influenced this change in depositary fees.

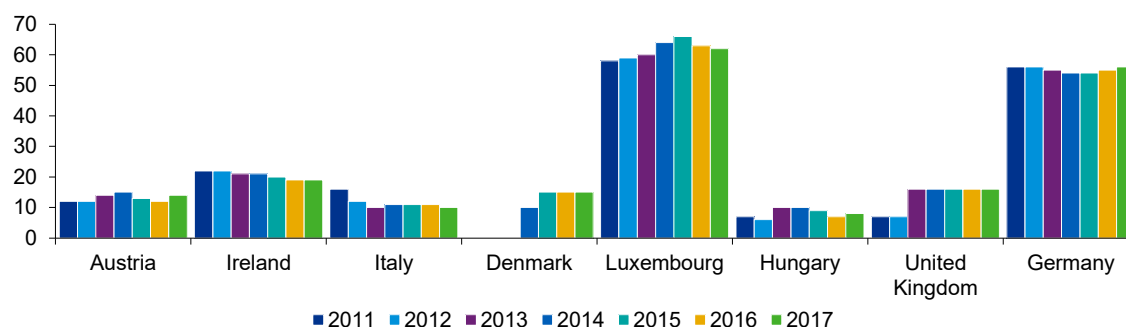
In Italy, on the other hand, a different development can be observed. The cost of depositary services did not increase after the introduction of AIFMD. AIFMD was

transposed into national law in early 2015, after which a clear dip in weighted depositary fees from about 5 basis points to 4 basis points can be observed.

In a survey of 14 major European depositaries conducted just after implementation of AIFMD,³⁰⁷ 85% of participants were planning to increase headcount as a result of AIFMD. Moreover, more than half of those participants named risk premia and capital requirements as substantial matters of the new regulations. However, in assessing adherence with the principle of efficiency, increased costs need to be set against new business opportunities and revenue streams.

As shown in 4.3.3 d) in Section 1, 68% of respondent AIFMs, depositaries and fund accountants reported an increase in the costs of overall depositary services as a result of AIFMD. There were similar results for **AIFMD's impact on individual depositary services** such as oversight functions, functions relating to non-custody assets, cash monitoring and provision of information to AIFMs/AIFs. As regards depositary fees charged to AIFs, however, only 55% of respondent AIFMs, depositaries and fund accountants had observed an increase (see Figure 55), which might indicate a **reduction in depositaries' profit margins and a consequent search for greater economies of scale.**

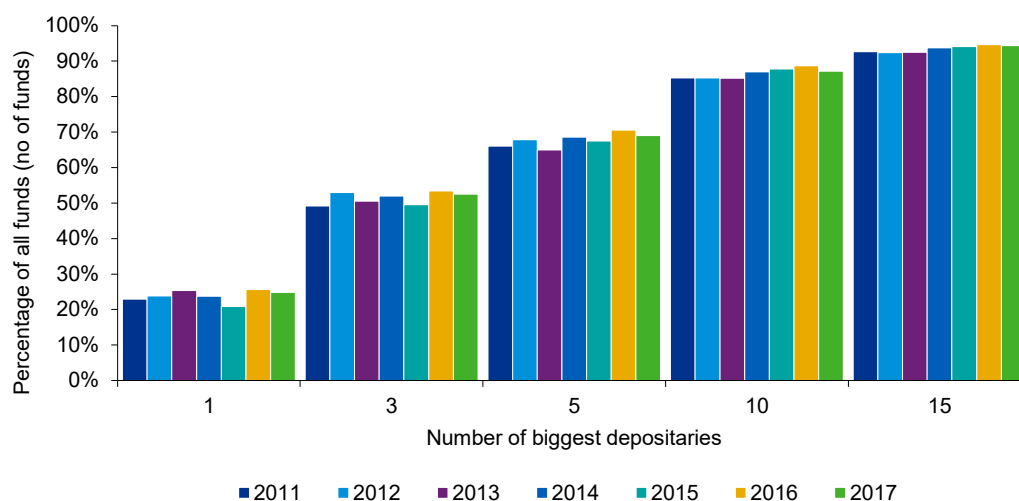
Figure 62: Number of depositaries by Member State



Source: NCAs and trade associations (2018)

Figure 63 shows the average share of AIFs (i.e. number of funds) serviced by the biggest, the top three, the top five, the top 10 and the top 15 depositaries around the EU. It is marked both that their percentage market share changed little over the years 2011 to 2017 and that the five largest depositaries service two-thirds of the AIF market.

³⁰⁷ Deloitte, *White Paper, AIFMD depositary pricing and capital*, 2014, p. 4, https://www2.deloitte.com/content/dam/Deloitte/ie/Documents/FinancialServices/investmentmanagement/2014_AIFMD_depositary_pricing_and_capital_White_Paper_deloitte_ireland.pdf.

Figure 63: Average share of AIFs serviced by the largest depositaries³⁰⁸

Source: NCAs and trade associations (2018)

On the one hand, larger depositaries may be able to provide services more effectively and efficiently; on the other hand, a trend towards an oligopolistic market structure may hinder competition and increase costs for AIFMs and investors in the long-run. **However, in addition to the comment above on depositaries' profit margins, more than one-third of all respondent AIFMs, depositaries and public authorities have observed increased competition in the AIF depositary market since AIFMD came into force** (see Figure 53: Impact of AIFMD on competition in the AIF depositary and custody market in 4.3.3 d) in Section 1). This picture does not concur with Figure 63, but might be explained by the increased competition being largely targeted in the smaller AIFM and non-custody assets space.

In order to generate a level playing field regarding the independent oversight of **certain AIFM activities and safeguarding of AIFs' assets, the AIFMD depositary requirements can be deemed proportionate**. Assets not held in custody are subject to a less stringent regime and no depositary is required for AIFs managed by sub-threshold AIFMs (although some Member States require a depositary for at least some such AIFs, especially for retail AIFs).

The transitional provision in Article 61(5) AIFMD, which allowed an AIF to have a depositary not in its own domicile, can also be judged proportionate as it enabled smaller domestic AIF markets to develop. As noted above, there are calls for the provision to be extended. Some interviewees expressed the view that if the depositary is situated in the same Member States as the AIF, it is nearer to the legal and regulatory requirements directly applicable to the AIF, and can more readily communicate face-to-face with the AIFM management and more regularly perform on-site checks. A contrary viewpoint was that for smaller Member States, where the establishment of more than one competitive and well-qualified depositary might be

³⁰⁸ Based on data received from Austria, Denmark, Germany, Ireland, Italy, Luxembourg, Hungary and the UK.

more challenging than in larger Member States, it is more beneficial for investors if the AIFM engages a well-qualified and well-equipped depositary in another Member State.

The overall conclusion, therefore, is that the AIFMD depositary provisions are efficient and proportionate. (See sub-section 4.3.7 below for a discussion on the asset segregation requirements.)

iii) Coherence

With regard to *internal* coherence of the AIFMD provisions on depositaries, it seems reasonable to assert that the requirements are coherent with other parts of the AIFMD. We have identified no evidence or commentary that suggests otherwise.

As regards *external* coherence, the AIFMD depositary provisions were introduced for the first time and in a tightened form compared to the previous provisions under UCITS.³⁰⁹ The UCITS depositary requirements have since been brought into line with those in AIFMD. Therefore, there is now a high level of coherence between AIFMD and UCITSD.

iv) Relevance

The AIFMD depositary rules form a substantial part of the **Directive's** investor protection objective. The fact that the majority of survey respondents agreed on the **depositaries' essential role across all types of AIFs** as providers of an appropriate level of investor protection indicates continued relevance of the provisions.

In particular, the rules provide significant guidance and clarity in relation to a range of issues relating to the duties, role and liability of the depositary. This is of relevance not only to entities intending to provide depositary services, but also to AIF investors, AIFs, AIFMs and other service providers or counterparties to AIFs.

In November 2015, IOSCO issued recommended standards on custody of CIU assets,³¹⁰ which remain current and underline the global policy-makers' view of the importance and ongoing relevance of such regulation.

v) EU added value

Prior to the introduction of AIFMD, at EU level there were only regulations with regards to depositaries for UCITS, under UCITSD. Given this, and given the assessments above against the four other principles, it can be argued that the AIFMD depositary requirements have led to an improvement in the Single Market for AIFs.

Further, based on the evidence available, it can reasonably be asserted that the objective of the AIFMD depositary rules – to provide independent oversight of certain **of the AIFMs' activities and to ensure safe-keeping of AIFs' assets** – has been met and has directly led to improvement in the stability of AIF market and the safety of the **investors' assets** (i.e. causality is indicated).

³⁰⁹ Cf Article 22 et seq. UCITSD as well as De Blasi in *Frankfurter Kommentar, KAGB (Frankfurt Legal Commentary for the German transformation Act of AIFMD)*, § 80 margin no. 1.

³¹⁰ See <https://www.iosco.org/news/pdf/IOSCONEWS405.pdf>

The transitional provision that allows a depositary to be in a different domicile to the AIF has been of particular added value to smaller Member States, which might otherwise not have been able to develop domestic AIF markets.

c) Summary

Effectiveness: The survey results indicate that the **depositaries'** essential role across all types of AIF as providers of an appropriate level of investor protection are effective. The transitional provision on depositary domicile has also been effective in enabling smaller Member States to develop AIF markets. There are differences in application of the provisions between Member States, but it is not evident that this has had a significant impact on the overall effectiveness of the provisions or the achievement of the specific and operational objectives.

Efficiency: Evidence points to increased costs of providing depositary services, but not increased fees. It may be that increased costs have been offset by new business opportunities and revenue streams. Assets not held in custody are subject to a less stringent regime and no depositary is required for AIFs managed by sub-threshold AIFMs, providing elements of proportionality. There remains a question, however, about the continuation of the transitional provision that allows an AIF to have a depositary in another Member State.

Coherence: Both internal and external coherence is met, the UCITSD depositary provisions having been brought into line with the AIFMD requirements.

Relevance: The safeguarding of AIF assets remains an important and relevant **objective, as evidenced by global standards and survey respondents' views. They** correspond to the key objective of investor protection, which is additionally met by the **depositaries' oversight function.**

EU added value: The introduction of the depositary requirement through AIFMD has led to a broadly harmonised Single Market at EU level and supports achievement of the investor protection objective (i.e. causality is indicated). The transitional provision that allows a depositary to be in a different domicile to the AIF has been of particular added value to smaller Member States, which might otherwise not have been able to develop domestic AIF markets.

Operational objective: to reduce the potential for weakness in investor disclosures as a barrier to effective due diligence

4.3.6. Rules on disclosures to investors to guide investment decisions

The general survey and interview results provided information and views on disclosures to investors to guide investment decisions (see 4.1.2 and 4.3.3 e) in Section 1). In addition, information was obtained from desk research conducted by the central team on the implementation and impact of these rules, and we sought specific information from the 15 Member States (see Annex 6).

a) Description of the rules

Articles 22 and 23 AIFMD and Articles 103-111 AIFMR set out the information that must be disclosed to investors, to guide their investment decisions, to assist with the understanding of risks and strategies of different AIFs, and to monitor investments.

Article 22 AIFMD stipulates the minimum requirements for annual reports. According to Article 22(1), an AIFM shall, for each of the EU AIFs it manages and for each of the

AIFs it markets in the EU, make available an annual report for each financial year no later than six months following the end of the financial year. The annual report shall be provided to investors on request. The annual report shall also be made available to the NCA of the home Member State of the AIFM and, where applicable, to the home Member State of the AIF.

Article 22(2) AIFMD contains a list of the minimum report components. Article 22(3) AIFMD clarifies that the accounting information given in the annual report shall be prepared in accordance with the accounting standards of the home Member State of the AIF or in accordance with the accounting standards of the third country where the AIF is established and with the accounting rules laid down in the AIF rules or instruments of incorporation. Further, the accounting information given in the annual report shall be audited by one or more persons empowered by law to audit accounts.

Article 23 AIFMD lays down the rules on investor disclosure for both initial investment transparency and ongoing/periodic disclosure.

First, in accordance with Article 23(1) and (2) AIFMD, AIFMs shall, for each EU AIF they manage and for each AIF that they market in the EU, make available to AIF investors, in accordance with the AIF rules or instruments of incorporation, a range of information before they invest in the AIF, as well as any material changes thereafter. That information includes descriptions of the investment strategy, types of assets invested in, techniques employed, use of leverage, delegation arrangements, valuation procedure and pricing methodology, liquidity risk management, all fees, charges and expenses, and any preferential treatment for certain investors.

Article 23(3) AIFMD provides that where an AIF publishes a prospectus in accordance with the Prospectus Regulation, only the additional information required by this article need to be provided to investors.

Second, Article 23(4) AIFMD stipulates that AIFMs shall, for each of the EU AIFs that they manage and for each of the AIFs that they market in the EU, periodically disclose to investors information **on the percentage of the AIF's assets subject to special arrangements** due to their illiquid nature, any new arrangements for managing the liquidity of the AIF, and the current risk profile of the AIF and the risk management systems employed by the AIFM to manage those risks.

b) Assessment against the five key principles

i) Effectiveness

Interviewees from the large majority of Member States indicated that AIFMs were already subject to similar domestic provisions via different disclosure mechanisms, i.e. prospectuses, key investor information documents (KIIDs) and other relevant material specified by domestic law.³¹¹

However, the majority of survey respondents reported that details of the AIFMD disclosure regime (in particular, the frequency of disclosures) were novel to the industry (see 4.3.3 e) in Section 1). Also, the AIFMD disclosure provisions have a

³¹¹ See Annex 9. Germany can be cited here as an example, which had a regulation on the preparation and publication of half-yearly and annual reports before implementation of AIFMD in Sec. 44 Investmentgesetz (InvG), cf. Gottschling, in *Frankfurter Kommentar, KAGB (Frankfurt Legal Commentary for the German transformation Act of AIFMD)*, § 308, margin no. 1.; for further in-depth study of Sec. 44 InvG, cf. Hornschu/Neuf, in *Kommentar zum Investmentgesetz (Legal Commentary for the German Investment Act)*, § 44, margin no. 1 et seq.

strong (but not exclusive) focus on the employment of leverage, as a reaction to the 2008 financial crisis.³¹²

No hard evidence was available as to whether and to what extent the AIFMD provisions have enabled more informed investment decisions by AIF investors. The large majority of respondent NCAs believed that the strengthening of investor disclosure requirements had fostered an increase in the overall information level of investors (see 4.3.3 e) in Section 1). However, some survey respondents and interviewees noted that professional investors continue to request additional disclosures, or disclosures in different forms, to the specifications in AIFMR (see 4.1.2 in Section 1).

Survey respondents also indicated that implementation of AIFMD had led to a doubling in the provision of information to AIF investors compared to the previously applicable national rules. According to AFG, for example, Article 23 AIFMD requires disclosures that are excessive in quantity and therefore are ignored or prevent investors from obtaining a clear understanding of the **AIF's** investment proposal.³¹³ Another commentator suggested that AIFMD had led to a quantitative improvement in the provision of information.³¹⁴

As shown in Figure 39, the content of the information provided to investors *before* investment has expanded in the opinion of around three-quarters of survey respondents, but less than half of respondents believed that the quality had improved. Moreover, only a minority thought that the information does not duplicate other required disclosures and that it is consistent around the EU.

As regards *periodic* reporting, Figure 40 reveals that a majority of respondents again thought that the content had expanded, but significantly fewer thought that the quality and frequency of disclosures had improved. Again, those who thought that the information does not duplicate other required disclosures and that it is consistent around the EU were a minority.

The comments about duplicative disclosures are supported by other commentators, who have criticised the AIFMD requirements for being inconsistent with other investor disclosure regimes.³¹⁵

On the other hand, some representatives of institutional investors noted that there remain insufficient or non-standardised disclosures of *all* fees, costs and charges in e.g. private equity investment (see 4.3.3 e) in Section 1).

In the absence of concrete data it is difficult to draw a firm conclusion as to the effectiveness of the AIFMD investor disclosure rules, but evidence obtained via the general survey and semi-structured interviews points to a number of concerns about the requirements which calls into question the degree to which the provisions are effective.

³¹² Recital 49 AIFMD.

³¹³ See *Response to Call for Evidence on the EU regulatory framework for Financial Service of Association Francaise de la Gestion Financière* as of 26 January 2016, page 19.

³¹⁴ In this sense *Diritto Bancario*, retrieved from <http://www.diritto bancario.it/approfondimenti/gestione-collettiva-del-risparmio/gli-impatti-organizzativi-della-aifmd-sulle-sgr>; *Advisor Online*, retrieved from <http://www.advisoronline.it/normative-e-fisco/aifmd.action>.

³¹⁵ For further details regarding the problems in the German market regard to the preparation obligations, cf. Hintze/Warnke, in *Frankfurter Kommentar, KAGB (Frankfurt Legal Commentary for the German transformation Act of AIFMD)*, § 67, margin no. 5. *et seq.*

ii) Efficiency

The AIF industry incurred additional costs in implementing the AIFMD disclosure requirements.³¹⁶ Given that AIFMs were largely already subject to disclosure rules prior to AIFMD (as noted in the previous sub-section), it must be questioned whether the additional costs gave rise to commensurate benefits for investors.

Most survey respondents reported that the costs and human resources (FTEs) expended by AIFMs on the disclosure requirements significantly influence overall transaction and operational costs, but no quantitative data was provided. The structural survey in France³¹⁷ observed that some of the costs of data migration directly relate to the regulation of investor disclosure on the one hand and data providers, such as credit rating agencies, on the other hand. Other data costs are due to the specific business operating model of AIFMs, whereby each level in the chain had to bear the costs for the data it uses or when it transfers data. Hence, it was observed that the end-investors eventually had to bear transaction costs several times for the same data. This led the Stakeholders Committee to conclude that, apart from the initial implementation costs, the benefit of a level playing field and use of a common template would be to reduce the additional cost burden passed on to investors.

Given the **respondents'** comments that professional investors often seek different or differently presented information (see 4.3.3 e) in Section 1), the principle of proportionality cannot be confirmed as met, although – equally – there is no concrete evidence that points to the rules being *disproportionate*. Also, it is not clear whether it is the rules themselves that are the main cause of additional costs, or the lack of a standardised disclosure format across the industry, or that investors require bespoke information.

That said, the evidence indicates that the amount of information available to investors has expanded and a significant proportion of investors agree that the *quality* of disclosures has improved. This aids the Single Market in AIFs and cross border investment, and is best achieved through regulation at the EU level. Interviewees noted that certain sectors of the AIF industry operate in accordance with trade association due diligence templates. Greater standardisation of disclosures to investors – in particular, common reporting templates – could perhaps reduce costs along the supply chain and aid comparability between AIFs for investors, but this might best be left to the industry, with encouragement of their use by ESMA and the NCAs.

iii) Coherence

With regard to *internal* coherence of the AIFMD provisions on disclosure to investors, it seems reasonable to assert that the requirements are coherent with other parts of the Directive. We have identified no evidence or commentary that suggests otherwise.

As regards *external* coherence, the relevant provisions are generally in line with the requirements set out in Article 69 et seq. of UCITS. The differences stem from differing regulatory policy objectives, in particular the main target investors.³¹⁸ While retail investors in UCITS are believed to require simpler and more standardised product information, professional investors in AIFs require more in-depth technical information and AIFs can engage in a much wider range of asset classes and

³¹⁶ Cf. for Germany German Parliament, *Explanatory Memorandum on the KAGB*, BT-Drucksache 17/12294, Pages 194-201 (*Estimates of Costs by the Legislator*), p. 194 et seq.

³¹⁷ *Report of the AIFMD Stakeholder's Committee on the Transposition of the AIFM Directive and the Development of French Innovative Asset Management – 26 July 2012.v*

³¹⁸ For an in-depth analysis see D. Zetzsche/D. Eckner (2015). *Investor Information and Reporting*, in: D. Zetzsche (ed.), *The AIFMD (2nd edn)*, p. 391 et seq.

investment strategies and employ higher levels of leverage. Therefore, more detailed disclosures are required for AIFs than for UCITS. We found no evidence that the more extensive AIFMD disclosures are actually *incoherent* with the UCITS disclosure rules.

However, some respondents noted that, with regard to the regulations on calculation of fund performance, the AIFMD rules do not sufficiently align with the MiFID II disclosure requirements. There are also inconsistencies between the PRIIP KID, MiFID II and AIFMD on the disclosure of climate change risk and differing national supervisory approaches (see 4.3.3 e) in Section 1). Last, as stated above, more than half of market participants consider that the duplication or use of information throughout the EU is not coherent.

iv) *Relevance*

The majority of Member States already had disclosure requirements prior to AIFMD,³¹⁹ which indicates that the inclusion of disclosure requirements in AIFMD was relevant and important for the AIF industry. Also, the reported requests from AIF investors for additional information demonstrates that disclosure requirements are regarded as relevant and important by investors, who wish to make informed investment decisions.

In particular, the disclosure of leverage remains a key priority for global policy-makers, **as indicated by the FSB's recommendation that IOSCO develop common measurements of leverage.**³²⁰

v) *EU added value*

As regards causality, although Member States already imposed a variety of disclosure requirements on their domestic markets prior to AIFMD, the AIFMD rules have led to more unified disclosures for all types of AIFs and across all markets, and have created a more level playing field, which is especially pertinent for cross-border investment.

There are open questions as to whether the rules could be more efficient by addressing any duplication or inconsistencies between different EU legislation, but to an observable extent the AIFMD disclosure requirements have added value for the EU and for investors in particular.

c) *Summary*

Effectiveness: No hard evidence was available as to whether and to what extent the AIFMD provisions have enabled more informed investment decisions by AIF investors, but the Article 23 AIFMD provisions have led to a greater consistency in AIF disclosures and in that sense have been effective in achieving the specific and operational objectives.

Efficiency: It is reported that professional investors often seek different or differently presented information. Given the costs of implementing and operating the AIFMD disclosure requirements and that national requirements were already in place, the principle of proportionality cannot be positively confirmed as met. However, there is no concrete evidence that the rules are *disproportionate* and the evidence indicates

³¹⁹ See Annex 9.

³²⁰ See <http://www.fsb.org/2017/01/policy-recommendations-to-address-structural-vulnerabilities-from-asset-management-activities/>

that the amount of information available to investors has expanded and the quality of disclosures has improved.

Coherence: AIFMD is internally coherent as regards the disclosure requirements. With regard to external coherence, the AIFMD requirements are more extensive than, but not inconsistent, with the UCITS provisions. However, there are inconsistencies between AIFMD and other EU legislation, including MiFID II and the PRIIP KID.

Relevance: Given that Member States imposed disclosure requirements prior to AIFMD, that AIF investors are reported to request additional information and that the disclosure of leverage, in particular, remains a key focus of global policy-makers, the AIFMD disclosure requirements remain relevant.

EU added value: The AIFMD provisions have led to more unified disclosures for all types of AIFs and across all markets (i.e. causality is indicated). Further value could be added by addressing any duplication or inconsistencies between different EU legislation, but the disclosure requirements have already added value for the EU and for investors in particular.

Operational objective: to ensure proper management of conflicts of interest and to impose appropriate controls and processes in key risk areas, such as valuation and custody

4.3.7. Asset segregation rules

The general survey and interview results provided information and views on the asset segregation rules (see 4.3.3 d) in Section 1). In addition, information was obtained from desk research conducted by the central team on the implementation and impact of these rules, and we sought specific information from the 15 Member States (see Annex 6).

a) *Description of the rules*

The AIFMD asset segregation rules form a key component of the depositary provisions and serve the essential purpose of safe-keeping of AIFs' assets.³²¹

Articles 21(7) and (9) AIFMD stipulate the general rights and duties of a depositary, while Article 21(8) AIFMD lays down the specific obligations for safe-keeping of financial instruments that can be held in custody and other assets, in particular real assets. Articles 85-99 AIFMR provide further specifications in Articles 21(7)-(9) and (11)(c) and (d) AIFMD.

The depositary must hold in custody all financial instruments that can be registered in **a financial instruments account opened in the depositary's books and** all financial instruments that can be physically delivered to the depositary. Further, the former assets must **be registered in the depositary's books within segregated accounts**, opened in the name of the AIF or the AIFM acting on behalf of the AIF, so that they can at all times be clearly identified as belonging to the AIF in accordance with the applicable law.

As far as other assets are concerned, the depositary must verify the ownership by the AIF or the AIFM acting on behalf of the AIF of such assets and maintain a record of

³²¹ Cf. also ESMA (2014), *Consultation Paper: Guidelines on asset segregation under the AIFMD*; Clifford Chance (2016), *Asset segregation and use of CSDs under AIFMD and UCITS V -ESMA's call for evidence*.

those assets for which it is satisfied that ownership is confirmed. Further, the assessment of ownership must be based on information or documents provided by the AIF or the AIFM and, where available, on external evidence. The depositary must keep its records up-to-date.

b) Assessment against the five key principles

i) Effectiveness

Almost all Member States had specific rules on asset segregation and custodians prior to AIFMD (see Annex 9). Pre-AIFMD rules and regulations were concentrated foremost **in domestic banking law and/or the MiFID safeguarding of clients' assets regulations**. It is reported that those measures were not as detailed as stipulated under AIFMD, but were based on a principles approach. However, some Member States implemented asset segregation rules in national capital investment codes that transposed the UCITSD requirements to certain types of AIFs.

Notably, the framework of asset segregation under French law is reported to be more stringent than the AIFMD asset segregation rules: for instance, asset pooling is still forbidden even in the case of sub-delegation of depositary functions.³²² In Luxembourg and some other Member States, on the other hand, interviewees noted that omnibus accounts were permitted and common.

Uncertainty about the level of segregation required under the AIFMD rules and different national approaches could lead to greater uncertainty for investors of AIFs in the different Member States, who would not know to what extent the assets of the AIFs in which they invest are protected. For instance, and as noted by ESMA,³²³ a third party delegate of a depositary could be considered as failing to meet the AIFMD asset segregation requirements in one Member State, whereas the same third party would be considered to meet these requirements in another Member State.

Through desk research, no data has been retrieved regarding bankruptcy, administration or creditor satisfaction concerning AIF assets, before or after the enactment and implementation of AIFMD. Therefore, the assessment of effectiveness of the AIFMD asset segregation provisions can only be made on the basis of more general information.

Interviewees also noted that the asset segregation rules recognise that overly stringent requirements in relation to applicable insolvency law could cause significant issues in relation to investment into certain (third country) jurisdictions and in relation to the use of US brokers (which operate under a different legal framework). In such cases, **Article 99(2) AIFMR permits the depositary to assess "what additional arrangements are to be made in order to minimise the risk of loss and maintain an adequate standard of protection". This was said to provide an effective level of protection for professional investors, who wish to access a range of investment exposures.**

At the time, the co-legislators recognised the need to graduate the requirements between UCITS (for retail investors) and AIFs (for professional investors), and the final rules under UCITSD are therefore more stringent in this regard than under AIFMD. Interviewees noted that the application of even more stringent rules to AIFs could have the effect of precluding AIFs from investing in certain third countries or via

³²² Rf. Art. L214-24 of the French Monetary and Financial Code.

³²³ Cf. Annex II of Consultation Paper – Guidelines on asset segregation under the AIFMD – ESMA/2014/1326

certain counterparties, which could in turn lead to professional investors seeking to invest via non-EU AIFs instead.

Therefore, on the basis of desk research and comments received from survey respondents and interviewees, the AIFMD asset segregation rules appear to have been effective in providing a higher and more consistent level of protection of the assets of EU AIFs across the EU than prior to AIFMD, but without being so stringent as to prevent certain types of investment activity by EU AIFs.

ii) Efficiency

No data could be retrieved on the additional costs for depositaries that were associated specifically with the asset segregation rules. Evidence on the overall trend in costs as a result of AIFMD are summarised under sub-section 4.3.5 *ii) Efficiency* above. Anecdotally, the AIFMD implementation costs for custodians were significant **and are “sunk costs” that cannot be recouped.**

Interviewees confirmed that a key criticism of the AIFMD asset segregation rules, which was strongly voiced by the custody industry when the rules were being drafted, remains: the issue of so-called multiple omnibus accounts being required at each level in the custody chain. The issue arises because at the time of implementation the industry received a strong message that Article 99(1)(a) AIFMD required each sub-custodian to hold in separate accounts the assets belonging to AIFs of that depositary (which is the **sub-custodian’s client**) **and assets belonging to other clients of that depositary** (e.g. UCITS assets).

This requirement to operate different omnibus accounts at each level of the sub-custody chain was criticised for being inefficient and burdensome for the industry, due to administrative complexity and increased costs, without providing increased protection for investors. Claims of an AIF would be against the depositary (i.e. at the first level of custody).³²⁴ In addition, the industry noted that an individual asset segregation would be impractical to implement throughout the global custody network.³²⁵

It is argued that as long as there is full segregation of assets for each AIF by the depositary, an AIF is able to enforce a claim against the depositary and there is no need for further segregation down the line of custody. The policy goal of the protection of AIF assets from the insolvency of a third-party delegate is sufficiently guaranteed via separate book-keeping in the accounts of the delegating depositary. Furthermore, it seems debatable whether individual asset segregation would be beneficial, given that it is the depositary, rather than the AIFM, which will have better knowledge of what level of segregation of assets is possible.³²⁶

On the other hand, it has been commented that larger pools of securities in omnibus accounts might facilitate the use of tri-party collateral management agreements, as well as broader market liquidity.³²⁷

The EC, in its recently adopted Delegated Regulation amending the AIFMD rules for depositaries and **sub-custodians of fund assets, stated that “the obligations for**

³²⁴ Cf. ESMA Response to Call for Evidence on asset segregation and custody services (ESMA/2016/1137)

³²⁵ Cf. EFAMA Response to the ESMA’s Call for Evidence on asset segregation and custody services (ESMA/2016/1137).

³²⁶ Cf. Clifford Chance, Briefing Note, Asset Segregation and use of CSDs under AIFMD and UCITS V, September 2016.

³²⁷ Cf. EFAMA Response to the ESMA’s Call for Evidence on asset segregation and custody services (ESMA/2016/1137).

depositories laid down in Article 21(11)(d)(iii) of Directive 2011/61/EU need to be clarified further". It has acknowledged the ESMA opinion on asset segregation.³²⁸ The scope of this study is limited to the existing AIFMD requirements, so we do not provide an assessment of the EC proposals in this report. We observe, though, that the EC notes that a (sub-)custodian can hold assets of UCITS and AIFs and of other clients of one depository in the same omnibus account, provided its own assets, proprietary assets of the depository and assets belonging to other clients of the third party are held in segregated financial instruments accounts.³²⁹

In conclusion, it is clear that harmonised EU rules have provided a more consistent approach to the protection of AIF assets and therefore greater assurance for AIF investors, which commonly wish to invest across EU Member State borders and in a range of jurisdictions around the globe. There is, though, a question whether the current AIFMD asset segregation rules (or the way in which they were understood when AIFMD was implemented) are proportionate to the policy objective.

iii) Coherence

With regard to *internal* coherence of the AIFMD provisions on asset segregation, it seems reasonable to assert that the requirements are coherent with other parts of the AIFMD. We have identified no evidence or commentary that suggests otherwise.

As regards *external* coherence, there is a significant difference between the AIFMD provisions and the **MiFID II rules on the safekeeping of clients' assets**. Under MiFID II, investment firms may deposit client assets and, hence, are obliged to segregate the **clients' assets from the relevant firm's own funds**.³³⁰ In contrast, under AIFMD, AIFMs need to appoint a depository for each AIF they manage which may not be the AIFM itself.³³¹ While AIFMD (and UCITSD) implement the typical investment triangle with an **independent entity in charge of custody of clients' assets, the mandate-based** individual asset management domain (which falls under MiFID II) is not closely aligned with the additional investor protection measures in the collective asset management regimes.

However, as ESMA stated, most of the rules on asset segregation under UCITSD and AIFMD are essentially equivalent.³³² Hence, there is a high degree of coherence between the two regimes. As noted above, the co-legislators decided that slightly less stringent requirements for AIFs (i.e. for professional investors) was appropriate.

iv) Relevance

The protection of client assets remains a global regulatory priority, as indicated in **IOSCO's report of July 2017**,³³³ which noted that most EU Member States had adopted measures that meet all the IOSCO principles. Earlier, in November 2015, IOSCO set out a number of reasons why specific regulatory measures on the safe-guarding of CIU assets are necessary.³³⁴

Also, there are technological developments, such as "distributed ledger technology", that could over the next few years lead to significant changes in the way in which the

³²⁸ *Opinion of ESMA, 20.7.2017, 34-45-277.*

³²⁹ *Explanatory memorandum of the Delegated Regulation, p. 3.*

³³⁰ *Cf. Annex I Section B of MiFID II (Ancillary services).*

³³¹ *Art. 21(4)(a) AIFMD.*

³³² *Cf. ESMA (2017), Opinion on Asset segregation and application of depository delegation rules to CSDs, ESMA34-45-277, Recital 24.*

³³³ <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD577.pdf>

³³⁴ <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD512.pdf>

infrastructure of financial markets operates, including custody. Clear principles on asset protection are especially important in a rapidly changing global landscape.

v) EU added value

Because of the differing national securities and insolvency laws, which are not harmonised at EU level,³³⁵ there is, it would seem, substantial value in asset segregation rules at EU level in order to causally mitigate any detrimental effects of deviation in national insolvency laws for cross border investments. Were it not for the AIFMD asset segregation measures at EU level (and attendant investor protection), a crucial area of a harmonised investment environment would carry less force and potentially leave the security of assets **outside an AIF's inherent economic and legal** attributes. There has been, however, a question about the efficiency of the AIFMD asset segregation rules on the basis of their original interpretations.

c) Summary

Effectiveness: The AIFMD asset segregation rules appear to have been effective in providing a higher and more consistent level of protection of the assets of EU AIFs. In particular, they have generally not hindered EU professional investors to access a wide range of asset types and geographical exposures via EU AIFs.

Efficiency: The (perceived) requirement to operate different omnibus accounts at each level of the sub-custody chain was criticised for being inefficient and burdensome for the industry, due to administrative complexity and increased costs, without providing increased protection for investors. There is, therefore, a question whether the current AIFMD asset segregation rules (or the way in which they were understood when AIFMD was implemented) are proportionate to the policy objective.

Coherence: The requirement of internal coherence is fulfilled. The principle of external coherence is adhered to with appropriate alignment of rules between the regimes of AIFMD and UCITSD.

Relevance: The protection of client assets remains a global regulatory priority. The segregation and safe-**keeping of AIFs' assets** (and therefore, ultimately, **investors'** exposures) are at the heart of investment and investor protection regulation and are still relevant.

EU added value: Against the backdrop of non-harmonised national insolvency laws, the AIFMD asset segregation rules appear to have been effective in causally providing a higher and more consistent level of protection of the assets of EU AIFs. Therefore, the rules have led to achievement of the specific and operational objectives. Also, the slight differences between the UCITSD and AIFMD provisions have enabled professional investors to continue to access exposures across the globe.

4.3.8. Rules on investor disclosures in key risk areas

The general survey and interview results provided information and views on overall disclosures to investors (see 4.3.3 e) in Section 1). The findings in relation to conflicts of interest, liquidity management and valuation are also relevant (see 4.3.2, 4.3.3 a) and 4.3.3 b) in Section 1).

³³⁵ Cf. also ESMA (2016), *Call for evidence: Asset segregation and custody services* p. 10.

a) Description of the rules

The rules on disclosures to investors of key risk areas aim to ensure transparency of conflicts of interest in the valuation, custody, delegation and other key arrangements, in order to prevent them from adversely affecting the interests of the AIFs and their investors (see Recital 80 AIFMD). The specific requirements are embedded in Article 23 AIFMD and related articles in AIFMR, which are summarised in sub-section 4.3.6.a) above.

In particular, pursuant to Article 23(1)(f),(g),(j),(o) AIFMD, the AIFM is required to disclose:

- a description of any delegated management function and of any safe-keeping function delegated by the depositary, the identification of the delegate and any conflicts of interest that may arise from such delegations;
- **a description of the AIF's valuation procedure and of the pricing methodology** for valuing assets, including the methods used in valuing hard-to-value assets in accordance with Article 19 AIFMD;
- a description of how the AIFM ensures fair treatment of investors and, whenever any investor receives (the right to) preferential treatment, a description of that treatment, the type of investors granted such treatment and, where relevant, their legal or economic links to the AIFM; and
- where relevant, the identity of the prime broker, a description of any material arrangements of the AIF with the prime broker, the way in which conflicts of interest are managed, the provision in the depositary contract on transfer or reuse of AIF assets, and any transfer of liability to the prime broker.

b) Assessment against the five key principles

i) Effectiveness

Even though AIFs are marketed predominantly to sophisticated, professional investors and it is commonly assumed that this group of investors have the capacity to understand and to bear the risks of their investments, the experiences from the 2008 financial crisis provided cause for reflection with regard to the adequacy of regulatory protections in this area, as noted in the EC Cross-Border Impact Assessment.³³⁶ **"Inadequacies"** were exposed in the due diligence performed by professional investors of all types. This was partly attributed to failures on the buy-side, in particular a **"tendency to follow trends"**, but also to investments without due scrutiny and a lack of clear and comparable information on the risks associated with particular investments.

The EDHEC Hedge Fund Reporting Survey,³³⁷ which comments on issues among the three main professional groups of the European hedge fund business (hedge fund managers, fund of hedge fund managers and hedge fund investors), expressed concerns of hedge fund investors that without certain binding disclosures, the door might be open for hedge fund managers to change their investment strategy or to include investments in the portfolio that are riskier than provided for by the managers' mandate. Without further transparency, it was argued, investors might even risk

³³⁶ Cf. Commission staff working document *Impact Assessment a SWD (2018) 54 final*, 12 March 2018. p. 20.

³³⁷ EDHEC Hedge Fund Reporting Survey 2008, retrieved from http://www.eurekahedge.com/Research/News/598/Hedge_Fund_Reporting_Survey_November_2008.

“fraudulent behaviour” if the action of the hedge fund management was detected only when a fund had failed. This view is supported by other commentators: *“incomplete disclosure can have some undesirable side effects”*.³³⁸

Moreover, as noted in the EC Cross-Border Impact Assessment, the importance of ensuring an appropriate level of investor protection has grown as the investor base for AIFs has expanded to include pension funds, insurance companies and some public authorities. However, evidence gathered by the EC led to the conclusion that the **quality and content of the information provided to investors** *“varies considerably, depending in particular on the nature of the AIFM”*. **Investors looked for the “same or comparable level of information and therefore assurance about associated risks and processes and other related indicators”**.

In a different study,³³⁹ which interviewed 226 institutional investors and alternative investment providers, **investors complained that** *“a lack of transparency makes it difficult to compare or benchmark performance between various AIF, understand the investment risks and strategies; others voice their concerns as regards standardised valuation reporting and reliability and consistency of valuations for ongoing investments.”* Respondents requested to have the same information from AIFM about their alternative investment as they get from their traditional investments.

Further, in 2009 the IOSCO Report on Hedge Fund Oversight³⁴⁰ remarked upon current market practices in the hedge fund sector and came to the conclusion that some aspects of investor information are not as transparent as is necessary. In particular, disclosure of valuation procedures, the existence of side letters and gating structures may not occur consistently. The report concludes that the provision of information to the market in general could be described as inconsistent or even opaque and that the provision of information to regulators varies.

Against this backdrop, AIFMD provides for harmonised and enhanced disclosures in key risk areas such as leverage, risk and liquidity management, custody and valuation, as well as conflict of interests.

For general comments on initial and periodic disclosures to investors, see sub-section 4.3.6 above.

In respect to disclosures on conflict of interest, the vast majority (86%) of survey respondents (which included some AIF investors) agreed with the statement that AIFMs are required to have appropriate conflicts of interest management – see 4.3.1 in Section 1. Further, 20% of respondent AIFMs had undertaken significant adjustments to their procedures for managing conflicts of interest and another 74% had reviewed their procedures but not made significant adjustments.

The provisions concerning the disclosures on conflict of interests satisfy the reasonable interests of investors to be informed about the involved parties performing management and depositary tasks. In this regard the relevant investor is able to **check if the involved parties are operating on an arms’ length basis and if there are any conflicts of interests**.³⁴¹

³³⁸ cf. to the effect of the AIFMD on the Hedge finding Industry Kokkila, *AIFMD Impact on European Hedge Fund Industry* (2016).

³³⁹ Cf. PricewaterhouseCoopers – March 2008, *Transparency versus returns: The institutional investor view of alternative assets*, retrieved from <https://www.ipe.com/alternatives-transparency-and-risk-more-important-pwc/www.ipe.com/alternatives-transparency-and-risk-more-important-pwc/27401.fullarticle>.

³⁴⁰ Cf. IOSCO (March 2009). *Hedge Funds Oversight, Consultation Report*.

³⁴¹ Cf. Gottschling, in *Frankfurter Kommentar, KAGB (Frankfurt Legal Commentary for the German transformation Act of AIFMD)*, § 307, margin no. 50; Prolifke in *Baur/Tappen, Investmentgesetze*, § 165, margin no. 73, 75, 78 and 81.

Disclosures on the valuation procedure (especially in relation to hard-to-value assets) and the calculation of the share/unit price of the AIF enable investors to verify the value of their investment. Further, it is important - in particular when investing into illiquid assets - that the investor has an overview of **the AIF's liquidity risk** management. Such information is considered to be of important relevance for investors in order to assess possible risks of non-performance of redemption requests, in particular in crisis scenarios. As noted by ESMA,³⁴² through such disclosures the investors also obtain an efficient overview of the special arrangements in place for the AIF, whether they relate to side pockets, gates or other such similar arrangements.

In conclusion, it can be said that the specific AIFMD disclosure requirements that relate, in various ways, to the management of conflicts of interest, are effective, in that investors are in the position to monitor the risks to their AIF investments. The increased transparency achieved and the information received through the provisions on reporting to investors under AIFMD should make it easier for the investor to perform its own due diligence and make proper assessments on the eligibility of such investments in compliance with its own or applicable regulatory standards, and to do so in a comparable way across any AIF investments. Further, through the aforementioned disclosure requirements, investors are able to detect and respond to risks from the investment.

ii) Efficiency

As already described in sub-section 4.3.6 above, the disclosure costs borne by the industry due to Articles 22 and 23 AIFMD are not available in public sources. Moreover, the comments discussed in sub-section 4.3.6 relating to the costs and human resources (FTEs) expended by AIFMs on the disclosure requirements appear to be most relevant to the quantitative data that must be provided before an investment and periodically thereafter, as they refer to operational costs along the value chain. The disclosures considered in this sub-section are narrative in nature and their substance will not change on a regular basis.

AIFMs will have incurred some costs in drawing up the required narratives for the first time when implementing AIFMD or when launching a new AIF. However, various industry due diligence templates already cover (and still do cover) such disclosures, so the costs of producing the narratives for many AIFs will likely have been non-material compared with other costs (e.g. relating to marketing or reporting to NCAs).

It can therefore be concluded that the requirements to disclose to investors the information summarised in sub-section a) above are proportionate to the benefits of ensuring that activities of AIFMs in key risk areas are transparent for investors and, in particular, that conflicts of interest are disclosed. Further, because the requirements are harmonised at EU level, investors may more easily be able to compare different AIFs and different AIFMs, including cross border.

iii) Coherence

Within AIFMD, the various requirements on disclosures to investors appear to operate coherently with each other. Further, the specific disclosures covered in this sub-section are broadly aligned with other EU measures with similar objectives, such as MiFID II, the Solvency II Directive and the Prospectus Directive.

³⁴² ESMA, *Consultation Paper ESMA's draft technical advice to the European Commission on possible implementing measures of the Alternative Investment Fund Managers Directive*, p. 230.

iv) *Relevance*

The AIFMD disclosure obligations summarised in sub-section a) above are intended primarily to ensure that the activities of AIFMs in key risk areas are transparent for investors in order to facilitate a proper risk assessment.

A recent study among 200 executive in global asset management describes the degree of transparency as the “**Top 1**” consideration before investing (63% of all respondents).³⁴³ According to the study, for the vast majority of respondents in Europe (83%), “*portfolio risk management is the single biggest factor in influencing their view of transparency*”. Consequently, information about key risk aspects are of direct relevance. Investors wish to be provided with sufficient information to serve as the basis for their due diligence and to ensure compliance with their own investment constraints.

It can therefore be concluded that the objective of disclosing to investors key information in respect of conflicts of interest, valuation, liquidity management and so on is of continuing relevance and importance.

v) *EU added value*

Prior to the introduction of AIFMD, there was no consistent approach across AIF sectors or across the EU to such disclosures.

For some AIF sectors, certain information obligations were codified through self-regulatory standards.³⁴⁴ For example, for hedge funds such information obligations were required by the Hedge Fund Standards Board. The private equity industry in Europe had also developed European guidelines governing the standards of AIFM reporting to investors.³⁴⁵ Also, a number of Member States imposed similar disclosure rules on certain types of AIFs, especially where the AIFs are available to retail or semi-professional investors, for example.

Consequently, although there was information available to investors for parts of the AIF market, there was no comparability between the disclosures of different types of AIFs or AIFMs/AIFs in different domiciles.

The AIFMD disclosure requirements have directly led both to information disclosures by all authorised AIFMs and to consistent and comparable disclosures across the EU, which has added value for investors and for the EU as a whole.

c) *Summary*

Effectiveness: The evidence indicates that the provisions summarised in sub-section a) provide for increased transparency of the activities of AIFMs and thereby facilitate better risk assessment by investors in respect to key aspects, and allow them to compare different AIFs and AIFMs.

Efficiency: The requirements are proportional to the benefits of ensuring that activities of AIFMs in key risk areas are transparent for investors and, in particular,

³⁴³ Cf. Northern Trust, *the path to transparency in alternatives investing 2017*, p. 3 (https://perspectives.eiu.com/sites/default/files/EIU_NT_The_Path-to-transparency-in-alternatives-investing.pdf).

³⁴⁴ EC Cross-Border Impact Assessment

³⁴⁵ See e.g. the EVCA Reporting Guidelines

that conflicts of interest are disclosed. Also, the costs of producing the specific disclosures are generally not material.

Coherence: The provisions are coherent with other components of AIFMD and vis-à-vis other EU measures with similar objectives.

Relevance: The objective of disclosing to investors key information in respect of conflicts of interest, valuation, liquidity management and so on is of continuing relevance and importance.

EU added value: The AIFMD disclosure requirements have directly led both to information disclosures by all authorised AIFMs and to consistent and comparable disclosures across the EU, which has added value for investors and for the EU as a whole.

4.4. Specific objective: Greater public accountability of AIFM holding controlling stakes in companies

Under this specific objective, we consider the rules for investing in non-listed companies and enterprises by private equity and venture capital funds and one operational objective: to increase transparency by an AIFM when an AIF it manages acquires a controlling stake in, and manages, companies.

4.4.1. Investing in non-listed companies

The general survey and interview results provided information and views on the rules for investing in non-listed companies and enterprises (see 4.1.2 and 4.4 of Section 1). In addition, information was obtained from desk research conducted by the central team on the implementation and impact of these rules,³⁴⁶ and we sought specific information from the 15 Member States (see Annex 6).

a) *Description of the rules*

In the context of the financial crisis and tightening credit conditions, concerns had arisen in relation to the sustainability of debt assumed by private equity portfolio companies. This was a particular concern for companies subject to leveraged buy-outs by private equity firms. Similar problems were experienced elsewhere in the financial system. An additional concern related to the treatment of employees when a company was acquired by a private equity transaction, namely that employees did not enjoy the same protection and rights as when a transfer of undertaking occurred. The existing regulatory framework and industry codes governing disclosure and information provisions of AIFMs did not sufficiently address the cross-border character of private equity transactions. Furthermore, there was no consistent standard for the level of transparency required in relation to such deals.³⁴⁷

³⁴⁶ cf. European Private Equity & Venture Capital Association - EVCA (2014), *AIFMD Implementation - Fees and Charges. Private correspondence?*; European Private Equity & Venture Capital Association - EVCA (2014), *Paying agent. Private correspondence?*.

³⁴⁷ AIFMD Impact Assessment, Sec. 3.2.6.

Consequently, Articles 26-30 AIFMD include obligations for AIFMs managing AIFs that acquire control of non-listed companies and enterprises.³⁴⁸ Article 26(5) AIFMD defines control as 50% of the voting rights of a non-listed company and, in the context of listed companies, by reference to the Takeover Bid Directive (TBD).

Without prejudice to any stricter rules adopted by the Member States with respect to the acquisition of holdings in non-listed companies and enterprises in their territories,³⁴⁹ Article 27 AIFMD requires that when an AIF acquires, disposes or holds shares or significant control of a non-listed EU company, the AIFM managing such an AIF must notify the corresponding NCA, within a maximum term of 10 business days, of the proportion of voting rights of the non-listed company held by the AIF any time when that proportion reaches, exceeds or falls below the thresholds of 10%, 20%, 30%, 50% and 75%. This notification must contain information regarding the voting rights held and the conditions under which control has been reached, including information about the identity of the different shareholders involved and the structures through which voting rights are effectively held.

In the same way, when an AIF, individually or jointly, acquires control of a non-listed EU company, Article 28 AIFMD requires the AIFM to provide certain information to the unlisted company, its shareholders and the NCAs of the home Member State of the AIFM within 10 working days of acquiring control. This information includes the information mentioned above in the case of acquisition of significant interests, information regarding the voting rights held and the conditions under which control has been reached. Also, the AIFM must request the board of directors of that company **to inform the employees' representatives of the acquisition of control** and the above-mentioned information.³⁵⁰

In these cases, Article 29(2) AIFMD requires the **AIF's** annual report to include certain specific information:

- **A fair review of the development of the company's business representing the situation at the end of the period covered by the annual report;**
- Any important events that have occurred since the end of the financial year;
- **The company's likely future development; and**
- Information on acquisitions of own shares.

Article 29(3)(b) AIFMD stipulates that the AIF annual report must be made available **no later than the portfolio company's annual report, the latter** being subject to domestic laws and regulations. The Article 29 requirements are in addition both to the requirements in Article 22 AIFMD (AIF annual report) and to the disclosures required in accordance with the Transparency Directive (TPD) and/or TBD.³⁵¹

The fulfilment of these obligations is exempted by Article 26(2) AIFMD when the object of the acquisition of the significant participation or taking control are small and medium-sized enterprises or special purpose vehicles with the purpose of purchasing, holding or administrating real estate.

³⁴⁸ Arts. 26-30 AIFMD were subject to much debate by the co-legislators. For an extensive description of the policy background see, for example, Clerc, *Specific duties of AIFMs when acquiring non-listed firms*, in: Zetzsche (ed), *AIFMD* (2nd edn, 2015), 649 et seq.

³⁴⁹ Art. 26(7) AIFMD.

³⁵⁰ **In accordance with Art. 26(6) AIFMD, disclosure to the employee's representative must adhere to the conditions and restrictions of Art. 6 Employee Consultation Directive 2002/14/EC. See also EC , YQOL AIFMD ID 1194: 'The provision in Article 26(6) [AIFMD] shall be understood in the sense that any information related to the application of Articles 26-30 of the AIFMD, which is susceptible of being considered as confidential should be subject to the requirements provided in Article 6 of the Employee Consultation Directive.**

³⁵¹ Recital 53 AIFMD.

Finally, Article 30 AIFMD establishes that when an AIF acquires, individually or jointly, control of an EU company, certain asset stripping restrictions apply. The basic restriction is that in the 24 months after the AIF has acquired control, the AIFM must **use its best efforts to prevent the 'controlled' company effecting distributions, capital reductions, share redemptions and/or the acquisition of own shares.**

b) Assessment against the five key principles

i) Effectiveness

The provisions of Articles 26 to 30 AIFMD, most commonly referred to as the "AIFMD private equity rules", articulate the legislative rationale in Recital 52 AIFMD:

"It is necessary to ensure that the competent authorities of the home Member State of the AIFM, the companies over which AIFs managed by an AIFM exercise control and the employees of such companies receive certain information necessary for those companies to assess how that control will impact their situation."

Furthermore, and in addition to this legislative rationale, the AIFMD private equity rules generally aimed at increased accountability, stewardship and corporate governance in such cases where AIFMs invest extensively in non-listed companies and enterprises on behalf, or for the account, of the AIFs they manage.

In a number of Member States, private equity funds were already regulated in some way prior to AIFMD – see Table 13. Generally, the private equity industry had no difficulty in setting up eligible structures that achieved the same objectives as before the transformation of AIFMD into national law.³⁵²

Table 13: Regulatory status of investments into non-listed companies (private equity/venture capital) by funds pre- and post-AIFMD

	Pre-AIFMD	Post-AIFMD
Austria	Private equity and venture capital funds were regulated under the Capital Markets Act. However this law was confined to requirements regarding prospectuses. There was no supervisory law.	The regulatory framework for private equity was reformed by the new Alternative Investment Fund Managers Act, which was published on 29 July 2013, entered into force on 22 July 2013 and amended on 2014. Also, it was necessary to modify other existing Austrian regulatory legislation such as the Banking Act and the Investment Funds Act 2011.
Belgium	Regulated under the Royal Decree of 18 April 1997, concerning undertakings for investment in non-listed companies and in growth companies.	On 17 June 2014 the Act of 19 April 2014 was published in the Official Gazette, implementing AIFMD in Belgium. On 4 August 2016, the Royal Decree on AIFs investing in non-listed companies and growth businesses was published in the Belgian State Gazette, repealing the existing Royal Decree of 18 April 1997.

³⁵² Cf. market developments in Table 14.

	Pre-AIFMD	Post-AIFMD
Cyprus	There were no rules relating to investments into non-listed entities prior to AIFMD transposition.	The AIFMs Law of 2013 (L.56(I)/2013) came into effect after its publication in the Official Gazette of the Republic on 5 July 2013. The relevant law harmonised the national legal framework with AIFMD, regulating the establishment and operation of AIFMs that manage all types of collective investment schemes that are not UCITS and fall within the category of AIFs. ³⁵³ Other relevant Directives have been issued by the Authority, such as Directive DI56-2013-04 in relation to the notifications made in the case of acquisition of control in non-listed companies or issuers by an AIF under the AIFM's management . ³⁵⁴
Czech Republic	Investment into non-listed companies was regulated under Act No. 189/2004 Coll. Collective Investment Act.	On 3 July 2013, the Parliament of the Czech Republic adopted Act No. 240/2013 Sb on Investment Companies and Investment Funds, which implements AIFMD. On 19 August 2013, Act No. 204/2013 on Investment Companies and Investment Funds became effective
Denmark	There were no rules relating to investments into non-listed entities prior to AIFMD transposition.	The Danish Act on Alternative Investment Fund Managers entered into force on 22 July 2013 and implements AIFMD into Danish law.
France	Management companies were regulated prior to AIFMD. There were also rules applicable to certain private equity investment funds, but no rules comparable to those foreseen by Articles 26-30 AIFMD in relation to target companies, anti-asset stripping and transparency.	AIFMD was fully transposed into French law by Order 2013-676, which was published in the Official Journal on 27 July 2013 and modified several existing laws.
Germany	The Act on Private Equity Companies (<i>Gesetz über Unternehmensbeteiligungsgesellschaften</i> - UBGG) dates from 1986. It is more motivated by tax law and affects only a small part of the industry. This fragmented approach led to the private equity industry itself demanding a unified regulatory framework. The 2008 Venture Capital Participation Act (WKBG) again covered only a small part of the industry and, above all,	The AIFM law (KAGB) was adopted on 16 May 2013, published in the Official Journal on 10 July 2013 and became effective on 22 July 2013.

³⁵³ See CySEC Annual Report 2013.

³⁵⁴ See CySEC Annual Report 2014.

	Pre-AIFMD	Post-AIFMD
	<p>became practically irrelevant due to the legal misconception.³⁵⁵</p> <p>A specific fund regulation regarding investment funds "which acquire control over unlisted companies and issuers" has therefore no predecessor in this form in German law.</p> <p>The former German Investment Act (<i>Investmentgesetz – InvG</i>), which was in force until the effective date of the German AIFMD transformation act (KAGB), only stipulated certain investment limits for open-ended mutual funds investing into companies. For example, up to 20% of the value of the investment fund could be invested in investments in unlisted companies. Only up to 5% of the value of the fund could be invested in units of the same undertaking, a restriction that also applied to Spezialfonds. However, this ruled out the structuring of a pure 100% private equity fund under the InvG.</p>	
Hungary	There was no regulation of investments into non-listed companies by funds prior to AIFMD.	As part of the sectoral regulation of the capital market and the transposition of European Directives, the new legislation regulating the fund manager sector – Act XVI of 2014 on Collective Investment Trusts and their Managers and Amending certain finance related Acts– entered into force on 15 March 2014. ³⁵⁶
Ireland	<p>Legal vehicles were regulated under the following provisions prior to AIFMD:</p> <ul style="list-style-type: none"> ▪ Unit trusts under the Unit Trusts Act, 1990; ▪ Investment companies under the Companies Act, 1990 Part XIII; ▪ Investment limited partnerships under the Investment Limited Partnerships, Act, 1994; and ▪ Common contractual funds under the Investment Funds, 	<p>There is now a uniform regime for this type of investment. AIFMD was transposed into Irish law under the European Union Regulations 2013 (AIFMs) on 16 July 2013.³⁵⁷</p> <p>Specific rules for non-listed companies were set out in the CBI's non-UCITS Notice 14.9 Venture or development capital schemes.³⁵⁸</p>

³⁵⁵ Jesch (2014). *Private-Equity-Fonds – Strukturierung und Vertrieb unter dem KAGB*, RdF, Page 180 et seq.

³⁵⁶ 2014 Business report and financial statements of the MNB.

³⁵⁷ cf. for further details KPMG, *Navigating through AIFMD: a guide for private equity and venture capital funds in Ireland (2014)*, p. 1 et seq.

³⁵⁸ *Conditions imposed in relation to Collective Investment Schemes Other than UCITS*, Report issued on May 2013 by the Central Bank of Ireland, Notice 14.9.

	Pre-AIFMD	Post-AIFMD
	Companies and Miscellaneous Provisions Act, 2005.	
Italy	The legal framework for investment and asset management was contained in the Legislative Decree n. 58 of 24 February 1998 (Italian Financial Act).	AIFMD was implemented with a delay of two years. On 19 March 2015, Decree of the Ministry of Finance n. 30 of 5 March 2015 on the criteria for Italian collective investment schemes, the Bank of Italy's Regulations on Collective Investment Undertakings of 19 January 2015, Resolution n. 19094 of 8 January 2015 of CONSOB, amending CONSOB Regulations on Issuers and CONSOB Regulations on Intermediaries, and the Bank of Italy and CONSOB Joint Regulation of 19 January 2015 on the provision of investment services and activities and collective asset management, were published in the Official Gazette and came into force on 3 April 2015. ³⁵⁹
Luxembourg	Investments into non-listed companies by funds were regulated under the following provisions: Law of 13 February 2007 relating to Specialised Investment Funds; and Law of 15 June 2004 relating to the investment company in risk capital.	On 15 July 2013, the law of 12 July 2013 on AIFMs entered into force on the day of its publication in the Official Journal (mémorial n°119 " Gestionnaires de fonds d'investissement alternatifs ").
Malta	Investment into non-listed companies was regulated under the Professional Investor Funds Regime prior to the transposition of AIFMD.	On 27 June 2013, MFSA published its new Investment Services Rules, which include the new parts regulating AIFMs.
Netherlands	Prior to AIFMD, there were no specific requirements for investments into non-listed companies by funds.	The new law implementing AIFMD was published on 25 June 2013, in the Bulletin of Acts, Orders and Decrees, the official bulletin of the Dutch government.
Spain	Only Venture Capital Entities were regulated prior to the transposition of AIFMD.	On 13 November 2014, the Official State Gazette published Spanish Law 22/2014, of 12 November.
UK	Private equity/venture capital investment entities are constructed as closed-ended vehicles. They are not authorised by the FCA but can apply to be listed, either as an ordinary company or as an investment company (under Chapter 15 of the UK Listing Rules). Any listed company is subject to certain disclosures. Chapter 15	On 16 July 2013, the AIFM Regulations 2013 (No. 1773) were published and entered into force on 22 July 2013. In addition, the FCA amended a number of rules and guidance in its rulebook.

³⁵⁹ See <http://www.aifi.it/regolamentazione/normativa-italiana/>.

	Pre-AIFMD	Post-AIFMD
	investment entities are subject to a special tax regime, which imposes investment and borrowing/leverage limits.	

Source: KPMG (2018).

Table 14: Volume (increase/decrease) of investments into non-listed companies by funds from 2014 to 2017

Austria	<p>AIFMs licenced or registered according to the Alternative Investment Fund Managers Act managed:³⁶⁰</p> <p>As at 31 December 2015: total assets amounting to EUR 1.04 bn, with EUR 0.56 bn accounted for by private equity funds, EUR 0.22 bn by real estate funds, EUR 0.18 bn by hedge funds and EUR 0.08 bn by other funds. Of these assets, EUR 0.68 bn were managed by registered AIFMs and EUR 0.36 bn by licenced AIFMs.</p> <p>As at 31 December 2016: total assets amounting to EUR 1.16 bn, with EUR 0.60 bn accounted for by private equity funds, EUR 0.22 bn by real estate funds, EUR 0.19 bn by hedge funds and EUR 0.16 bn by funds of funds and other funds. It should be noted that the figures quoted were provisional figures available at the time of the Annual Report being prepared.</p>
Cyprus	No information publically available.
Denmark	Funds with a primary investment strategy within private equity have seen an increase in assets of about 40% from about DKK 12 bn at the end of 2015 to approximately DKK 17 bn a year later. The significant growth was mainly driven by an increased number of new funds with private equity as their investment strategy. ³⁶¹
France	As of end of 2016, private equity invested EUR 12.4 bn in 1,900 companies; end of 2015, private equity invested EUR 10.7 bn in 1,645 companies; end of 2014, private equity invested EUR 8.7 b. in 1,648 companies; end of 2013, private equity invested EUR 6.5 bn in 1560 companies. ³⁶²
Germany	<p>According to the German Private Equity Association³⁶³ there are 300 German private equity firms and more than 5,000 German portfolio companies with 960,000 employees, financing annually more than 1,000 companies to the amount of EUR 37 bn from 2013 to 2017 (EUR 11,3 bn in 2017).³⁶⁴</p> <p>Therefore, the private equity market can be considered to be important for the German economy, with dynamic growth in the period 2014 to 2017. Venture Capital Investments in Germany increased from EUR 6.7 bn in 2014 to EUR 8.4 bn in 2015, reached a climax of EUR 10.6 bn in 2016 and stood at EUR 10.4 bn in 2017. Similar growth can be observed for buyouts and minority investments, from EUR 6.5 bn in 2014 up to EUR 10.2 bn in 2017.</p>

³⁶⁰ FMA: 2015 Annual Report of the financial Market Authority; see also AVCO Presseaussendung zu den PEVC Kennzahlen 1996 to 2016 (Austrian Private Equity and Venture Capital Organisation). Retrieved from <https://www.fma.gv.at/download.php?d=1892>.

³⁶¹ Market development in 2016 for collective investments, Report issued by the Danish Financial Supervisory Authority. Retrieved from <https://www.finanstilsynet.dk/~media/Tal-og-fakta/2017/MU/Market-development-in-2016-for-collective-investments-pdf.pdf?la=en>

³⁶² Overview of French private equity market : AFIC / EY, CROISSANCE ET CRÉATION D'EMPLOIS dans les entreprises françaises accompagnées par les acteurs français du capital-investissement, 2013- 2016.

³⁶³ Bundesverband Deutscher Kapitalbeteiligungsgesellschaften e.V. (BVK)

³⁶⁴ German Private Equity Association (Bundesverband Deutscher Kapitalbeteiligungsgesellschaften e.V. (BVK)), the German Private Equity Market 2017 and Outlook for 2018, p. 4.

Hungary	<p>At end-2011 and end-2012, there were 15 and 27 companies with venture capital fund management licences, respectively, while at end-2013 and end-2014, 33 companies held such licences. The number of venture capital funds also increased dynamically in 2013 and 2014 (17 at end-2012, 29 at end-2013 and 38 in 2014).³⁶⁵</p> <p>The dynamic growth seen in the three years to 2015 then halted and there was a slight downturn. By 2015 only 31 companies remained in the market, but the number of capital funds remained at 38. One venture capital fund manager had 4 funds, another had 3 funds, three had two funds, 25 fund managers had one fund, and one fund manager did not have any registered funds.</p> <p>In 2016 the number of venture capital funds did not change, but new “private capital funds” – based on an operating model conditional upon supervisory licence – entered the market. In 2016 the number of private capital funds rose to 5 from one registered in 2015. At end-2016 four firms managed private capital funds. The increasing trend is also evidenced by the changes in the NAV of private capital funds, which rose from HUF 3 bn at end-2015 to HUF 40 bn by end-2016. The number of venture capital funds managers decreased by one to 31 in 2016.³⁶⁶</p>
Italy	<p>In 2017, there were 311 private equity and venture capital transactions, spread over 250 companies, for a counter value of EUR 4,938 mn, a reduction of 40% compared to the previous year, when the total invested amounted to EUR 8,191 mn, due to some large-scale operations carried out mainly by international entities. The figure for 2017 was the third highest value recorded in the Italian market over the past 10 years, after the figures reached in 2016 and 2008 (EUR 5,458 mn). However, the number of transactions compared with 2016 saw a decrease of 3%.³⁶⁷</p>
Malta	<p>According to MFSA Annual Reports 2015³⁶⁸ and 2016,³⁶⁹ AIFMD expanded market access and a number of AIFMs were established. However, no specific figures are available for private equity and venture capital funds.</p>
Spain	<p>The Survey Venture Capital & Private Equity 2016 of ASCRI (Spanish Venture Capital & Private Equity Association) shows investment totalled EUR 2.93 bn in 2015, a fall of 15.5 % on 2014 (EUR 3.48 bn), although with positive performance in Venture Capital and Middle Market segments.³⁷⁰ According to CNMV with reference to ASCRI, the fall was concentrated in the segment of large-scale deals (above EUR 100 mn), which in the previous year had grown sharply and where international funds predominated.³⁷¹ Only four deals of this type were registered in 2015, for a total amount of EUR 605 mn, compared with 11 deals and EUR 2.34 bn in 2014. In contrast, there was growth in small and medium-scale deals, in particular in deal tranches between EUR 40 mn and EUR 100 mn, mainly focused on private equity</p>

³⁶⁵ Risk outlook for non-bank financial sectors 2015, published by the MNB (supervises the Hungarian financial intermediary system).

³⁶⁶ Insurance, Funds and Capital Market Report 2017, published by the MNB.

³⁶⁷ AIFI (2017). Il Mercato Italiano del Private Equity E Venture Capital, retrieved from <http://www.aifi.it/studi-ricerche/dati-mercato/>, p. 33; see also research of the NCA: *Elemzés a hazai kockázati tőkealap-kezelők és alapok működéséről*, retrievable from http://alk.mnb.hu/data/cms2428377/Elemzes_a_kovkazati_tokealapkezeloi_szektorrol_0202.pdf.

³⁶⁸ MFSA: Annual Report 2015, retrieved from <https://www.mfsa.com.mt/pages/readfile.aspx?f=/files/Publications/Annual%20Reports/2016/MFSA%20AR%2015.pdf>.

³⁶⁹ MFSA: Annual Report 2016, retrieved from <https://www.mfsa.com.mt/pages/readfile.aspx?f=/files/Publications/Annual%20Reports/2016/MFSA%20AR%2016.pdf>.

³⁷⁰ ASCRI 2016 Survey "Venture Capital & Private Equity in Spain", retrieved from <https://www.ascr.org/en/estadisticas-publicaciones/activity-reports/>, p. 16.

³⁷¹ ASCRI 2015 Survey "Venture Capital & Private Equity in Spain", retrieved from <https://www.ascr.org/en/estadisticas-publicaciones/activity-reports/>, p. 16.

	<p>deals. Including pure venture capital deals, investments multiplied by 2.5 and reached an amount equivalent to 59% of the annual total. As usual, the bulk of the deals in the sector (86% of the total) corresponded to investments of less than EUR 5 mn.</p> <p>2016 was marked by a mature sector showing considerable resilience to the political uncertainty of 2016. Investment in Venture Capital & Private Equity in 2016 totalled EUR 3.61 bn, representing a 33.6% increase from 2015 (EUR 2.70 bn), the third best figure on record following 2005 and 2007.³⁷² International investors once again led these activities in terms of the amount invested, with EUR 1.99 bn (66% of the total), spread among 62 deals. This investment volume was 17% up on the previous year. Private Spanish operators invested EUR 931 mn (31% of the total invested volume) in a total of 420 investments. The remaining investment volume was provided by the public sector.</p> <p>Following extremely positive performance of the sector in 2016, despite political uncertainty, 2017 was an exceptional year. Private Equity and Venture Capital investment in Spain broke the highest figures on record (EUR 4.35 in investments in 2007). Investment in Venture Capital & Private Equity in 2017 totalled EUR 4.9 bn, representing 30% growth from 2016 (EUR 3.8 bn). 83% of investments were allocated to new investments, compared to 16.7% in follow-ons.³⁷³</p>
UK	<p>The British Venture Capital Association (BVCA) Annual Report 2017 states that total fundraising in 2017 reached GBP 33 bn. The number of funds raising new capital was 79. The total equity amount invested in portfolio companies increased by 4% year-on-year to GBP 22.23 bn. The number of companies receiving investment rose 11% to 1,030. Buyout investment increased over 21% year-on-year to GBP 18.22 bn. The number of companies backed increased by 46% to 230. Venture capital investment increased by 45% to GBP 820 mn and effectively doubled since 2014. 485 companies were venture-backed, a 36% increase. Seed investments grew by almost 300%, reaching GBP 56 mn, followed by early stage financing which year-on-year nearly doubled in size to GBP 313 mn. Growth capital investments decreased by 40% to GBP 1.95 bn 297 companies were backed, an 8% decrease year-on-year.</p>

Source: KPMG (2018).

Article 26(7) AIFMD allows Member States to implement stricter rules on the acquisition of shareholdings. CONSOB requires information on: (i) the identity of other management companies cooperating with the AIFM by virtue of an agreement under which the AIFs have jointly acquired control; (ii) the policy of managing conflicts of interest between the AIFM, the AIF and the non-listed company, including information on the measures adopted to ensure that any agreements between the AIFM and the AIF or between the AIFs and the non-listed company itself are performed at normal market conditions; and (iii) the methods for communicating information between the non-listed company and employees.³⁷⁴

Table 14 provides a summary of the data publically available showing trends in the private equity and venture capital industries in individual Member States.

41% of AIFMs that responded to the general survey did not invest or had never invested in non-listed entities on behalf of their managed AIFs, and the majority of

³⁷² ASCRI 2017 Survey "Venture Capital & Private Equity in Spain", retrieved from <https://www.ascr.org/en/estadisticas-publicaciones/activity-reports/>, p.14.

³⁷³ ASCRI 2017 Survey "Venture Capital & Private Equity in Spain" (<https://www.ascr.org/en/estadisticas-publicaciones/activity-reports/>), p.14.

³⁷⁴ Article 45 of Testo Unico della Finanza "Regolamento Emittenti".

AIFM survey respondents stated that they have never and/or are not aiming to acquire or have not actually acquired control of non-listed companies and enterprises (see Figure 41 in 4.4 in Section 1). Only 12% of respondent AIFMs had acquired or aimed to acquire control of non-listed entities, and did not fall within the Article 26 exemptions (including special purpose vehicles and unlisted UCITS or other AIFs).

Only in a limited number of the countries evaluated is it possible to identify benefits of the legislation or an increase of investment into non-listed companies or enterprises. It is notable that the impact of AIFMD on investment in private equity/venture capital received the highest proportion of negative views of the three investment types (see Figure 42 in 4.4 in Section 1).

These results correspond closely with other evaluations of the effectiveness of the AIFMD private equity rules.³⁷⁵ Voices in the hedge fund industry remarked during the **approach of the “one-year milestone” of AIFMD, that the new regulatory regime “can present opportunities and challenges”**. Throughout this process the Managed Fund Association declared it was **“broadly supportive of the AIFMD’s goals to bring [...] a more transparent and globally harmonised regulatory framework for the alternative investment fund industry”**.³⁷⁶

The statement that notifications required to NCAs are useful, essential and not overly burdensome was disagreed with by most respondent AIFMs. The level of disagreement regarding improvement by AIFMD of the information provided by the AIF/AIFM to controlled companies was also strong, as was disagreement that AIFMD has had a positive impact on the relationship between AIFs/AIFMs and target or investee enterprises, with a majority of AIFMs rejecting this statement. Respondent AIFMs that expressed an opinion on whether the anti-asset stripping rules provide an appropriate level of protection were equally distributed between agreement, disagreement or neutral. Also, while around 60% of respondent AIFMs found the asset stripping rules clear in relation to investments in unlisted special purpose investment vehicle, only 42% were clear as to their application to investments in unlisted UCITS or AIFs (see Figure 43).

Also, **the meaning of “non-listed company”** was found not to be fully clear in every Member State subject to this review. In contrast to the French and English versions of the AIFMD, for example, it is not clear in the German translation of AIFMD if only non-listed companies in the legal form of a capital company are covered by the term “non-listed company”.³⁷⁷ German legal commentaries have raised the issue that the term **“company”** in Articles 26–30 AIFMD could be interpreted in such a way that only entities qualifying **as an “operating company”** and with working employees are subject to the AIFMD provisions.³⁷⁸ The mere holding and managing of investments should not be sufficient to qualify the entity as a **“company”** within the meaning of Articles 26–30 AIFMD. This implies uncertainty in the legal and practical application of these provisions around the EU and may have resulted in different interpretations among Member States.

Nearly 70% of respondent AIFMs reported that there are not similar rules for non-AIFMs in their country regarding transparency and anti-asset stripping (see Figure

³⁷⁵ See, for instance, *Europe Economics, Evaluation of the Alternative Investment Fund Managers Directive, December 2017, sec. 5.8.*

³⁷⁶ *Managed Fund Association (MFA), Preqin, Global Hedge Fund Managers Respond to the AIFMD, July 2014, p. 4.*

³⁷⁷ *Raised issue for the German market, cf. Jesch, in Frankfurter Kommentar, KAGB (Frankfurt Legal Commentary for the German transformation Act of AIFMD), § 289, margin no. 45.*

³⁷⁸ *Cf. Jesch, in Frankfurter Kommentar, KAGB (Frankfurt Legal Commentary for the German transformation Act of AIFMD), § 289, margin no. 45; Bärenz/Käpplinger, in Dornseifer/Jesch/Klebeck/Tollmann, AIFM-RL, Art. 27, margin no. 15.*

43). In this regard, the compatibility with national constitutional rights and European law was discussed by legal commentaries, but not concluded.³⁷⁹ It also raises the question whether the AIFMD rules are disadvantageous for AIFMs and AIFs when competing with non-regulated private equity investors for investments. However, the majority of respondents stated that this had not discouraged investments via EU AIFs, although it is notable that 20% of respondent investment managers/advisors indicated that AIFMD had caused them somewhat to restrict their service offerings to private equity funds (see Figure 56).

In the initial phase of the transposition of AIFMD into national law, it was criticised that it is "virtually unlikely" that the mere reach of threshold limits will induce NCAs to undertake supervisory actions on the AIFM. For that reason, the legal-political purpose of the obligation to provide further information to the NCAs was regarded as "doubtful".³⁸⁰ In respect to the exemption of Article 26(2)(a) AIFMD for small and medium-sized enterprises, questions were raised if the legal wording of this exception relates to holding or acquisition. An enterprise could grow into a large company during the investment of the AIF and the applicability of Articles 26-30 be brought into question.

It was not possible to determine the qualitative or quantitative effects of the requirements to provide information to investors or investee companies, not only because no relevant data could be retrieved, but also because the usefulness and relevance of the information to the recipients are, at least to some extent, subjective.

ii) Efficiency

The AIFMD requires fund managers to provide information to NCAs on liquidity, current risk profile, and main categories of assets in which the AIF are invested. Besides these general disclosure requirements, Article 26 et seq. AIFMD requires certain additional, acquisition-related disclosure. This is intended to improve monitoring and supervision of the private equity industry and represents an increase of administrative costs for AIFMs.

Some respondents criticised that these acquisition-related disclosures could limit the number of small private equity or venture funds offered to EU investors or operating in the EU. In particular, the administrative burden and additional costs for non-EU AIFMs with no similar requirements in their home jurisdictions outside the EU, or the additional limits on non-EU funds managed by an EU AIFM, could hinder such non-EU funds in accessing the EU market.

In addition to the findings of the general survey and semi-structured interviews, other research illustrates that Article 26 et seq. AIFMD has generally led to an increase of administrative costs either on the level of the target/investee company and/or the AIFM itself.³⁸¹ However, it has not been possible to aggregate and consolidate valid and reliable data on the administrative and operational costs borne by AIFMs. Therefore the qualitative statement (that the rules have resulted in a higher cost burden) cannot be evidenced by quantitative measures.

³⁷⁹ Cf. Jesch, in *Frankfurter Kommentar, KAGB (Frankfurt Legal Commentary for the German transformation Act of AIFMD)*, § 289, margin no. 19.

³⁸⁰ Raised issue for the German market, cf. Jesch, in *Frankfurter Kommentar, KAGB (Frankfurt Legal Commentary for the German transformation Act of AIFMD)*, § 289, margin no. 18; Behme in *Baur/Tappen, Investmentgesetze*, § 289, margin nos. 4, 6 and 27.

³⁸¹ See, for instance, *Europe Economics, Evaluation of the Alternative Investment Fund Managers Directive, December 2017, sec. 5.8.*, however, without indicating a range or benchmark of the increased operational costs.

In conclusion, it can be argued that the rules for investing in non-listed companies and enterprises **are “proportionate” because** they have established a common framework at EU level, which would not be possible by individual Member State legislation and which enables investors to compare AIFs across borders. Transaction patterns and potential risks have, to a certain extent, been driven by Anglo-American inspired investment strategies.³⁸² The co-legislators decided to provide specific protections for investee enterprises and their staff.

However, there is a question whether the rules are efficient in a broader sense, especially regarding the extent and frequency of disclosures that must be made to NCAs on control holdings and what use is or can be made of that data on a regular basis (bearing in mind that NCAs have powers to ask for data on an *ad hoc* basis). It is also pertinent that many private equity/venture capital AIFMs are smaller companies, for whom the administrative burdens may be proportionately greater.

iii) Coherence

In general, there is internal and external coherence of the provisions on increased transparency when acquiring a controlling stake as well as investing in non-listed companies and enterprises.³⁸³ Neither regulatory loopholes nor contradictory regulation has been identified. AIFMD is well-aligned with other EU regulation, as well as with previous national legislation of the Member States evaluated, some of which regulated certain aspects related to investment into non-listed companies prior to AIFMD.

Private equity investments are subject to regulatory requirements not only on the AIFM/AIF side but also on the investor side.³⁸⁴ For example, SII stipulates specific capital requirements for investments by insurance companies in private equity funds, which are qualified as “other share risks” and are added to the quota for unlisted equity investments. These holdings are subject to an increased basic capital requirement of 49% up to 59%, which can, however, be reduced by the concept of an internal model. Moreover, EIOPA³⁸⁵ recently held out the prospect of an allocation to the category “global share risks” under certain conditions, stipulating in general a capital backing of 39%.

Article 27(1) AIFMD requires **AIFMs to notify the NCA of the AIF’s home Member State** when the proportion of voting rights in non-listed companies exceeds the respective thresholds. Article 9 of the Prospectus Directive includes a similar provision for issuers whose shares are admitted for trading on a regulated market and to which voting rights are attached.³⁸⁶ In addition, Articles 27(2) and 26(5) AIFMD, which stipulate a notification requirement in the case that an AIF acquires control – i.e. 50% of the voting rights – of a portfolio company, resemble Article 10(a)-(h) Prospectus Directive, but without adopting the precise requirements of the transparency regime.³⁸⁷ Furthermore, the provisions on asset stripping pursuant to Article 30 AIFMD

³⁸² Cf. Harvard University (27 December 2008). *Private equity, history and further development*, retrieved from <http://blogs.harvard.edu/nhonma/2008/12/27/private-equity-history-and-further-development/>; Wall Street Journal (17 January 2012). *A Short (Sometimes Profitable) History of Private Equity*. Retrieved from <https://www.wsj.com/articles/SB10001424052970204468004577166850222785654>.

³⁸³ Extensive scientific research has been undertaken by D. Zetzsche/D. Eckner, *Investor Information and Reporting*, in: D. Zetzsche (ed.), *The AIFMD (2nd edn 2015)*, 391 et seq.

³⁸⁴ Cf. Bundesverband Alternative Investments e.V. (BAI), *Eine Einführung in die Welt nicht traditioneller Anlagen und Strategien*.

³⁸⁵ European Insurance and Occupational Pensions Authority

³⁸⁶ AIFMD Impact Assessment.

³⁸⁷ See also EC, YQOL AIFMD ID 1194.

are well aligned with the basic concept stipulated under the Second Company Law Directive.³⁸⁸

However, Article 30 AIFMD provides for disclosure at additional levels of holdings of targets and investee companies than the Second Company Law Directive.³⁸⁹ Also, the AIFMD rules apply generally to all types of portfolio companies, while the Second Company Law Directive focusses only on certain companies.³⁹⁰

iv) *Relevance*

In general, the transparency provisions of the AIFMD private equity rules remain relevant. As illustrated in Table 13, some Member States already had provisions in place, either by national law³⁹¹ or best practice (e.g. the Walker Guidelines in the UK). Also, there is not at present any evidence that the co-legislators would wish to remove the asset stripping rules. However, the relevance of certain detailed aspects of the rules has been questioned.

In particular, survey respondents generally believed that the additional reporting to NCAs are neither useful nor essential and are burdensome, and it is not clear how the information is, or can be, used by NCAs. Further, the vast majority of respondents disagreed that AIFMD had improved the information provided by AIFs/AIFMs to controlled companies or had improved the relationship between AIFs/AIFMs and target or investee enterprises. Moreover, the vast majority of respondents indicated that they are not subject to the provisions of Article 26 et seq. AIFMD as they do not target investments in non-listed enterprises or do not aim to control investee enterprises. Other surveys and evaluations have described Articles 26-30 AIFMD as “*primarily an administrative annoyance*”.³⁹²

v) *EU added value*

As highlighted in the assessments above on effectiveness, efficiency, coherence and relevance, there is only a marginal measurable impact of the AIFMD private equity provisions. The rules have helped to develop and foster an internal market for private equity and venture capital funds, as well as other AIFs that partly invest in non-listed enterprises (i.e. they have had a causal effect). As such, the rules have provided a high degree of harmonisation throughout the EU, which enables investors to compare AIFs cross borders.

³⁸⁸ Second Council Directive 77/91/EEC of 13 December 1976; recast as Directive 2012/30/EU of the European Parliament and of the Council of 25 October 2012 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 54 of the Treaty on the Functioning of the European Union, in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent.

³⁸⁹ For an extensive scrutiny, see C. Clerc, *Specific duties of AIFMs when acquiring non-listed firms*, in: D. Zetzsche (ed.), *The AIFMD* (2nd edn 2015), 649 et seq.

³⁹⁰ These are, *inter alia*, German Aktiengesellschaft, UK public company limited by shares, French sociétés anonymes, Dutch naamloze vennootschap or Italian società per azioni. For further reference, see C. Clerc, *Specific duties of AIFMs when acquiring non-listed firms*, in: D. Zetzsche (ed.), *The AIFMD* (2nd edn 2015), 649 et seq.

³⁹¹ As already indicated in the Recitals of AIFMD, many private equity funds were already subject to specific disclosure and reporting requirements as set out in the TBD and/or TPD. See Recital 53 AIFMD: “Where AIFMs manage AIFs which exercise control over an issuer whose shares are admitted to trading on a regulated market, information should generally be disclosed in accordance with” the TBD and TPD.

³⁹² Europe Economics (December 2017). *Evaluation of the Alternative Investment Fund Managers Directive*, sec. 5.8.

Apart from that, additional value of the AIFMD private equity rules could not be identified. In fact, there are questions about the efficiency, coherence and relevance of the rules, given the administrative cost for (often) smaller AIFMs, uncertainty about the use NCAs can make of the information on a regular basis, and that the various levels of holdings at which reports must be made are more extensive than in other EU measures.

Further, the AIFMD private equity rules now need to be considered in the context of CMU. The first **objective of CMU is to promote “financing for innovation, start-ups and non-listed companies”**.³⁹³ It could be argued that some of the administrative costs of the AIFMD rules do not align with this objective.

c) Summary

Effectiveness: The evidence above shows that the AIFMD private equity rules have been effective in helping to develop and foster a harmonised EU market for AIF investments in non-listed enterprises. It is questioned, though, whether the volume of additional disclosures to NCAs, investee companies and investors is necessary, useful or effective.

Efficiency: The AIFMD private equity rules are assessed as proportionate in that national provisions or industry guidance alone would not have fostered an EU Single Market for such AIFs, but there is a question whether the rules are efficient in a broader sense. A quantitative assessment of the costs of compliance with, or the impacts of, the AIFMD private equity rules was not possible on the basis of the available evidence, but other evidence points to an excessive administrative burden, especially regarding the extent and frequency of disclosures that must be made to NCAs.

Coherence: The provisions are internally coherent and are generally externally coherent vis-à-vis other EU measures with similar objectives, such as SII and the Prospectus Directive. However, Article 30 AIFMD provides for disclosure at additional levels of holdings of targets and investee companies, and for more types of portfolio holdings, than the Second Company Law Directive.

Relevance: In general, the transparency provisions of the AIFMD private equity rules remain relevant and there is not at present any evidence that the co-legislators would wish to remove the asset stripping rules, but the relevance of certain detailed aspects of the rules is questioned.

EU added value: The AIFMD private equity rules have helped to develop and foster an internal market for private equity and venture capital funds, and enable investors to compare AIFs cross borders. However, there are questions about the efficiency, coherence and relevance of the rules. Furthermore, the rules now need to be considered in the context of the first objective of CMU – **“financing for innovation, start-ups and non-listed companies”**.

4.5. Specific objective: Develop the Single Market in AIFs

This sub-section considers the AIFMD rules on the cross-border managing or marketing of AIFs, with or without a passport, where the AIFs or AIFMs are EU or non-EU. The rules are assessed against the five key principles and against one operational

³⁹³ See https://ec.europa.eu/info/business-economy-euro/growth-and-investment/capital-markets-union_en.

objective: to remove barriers to the efficient cross-border distribution of AIFs to professional investors without compromising the effectiveness of regulation and supervision.

4.5.1. Background

AIFMD established, *inter alia*, a passport regime for marketing and managing EU AIFs in the EU, as well as allowing for NPPRs to continue for non-EU AIFs and non-EU AIFMs. Article 32 AIFMD establishes the marketing passport, Article 33 establishes the management passport, and Articles 36 and 42 cover NPPRs.

The term NPPR is not clearly defined or used. In Germany, for instance, the legislator opted for notification procedures that, strictly speaking, can be considered outside the scope of an NPPR.³⁹⁴ As the lowest common denominator, one could consider an NPPR to permit the distribution of certain products and services without the explicit approval of or notification to the NCA.³⁹⁵ On the international stage, such regimes are commonly referred to as NPPRs. However, it could be argued that AIFMD has abolished the possibility of Member States establishing NPPRs in the true sense. Against this backdrop, in this report, the term NPPR is used to refer to all national marketing regimes without a passport, based on Articles 36 and 42 AIFMD.

In accordance with Article 66(4) AIFMD, NPPRs will remain in place only until the EC adopts a delegated act pursuant to Article 68(6) AIFMD, which activates the passports for non-EU AIFs and non-EU AIFMs.

Table 15: Cross-border distribution and passporting provisions

AIFMD	Activity	AIFM	AIF	Measure	Sub-section
Art. 32	Marketing into another MS	EU	EU	Marketing passport	4.5.3
Art. 33	Managing in another MS	EU	EU	Management passport	4.5.2
Art. 34	Managing in a third country	EU	Non-EU, not marketed in EU	--	4.5.4
Art. 36	Marketing in allowing MS	EU	Non-EU	NPPR	4.5.4
Art. 42	Marketing in allowing MS	Non-EU	Non-EU	NPPR	4.5.4

Source: KPMG (2018).

Table 15 provides a navigational aid to the rules and in which sub-sections of this report the rules are considered.

The EC has wider initiatives underway that might impact or be relevant to the EU AIF market, including the Single Market Strategy and the Digital Single Market.³⁹⁶ The Single Market Strategy comprises targeted actions in three key areas: creating

³⁹⁴ Sec. 329 and 330 KAGB

³⁹⁵ Rf. Weitnauer/Boxberger/Anders, KAGB (2nd edn), sec. 329 recital 3.

³⁹⁶ See https://ec.europa.eu/commission/priorities/digital-single-market_en

opportunities for consumers, professionals and businesses, encouraging modernisation and innovation, and ensuring practical delivery that benefits consumers and businesses in their daily lives.³⁹⁷

In particular, the EC has already identified the need for legislative action regarding the marketing and cross-border distribution of AIFs. The specifics of the EC Cross-Border Distribution Proposal are outside the scope of this report, but the impact assessment accompanying the proposals is an important source of information and is referred to below.

The EC has analysed the problems of cross-border distribution of investment funds (UCITS, AIFs, EuSEFs and EuVEECAs) within the EU and proposed legislation that aims at reducing the regulatory barriers by addressing unnecessary complexity and legal uncertainty associated with cross-border distribution. The proposed Regulation and Directive mostly seek to reduce the cost of cross-border marketing, recognising that there are other factors outside the scope of the proposals that hold back the cross-border distribution of investment funds in the EU. The proposals seek to lead to greater attractiveness of marketing into other Member States and to boost competition within the EU.

The impact assessment to the legislative proposals evidences problems with the cross-border marketing of investment funds. Possible regulatory options are proposed to counteract these marketing and distribution obstacles. In particular, the proposed Directive intends to contain the variation in the costs and requirements in the different Member States and to improve transparency in this matter. Therefore, it is proposed that ESMA should maintain a central database on national provisions concerning marketing requirements.

4.5.2. Managing EU AIFs and/or non-EU AIFs by EU AIFMs with the passport

The general survey and interview results provided information and views on these rules (see 4.1.2, 4.5 and 4.7 of Section 1). In addition, information was obtained from desk research conducted by the central team on the implementation and impact of these rules, and we sought specific information from the 15 Member States (see Annex 6).

a) Description of the rules

The management passport allows an AIFM, which has been authorised in a Member State, to carry out its business in other EU Member States, either under the freedom to provide services or by establishing a branch.

Article 33 AIFMD provides the management passport for EU AIFs managed by EU AIFMs. The management may be carried out directly by the AIFM (through cross-border services) or through a branch in another Member State. If the AIFM wishes to manage a certain AIF for the first time, it has to provide the NCA of its home Member State with information regarding the targeted Member States and a relevant business plan.

The NCA of the home Member State of the AIFM shall, within one month of receiving the complete documentation or within two months when a branch shall be established, transmit the complete documentation to the NCA of the host Member State. **Such transmission shall occur only if the AIFM's management of the AIF complies, and will**

³⁹⁷ EC, *Action on Cross-Border Distribution of Funds across the EU*, p. 5.

continue to comply, with all requirements of AIFMD. The NCA of the home Member State of the AIFM shall enclose in its submission to the host NCA a statement to the effect that the AIFM concerned is authorised. Also, it shall immediately notify the AIFM about the transmission.

Upon receipt of the transmission notification the AIFM may start to provide its services in the host Member State. The NCA of the host Member State shall not impose any additional requirements on the AIFM concerned in respect of the matters covered by AIFMD.

b) Assessment against the five key principles

i) Effectiveness

In general, the provisions on cross-border distribution provide for the Single Market in EU AIFs, in which the proper functioning of cross-border managing and marketing is guaranteed. Besides the possibility of cross-border activities, the rules also aim to guarantee a high level of control and transparency to limit macro- and micro-prudential risks and to provide an appropriate level of investor protection. The general purpose of Article 33 AIFMD is to enable authorised EU AIFMs to manage EU AIFs in all other Member States, without inappropriate or unnecessary barriers.

As a general point of reference, the ESMA Notification Study provides some statistics on the use of the management passport as at 30 June 2016. For most Member States, the percentage of management companies³⁹⁸ with the management passport was approximately 10% (+/- 300 basis points), or even less, of the overall number of domestic management companies. However, France and the UK had higher percentages, of around 19%. The rate of use of the management passport in a number of Member States was not significantly lower than that of UCITS ManCos, but was substantially higher in some Member States. Ireland and Malta stand out, but Denmark and the UK come out on top with 10 times the number of passporting AIFMs as opposed to passporting UCITS ManCos (Denmark 10/0, UK 160/16).

To retrieve specific and more recent data (or trend statistics) on the use of the management passport among the Member States surveyed proved a difficult task and little statistical evidence could be gained through desk research.³⁹⁹ However, for some Member States, numbers and tendencies were retrieved.

As of 3 August 2018, the CBI reports that 695 non-Irish AIFMs operated in Ireland on a branch or cross-border basis.⁴⁰⁰ Of these, 442 are EU AIFMs – five operated via a branch under the freedom of establishment and 437 operated under the freedom to provide services – and 253 were non-EU AIFMs. Considering that there were only 164 Irish AIFMs on that date (70 registered and 94 authorised),⁴⁰¹ the statistics clearly indicate that Ireland is an attractive AIF domicile for non-Irish AIFMs.

Considerably lower in absolute numbers, although no less elucidating, are data from MFSA. In Malta, as of 28 August 2018, 88 EU-AIFMs operated under the management

³⁹⁸ The combined total number does not differentiate between UCITS ManCos and AIFMs.

³⁹⁹ For instance, in Spain, as of 28 August 2018, the number of EEA management companies operating under the freedom to provide services is 82, as opposed to 17 EEA managers that operate under the freedom of establishment, data retrieved from Spanish NCA as of 28 August 2018, <http://www.cnmv.es/portal/Consultas/listadoentidad.aspx?id=2&tipo=3>. It is, however, not clear from the information available whether this concerns UCITS ManCos as well as AIFMs.

⁴⁰⁰ CBI, Register of AIFMs operating in Ireland on a Branch or Cross-Border Basis as at 03 Aug 2018, retrieved on 28 August 2018 from <http://registers.centralbank.ie/DownloadsPage.aspx>.

⁴⁰¹ CBI, Register of Authorised and Registered AIFMs as at 03 Aug 2018, retrieved on 31 August 2018 from <http://registers.centralbank.ie/DownloadsPage.aspx>.

passport, under either the freedom to provide services or the freedom of establishment.⁴⁰² Outbound, there were 20 AIFMs, including one branch, operating with the management passport in the EU. The number of EU AIFMs newly notifying activities in Malta based on the management passport were 19 in 2017, six in 2016, 19 in 2015 and 36 in 2014.⁴⁰³ Outbound Maltese AIFMs newly notifying activities under the management passport into other Member States were five in 2017, nine in 2016, four in 2015 and two in 2014.

Data gathered from Austria showed that, in 2017, four Austrian AIFMs used the management passport to conduct business in other Member States, one of these operated via a branch under the freedom of establishment, the other three under the freedom to provide services.⁴⁰⁴ Moreover, the numbers of EU AIFMs operating in Austria with the management passport have increased approximately 20% a year over the last four years. They numbered 68 in 2015, 85 in 2016, 104 in 2017 (two having established a branch) and 122 as at 27 August 2018, with three EU AIFMs operating through a branch.⁴⁰⁵

In France in 2014,⁴⁰⁶ 51 UK AIFMs operated under the management passport regime, one of those having established a branch. Three Luxembourgish AIFMs, one Maltese and one German AIFM used the passport under the freedom to provide services; another German AIFM operated through a branch. Outbound, 101 French AIFMs operated in other Member States, five through branches (three in the UK, one in Germany and one in Latvia) and 96 through the cross-border provision of services. Almost one-third of the latter operated in Luxembourg (31 AIFMs), eight in each of the UK and Ireland, six in Germany, five in Belgium and the remaining 20 in other Member States.

Data provided for the inbound use of the management passport by the MNB stated that as of September 2018 there are a total of 54 EU AIFMs operating in Hungary. This started in 2016 with 39 AIFMs, a further eleven AIFMs in 2017, and a further four in 2018.

This statistical evidence is supported by findings from the general survey (see 4.5 in Section 1).

More than one-quarter of respondent AIFMs indicated that their ability or commercial desire to manage AIFs in jurisdictions other than their own has increased. One-third of respondent AIFMs (already) managed AIFs domiciled in jurisdictions other than their own jurisdiction, with even higher rates in the UK and France. Almost half the respondents indicated no change in ambitions for cross-border management activities and smaller AIFMs even indicated a decreased desire (perhaps due to their capacities, limited resources and higher degree of specialisation). It seems, therefore, that for larger/better resourced AIFMs the management passport (Article 33 AIFMD) has to some extent achieved the objective of removing barriers to the efficient cross-border distribution of AIFs and develop the Single Market in AIFs.

Moreover, this is reflected in the subjective views of respondent AIFMs, NCAs and institutional investors. A small majority agreed that AIFMD had increased access to national markets, but 34% said that the time to market had increased and 35% noted increased complexity of registration or authorisation procedures.

⁴⁰² Data retrieved from MFSA web pages as of 28 August 2018, <https://www.mfsa.com.mt/pages/licenceholders.aspx>.

⁴⁰³ All data taken from MFSA Annual Reports 2014 to 2017.

⁴⁰⁴ FMA, Annual Report 2017, p. 70.

⁴⁰⁵ FMA, data retrieved from web page <https://www.fma.gv.at/wp-content/uploads/dynamic-downloads/EWRNiederAIFM.pdf> as of 27 August 2018.

⁴⁰⁶ AMF, Annual Report 2014, p. 49.

Other factors would seem to hinder further achievement of the objectives. A key concern seems to be taxation, which is primarily affecting marketing activities. Also, the taxation of cross-border management services (Value Added Tax) and taxes linked to establishment play a significant part in AIFMs' decision-making.⁴⁰⁷ This is acknowledged in the EC Cross-Border Impact Assessment as one of the important out-of-scope barriers to cross-border distribution of AIFs. More importantly, the impact assessment also acknowledges in-scope problem drivers, i.e. requirements stemming directly from AIF/AIFM regulation and relating to marketing, regulatory fees, administration and notification.

In conclusion, the AIF market pre-AIFMD was strongly rooted in domestic management, but AIFMD has resulted in quick growth in cross-border AIF management. The management passport pursuant to Article 33 AIFMD is therefore assessed as supporting achievement of the specific and operational objectives and is effective.

ii) Efficiency

Respondent AIFMs had different views on whether an AIFM authorisation has an adequate cost-benefit ratio (see 4.7 in Section 1). The same picture emerged in the ESMA Notification Study. Of the NCAs in the 15 Member States considered specifically in this report, only six stated that ten or more AIFMs made use of the AIF management passport in their jurisdiction, with regard to either the management of EU AIFs or the provision of MiFID services, and AIFMs in the other nine Member States did not carry out any cross-border management (including MiFID services) of AIFs at all.

Points relating to increased time to market and increased complexity are noted above, together with factors external to AIFMD such as taxation. These impact the efficiency of the AIFMD passporting provisions. Specific costs concerning the management passport, however, proved not possible to establish via this study.

A bottom line cost estimate may be derived from the cost assumption in the EC Cross-Border Impact Assessment. The EC estimates total current costs for the industry per AIF and per jurisdiction of approximately EUR 11,000 in the first year when entering a jurisdiction (initial costs) and approximately EUR 8,000 annually during the marketing phase (ongoing costs). These numbers are based on all funds marketed cross-border and on the assumption that AIFMs will use in-house legal advice and undertake fund administration themselves. Should there be outsourcing of legal and administration services (both of which are common throughout the industry), costs are considered to be around EUR 15,000 (initial) and EUR 14,000 (ongoing). Overall costs for the industry are estimated to range from EUR 680 mn to EUR 900 mn (initial) and EUR 500 mn to EUR 860 mn (ongoing). NCA costs are thought to amount to EUR 750,000 one-off costs and ongoing costs of EUR 4.5 mn plus two FTEs.

These estimates relate to the marketing passport, but might be considered as providing minimum ball park figures for the management passport, too.

The EC notes (albeit with regard to marketing and not managing AIFs) **that** *"the number of cross-border funds increased over the last 5 years on average per 6.8% p.a. and growth should further accelerate"*. This indicates that the costs of applying or and operating the passports have not overly hindered cross-border distribution of AIFs

⁴⁰⁷ Rf. for a German perspective: Dornseifer, in Dornseifer/Jesch/Klebeck/Tollmann, AIFM-RL, Art. 33, margin no. 29, concerning potential taxability of establishment, when material contracts are concluded in Germany. Cf. also for Cyprus: KPMG Cyprus, *Alternative Investment Fund Managers (AIFMs)*, 2014, p. 21.

and that the AIFMD provisions and Member States procedures are bearable for AIFMs and investors, even though the efficiency of AIFMD in this regard could be improved.

Finally, since the legitimate purpose of removing barriers and developing the Single Market in AIFs can only be achieved on a European level, it would seem reasonable to assert that the AIFMD **passporting provisions are “proportionate”**. Individual regulation on Member State level would be unlikely to be as effective in achieving the Single Market and would not create a level playing field in cross-border AIF management.

However, there are clear concerns about the efficiency of the passports more broadly. These have already been well-articulated in the EC Cross-Border Impact Assessment.

iii) Coherence

The AIFMD management passport provisions are assessed as *internally* coherent. No evidence was identified to the contrary during the study.

The provisions are also assessed as *externally* coherent with other EU actions having similar objectives. Passporting is a common tool of EU legislation to enhance the Single Market. In particular, the AIFMD and UCITS management passports operate in broadly similar ways.

Furthermore, CMU aims to create an integrated capital market to strengthen the EU economy and to stimulate investments to create jobs. The AIFMD management passport is part of that plan.⁴⁰⁸ The EC Cross-Border Distribution Proposal aims to address barriers to cross-border distribution of both AIFs and UCITS, and in similar **ways, which will maintain (and perhaps increase) the AIFMD passport’s coherence with the UCITS ManCo passport.**

iv) Relevance

The objectives of the passport regime still remain relevant, since cross-border activities, by their very nature, are one of the main measures to achieve the objective of a Single Market in the EU. Allowing AIFMs to act in several Member States is an essential effort for the further integration of EU capital markets, as per CMU. The need to reform and upgrade the rules and NCA processes to accomplish this goal has already been recognised in the EC Cross-Border Distribution Proposal.

v) EU added value

The AIFMD provisions on cross-border management add significant value in that they are a step to the creation and further development of the Single Market in AIFs (i.e. causality). Also, from a general perspective, they advance the notion of the universal application of the freedom to provide services and the freedom of establishment to AIFMs as an integral part of the EU asset management industry with particular relevance to EU professional investors. Such investors, which include insurance undertakings and pension funds, are in turn a vital component in a socio-economic context, at both the national and EU levels.

Cross-border activities and the fundamental freedoms of establishment and provision of services are at the heart of the EU. The provisions of Article 33 AIFMD would seem essential to nurture the universal approach of those fundamental concepts. Despite

⁴⁰⁸ Cf. *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions ‘Action Plan on Building a Capital Markets Union’ (‘CMU Action Plan’)*, COM(2015) 468 final, p.5.

some hindrance at national level, especially when it comes to taxation or other non-harmonised areas of law, the rules on the management passport fare well against the five principles assessed and achieve the objectives of removing barriers and developing the Single Market in AIFs. Certain efficiency questions are already being discussed and addressed in the development of the EC Cross-Border Distribution Proposal.

c) Summary

Effectiveness: The evidence shows an increasing trend for AIFMs to provide cross-border management services and that the Article 33 AIFMD provisions have made access to other Member State markets easier while ensuring effective supervision. The provisions have helped to achieve the specific and operational objectives.

Efficiency: The Article 33 provisions are assessed as proportionate, and costs seem generally bearable for managers and investors alike. However, there are clear concerns about the efficiency of the passports more broadly, which are well-articulated in the EC Cross-Border Impact Assessment (see sub-section 2424.5.3 below).

Coherence: The rules on managing EU AIFs and/or non-EU AIFs by EU AIFMs with the passport are coherent in relation to other AIFMD provisions as well as in relation to other EU legislation, in particular UCITSD.

Relevance: Cross-border activities being at the heart of the internal market, the promotion of such activities and the removal of obstacles to cross-border management remain relevant and are still in the focus of political and regulatory debate.

EU added value: Not only do the rules on managing EU AIFs and/or non-EU AIFs by EU AIFMs with the passport enable and further the Single Market in AIFs (i.e causality), they provide for the universal application of the freedom to provide services and the freedom of establishment to AIFMs. In doing so, they help achieve the AIFMD objectives and provide socio-economic benefits.

4.5.3. Cross-border marketing EU AIFs by EU AIFMs with the passport

The general survey and interview results provided information and views on these rules (see 4.1.2, 4.5 and 4.7 of Section 1). In addition, information was obtained from desk research conducted by the central team on the implementation and impact of these rules, and we sought specific information from the 15 Member States (see Annex 6).

a) Description of the rules

In addition to the management passport provisions of Article 33 AIFMD, Article 32 provides for the marketing passport. The marketing passport allows for an EU AIFM, authorised in a Member State, to market units or shares of AIFs it manages into other EU Member States, either under the freedom to provide services or by establishing a branch.

Article 32 AIFMD stipulates the relevant passporting rules on cross-border marketing of EU AIFs by their EU AIFMs. The obligation of Article 31(1) AIFMD for distribution in the home Member State is extended through Article 32(1) AIFMD to other Member States.

Article 32(1) AIFMD provides that an EU AIFM, authorised in a Member State, shall be allowed to market units or shares of an EU AIF it manages to professional investors in another EU Member State than the home Member State.

Article 32(2) AIFMD requires the AIFM to notify the NCA of its home Member State in respect of each AIF it intends to market into other Member States. Pursuant to Article 32(3), the NCA of the AIFM home Member State must, provided the AIFM is in compliance with AIFMD, send the complete notification documents within 20 working days to the NCA of the Member States in which the AIFM intends to market the AIFs. This must be accompanied by a certificate of authorisation of the home Member State and the AIFM must be notified of the transmission. Pursuant to Article 32(4), from the time of this notification, the AIFM can begin to market units or shares of the relevant AIF in the other Member State(s).

Article 32(5) AIFMD stipulates that the rules of the respective host Member State shall **apply regarding the** *"information about arrangements made for the marketing of AIFs and, where relevant, information on the arrangements established to prevent units or shares of the AIF from being marketed to retail investors, including in the case where the AIFM relies on activities of independent entities to provide investment services in respect of the AIF"*.⁴⁰⁹

b) *Assessment against the five key principles*

i) *Effectiveness*

Very little public data was available across the 15 Member States regarding the number of EU AIFs being marketed with the AIFMD marketing passport into other Member States. There is, however, data as at 30 June 2016 in the ESMA Notification Study, as well as some evidence from a small number of Member States. From the ESMA data only a general picture can be gained.

Unlike the management passport, which saw AIFM cross-border management activities quickly reaching or even exceeding UCITS cross-border management activities, the AIFMD marketing passport seems to have drawn less attention so far and lags behind activity under the UCITS product passport.⁴¹⁰ This might be explained by a number of factors: the heterogeneous character of AIFs as opposed to the standardised UCITS product; a different pedigree of industry participants (a number of AIFMs were not regulated before implementation of AIFMD or had no experience of use of a passport); the relatively short implementation period of AIFMD; the late transposition of AIFMD in a number of Member States; and the limitation of marketing activities under the passport to professional investors only.⁴¹¹

Nevertheless, some Member States, in particular Austria, France, Germany, Ireland, Luxembourg, the Netherlands and the UK, show significant cross-border marketing

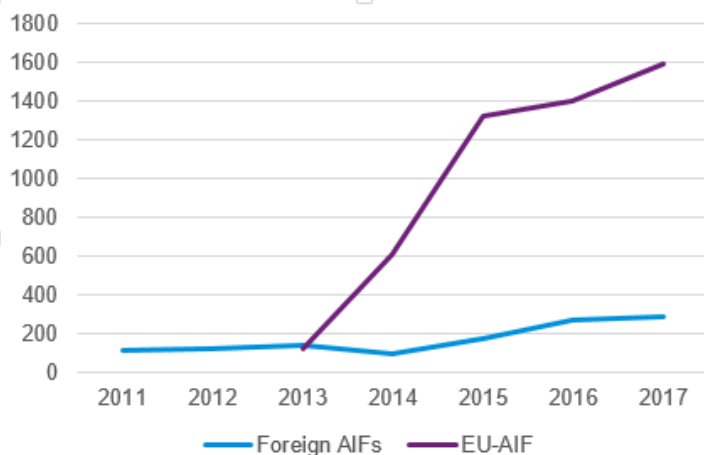
⁴⁰⁹ Cf. also, for instance, BaFin, *Guidance Notice (2013) for marketing units or shares of EU AIFs or domestic special AIFs (Spezial-AIF) managed by an EU AIF management company to semi-professional and professional investors in the Federal Republic of Germany pursuant to section 323 of the Investment Code (Kapitalanlagegesetzbuch – KAGB)*, last updated 14.03.2017, p. 2. Concerning outbound AIF notification cf. *Guidance Notice (2013) on the marketing of units or shares of EU AIFs or domestic AIFs managed by an AIF management company to professional investors in other Member States of the European Union or in signatories to the Agreement on the European Economic Area pursuant to section 331 of the Investment Code (Kapitalanlagegesetzbuch – KAGB)*, last updated 27.05.2013.

⁴¹⁰ EC Cross-Border Impact Assessment (2015). P. 12 et seq; KPMG Report "AIFMD – How to access Europe? KPMG Luxembourg, p. 3.

⁴¹¹ ESMA Notification Study, p. 21.

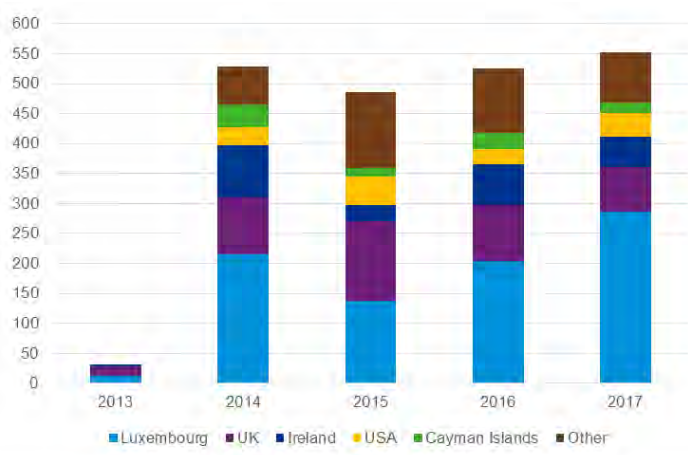
activities.⁴¹² Data from the annual reports of FMA⁴¹³ and BaFin⁴¹⁴ evidence that since implementation of AIFMD there have been substantial and steady increases in the numbers of EU AIFs and non-EU AIFs marketed in Austria and Germany, respectively.

Figure 64: Germany – number of foreign and EU AIFs



Source: BaFin, Annual Reports 2011 – 2017.

Figure 65: Germany – newly-marketed foreign and EU AIFs



Source: BaFin, Annual Reports 2013 – 2017.

Starting with about 120 foreign non-UCITS funds being marketed in the years 2010 to 2012, BaFin reports an increase in EU AIFs marketed into Germany from 2013 onwards: 134 in 2013, 609 in 2014, 1,324 in 2015, 1,402 in 2016 and 1,591 in 2017 (see Figure 64). From 2014 onwards, in each year there have been around 500 new

⁴¹² Cf. CSSF Annual Report (2016), p. 85 et seq.; ESMA Notification Study, p. 35, cf. also *ibid.* p. 21.; for France see the AMF Position Guide to UCITS and AIF marketing regimes in France (2014) and the AMF Position Panorama du marché français de gestion pour compte de tiers (2017)

⁴¹³ FMA, Annual report 2017, p. 68.

⁴¹⁴ All data taken from BaFin, Annual Reports 2010 et seq., retrievable from https://www.bafin.de/DE/PublikationenDaten/Jahresbericht/jahresbericht_node.html.

foreign AIFs (i.e. both EU and non-EU AIFs) entering the German market (see Figure 65).⁴¹⁵

The number of EU AIFs marketed in Austria has increased steadily from 448 in 2015, to 598 in 2016 and 743 in 2017. Although considered by some commentators to be **rather heavily "gold-plated"**,⁴¹⁶ the figures indicate that there has been growing interest from AIFMs to market into Austria.

Based on these numbers, from 2015 to 2017, the increase in EU AIFs marketed in Austria was 65% and in Germany still 20%, indicating a successful market for cross-border distribution.

This picture is also reflected in the figures from Malta,⁴¹⁷ albeit not to the same extent with regard to absolute numbers. As of 28 August 2018, 20 Maltese AIFs were marketed into other EU Member States under the marketing passport, nine of those 20 being newly notified during 2017. The numbers of new notifications under the marketing passport for the three previous years were 10 in 2016, 12 in 2015 and one in 2014. As regards inbound marketing activities, 15 AIFMs notified 26 AIFs in 2014, nine AIFMs notified 14 AIFs in 2015 and eight AIFMs notified 10 AIFs in 2016.⁴¹⁸ In 2017 a further 25 AIFMs submitted new notifications under the marketing passport, leading to a total of 49 EU AIFs marketed into Malta as at 28 August 2018.⁴¹⁹

Concerning French AIFs, only limited data have been obtained, indicating that 370 French AIFs were marketed outside France.⁴²⁰

For Hungary, the MNB provided information on the numbers of EU AIFs notified by EU AIFMs as being marketed into Hungary with the marketing passport. They evidence increased use of the passport but a sharp fall-back in the last two years: one EU AIF in 2013, 25 in 2014, 33 in 2015, 50 in 2016, 17 in 2017 and seven as of July 2018. The fall-back is thought to be due, at least in part, to anticipation of the MiFID II requirements for **"complex" products** and the approach by ESMA that all AIFs are **"complex"** (in Hungary, most AIFs are aimed at the retail market, so MiFID II has led to increased obligations for distributors.) However, the marketing of Hungarian AIFs does not indicate a similar decline (see sub-section 4.6.1 below).

According to ESMA,⁴²¹ only about 3% of AIFs are marketed in more than three Member States. The figures from the general survey paint a different picture (see 4.5 in Section 1), but this will largely be due to the higher proportion of responses from the larger AIFMs. Around two-thirds of AIFM survey respondents marketed their AIFs to countries other than their home Member State, half of which were non-EU/EEA countries. About one in three AIFs was distributed only within its home Member State.

The effects of AIFMD from an effectiveness point of view also become clear when viewed against the backdrop of investor types. About 40% of the respondent AIFMs marketed their EU/EEA AIFs to EU retail or semi-professional investors. For 38% of these AIFMs, this included cross-border marketing to EU retail or semi-professional investors domiciled in other EU Member States/EEA countries, whereas the majority of

⁴¹⁵ Cf. 4.5.4 b) below for BaFin numbers of non-EU AIFs.

⁴¹⁶ Wolf Theiss Law Firm (2015), *Implementation of the Directive 2011/61/EU on AIFMD in selected CEE/SEE countries*, p. 3, <https://www.wolftheiss.com/knowledge/wolf-theiss-guides/detail/implementation-of-the-directive-201161eu-on-alternative-investment-fund-managers-aifmd-in-sele/>.

⁴¹⁷ Retrieved from MFSA web pages as of 28 August 2018, <https://www.mfsa.com.mt/pages/licenceholders.aspx>.

⁴¹⁸ All data taken from MFSA Annual Reports 2014 to 2016.

⁴¹⁹ Retrieved from MFSA web pages as of 28 August 2018, *ibid*.

⁴²⁰ AMF, *Annual Report 2015*, p. 60.

⁴²¹ EC Cross-Border Distribution Proposal, p. 2.

62% of these AIFMs concentrated their marketing activities only within the Member State of their domicile.

As far as the marketing of non-EU/EEA AIFs (assessed in more detail in sub-section 4.5.4 below) is concerned, 52% of respondent AIFMs did not manage non-EU/EEA AIFs. Of those that did, about 43% marketed non-EU/EEA AIFs into the EU. However, respondents indicated that, as a result of national implementations of AIFMD, the restrictions on the type of AIFs that may be marketed across the EU have increased (see Figure 46).

Survey respondents' comments on increased restrictions are mirrored in the EC's findings.⁴²² The EC also notes that some Member States require *ex-ante* approval of marketing communications whereas other Member States monitor communications *ex-post*; some Member States adopt a principles-based approach whereas others apply detailed rules.⁴²³

Interviewees identified two main concerns (see 4.1.2 in Section 1). First, there is a large divergence of marketing requirements between EU Member States due to the inconsistent application of the AIFMD marketing rules across the EU. Second, there is uncertainty over the application of the definition of marketing and pre-marketing under AIFMD. This concern is linked to the problem of the divergence of marketing requirements, as different Member States have adopted different approaches in **relation to what activities constitute "marketing", which leads to higher costs of marketing in Member States with more restrictive rules.**

For example, the pre-marketing phase is treated more strictly by BaFin than by NCAs in other Member States, commented one industry representative.

"Marketing" is defined in Article 4(1)(x) AIFMD and any differing requirements of respective Member States would seem to be based on differing interpretations of which activities constitute marketing and which are regarded as mere pre-marketing activities.

Around the EU, **"gold-plating" can be observed, which undermines the efforts of creating a Single Market through the passport system.** The application of different rules in the Member States results in a diverse and quite complex environment, which in turn means that the Single Market for AIFs is still partially fragmented. This was the main concern about the passport process, expressed by 59% of respondents.

EFAMA⁴²⁴ argues that unjustified national barriers to cross-border investment, such as insolvency, tax and securities law, should also be dismantled, to deepen financial integration and to enhance the flow of capital from institutional investors to European investment projects, improving allocation of risk and capital across the EU and, **ultimately, making households' savings more resilient to future shocks. To achieve these objectives, EFAMA suggests that an important part of the EC's work should focus on the elimination of potentially discriminatory tax obstacles to cross-border investment and the adoption of more efficient withholding tax procedures.**

As noted in sub-section 4.5.2, the area of taxation is acknowledged in the EC Cross-Border Impact Assessment as one of the important out-of-scope barriers to cross-border distribution of AIFs. More importantly, it also acknowledges in-scope problem drivers, i.e. requirements stemming directly from AIF/AIFM regulation and relating to marketing, regulatory fees, administration and notification.

⁴²² EC, *Action on Cross-Border Distribution of Funds across the EU*, p. 10.

⁴²³ EC *Cross-Border Distribution Proposal*, 12 March 2018, p. 5.

⁴²⁴ Cf. EFAMA *Response to the Commission Consultation Document on CMU action on cross-border distribution of Funds (UCITS, AIF, ELTIF, EUVECA and EUSEF)*, p.1-3.

In conclusion, the AIFMD marketing passport has led to increased access to national markets and, in principle, a uniform standard. This could not have been achieved by national measures alone. However, it would seem that the overall increase in the distribution of AIFs by AIFMs has been mainly directed at semi-professional and retail investors within the Member State of domiciliation. The exception to the home Member State supervision of Article 32(5) AIFMD has led to diverging requirements at (host) Member State level, which have impacted the effectiveness of the marketing passport.

Such divergence creates complexity and requires AIFMs to be well-informed about the marketing requirements of different Member States (e.g. regulatory fees and administrative and notification requirements), which may be difficult to achieve, especially for smaller players. Other factors not directly linked to AIFMD or the passport requirements, like national tax regimes for AIFs or AIF investors, vertical distribution channels and cultural preferences for domestic investment products, also hinder cross-border activities.⁴²⁵

Therefore, the goal of creating a Single Market in AIFs, in which cross-border marketing and investment can flow unimpeded, has been only partly achieved, and has already elicited action by the EC via the EC Cross-Border Distribution Proposal.

ii) Efficiency

The development of the Single Market in AIFs could not have been achieved by national measures alone. The evidence clearly indicates that the marketing passport has been successful. Therefore, the AIFMD provisions are assessed as proportionate. There are, however, some wider efficiency questions.

The concise cost estimate in the EC Cross-Border Impact Assessment concerning cross-border distribution indicates the level of impact. The number of cross-border funds has increased over the last five years by on average 6.8% p.a. This indicates that costs are bearable and have not fully hindered cross-border marketing of AIFs that the AIFMD marketing passport has enabled.

Although the majority of respondent AIFMs were positive about the impact of AIFMD with respect to marketing their AIFs in other EU/EEA countries (see Figure 49) and the costs associated with cross-border activities under the AIFMD passports do not seem to be so prohibitive as to have prevented opportunities in cross-border business and investment, the discussion in sub-section *i) Effectiveness* above evidences that the AIFMD marketing passport is not yet fully efficient. This has been recognised by the EC and proposals to tackle the remaining barriers to cross-border distribution of AIFs are included in the EC Cross-Border Distribution Proposal.

There was a unanimous view among survey respondents and interviewees that the AIFMD provisions should be applied consistently across all Member States in order to prevent rule arbitrage and to ensure a harmonised common level playing field (see 4.1.2 of Section 1). Further, a lack of transparency with regard to the differing national rules and NCA processes was seen as a major obstacle for rolling out uniform marketing activities across the EU. This lack of transparency directly translates into additional expenditures on time and other resources. As one industry representative **commented**: *"The different interpretations and national requirements around the EU mean that the benefit of the passport is diminished, by way of additional costs to the industry and, ultimately, at the expense of the investors"*.

⁴²⁵ EC Cross-Border Distribution Proposal, 12 March 2018, p. 2.

iii) Coherence

The AIFMD marketing passport provisions are assessed as *internally* coherent. No evidence was identified to the contrary during the study.

As regards *external* coherence, the close cousins to the AIFMD marketing passport are the UCITS, ELTIF, EuVECA and EuSEF product passports. In a number of ways the AIFMD marketing passport acts similarly to these product passports. However, AIFMD comprises only regulation of the manager whereas the four product passports are based on regimes that include product regulation, the most extensive of which being in UCITSD. Nevertheless, broadly speaking, AIFMD is coherent with these regimes.

The AIFMD marketing passport (or, rather, the objective of developing the Single Market in AIFs) is not, though, coherent with other measures, some EU and some national. EFAMA,⁴²⁶ for example, called for the calibration of regulatory capital charges and the quantitative and qualitative limits constraining the investment of institutional investors, particularly insurers and pension funds, to be revisited to eliminate unjustified restrictions and to allow these investors to scale up their investments in less-liquid assets. In this regard, ESMA cites the ELTIF as an investment vehicle to meet the growing interest of institutional and private investors in longer-term investment opportunities with stable returns and broad risk diversification, but it is crucial that the right incentives are in place, in particular the tax treatment of ELTIFs at national level.

iv) Relevance

As noted in 4.5.1, the AIFMD marketing passport regime remains a vital element of CMU and cross-border activities lie at the core of the Single Market. Moreover, against the background of the current low interest rates, there are valid socio-economic arguments to promoting investment products whose providers (i.e. the AIFMs) are well-regulated. This is relevant not only for professional investors, but also to encourage household savings and investment via the capital markets.

v) EU added value

The evidence above clearly shows that the AIFMD marketing passport has made a strong start. It has removed a number of previous national barriers and has directly led to the development of the Single Market in AIFs. It has therefore directly led to the achievement of the general, specific and operational objectives (i.e. causality). However, there is some room for improvement, especially as regards efficiency.

This conclusion confirms the results of the EC's **targeted survey of 60** funds as part of the EC Cross-Border Impact Assessment. The overwhelming perception among respondents, ranging between 77% and 100%, was that EU harmonisation in areas of national marketing rules such as regulatory fees, notification processes and local agent requirements would be the best way to increase the cross-border distribution of funds.

⁴²⁶ EFAMA, *Asset Management in Europe May 2017*, p. 17.

c) Summary

Effectiveness: The AIFMD marketing passport is assessed as having helped to achieve the specific and operational objectives. It has not been as effective as the management passport, though.

Efficiency: The AIFMD marketing passport provisions are assessed as proportionate. Also, the costs involved in the cross-border distribution of AIFs have not hindered use of the passport. There is, however, clear room for improvement in the efficiency of the passport in a wider sense. This has been recognised in the EC Cross-Border Distribution Proposal.

Coherence: The rules on the cross-border marketing of EU AIFs by EU AIFMs with the passport are internally coherent. They are also broadly coherent with the four EU product passports. There are, though, possible misalignments in areas such as the calibration of regulatory capital charges and the quantitative and qualitative limits constraining the investment of institutional investors, particularly insurers and pension funds.

Relevance: The AIFMD marketing passport regime remains a vital element of CMU and cross-border activities lie at the core of the Single Market. The provisions therefore remain highly relevant.

EU added value: By nature, the rules on cross-border marketing EU AIFs by EU AIFMs with the passport brought about EU added value that could only have been achieved by regulation at EU level, especially concerning access of investors to relevant investment products like AIFs across Member States (i.e. causality is indicated). However, national provisions have impaired the extent of this achievement.

4.5.4. Marketing and/or managing non-EU AIFs by EU or non-EU AIFMs without a passport

The general survey and interview results provided information and views on these rules (see 4.5 and 4.7 of Section 1). In addition, information was obtained from desk research conducted by the central team on the implementation and impact of these rules, and we sought specific information from the 15 Member States (see Annex 6).

a) Description of the rules

According to Recital 64 AIFMD, a non-EU AIFM shall benefit from the rights conferred under the Directive, such as to market units or shares of AIFs throughout the EU with a passport, subject to its compliance with the AIFMD, after the entry into force of a delegated act to be adopted by the EC, which will, in principle, taking into account advice given by ESMA, occur two years after 22 July 2013. As at the date of this report, these rights had not yet been extended to the marketing and/or managing of non-EU AIFs by EU or non-EU AIFMs.⁴²⁷

⁴²⁷ *Substantial efforts regarding the assessment of third countries have been made by ESMA (cf. ESMA's advice to the European Parliament, the Council, and the Commission on the application of the AIFMD passport to non-EU AIFMs and AIFs, 12 September 2016, ESMA/2016/1140) but have not yet established a feasible basis for the expansion of the passport to non-EU AIFs and non-EU AIFMs. Regarding the AIFMD and its impact on Third Countries cf. Elvinger Hoss, The Alternative Investment Fund Manager Directive: key features & focus on third countries (2016); especially for Germany cf. Guidance Notice on the marketing of units or shares in a foreign AIF or EU AIF managed by a foreign AIF management company to professional or semi-professional investors in the Federal Republic of Germany pursuant to section 330 of the Investment Code (Kapitalanlagegesetzbuch – KAGB) Preliminary remark.*

Meanwhile, pursuant to Recitals 63 and 69 and Article 68 AIFMD, Member States may implement NPPRs for non-EU AIFs, managed by both EU and non-EU AIFs, and authorised EU AIFMs may manage non-EU AIFs that are not marketed in the European Union.

Applicable provisions on marketing and/or managing non-EU AIFs by EU or non-EU AIFMs without a passport are stipulated in Article 36 AIFMD (non-EU AIFs managed by EU AIFMs) and Article 42 AIFMD (AIFs managed by non-EU AIFMs).

According to Article 36 AIFMD, a Member State may allow the marketing of a non-EU AIF managed by an authorised EU AIFM in their territory without a passport. The same applies for EU feeder AIFs that do not fulfil the requirements referred to in the second subparagraph of Article 31(1), i.e. there is no EU master AIF managed by an authorised EU AIFM. The EU AIFM is required to comply with all the requirements established in the Directive with the exception of Article 21 AIFMD. The EU AIFM shall, however, ensure that one or more entities are appointed to carry out the duties referred to in Article 21(7)-(9) AIFMD (depository functions). Moreover, appropriate cooperation arrangements for the purpose of systemic risk oversight and in line with international standards must be in place between the NCA of the home Member State of the AIFM and the supervisory authorities of the respective third country where the non-EU AIF is established, in order to ensure an efficient exchange of information that allows the NCA of the home Member State of the AIFM to carry out their duties in accordance with the Directive.

Article 42 AIFMD provides that the marketing of a non-EU AIF managed by a non-EU AIFM to professional investors in the territory of a Member State may be allowed if certain transparency and cooperation conditions are met. First, the non-EU AIFM must comply with Articles 22-24 AIFMD (reporting and disclosure obligations) in respect of each AIF marketed by it and with Articles 26-30 (concerning investments in non-listed companies) where an AIF marketed by it falls within the scope of Article 26(1). Second, similar to Article 36 AIFMD, appropriate cooperation arrangements for the purpose of systemic risk oversight and in line with international standards must be in place between the NCAs of the Member States where the AIFs are marketed, the supervisory authorities of the third country where the non-EU AIFM is established and, insofar as applicable, the supervisory authorities of the third country where the non-EU AIF is established, in order to ensure an efficient exchange of information that allows the NCAs of the relevant Member States to carry out their duties in accordance with the Directive.

Recital 60 recognises that many EU AIFMs manage non-EU AIFs and states, ***"It is appropriate to allow authorised EU AIFMs to manage non-EU AIFs without marketing them in the Union without imposing on them the strict depository requirements and the requirements relating to the annual report provided for in this Directive, as those requirements have been included for the protection of Union investors."***

Conditions for the management by EU AIFMs of non-EU AIFs that are not marketed into the EU are set out in Article 34 AIFMD. The article requires Member States to ensure that an authorised EU AIFM may manage non-EU AIFs that are not marketed in the EU provided that, first, the AIFM complies with all AIFMD requirements except for Articles 21 and 22 (depository and annual report) in respect of those AIFs and, second, appropriate cooperation arrangements are in place between the NCA of the home Member State of the AIFM and the supervisory authorities of the third country where the non-EU AIF is established, in order to ensure at least an efficient exchange of information that allows the NCA of the home Member State of the AIFM to carry out their duties in accordance with the Directive.

b) *Assessment against the five key principles*

i) *Effectiveness*

As at the date of this report, non-EU AIFs could be marketed and managed by EU or non-EU AIFMs only subject to NPPRs, as allowed under Articles 36 and 42 AIFMD. The majority of Member States surveyed had some kind of NPPR in place.⁴²⁸

As found by ESMA in 2015 in its assessment of the functioning of the NPPRs,⁴²⁹ publicly available data on the numbers of non-EU AIFs and AIFMs have been difficult to obtain in most Member States.

The numbers of non-EU AIFs distributed in Germany were 13 in 2013,⁴³⁰ 92 in 2014,⁴³¹ 168 in 2015,⁴³² 266 in 2016⁴³³ and 285 in 2017⁴³⁴ – showing a steady increase. As at 18 September 2018, there were three non-EU AIFMs marketing AIFs in Malta, one of which marketed retail AIFs.⁴³⁵ In Denmark in 2018, there seem to be 14 non-EU AIFMs operating in some way.

The only other data retrieved are those provided by ESMA in 2015.⁴³⁶ These data are referenced in the following assessment of Articles 36 and 42 AIFMD.

Finally, concerning the management of non-EU AIFs by EU AIFMs pursuant to Article 34 AIFMD, hardly any data were available. For example, data from CySEC indicate very limited use of Article 34 AIFMD in Cyprus and no indication of growth. The numbers of non-EU AIFs managed by Cypriot AIFMs were three in 2015, four in 2016 and only one in 2017. Hence, only a basic theoretical analysis is provided below. However, 33% of the AIFMs that responded to the general survey managed AIFs domiciled in jurisdictions other than their own (see 4.5 in Section 1). Looking at country level responses, there were significant differences among the EU Member States. For example, the ratios for France and the UK were slightly more than 60% and about 55%, respectively. In stark contrast the ratio for Germany was only 6%.

Considering that the NPPRs are part of the respective national laws of the Member States and, above all, bridge the regulatory gap until the passport regimes for non-EU AIFs and AIFMs are established, the principle of effectiveness, just as the other four principles, needs to be viewed accordingly.

From the limited data retrieved, one can say at least that the trend in the number of non-EU AIFs marketed in Germany indicates an interest by German professional investors in non-EU products (with US and Cayman Islands AIFs at the forefront)⁴³⁷ as well as a willingness of AIFMs to market such non-EU AIFs. A similar conclusion can be **derived from ESMA's 2015 data**, which indicate that for the period July 2014 to March

⁴²⁸ Cf. *ESMA's advice to the European Parliament, Council and the Commission on the application of the AIFMD passport to non-EU AIFMs and AIFs*, 30 July 2015, ESMA/2015/1236, p. 166 et seq. (Annex 8); *ESMA's opinion to the European Parliament, Council and Commission and responses to the call for evidence on the functioning of the AIFMD EU passport and of the National Private Placement Regimes*, 30 July 2015, ESMA/2015/1235, recital 229 – NPPRs in place in the UK, Ireland, Luxembourg, the Netherlands, Denmark, Belgium, Germany, Austria, France.

⁴²⁹ *ESMA's opinion to the European Parliament, Council and Commission and responses to the call for evidence on the functioning of the AIFMD EU passport and of the National Private Placement Regimes*, 30 July 2015, ESMA/2015/1235, recital 10.

⁴³⁰ BaFin, *Annual Report 2013*, p. 188.

⁴³¹ BaFin, *Annual Report 2014*, p. 238.

⁴³² BaFin, *Annual Report 2015*, p. 254.

⁴³³ BaFin, *Annual Report 2016*, p. 196.

⁴³⁴ BaFin, *Annual Report 2017*, p. 153.

⁴³⁵ MFSA, *Database*, retrieved from <https://www.mfsa.com.mt/pages/licenceholders.aspx>.

⁴³⁶ *ESMA's advice to the European Parliament, Council and the Commission on the application of the AIFMD passport to non-EU AIFMs and AIFs*, 30 July 2015, ESMA/2015/1236, p. 166 et seq. (Annex 8).

⁴³⁷ Cf. BaFin, *Annual Report 2017*, p. 153.

2015 there was considerable market activity and even a slight increase in non-EU AIFs marketed under Article 36 AIFMD and Article 42 AIFMD in the UK (predominantly from the Cayman Islands and the Channel Islands as well as Bermuda and Japan).⁴³⁸

However, from the same set of data it is apparent that in other Member States developments depend on the domicile of the respective non-EU AIFs and AIFMs. For instance, in Belgium, the number of Cayman Islands AIFs marketed under Article 36 AIFMD increased by 50%, whereas concerning marketing under Article 42 AIFMD, numbers in Cayman AIFMs and AIFs slightly dropped, and as regards US AIFMs fell dramatically from 24 to just two within just six months from the last quarter of 2014 to the first quarter of 2015.

This indicates that developments are heavily dependent on investors' demands for non-EU AIFs, with growth in some national markets like the UK and Germany, but stagnation or decline in other Member States. Further, the demand for non-EU AIFs in Germany, where requirements are said to be gold-plated, seems as strong as in the UK, which imposes no or only minor gold-plating.⁴³⁹ Nevertheless, it seems reasonable to postulate that (even) less gold-plating could lead to even stronger market demand for non-EU AIFs.

The bridging function of the NPPRs appears, therefore, to have been fulfilled in some Member States, but firm conclusions cannot be drawn on whether a full passport regime for non-EU AIFs would lead to increased numbers of such AIFs marketed in other Member States. Some Member States' markets (i.e. number of investors and funds to be invested) may simply be too small to be attractive for AIFMs to market in those markets AIFs that they manage – be it on the basis of an NPPR or via the (yet to be activated) non-EU passport.

Finally, it should be noted that by requiring both EU and non-EU AIFMs to fulfil the reporting requirements of Articles 22 and 24 AIFMD for non-EU AIFs that they manage and market, the objective of not compromising the effectiveness of regulation and supervision is taken into account in the rules on marketing and/or managing non-EU AIFs by EU or non-EU AIFMs without a passport.

Concerning the management of non-EU AIFs (not marketed in the EU) by EU AIFMs, pursuant to Article 34 AIFMD, it is noted that the application of the relevant AIFMD rules leads to effective supervision of all activities of an EU AIFM and may be of specific importance in the monitoring and supervision of potential systemic risks, in this case arising from an EU AIFM's management activities outside the EU/EEA.

ii) Efficiency

AIFMD envisages a passport regime that encompasses non-EU AIFs. According to Recitals 63 and 69 AIFMD, the aim of the rules on marketing and/or managing non-EU AIFs by EU or non-EU AIFMs without a passport (pursuant to Articles 36 and 42 AIFMD) is to allow such activities in accordance with the Member States national laws but on the condition of a minimum application of AIFMD provisions (i.e. certain depositary, reporting and disclosure rules).

Since, by allowing NPPRs, the European co-legislators left the authority and decision-making with the Member States, the principle of proportionality, in general, can be

⁴³⁸ *ESMA's advice to the European Parliament, Council and the Commission on the application of the AIFMD passport to non-EU AIFMs and AIFs*, 30 July 2015, ESMA/2015/1236, p. 166 et seq. (Annex 8).

⁴³⁹ *Concerning goldplating cf. ESMA's opinion to the European Parliament, Council and Commission and responses to the call for evidence on the functioning of the AIFMD EU passport and of the National Private Placement Regimes*, 30 July 2015, ESMA/2015/1235, Recital 229.

assessed as met. It is also proportionate to take action at EU level only when standards in and with non-EU third countries are established to a qualitative degree that allows for further application of the passport regime. Unless such standards are in place and the EU has a basis to act, Member States should not be limited in extending their NPPRs to non-EU AIFs.

Cost-related matters for NCAs and AIFMs lie with the Member States, insofar as they have established an NPPR. Data specific to the activities considered under this sub-section were not available, but reference can be made to the overarching costs discussed earlier under the relevant rule sections above (i.e. sub-sections 4.2.1 (reporting), 4.3.5 (depository) and 4.3.6 (disclosures to investors)).

For example, EU reporting requirements impact EU AIFMs marketing non-EU AIFs in the same way as their marketing of EU AIFs. Hence, those EU AIFMs and their home Member State NCAs incur costs. One can assume that such costs are similar to those discussed under sub-section 4.2.3 above.

Similarly, non-EU AIFMs have to fulfil the reporting obligations in accordance with Article 42(1)(a) AIFMD. Again, costs are incurred by both the non-EU AIFM and the NCAs of the Member States in which the non-EU AIFM undertakes marketing activities will occur, which will again be in line with those discussed in sub-section 4.2.3 above.

However, these costs need to be set against the fact that the reporting obligations concerning the marketing of non-EU AIFs are in the interests of the NCAs and are, in any case, part of the supervisory system established in the EU by AIFMD. Hence, there would appear to be no issues over and above those already commented on in sub-section 4.2.3.

As regards Article 34 AIFMD, the rules can be considered just as efficient as when viewed against management activities in the EU concerning EU AIFs.

iii) Coherence

The provisions of Articles 34, 36 and 42 AIFMD are assessed as *internally* coherent as they explicitly defer to the relevant provisions elsewhere in the Directive (i.e. reporting to NCAs, depository functions and disclosures to investors).

Further, there is no evidence or indication that the rules on marketing non-EU AIFs by EU AIFMs or non-EU AIFMs without a passport (Articles 36 and 42 AIFMD) are not coherent with other EU regulatory frameworks.

iv) Relevance

Considering the bridging function of the rules on marketing non-EU AIFs by EU or non-EU AIFMs without a passport, such passporting not yet being established for non-EU AIFs and the views of survey respondents (from both the EU and third countries) that NPPRs should be retained even after the passport regime would apply to non-EU AIFs (see 4.5 in Section 1), the rules on marketing non-EU AIFs by EU or non-EU AIFMs without a passport remain relevant. This assessment is underlined by the fact that the objective of establishing the Single Market in AIFs has not been fully achieved so far via other AIFMD provisions (as described in sub-sections 4.5.2 and 4.5.3 above).

Further, all management activities, whether within the EU/EEA or abroad, can give rise to risks. Hence, the provisions of Article 34 AIFMD concerning the management of non-EU AIFs by EU AIFMs remain relevant.

v) *EU added value*

With respect to the objective of developing the single EU market in AIFs, as well as the co-**legislators'** intention to introduce a passport regime for non-EU AIFs and AIFMs, it would appear from the evidence that progress is patchy. It is heavily dependent on national measures and demand by professional investors for non-EU AIFs, which varies markedly from one Member State to another. Therefore, in particular with **investors' interest in mind**, it is clearly of EU added value that NPPRs are permitted to continue to operate, complemented by minimum AIFMD requirements regarding reporting to NCAs, certain depositary functions and disclosures to investors, as provided by Articles 36 and 42 AIFMD.

Finally, applying the AIFMD requirements (e.g. in relation to risk management and governance) also to outbound management activities ensures that there is no differentiation made between the management of non-EU AIFs and of EU AIFs. Further EU added value is provided by the fact that the applicable rules are at the EU level, ensuring consistency in the regulatory approach to risks across the EU.

c) *Summary*

Effectiveness: On the basis of the limited data available, the specific and operational objectives are to some extent achieved and the rules on marketing and/or managing non-EU AIFs by EU or non-EU AIFMs without a passport are assessed as effective. However, this is largely dependent on the fact that NPPRs are permitted to continue to operate.

Efficiency: The EU measures are assessed as proportionate. As regards the principle of efficiency more broadly, the comments on efficiency in sub-sections 4.2.1, 4.3.5 and 4.3.6 above are assumed to be of equal relevance to the provisions of Articles 34, 36 and 42 AIFMD.

Coherence: Articles 34, 36 and 42 AIFMD are assessed as internally and externally coherent.

Relevance: The rules on marketing non-EU AIFs by EU or non-EU AIFMs without a passport remain relevant. This assessment is underlined by the fact that the objective of establishing the Single Market in AIFs has not been fully achieved so far via other AIFMD provisions. Further, the provisions of Article 34 AIFMD concerning the management of non-EU AIFs by EU AIFMs remain relevant

EU added value: With respect to the objective of developing the single EU market in AIFs, as well as the co-**legislators' intention to introduce a passport regime for non-EU AIFs and AIFMs**, it would appear from the evidence that progress is patchy. It is heavily dependent on the impact of national measures and demand by professional investors for non-EU AIFs, which varies markedly from one Member State to another. Therefore, it is of EU added value that NPPRs are permitted to continue to operate as otherwise EU professional investors may those access to the investment vehicles they seek. Further, the requirements of Article 34 AIFMD provide just as much EU added value as the general rules of the Directive.

4.6. Additional aspects assessed: commercial and market impacts

Beyond the assessment of the specific rules above, further commercial and market impacts came to light and have been assessed during this study.

4.6.1. Impact of AIFMD on AIF investors

Survey respondents and interviewees were asked about the impact of AIFMD on the *attractiveness of EU AIFs for professional investors* (see 4.7 in Section 1). 84% of institutional investors and trade bodies representing institutional investors (including some from third countries) said that AIFMD had not influenced their decisions to invest (or not) through AIFs. Similarly, 83% of such respondents said that AIFMD had not influenced their decisions to invest through EU/EEA AIFs rather than third country AIFs (or vice versa).

Interviewees noted that the landscape prior to AIFMD was not devoid of regulation. Many Member States regulated at least parts of the industry, and a number of jurisdictions outside the EU imposed rules on the equivalent of AIFMs and/or AIFs. AIFMD has provided some consistency around the EU, but professional investors continue to conduct their own due diligence on investments in AIFs of any sort.

Although AIFMD is focussed on regulating the managers of AIFs that market to professional investors, Article 43(1) AIFMD provides that Member States may allow AIFMs to market to *retail investors* in their territory units or shares of AIFs they manage in accordance with AIFMD, irrespective of whether such AIFs are marketed on a domestic or cross-border basis or whether they are EU or non-EU AIFs.

Pursuant to Article 43(2) AIFMD Member States may impose stricter requirements on the AIFM or the AIF than the requirements applicable to the AIFs marketed to professional investors in their territory but shall not impose stricter or additional requirements on EU AIFs established in another Member State and marketed on a cross-border basis than on AIFs marketed domestically.

Member States made extensive use of this possibility to retain an NPPR for certain types of AIFs for retail investors as stipulated under Article 43 AIFMD. A very brief synopsis of the retail AIF aspects of NPPRs is displayed in Table 16.

Table 16: Overview of the key elements of NPPRs regarding retail AIFs

Country	Fund Types and/or Domestic Particularities
Austria	Specific fund taxonomy with regard to retail marketing (inter alia real-estate investment funds, managed futures funds, private equity fund of funds, AIF in private equity) as well as accompanied regulatory regime
Belgium	AIFs may be distributed to retail investors upon meeting certain requirements.
Cyprus	AIFs may be distributed to retail investors upon meeting certain requirements, in particular the issuance of a key investor information document (KIID) pursuant to Commission Regulation (EU) No. 583/2010
Czech Republic	Retail distribution only of SICAVs and open-ended trusts
Denmark	Retail distribution of certain AIFs only upon prior permission ⁴⁴⁰
France	Applicability of a special regime for marketing and distributing to retail investors ⁴⁴¹
Germany	Management and distribution of retail AIFs (Publikums-AIF) as defined in Sec. 1(6) KAGB allowed for AIFMs

⁴⁴⁰ Rf. Directives on AIFMs, § 5 stk. 4. Per * 19 Danish AIFMs are authorised to distribute a total of 42 AIFs to non-professional investors.

⁴⁴¹ Rf. Art. L.214-23-1 of the French Monetary and Financial Code as well as Art. 421-12 of AMF General Regulation.

Country	Fund Types and/or Domestic Particularities
Hungary	Retail distribution of AIFs
Ireland	RIAIFs (Retail Investor AIFs) with a special regulatory framework set out in the AIF Rulebook
Italy	Retail distribution of certain AIFs only upon prior authorisation from NCA
Luxembourg	Retail AIFs regulated under Part II of the 2010 Law
Malta	Specific requirements under a National Private Placement Regime ⁴⁴²
Netherlands	Retail AIF distribution regime under applicability of certain disclosure requirements (UCITS prospectuses for open-ended AIFs and prospectuses for closed-ended AIFs)
Spain	Retail AIFs may be marketed pursuant to Article 79 of the Law 22/2014
United Kingdom	Non-UCITS retail schemes (which are open-ended and authorised by the FCA) may be marketed to UK retail investors. Retail investors can also buy listed closed-ended AIFs but such AIFs cannot actively be marketed to those investors. The UK NPPR also permits non-UK retail AIFs (that are similar to the UK versions) to be marketed to UK retail investors

Source: KPMG (2018).

When looking at how the retail AIF sector has developed, only limited evidence could be identified for overall trends in the market and in particular to support the findings of the general survey (see 4.7.3 of Section 1).

For instance, in Germany, BaFin authorised 109 retail AIFs (against 121 UCITS) in 2015, 52 retail AIFs (against 99 UCITS) in 2016 and 31 retail AIFs (against 107 UCITS) in 2017.⁴⁴³ Although over a limited time frame of three years, the decline in retail AIFs is obvious, the number of UCITS products is fairly stable.

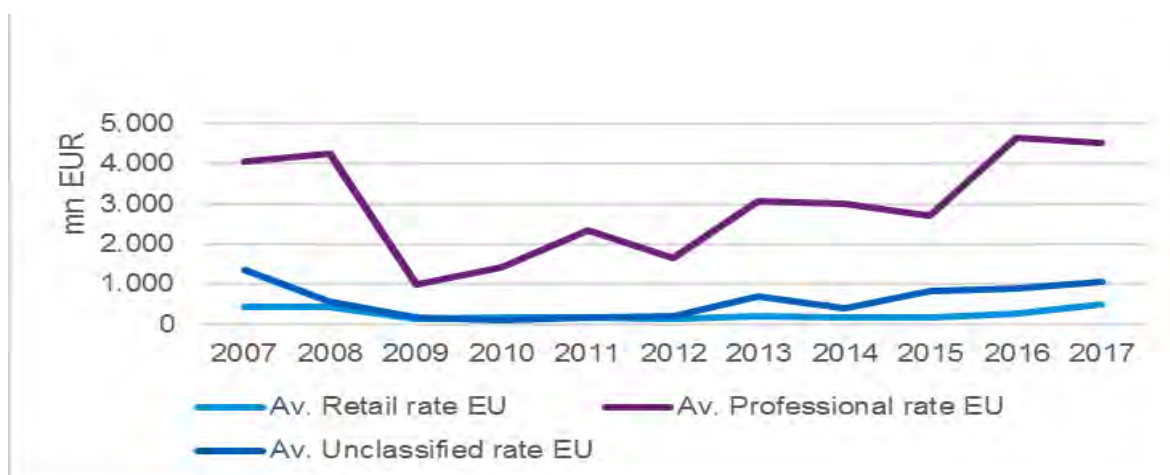
The views of survey respondents about the impact of AIFMD on retail investors differed concerning investments in EU/EEA AIFs and those in non-EU/EEA AIFs (see 4.7.3 in Section 1). Regarding EU/EEA AIFs, 44% of the respondents noticed an increased level of investment, while one-fifth saw no change and another fifth a strong decrease. Regarding non-EU/EEA AIFs, more than half of respondents expressed no opinion. Of those that did, responses were equally divided between unchanged and strongly decreased, with none noting any increase in non-EU/EEA investments.

Key negative factors were reported to be higher costs, with ultimately more expensive products for retail investors, and less variety of products because small AIFMs no longer felt able to provide niche AIF products.

Most data sources do not show the channel of investment but rather the type of targeted investor (non-professional/professional). Therefore, there is only weak evidence to support any conclusions about the development of investments by retail investors in AIFs. Additionally, the data available suggest a mixed picture, as shown in Figure 66 to Figure 69 for various Member States, and in particular Ireland and the Czech Republic.

⁴⁴² *Rf. Sec. 10 of the AIFM Rulebook.*

⁴⁴³ *Data taken from BaFin, Annual Report 2015, p. 253; Annual Report 2016, p. 195; Annual Report 2017, p. 151.*

Figure 66: Selected Member States⁴⁴⁴ – Private Equity – average fundraising by investor type

Source: Invest Europe (2017)

Figure 67: Ireland – Private Equity – funds raised by investor type



Source: Invest Europe (2017)

In Hungary, data suggest a rather stable demand in retail investor AIF products after implementation of AIFMD. According to MNB, the total number of AIFs were 526 in 2013, 535 in 2014, 597 in 2015, 610 in 2016, 613 in 2017 and 647 as at 30 June 2018.⁴⁴⁵ The vast majority of those are believed to be retail AIFs, which have dominated the Hungarian fund market.⁴⁴⁶ The AuM of retail AIFs has a percentage of all funds (i.e. including UCITS) increased from 90.92% in 2011 to 97.21% in 2014,

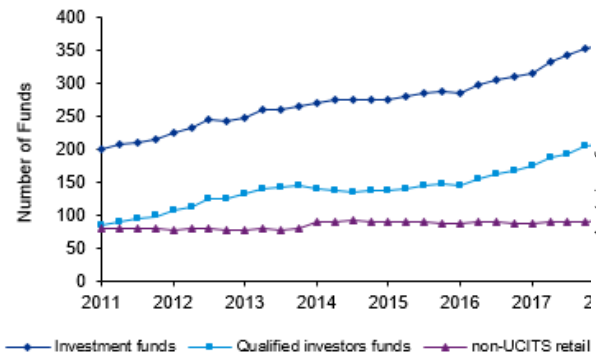
⁴⁴⁴ Austria, Belgium, Czech Republic, Denmark, France, Germany, Hungary, Ireland, Italy, Luxembourg, The Netherlands, Spain, the UK; data relates to private equity funds, no distinction between AIFs and non-AIFs.

⁴⁴⁵ MNB, as of 30 June 2018, retrieved from <https://www.mnb.hu/letoltes/befalap-idosor.xls>, Sheet: "1_alapkez és alapok száma".

⁴⁴⁶ No definite data available.

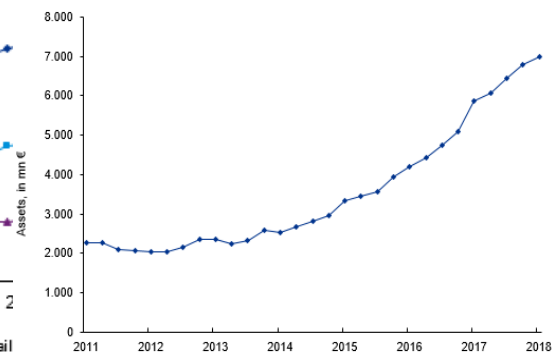
but recently fell due to a slowly growing number of UCITS, the share of UCITS in overall NAV now standing at 8.57%.⁴⁴⁷

Figure 68: Czech Republic - number of funds



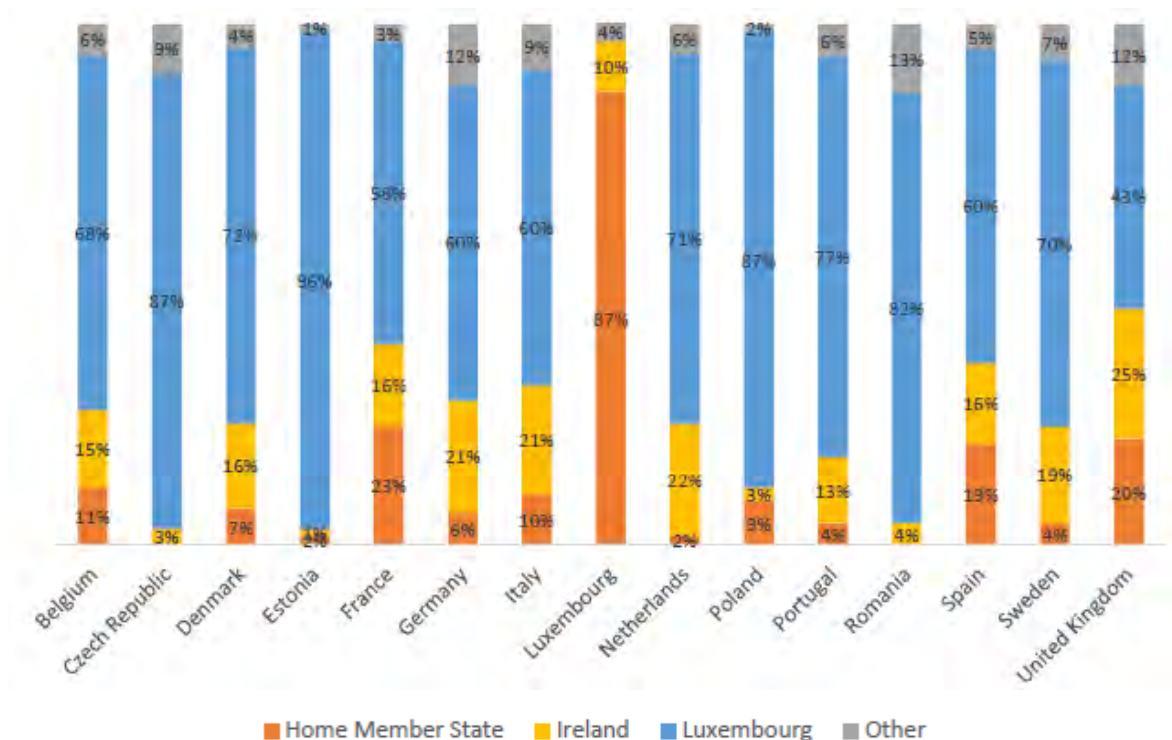
Source: CNB (2018).

Figure 69: Czech Republic – AuM of retail AIFs



Source: CNB (2018).

Figure 70: Split by domicile of all investment funds available to retail investors (AIFs & UCITS) by total number of share classes available for sale in the Member State



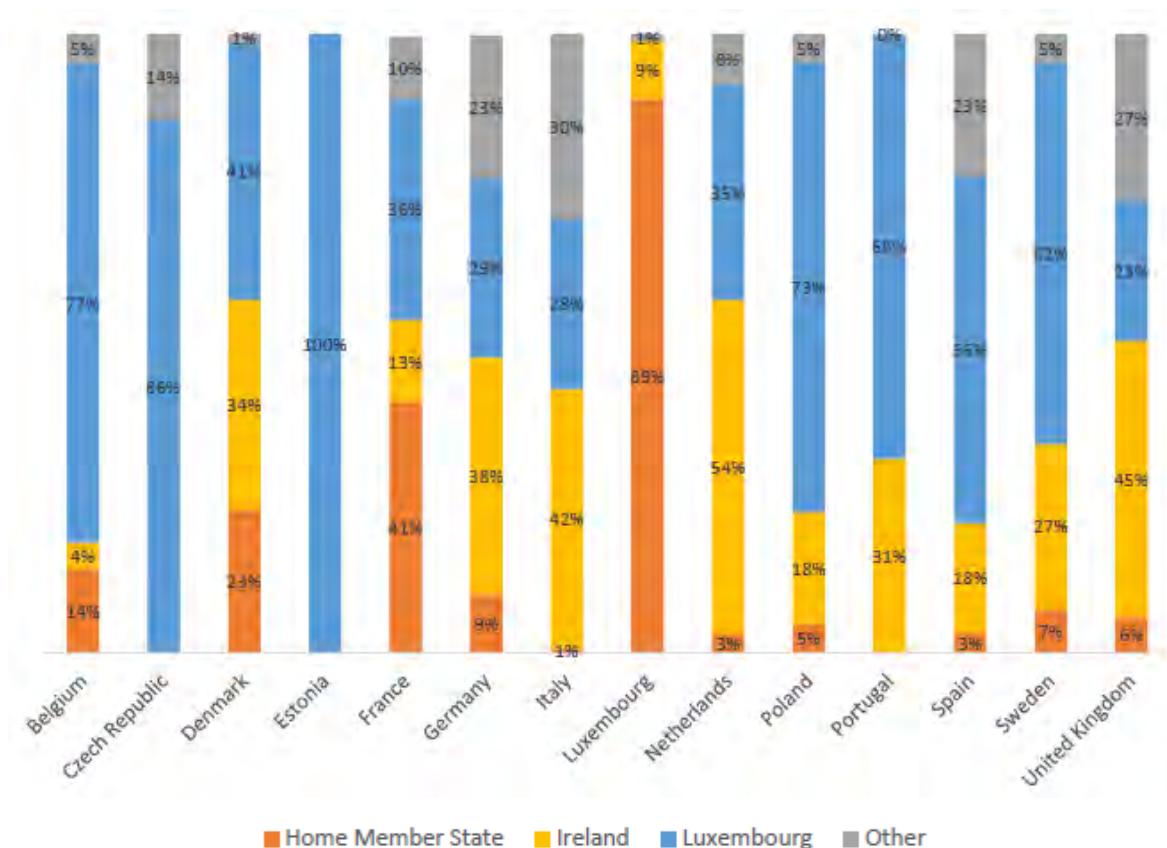
Source: EC, Deloitte Luxembourg (2018), P. 29.

⁴⁴⁷ Data provided by BAMOSZ.

A 2018 study carried out by the EC and Deloitte Luxembourg investigated the distribution systems of retail investment products.⁴⁴⁸ Figure 70 shows the domicile of all investment funds available to retail investors in various Member States. Figure 71 shows the split by domicile of passively investment funds available to retail investors. The study, however, includes both AIFs and UCITS, so that no distinct conclusion can be drawn concerning the AIF retail market. Moreover, the split between retail and professional funds is not commonly made in the data collection of NCAs, which prevents one from drawing a general conclusion for all examined Member States.

Figure 70 demonstrates the extent to which the market in European investment funds (AIFs and UCITS) is dominated by Luxembourg. The proportion of funds from Luxembourg usually varies between 60% and 85% of available funds for retail investors. Figure 71 shows that passively-managed investment funds are mostly domiciled in Ireland and Luxembourg.

Figure 71: Split by domicile of all passively-managed investment funds available to retail investors by total number of share classes available for sale in the Member State



Source: European Commission, Deloitte Luxembourg (2018), P. 30.

⁴⁴⁸ The study was prepared on the occasion of the public hearing "Making the capital markets work for retail investors" in 29 June 2018 in Brussels. Vice-President of the EC Dombrovskis reflected on the need of retail investments: "In the EU, on average, 30% of household savings are kept in deposits or currency. In an ageing society, with public pensions systems increasingly under pressure, these funds should instead be put to productive use on capital markets. This would allow households to earn a higher rate of return on their savings." EC. (2018 June 29). Opening speech by Vice-President Valdis Dombrovskis: "Making the Capital Markets work for retail investors."

4.6.2. Impact of AIFMD on investment in or for the benefit of developing countries

Article 69(k) AIFMD refers to the impact of the Directive on investment in or for developing countries. Evidence on this question is scarce.

As seen in Figure 48 in 4.6 in Section 1, more than half of all participants had no opinion on this matter. Another third of all respondents saw no change in investment in or for the benefit developing countries. Only 5% of respondents held the view that such investments had somewhat increased, whereas 6% were of the opposite opinion that investments had somewhat decreased, another 1% indicating a strong decrease.

Respondents offered some reasons why no further developments may have taken place. Non-EU AIFs domiciled in developing countries face increased cost and burden of marketing into Europe. Marketing rules seem more complex and opaque to managers in those countries. Also, managers in developing countries are viewed as less likely to be able to bear the cost of establishing and maintaining an AIFM. Client feedback referred to by respondents was that microfinance funds prefer to exist outside the framework of AIFMD, as the regime is too costly for them.

It is also believed that EU-based investors tend to be risk-averse and that AIFs from or concerning developing countries are generally of smaller size. The absent of the liability cap on external valuers would not seem to encourage investment strategies in developing countries.

It was noted by a number of respondents and interviewees that investments in or on behalf of emerging markets by EU AIFs can be difficult due to the AIFMD provisions relating to depositary liability.

On the other hand, increased regulation is seen as a factor that may increase risk appetite for such collective investments in developing countries. The diversification of exposures that AIFs can offer, as opposed to single investments in a specific asset, is also beneficial for most investors.

Developing countries seem most often to be invested in by funds managed by non-EU managers, because EU managers have less relevant expertise than managers closer to the developing markets in question. As the result of AIFMD and the restrictions on marketing by such managers to secure investment from EU investors, it is likely that the amount of capital raised from EU investors for investment in non-EU countries has reduced or at least that returns will have been eroded by higher costs.

Whether, on the basis of this anecdotal information, one can assume that AIFMD has hindered investment in developing countries remains open to question. What can be said, however, is that no *positive* effects on investment in or for the benefit of developing countries has been established.

4.6.3. Impact of AIFMD on the operations of AIFMs

Survey responses to questions about whether AIFMD had enabled AIFMs to rationalise their operational set-up and processes were mixed (see Figure 49). About one-quarter of respondents indicated that AIFMD had a positive impact, but over one-third of AIFMs disagreed with the statement that AIFMD led to a rationalisation of their operational setup and processes.

The AIFMD governance provisions, which essentially concretise the operational and procedural set-up of AIFMs, are closely-aligned with other EU legislative acts such as UCITS and MiFID II. A significant number of AIFMs are part of a wider financial services group or were already UCITS ManCos and therefore already complied with broadly similar requirements. For these types of AIFMs, AIFMD more often brought

clarity and legal certainty in this regard, which, *inter alia*, led to more effective and efficient operational set-up, systems and processes. However, many smaller and/or mid-sized AIFMs had to undertake a major effort to implement and apply the AIFMD governance provisions. Organisational as well as operational structures, systems and processes had to be implemented for the first time, leading to a significant volume of operational costs in the initial phase and often the need for external advice and support.

4.6.4. Impact of AIFMD on AIF product ranges

Survey questions on the impact of AIFMD on AIF product ranges also elicited mixed responses. Just under two-thirds of respondent AIFMs said that AIFMD had not caused them to rationalise or expand their product offerings and only one-fifth had expanded their AIF ranges (see Figure 50). The level of product change was low across the main AIF sub-sectors and there was an especially low impact on the leverage level within funds.

In only a few cases, it was observed that the implementation and application of the AIFMD caused some market participants, previously operating under a domestic investment law regime, to terminate the offering of certain products and/or terminate the business of investment management itself (see 4.7 in Section 1).⁴⁴⁹ However, it was also observed that in some Member States AIFMD has indirectly led to the creation of new product regimes by the NCAs. Prior to AIFMD, some national markets included unauthorised and unlisted AIFs (e.g. unauthorised unit trusts in the UK), but a number of Member States allowed only authorised or listed AIFs. The introduction of AIFMD (which regulates only the manager not the product) caused some NCAs to debate with the industry whether to allow *unauthorised* AIFs.

In July 2016, Luxembourg law introduced the Reserved Alternative Investment Fund (RAIF).⁴⁵⁰ A RAIF is not subject to approval by the CSSF (enabling a quicker time to market). It can take a number of legal forms and can hold any types of assets. RAIFs are subject to the principle of risk-spreading, but this is not articulated via detailed rules, and **if the RAIF's constitutional documents provide for exclusive investments in risk capital**, the principle of risk-spreading does not apply.

Given the popularity of the RAIF, CySEC has introduced a regime for registered, but not authorised, AIFs in order to facilitate a fast and cost-efficient fund initiation process in Cyprus. The funds must be managed by a full-scope EU AIFM. They can be of the open- or closed-ended type and can follow any strategy and invest in any type of asset.⁴⁵¹ Similarly, Malta has introduced Notified Alternative Investment Funds (NAIFs). The AIFM must notify MFSA of a NAIF, and in so doing undertakes

⁴⁴⁹ *Albeit few in numbers, such a tendency could have been observed in the transitional period of AIFMD implementation, inter alia, in the German closed-ended fund market. Due to the associated operational and transactional costs to be borne while complying with AIFMD, AIFs of the closed-ended type have been liquidated.*

⁴⁵⁰ *For further scrutiny on the Luxembourg RAIF see Association of the Luxembourg fund industry (alfi) at <http://www.alfi.lu/setting-luxembourg/alternative-investment-funds/raif/>; cf. also KPMG Luxembourg, *Luxembourg Investment Vehicles (May 2018)*. An overview of the legal and regulatory requirements, retrieved from <https://home.kpmg.com/content/dam/kpmg/lu/pdf/luxembourg-regulated-investment-vehicles-2018.pdf>.*

⁴⁵¹ *From this broad range of assets, the Registered AIF may, however, not be established as a Money Market and Loan origination fund. See also King & Wood Mallesons, *Newsletter of 23 September 2016*, retrieved from http://www.kwm.com/en/uk/knowledge/insights/cyprus-modernises-its-fund-rules-20160923?utm_source=newsletter_external&utm_medium=email&utm_campaign=pe_europe_focus_2016September23&utm_content=single&utm_term=banner.*

responsibility for that AIF and for the fulfilment of its obligations under AIFMD. MFSAs may, however, remove an AIF from the official list of NAIFs at any time.

AIFMD has also had adverse impacts on AIF product ranges in some Member States. For instance in Austria, the fund-based financing of start-ups as well as small and medium-sized enterprises was impeded by the domestic implementation of AIFMD. Therefore, the Austrian government enacted a new supervisory law to regulate crowdfunding, which is specifically designed to the needs of start-ups and small and medium-sized enterprises.⁴⁵²

In Belgium, the majority of AIFs are pension savings funds ("3rd pillar"), which are governed by both the transposed Belgian AIF legislation⁴⁵³ and Belgian tax legislation. Under MiFID II, the pension savings funds are considered complex products, given their status as AIFs under the Belgian AIF legislation, even though they are traditional tax-incentivised pension savings vehicles for retail investors. In the same vein, evidence from France points at issues related to employee saving schemes being categorised as AIFs. AIFMD does not clearly define an employee scheme or employee saving scheme, which has led to diverging interpretations by NCAs. **Hungarian AIFs are retail products and have similarly been impacted by the "complex" definition.**

4.6.5. Other matters impacting the effectiveness and efficiency of AIFMD

AIFMs and depositary representatives, as well as industry representatives from France, Germany and the Netherlands, pointed out some factors that had enhanced the effectiveness of AIFMD (see 4.1.2 in Section 1). In particular, AMF had provided a lot of support and clear guidance for affected market participants. One interviewee observed that this was not surprising because French management companies were already subject to some of the most stringent rules and therefore it took them less effort to fill in the gaps to comply with the AIFMD requirements. In particular, the **AMF's** proportionate approach in relation to the risk management function, remuneration policy and the distinction between systemic leverage and operational leverage were highlighted.

Concerning the ongoing costs for AIFMs of undertaking or outsourcing (parts of) key functions, three quarters of the AIFMs surveyed indicated that the cost of AIFM services had increased (see 4.7.2 in Section 1). Portfolio management costs were said by about one half of respondents to have largely been unchanged, but one-third said they had risen. The large majority of respondents stated that the main cost increases are due to the NCA reporting requirements.

Similar observations were made by respondents in relation to depositary functions, including oversight, non-custody assets, cash monitoring and provision of information to AIFs/AIFMs, with cost increases for cash monitoring receiving the highest scores (see 4.7.2 in Section 1). Almost one half of respondents among service providers to AIFs/AIFMs stated that they had experienced increased competition in the AIF market for their services. It was suggested that the business was no longer attractive for small AIFMs, either in complying with the full AIFMD rules or in navigating the non-uniform NPPRs.

This is illustrated by the fact that three-quarters of the AIFMs surveyed indicated that the cost of AIFM services overall has increased (see Figure 51). The main cause of the increase was said to be regulatory reporting (by just under 90% of respondents). In

⁴⁵² Cf. *Bundesgesetz über alternative Finanzierungsformen (Alternativfinanzierungsgesetz – AIFG)*, *Bundesgesetzblatt (Austrian Federal Law Gazette) I 114/2015*.

⁴⁵³ *Rf. Belgian Law of 19 April 2014*.

contrast, about one half of all respondents indicated that portfolio management costs remained unchanged, but one-third of respondent AIFMs stated that portfolio management costs have risen, although the costs were possibly dependent on the size of the AIFM involved. The driving factors behind the cost increases due to regulatory reporting were said to be that AIFMs would not otherwise have developed such systems, that there is duplication in reporting requirements and that there are additional national requirements (see Figure 52).

What was observed for AIFMs applies also to the development of the cost structure at depositary level. The costs of AIF/AIFM oversight functions, functions relating to non-custody assets, cash monitoring and provision of information to AIFs/AIFMs show a similar pattern of responses, with cost increases for cash monitoring receiving the highest scores (see Figure 54).

Competition between AIFMs was thought by survey respondents to have only slightly increased since implementation of AIFMD.

5. Overall assessment of achievement of the general objective

The pre-AIFMD landscape across Member States was heterogeneous across all aspects: asset classes, geographies, investment and redemption strategies; AIF legal structures, regulatory categorisations/unauthorised and listing (or not); investor types and mixes; tax regimes (of both the AIF and its investors); manager regulation; depositary or custody requirements or arrangements; management and governance structures; asset valuation practices; fund administration and accounting; and the level of transparency, to NCAs, investors or the market.

The co-legislators recognised this high level of heterogeneity and decided to adopt a Directive that regulates the management company and not the fund itself (i.e. AIFMD is not product regulation, unlike UCITS). AIFMD therefore regulates only some of the aspects noted above and leaves a number of areas to national discretion, in particular for AIFs marketed to retail investors within the Member State.

In order to provide an overall assessment of the achievement of the general objective of providing an internal market for EU and non-EU AIFMs and a harmonised and stringent regulatory and supervisory framework for AIFMs, evidence was sought to address, *inter alia*, the following questions:

1. Has AIFMD provided an effective legal framework for monitoring and managing the risks associated with the activities of AIFMs?
2. Are the macro- and micro-prudential risks adequately addressed by the provisions of AIFMD?
3. Is the information provided to the investors and employees of non-listed companies sufficient to safeguard their interests?
4. Is the AIFMD passport working efficiently?
5. What changes has the AIFM and AIF market structure undergone since the adoption of AIFMD?

5.1. Overall assessment

In summary, and on the basis of the evidence retrieved and analysis undertaken (as described in the sub-sections above), it is clear that AIFMD has played a major role in helping to create an internal market for AIFs and a harmonised and stringent regulatory and supervisory framework for AIFMs.

Moreover, most areas of the provisions are assessed as having contributed to achievement of the specific and operational objectives, to have done so effectively, efficiently and coherently, to remain relevant and to have EU added value. There are, however, some provisions (or the detail or application of which) that have not contributed, or may be counter to, the achievement of these aims. This is particularly, but not exclusively, in relation to the principles of effectiveness and efficiency (see sub-section 5.2 below).

It is clear from the evidence and analysis provided in the sub-sections above that the answer to question 1 is broadly yes, but the effectiveness and efficiency of the reporting regime could be improved, and work on a common set of methodologies to calculate leverage is important (see sub-sections 5.2.1 to 5.2.3 below).

Similarly, the answer to question 2 is broadly yes, but there are points of note relating to rules on valuation, remuneration, depositaries and disclosures to investors.

In relation to question 3, the picture is mixed. We could not retrieve any verifiable information on whether the disclosures to employees of non-listed companies are sufficient to safeguard their interests. In large measure, this is likely to be due to the very few occasions when these provisions have come into play since implementation of AIFMD. Indeed, the AIFMD asset stripping rules may have reduced the likelihood of the provisions being activated.

In relation to the disclosures to investors, AIFMD is not generally regarded as having improved the information provided by the AIF/AIFM to controlled companies or as having had a positive impact on the relationship between AIFs/AIFMs and target or investee enterprises.

As regards the AIFMD passport regimes, and in answer to question 4, evidence indicates that the EU management passport is working well, but the EU marketing passport is lagging behind and is suffering from the different approaches taken by NCAs (as recognised in the EC Cross-Border Distribution Proposal). In relation to non-EU AIFs and AIFMs, developments vary markedly from one Member State to another. Therefore, it is clearly of EU added value that NPPRSs are permitted to continue to operate.

The study has shed light on a number of points relating to question 5.

In particular, the statistical analysis of a sample of data (see Annex 4) led to the conclusion that *there is no statistically significant effect of AIFMD on AIF net assets*, after controlling for national share prices indices, inflation (consumer price index) and the change in EFAMA's categorisation. However, this result should be interpreted as the effects within countries, stripped of country-specific and time-specific unobserved variables.

Survey respondents and interviewees were asked about the impact of AIFMD on the *attractiveness of EU AIFs for professional investors* (see 4.7 in Section 1). The large majority of institutional investors and trade bodies representing institutional investors said that AIFMD had not influenced their decisions to invest (or not) through AIFs, or to invest through EU/EEA AIFs rather than third country AIFs (or vice versa).

Member States make extensive use of the possibility to retain an NPPR for certain types of AIFs to *retail investors*, as stipulated under Article 43 AIFMD, and impose

additional requirements (in particular, product regulation). Respondents' views were mixed about the impact of AIFMD on the level of retail clients' investment in EU/EEA or non-EU/EEA AIFs, and whether the impact was positive or negative. Key negative factors were reported to be higher costs, with ultimately more expensive products for retail investors, and less variety of products because small AIFMs no longer feel able to provide niche AIF products. The suggestion that all AIFs are "complex" under MiFID II has further impacted the retail AIF market.

In respect of *developing countries*, there is no evidence of any positive effect on investment in or for the benefit of developing countries based on the introduction of AIFMD. Similarly, AIFMD appears to have had **no significant impact on investors' appetite for investment in non-listed or real assets.**

Competition between AIFMs was thought by survey respondents to have only slightly increased since implementation of AIFMD.

Survey responses to questions about whether AIFMD had enabled AIFMs to rationalise their *operational set-up and processes* were mixed (see Figure 49). About one-quarter of respondents indicated that AIFMD had had a positive impact, but over one-third of AIFMs disagreed with the statement that AIFMD had led to a rationalisation of their operational setup and processes.

Survey questions on the impact of AIFMD on *AIF product ranges* also elicited mixed responses. Just under two-thirds of respondent AIFMs said that AIFMD had not caused them to rationalise or expand their product offerings and only one-fifth had expanded their AIF ranges (see Figure 50). However, AIFMD has caused some Member States to introduce regimes for unauthorised, unlisted AIFs.

5.2. The five key principles – areas of potential weakness

5.2.1. Effectiveness

A number of Member States apply additional provisions to *sub-threshold AIFMs* (including requiring full authorisation in some cases), which makes assessment of the impact of the threshold provisions difficult. Also, differences in the national interpretations of an AIF and an AIFM may, in isolated cases, make redundant the distinction between authorised and registered AIFMs, because consideration of the volume of AuM of the (potential) AIFM does not come into consideration. However, the heterogeneity of the AIF universe makes it imperative that NCAs have the discretion to consider specific national arrangements against the legislative definitions, in discussion with other NCAs and ESMA as appropriate. Further, although a number of survey respondents said they were aware of such cases, it is not evident that such cases are large in number.

ESMA and some NCAs said that the AIFMD *reporting* requirements do not provide all the data they need to be able to monitor and analyse the AIF market, for example in relation to investment strategies (but see the additional comments below under 5.2.2 (Efficiency)). More generally, large volumes of data are regularly submitted by AIFMs, not all of which may be essential, some of which may be insufficient, most of which are considered by NCAs but their analyses are not generally made publically available, and only a small subset of which has, until recently, been collated and analysed at EU level.

The binary choice in the *valuation* rules between internal or external valuation, and the differing legal interpretations of the liability of external valuers, are assessed as having impaired the effectiveness of the rules for some asset classes and in some Member States.

Some of the AIFMD *depository* rules are interpreted differently in different Member States – for example, there are differing national approaches to the total look-through provision and to the cash monitoring duties, but it is not clear whether and to what extent this has impaired the effectiveness of the provisions.

There is a strength of opinion that the Article 23 AIFMD requirements on *disclosures to investors* are excessive in quantity and therefore are ignored or prevent investors from obtaining a **clear understanding of the AIF's investment proposal**. On the other hand, some representatives of institutional investors noted that there remain insufficient or non-standardised disclosures of *all* fees, costs and charges in e.g. private equity investment.

The requirements relating to *investments in non-listed companies* and enterprises came under particular criticism. The extent of the notifications to NCAs are not viewed as useful, essential and are overly burdensome, and it is not clear what use the NCAs can or do make of the information. Further, AIFMD is not regarded as having improved the information provided by the AIF/AIFM to controlled companies or as having had a positive impact on the relationship between AIFs/AIFMs and target or investee enterprises. **Also, there is a lack of clarity in relation to the meaning of "non-listed company" and the application of the rules to investments in unlisted special purpose investment vehicle and unlisted UCITS or AIFs.**

The *marketing passport*, although in general a success, faces regulatory and administrative obstacles (and taxation matters, although the detail of these is outside the scope of this study) that hinder cross-border distribution. Interviewees identified two main concerns: a large divergence of marketing requirements between EU Member States due to the inconsistent application of the AIFMD marketing rules; and uncertainty over the application of the definition of marketing and pre-marketing. It is noted that the EC Cross-Border Distribution Proposal seeks to address these points.

5.2.2. Efficiency

The *reporting requirements* are viewed as giving rise to unnecessary, duplicative or insufficient data reports, even more so when other reporting requirements are taken into account (see Coherence below). Differences in national interpretation and filing procedures further exacerbate costs, which are not compensated for by the availability or regular provision of analysis to the market (and in particular, to investors) at national or EU level.

Given the issues noted above about the *external valuer* provisions, it is reported that there are fewer available external valuers in some Member States, which lowers the level of competition and could result in higher fees charged to AIFs/AIFMs.

There was a differentiated response, in particular from the private equity and real estate sectors, about the necessity of full functional and hierarchical separation of *risk and portfolio management* and the impact on smaller AIFMs. However, the onus is on NCAs to ensure appropriate application of the proportionality principle in such cases.

Regarding the rules on *asset segregation*, the (perceived) requirement to operate different omnibus accounts at every level of a sub-custody chain is seen as unnecessary and burdensome for the industry, due to administrative complexity and increased costs, without providing increased protection for investors. The EC has recently clarified that a (sub-)custodian can hold assets of UCITS and AIFs and of other clients of one depository in the same omnibus account, provided its own assets,

proprietary assets of the depositary and assets belonging to other clients of the third party are held in segregated financial instruments accounts.⁴⁵⁴

There is a question whether the rules on *investments in non-listed companies* and enterprises are efficient as regards the extent and frequency of disclosures that must be made to NCAs on control holdings and what use is or can be made of that data on a regular basis (bearing in mind that NCAs have powers to ask for data on an *ad hoc* basis). It is also pertinent that many private equity/venture capital AIFMs are smaller companies, for whom the administrative burdens may be proportionately greater.

There are clear concerns about the efficiency of the *marketing passport* regime, mainly due to different national approaches. In particular, a lack of transparency with regard to the differing national rules and NCA processes was seen as a major obstacle for rolling out uniform marketing activities across the EU. These issues have been well-articulated in the EC Cross-Border Impact Assessment.

5.2.3. Coherence

Overlapping *reporting obligations* under other EU legislation hinder coherence.

It would be helpful to harmonise the calculation methodologies for *leverage* across **AIFMD, UCITS and other relevant legislation. In the light of IOSCO's work on common leverage measures, it would be more efficient (for AIFMs, NCAs and investors) if any changes to EU requirements are considered only after IOSCO's work is complete and introduced simultaneously for UCITS and AIFs.**

There are questions about the coherence of the AIFMD *remuneration* rules with other pieces of legislation and guidelines (especially for AIFMs that are part of corporate groups with interfaces to more than one regulatory regime), which in turn reduces the potential efficiency of the regime. Also, for some AIFs there remain additional national provisions.

The AIFMD *investor disclosure* rules are inconsistent with other EU investor disclosure regimes and give rise to duplicative (and potentially inconsistent) disclosures.

The disclosure rules on *investments in non-listed companies* and enterprises are not consistent with the Second Company Law Directive. They require disclosures at additional levels of holdings and for more types of portfolio.

5.2.4. Relevance

Only one issue was identified under this principle. In general, the transparency provisions of the rules on *investments in non-listed companies* and enterprises remain relevant and there is not at present any evidence that the co-legislators would wish to dilute the asset stripping rules, but the relevance of certain detailed aspects of the rules is questioned (as noted above). Also, the rules now need to be assessed in the context of the first objective of CMU - "**financing for innovation, start-ups and non-listed companies**".

⁴⁵⁴ Explanatory memorandum of the Delegated Regulation, p. 3.

5.2.5. EU added value

The key points relating to EU added value are covered by the comments above against the first four principles. There are, though, some additional points to highlight.

Respondents urged that decisions about amendments to the *reporting* requirements should take into account the significant sunk costs in implementing the reporting systems, for AIFMs, NCAs and ESMA, and the additional costs that would be incurred in making changes, especially if those changes are made in a piecemeal fashion. Also, given the points above under Coherence, reporting obligations should be looked at in the round for asset and fund managers and should consider efficient use of new technologies.

There is a high degree of coherence between depositary requirements under AIFMD and UCITSD, but the co-legislators decided that slightly less stringent *asset segregation* requirements were appropriate for AIFs given the investment needs of EU professional investors (e.g. exposures to developing countries).

Also, the transitional provision in Article 61(5) AIFMD in relation to the *domicile of the depositary* has proved to add EU value, especially for smaller Member States. Therefore, its extension is requested by such Member States.

With respect to the objective of developing the single EU market in AIFs, as well as the **co-legislators' intention to introduce a passport regime for non-EU AIFs and AIFMs**, it would appear from the evidence that progress is patchy. It is heavily dependent on national measures and demand by professional investors for non-EU AIFs, which varies markedly from one Member State to another. Therefore, it is clearly of EU added value that NPPRSs are permitted to continue to operate.

Annexes – Table of Contents

Annex 1 – The online questionnaire for the general survey	270
Annex 2 – General survey: Questions and stakeholders	302
Annex 3 – Overview of the semi-structured interviews	315
Annex 4 – Results of the quantitative data collection and analysis	320
Annex 5 – Country level quantitative data and analysis	337
Annex 6 – Questions to guide the analysis	363
Annex 7 – References	367
Annex 8 – List of AIFMD-related national transformation laws	370
Annex 9 – List of similar domestic regulations prior to AIFMD	371
Annex 10 – Desk Research	373

Annex 1 – The online questionnaire for the general survey

Table of Contents

1. Introduction	271
2. Information about the respondent	272
2.1. Institutions	272
2.2. Individuals	273
2.3. Stakeholder-related questions	274
2.3.1. Alternative Investment Fund Manager (AIFM)	274
2.3.2. A public authority	276
2.3.3. Institutional investor or eligible counterparty investing in AIFs for own account	276
2.3.4. Representative body of investors and/or retail consumers	277
2.3.5. An entity marketing, selling or selecting AIFs	278
2.3.6. A non-listed company or enterprise receiving investment from AIFs	278
2.3.7. An AIF depositary or sub-custodian	279
2.3.8. An investment manager/adviser to AIFs	279
2.3.9. Another type of entity enabling AIFs to operate (e.g. prime brokers, brokers in underlying AIF assets, fund administrators, external valuers)	280
2.3.10. An industry body, representing any parties in the operation of AIFs	280
3. The objectives of AIFMD	281
3.1. Appropriate authorisation and registration requirements	281
3.1.1. Authorisation (Chapter II)	281
3.1.2. Competent Authorities (Chapter IX)	283
3.1.3. Scope, exemptions, definitions (Art. 2-4)	284
3.2. Enhanced transparency of macro-prudential risks	286
3.2.1. Reporting to authorities (Art. 24)	286
3.2.2. Leverage (Art. 25)	287
3.3. Limitation of micro-prudential risk and investor protection	288
3.3.1. Remuneration (Art. 13)	288
3.3.2. Conflict of interests (Art. 14)	288
3.3.3. Risk Management (Art. 15)	289
3.3.4. Liquidity Management (Art. 16)	289
3.3.5. Valuation (Art. 19)	290
3.3.6. Delegation (Art. 20)	290
3.3.7. Depositary (Art. 21)	291
3.3.8. Disclosure to public and investors (Art. 22, 23)	292
3.4. Rules for investing in non-listed companies by private equity and venture capital funds	292
3.5. Single Market / European Passport	295
3.6. Specific investment types	296
4. Market and commercial impacts	297
5. Impact of and interplay with other legislation	301

1. Introduction

Welcome Screen participants will see this right after clicking on the survey link, like here: <https://surveys.kpmg.de/felix-natschinski/en>

Short title (displayed at top left of survey screen)

AIFMD Survey

Welcome screen headline

Welcome to the online questionnaire about the functioning of the Alternative Investment Fund Managers Directive (AIFMD)

Welcome screen text

About the survey

The Directorate General for Financial Stability, Financial Services and Capital Markets Union of the European Commission (DG FISMA) has contracted KPMG to carry out research on how the Alternative Investment Fund Managers Directive (AIFMD) has worked in practice and to what extent its objectives have been met.

This online questionnaire is an important part of our research. We ask for your views **on the AIFMD's requirements, your experience in applying them and the market impacts**. It should take about 25-90 minutes of your time, depending on the number of aspects of AIFMD in which you have an interest.

Data privacy

We ask for your name, email address, phone number and company name in case we need to contact you for clarification. Your answers will not be shared with third parties and the raw data shared with DG FISMA will be anonymised. The name of your organisation will be mentioned as a source in the final report but will not be connected to specific points or findings.

The survey data will be stored **on KPMG's** servers in Germany. Your personal data will be deleted from the survey data once the project is completed. The anonymised data set may be used for future benchmarking.

By starting responses to the questionnaire you agree to allow KPMG to collect, process and use your personal data (name, email address, phone number and company name) in order to conduct this online survey about the AIFMD. You can revoke your acceptance of this agreement at any time by contacting the email address provided.

Technical information

You can work through the survey by scrolling through the questions from top to bottom, or you can navigate directly to individual sections via the interactive table of contents on the left. The number next to the chapter name indicates how many questions remain to be answered in that section. A green check mark shows that you have completed a section. If you have any technical questions, you can email us at de-kpmgsurveys@kpmg.com.

Important note: Please complete the questionnaire in one session. If you leave or reload this page, your answers will be lost. Please ensure you click the "submit survey" button at the end.

2. Information about the respondent

We recommend to add this section to all open link surveys to give respondents the chance to request a personalised link which is more comfortable for them to fill in as they can return to it at any time rather than having to complete it in one go

You are answering this survey using an open link where your results will not be cached, so you have to complete the survey in one go. It might be necessary for you to get certain information we ask of you from different sources, so you might not be able to complete it in one go. Therefore we recommend that we send you a personalised survey link instead which will allow you to leave and return to the survey at any time.

Would you like a personalised link?

- Yes – please send me a personalised link to this survey via email
- No – I will continue this survey using this open link

[If Yes]

Please provide us with the following contact details. We will send you a personalised survey link in the next few days from the address de-kpmgsurveys@kpmg.com

- Full name
- Email address
- Name of your institution (if any)
- Country

[If No – continue with questionnaire / If Yes, questionnaire ends here]

Q 1) Please provide your contact details in case we have any questions.

[Only display in the open link survey]

- a. Full name
- b. Email address
- c. Phone number

Q 2) Are you answering on behalf of an institution or as an individual?

- a. Institution
- b. Individual

2.1. Institutions

[Display chapter only if Q2 = "Institution"]

Q 3) Please specify what type of stakeholder you are: (Multiple Choice)

- a. Alternative Investment Fund Manager (AIFM)
- b. Public authority
- c. Institutional investor or eligible counterparty investing in AIFs for own account
- d. Representative body of investors and/or retail consumers

- e. Entity marketing, selling or selecting AIFs to/for investors
- f. Non-listed company or enterprise receiving investment from AIFs
- g. AIF depositary
- h. AIF sub-custodian
- i. Investment manager/adviser to AIFs
- j. Another type of entity enabling AIFs to operate (e.g. prime brokers, brokers in underlying AIF assets, fund administrators, external valuers)
- k. Industry body, representing any parties in the operation of AIFs.
- l. Other (please specify: _____)

Q 4) Please provide contact details of your institution:

- a. Name
- b. Trade mark or brand, if different from name
- c. Street name and number
- d. City
- e. Postal code
- f. Country

Q 5) *[Display only if Q3 = c]*
What category of investor are you?

- a. Retail investor
- b. Opted down retail investor
- c. Opted-up professional investor
- d. Professional investor
- e. Eligible counterparty
- f. Not sure

Q 6) Was your institution active in the AIF market prior to AIFMD coming into force?

- a. Yes
- b. No

Q 7) If you are on the transparency register of the European Commission, please provide your registry number: _____

2.2. Individuals

*[Display **chapter only if Q2 = "Individual"**]*

Q 8) Are you an investor in Alternative Investment Funds (AIFs)?

- a. Yes
- b. No

Q 9) *[Display only if Q8 = Yes]*
What type of investor are you?

- a. Retail investor

- b. Semi-professional investor
- c. Professional investor
- d. Not sure

2.3. Stakeholder-related questions

2.3.1. Alternative Investment Fund Manager (AIFM)

[Display chapter only if Q3 = "AIFM"]

- Q 10)** In which country is the head office of the AIFM?
 [Dropdown with list of EU countries (alphabetical order), then Iceland, Norway, Liechtenstein, Switzerland, Channel Islands, Bermuda, British Virgin Islands, Hong Kong, Singapore, US and other (please specify)]
- Q 11)** Are you a full-scope or sub-threshold AIFM?
- a. Full-scope AIFM
 - b. Sub-threshold AIFM
 - c. Sub-threshold but opted in to full-scope

Guidance: An AIFM is sub-threshold if it either directly or indirectly, through a company with which it is linked by common management or control, or by a substantive direct or indirect holding, manages portfolios of AIFs whose aggregate AUM:

- *do not exceed €100m, including any assets acquired through the use of leverage;*
or
- *do not exceed €500m when the portfolio of AIFs consist of AIFs that are unleveraged and have no redemption rights exercisable during a period of five years following the date of initial investment in each AIF.*

- Q 12)** Which types of AIFs do you manage? (Please indicate all that apply)
- Open-ended and authorised by the NCA
 - Closed-ended and authorised by the NCA
 - Open-ended and traded on a regulated market
 - Closed-ended and traded on a regulated market
 - Funds that are only for professional investors
 - Funds that are only for retail (and/or semi-professional) investors
 - Funds that for both types of investors
 - Funds that are only for specific types of investors (eg pension funds, charities etc)

- Q 13)** Please complete the following details regarding the AIFs under your management:
- Number of AIFs: _____
 - Domiciles of the AIFs (please indicate all that apply):
 [Dropdown with list of EU countries (alphabetical order), then Iceland,

Norway, Liechtenstein, Switzerland, Channel Islands, Bermuda, British Virgin Islands, Hong Kong, Singapore, US and other (please specify)]

- Total net asset value of those AIFs (EUR 1,000s): _____

Q 14) In which of the following asset types (as per the Annex IV reporting template) are AIFs under your management invested? (Please indicate all that apply)

- Cash and cash equivalents
- Listed equities
- Unlisted equities
- Corporate bonds not issued by financial institutions
- Corporate bonds issued by financial institutions
- Sovereign bonds
- Convertible bonds not issued by financial institutions
- Convertible bonds issued by financial institutions
- Loans
- Structured/secured products
- Equity derivatives
- Fixed income derivations
- CDS
- Foreign exchange (for investment purposes)
- Interest rate derivatives
- Commodity derivatives
- Other derivatives
- Real estate
- Commodities
- Other real/tangible assets
- Collective investment undertakings managed by you
- Other collective investment undertakings
- Other

Q 15) Which of the following specialist investment strategies (as per the Annex IV reporting template) are executed within the AIFs you manage? (Please indicate all that apply)

- a. Equity
- b. Fixed income
- c. Infrastructure
- d. Commodity
- e. Hedge fund
- f. Private equity
- g. Real Estate
- h. Fund of funds
- i. Other (please specify: _____)

[AIFM-only chapter ends]

2.3.2. A public authority

[Display chapter only if Q3 = "Public authority"]

- Q 16) Please indicate whether you have responsibility for the following? (Please indicate all that apply):
- a. Authorising AIFMs
 - b. Registering incoming AIFMs
 - c. Authorising AIF depositaries and custodians
 - d. Authorising prime brokers, specifically in relation to AIFs
 - e. Authorising AIFs
 - f. Registering AIFs
 - g. Authorising investment managers/advisers to AIFs
 - h. Authorising distributors of AIFs
 - i. Authorising other entities involved with the operation of AIFs
 - j. None of the above

- Q 17) *[Display only if answer to Q16 = "None of the above"]*

You state that you have no authorisation or registration responsibilities relevant to the AIFMD. Please describe your interest in the AIFMD and this survey: _____

["Public authority"-only chapter ends]

2.3.3. Institutional investor or eligible counterparty investing in AIFs for own account

[Display chapter only if Q3 = "Institutional investor or eligible counterparty ..."]

- Q 18) What type of investor are you?
- Credit institution
 - Investment firm
 - Insurance company
 - Other authorised or regulated financial institution
 - Pension fund or pension fund manager
 - UCITS or UCITS management company
 - Other (please indicate: _____)

- Q 19) Do you invest in EU/EEA AIFs?

- Yes
- No

[Display only if answer = Yes]

Please complete the following details:

- i. total net asset value of investments in EUR: _____
- ii. approximate leverage range of the AIFs (%): (minimum)_____(maximum) _____
- iii. number of AIFs: _____

- iv. approximate domiciles of the AIFs (please indicate all that apply):
[EU countries plus Iceland, Liechtenstein, Norway]

Q 20) Do you invest in non-EU/EEA AIFs?

- Yes
- No

[Display only if answer = Yes]

If yes, please complete the following details:

- i. number of AIFs: _____
- ii. approximate total net asset value of investments in EUR: _____
- iii. approximate leverage range of the AIFs (%): (minimum)_____ (maximum)

- iv. domiciles of the AIFs (please indicate all that apply): [list as per Q10 minus EU/EEA]

["Institutional investor or eligible counterparty..."-only chapter ends]

2.3.4. Representative body of investors and/or retail consumers

["Display chapter only if Q3 = "Representative body of investors and/or retail consumers"]

Q 21) Please describe briefly your coverage:

- a. Jurisdictional coverage: _____
- b. Types of investors/consumers you represent: [Multiple choice]
 - i. Individual investors only
 - ii. Professional investors only
 - iii. **Institutional investors only (some of which may be "retail")**
 - iv. Eligible counterparties

Q 22) *[If answer to Q21 b ii or iii = Yes]*

What types of professional or institutional investor do you represent? (Please indicate all that apply)

- Credit institution
- Investment firm
- Insurance company
- Other authorised or regulated financial institution
- Pension fund or pension fund manager
- UCITS or UCITS management company
- Other (please indicate: _____)

["Representative body of investors and/or retail consumers"-only chapter ends]

2.3.5. An entity marketing, selling or selecting AIFs

[Display chapter only if Q3 = "Entity marketing, selling or selecting AIFs..."]

Q 23) What type of firm are you? (Please indicate all that apply)

- Financial advisor
- Discretionary investment/wealth manager
- Execution only-broker or platform
- Other (please specify: _____)

Q 24) Of what types are your clients? (Please indicate all that apply)

- a. Retail investor
- b. Opted-down retail investor
- c. Semi-professional investor
- d. Opted-up professional investor
- e. Professional investor

Q 25) Do you market, sell or select? [Multiple Choice]

-EU/EEA AIFs to or for EU/EEA clients in your own jurisdiction?
-EU/EEA AIFs to or for EU/EEA clients cross border within the EU?
-EU/EEA AIFs to or for non-EU/EEA clients?
-non-EU AIFs to or for EU/EEA clients?

[“Entity marketing, selling or selecting AIFs...”-only chapter ends]

2.3.6. A non-listed company or enterprise receiving investment from AIFs

[Display chapter only if Q3 = "Non-listed company or enterprise receiving investment from AIFs"]

Q 26) Are you a small or medium-sized enterprise

- Yes
- No

Guidance: A small or medium-sized enterprise means an enterprise employing fewer than 250 persons and having an annual turnover not exceeding EUR 50 million, and/or an annual balance sheet total not exceeding EUR 43 million.

Q 27) Are you controlled by one or more AIFs/AIFMs?

- Yes
- No

Guidance: When calculating the percentage of voting rights, in addition to the voting rights held directly by the relevant AIF, the voting rights of (a) an undertaking controlled by the AIF; and (b) a natural or legal person acting in its own name but on behalf of the AIF or on behalf of an undertaking controlled by the AIF shall be taken into account. The percentage of voting rights shall be calculated on the basis of all the shares to which voting rights are attached even if the exercise thereof is suspended.

[“Non-listed company or enterprise receiving investment from AIFs”-only chapter ends]

2.3.7. An AIF depository or sub-custodian

[Display chapter only if Q3 = "AIF depository or sub-custodian"]

Q 28) Please provide the following information regarding the AIFs for which you are the depository or sub-custodian:

- Number of AIFs: ____
- Total assets under management of those AIFs: (EUR 1,000s) _____
- Asset classes (please indicate all that apply):
 - Open-ended and authorised by the NCA
 - Closed-ended and authorised by the NCA
 - Open-ended and traded on a regulated market
 - Closed-ended and traded on a regulated market
 - Funds that are only for professional investors
 - Funds that are only for retail (and/or semi-professional) investors
 - Funds that for both types of investors
 - Funds that are only for specific types of investors (eg pension funds, charities etc)

["AIF depository or sub-custodian"-only chapter ends]

2.3.8. An investment manager/adviser to AIFs

[Display chapter only if Q3 = "Investment manager/adviser to AIFs"]

Q 29) Please provide the following information regarding the AIFs to which you provide investment management or related services:

- Number of AIFs: ____
- Total Assets under management of those AIFs: (EUR 1,000s) _____
- Asset classes (please indicate all that apply): [List as per Q14]
- Investment strategies (please indicate all that apply): [List as per Q15]

Q 30) Which of the following functions do you carry out? (Please indicate all that apply)

- **Discretionary portfolio management of an AIF's total portfolio**
- **Discretionary portfolio management of part of an AIF's portfolio**
- Advisory investment management services
- Investment risk management functions
- Provision of information to enable the AIFM to undertake investment risk management
- Distribution of the AIFs
- Other (please specify: _____)

["Investment manager/adviser to AIFs"-only chapter ends]

2.3.9. Another type of entity enabling AIFs to operate (e.g. prime brokers, brokers in underlying AIF assets, fund administrators, external valuers)

[Display chapter only if Q3 = "Another type of entity enabling AIFs to operate"]

Q 31) Which of the following functions do you carry out? [Multiple Choice]

- a. Prime broker
- b. Broker in underlying AIF assets
- c. Fund administrator
- d. Fund accountant
- e. External valuer
- f. Other activities relating to the assets of the AIF
- g. Other (please specify: _____)

Q 32) *[Display only if Q32 = Fund administrator]*

What are the total assets under management of the AIFs that you administer? (EUR 1,000s): _____

["Another type of entity enabling AIFs to operate"-only chapter ends]

2.3.10. An industry body, representing any parties in the operation of AIFs

[Display chapter only if Q3 = "An industry body, representing any parties in the operation of AIFs"]

Q 33) Please specify what type of stakeholders you represent or are your members (please indicate all that apply):

- Alternative Investment Fund Manager (AIFMs)
- Institutional investors or eligible counterparties investing in AIFs for own account
- Representative bodies of investors and/or retail consumers
- Entities marketing, selling or selecting AIFs to or for retail investors
- Non-listed companies or enterprises receiving investment from AIFs
- AIF depositaries or (sub)custodian
- Investment managers/advisers to AIFs
- Another type of entity enabling AIFs to operate (e.g. prime brokers, brokers in underlying AIF assets, fund administrators, external valuers)
- Other industry bodies, representing any parties in the operation of AIFs.
- Other (please specify: _____)

Q 34) Please briefly describe your jurisdictional coverage: _____

["An industry body, representing any parties in the operation of AIFs"-only chapter ends]

3. The objectives of AIFMD

This section seeks to identify to what extent the objectives of AIFMD are met.

3.1. Appropriate authorisation and registration requirements

AIFMD seeks to ensure that all Alternative Investment Fund Managers (AIFMs) are subject to appropriate authorisation or registration requirements (including minimum capital, and fit and proper requirements). In particular, the minimum thresholds for AIFMs (based on total AIF assets under management) were designed to be appropriately set to meet this objective. It also requires an appropriately authorised depositary for EU/EEA AIFs.

3.1.1. Authorisation (Chapter II)

[Display these questions only if Q3 = "Alternative Investment Fund Manager"]

Q 35) Were you already authorised by the NCA as an AIFM (i.e. subject to broadly equivalent national rules) prior to AIFMD?

- a. Yes
- b. No

Q 36) What was the approximate cost of obtaining a new AIFM authorisation from the NCA or of revising your existing authorisation to comply with AIFMD implementation, excluding passport notifications and ongoing costs? Please state in EUR thousands

- NCA fees: _____
- People resources: _____
- Other costs (including professional advisors): _____

Q 37) How long did it take to obtain a new AIFM authorisation or a revised authorisation to comply with AIFMD implementation, after all requisite documents had been delivered to the NCA?

- Less than a week
- 1 – 4 weeks
- 1 – 3 months
- 3 – 6 months
- 6 – 12 months
- More than a year

Q 38) What is the approximate annual cost of maintaining your AIFM authorisation (taking into account time spent, adviser fees for instance for inspections etc. but excluding passport notifications)? Please state in EUR thousands.

Q 39) What is the approximate annual cost of maintaining your passport notifications?

Please state in EUR thousands.

[End of Alternative Investment Fund Manager section]

[Display only if Q3 = Depositaries]

Q 40) Where you already licenced by the NCA as a depositary for UCITS or AIFs (i.e. subject to broadly equivalent national rules) prior to AIFMD?

- a. Yes
- b. No

Q 41) What was the approximate cost of obtaining a new AIF depositary licence from the NCA or of revising your existing licence to comply with AIFMD implementation, excluding ongoing costs?

Please state in EUR thousands

- NCA fees: _____
- People resources: _____
- Other costs (including professional advisors): _____

Q 42) How long did it take to obtain a new AIF depositary licence or a revised licence to comply with AIFMD implementation, after all requisite documents had been delivered to the NCA?

- Less than a week
- 1 – 4 weeks
- 1 – 3 months
- 3 – 6 months
- 6 – 12 months
- More than a year

Q 43) What is the approximate annual cost of maintaining your AIF depositary licence (taking into account time spent, adviser fees for instance for inspections etc)?

Please state in EUR thousands. _____

[End of depositary section]

Q 44) ***[Display only if Q3 = "A public authority" and answer to Q16 a and/ or c = Yes]***

What are your charges for:

Please state in EUR.

- | | | |
|--|----------------|----------------|
| a. A new full-scope AIFM licence: | Minimum: _____ | Maximum: _____ |
| b. A new sub-threshold AIFM licence: | Minimum: _____ | Maximum: _____ |
| c. A new AIF depositary licence: | Minimum: _____ | Maximum: _____ |
| d. Revision to a full-scope AIFM licence: | Minimum: _____ | Maximum: _____ |
| e. Revision to a sub-threshold AIFM licence: | Minimum: _____ | Maximum: _____ |
| f. Revision to an AIF depositary licence: | Minimum: _____ | Maximum: _____ |

- g. Annual supervisory fee for full-scope AIFM: Minimum: _____ Maximum: _____
- h. Annual supervisory fee for sub-threshold AIFM:
Minimum: _____ Maximum: _____
- i. Annual supervisory fee for AIF depositary: Minimum: _____ Maximum: _____
- j. Processing an incoming AIFM passport
- k. notification: Minimum: _____ Maximum: _____

3.1.2. Competent Authorities (Chapter IX)

[Display for AIFMs, Public Authorities, Depositaries, Investment Managers/ Advisers, Other entities involved in operation of AIFs, Trade Bodies]

Q 45) Please indicate to what extent you agree that AIFMD is applied consistently and without significant variation by all NCAs

[Scale: fully agree – somewhat agree – neutral – somewhat disagree – fully disagree – no opinion]

[Display only if answer = somewhat or fully disagree]

Please briefly explain the main areas where AIFMD is not applied consistently by all NCAs: _____

Q 46) ***[Display only if Q3 = "Alternative Investment Fund Manager" OR "An AIF depositary or sub-custodian"]***

How often since AIFMD implementation have you been subject to an on-site inspection by the NCA in relation to your AIFMD activities?

- Never
- Once
- Twice
- Three times or more

[Display these questions only if Q3 = "A public authority" and if answer to Q16 = a or c

Q 47) How regularly do you undertake on-site inspections of AIFMs or AIF depositaries in relation to their AIFMD activities?

- Never
- Once every five years or longer
- Between three and five years
- Once a year
- Depends on the size and activities of the firm. Please indicate range: between ___ and ___ years

Q 48) *[Display only if answer to Q16 = a]*

What were the three aspects of AIFMD requirements on which you most frequently found AIFMs' governance, controls or processes to be lacking?

1. _____
2. _____
3. _____

Q 49) *[Display only if answer to Q16 = c]*

What were the three aspects of AIFMD requirements on which you most frequently found AIF depositaries' **governance, controls or processes to be** lacking?

1. _____
2. _____
3. _____

Q 50) *[Display only if answer to Q16 = a]*

Since AIFMD implementation, how often have you used your AIFMD sanctioning* powers?

- Never
- Once
- Twice
- Three times or more

Sanctions might include: requirement to cease contrary practices, freezing or sequestration of assets, temporary prohibition, requirement to repurchase or redeem units, withdrawal of authorisation or referral of matters for criminal prosecution

Q 51) *[Display only if answer to Q16 = a]*

What were the three most frequent types of sanctions? (Multiple choice, max. 3 answers)

- Required the cessation of contrary practices
- Froze or sequestered assets
- Imposed a temporary prohibition
- Required repurchase or redemption of units
- Withdrew authorisation
- Referred matters for criminal prosecution
- Other (Please specify: _____)

3.1.3. Scope, exemptions, definitions (Art. 2-4)

[Display these questions only for AIFMs, public authorities, institutional investors, Entity marketing, selling or selecting AIFs , depositaries & custodians, investment managers/advisors, industry bodies, representative bodies]

Q 52) Are you aware of differences in interpretation of the definition of an AIF or in the formation of investment vehicles that might adversely impact competitiveness within the industry or investor protection?

- Yes
- No
- Don't know

[Display only if answer = yes]

Please provide a brief explanation: _____

Q 53) Are you aware of any market practices that enable AIFM-like firms not to be classified as AIFMs and therefore to be outside the AIFMD requirements for AIFMs?

- Yes
- No
- **Don't know**

[Display only if answer = yes]

Please provide a brief explanation: _____

Q 54) *[Display this question only for institutional investors and entities marketing, selling or selecting AIFs]*

Is it clear to you whether an AIFM is “full-scope” or “sub-threshold” (and therefore not subject to the full AIFMD requirements)?

- Yes
- No

Q 55) Please indicate to what extent you agree with the following statements about AIFMs that are, or that choose to be, subject to the full AIFMD requirements.

[Scale for each statement: fully agree – somewhat agree – neutral – somewhat disagree – fully disagree – no opinion]

- AIFMs provide for a high standard in AIF management that is comparable to or better than standards in other jurisdictions around the globe
- AIFMs provide for a high level of investor protection
- AIFMs provide a high level of transparency with regard to their services
- AIFMs provide a high level of transparency with regard to the AIFs they manage

Q 56) *[Display this question set only if answer to Q55 = Yes]*

Please indicate to what extent you agree with the following statements about sub-threshold AIFMs?

[Scale for each statement: fully agree – somewhat agree – neutral – somewhat disagree – fully disagree – no opinion]

- In practice there is no significant difference in the professional standards of sub-threshold and full-scope AIFMs
- Sub-threshold AIFMs provide similar disclosures to full-scope AIFMs
- Sub-threshold AIFMs follow similar risk management standards to full-scope AIFMs
- Sub-threshold AIFMs manage conflicts of interest to the same standards as full-scope AIFMs

3.2. Enhanced transparency of macro-prudential risks

One of the primary objectives of AIFMD is the monitoring of macro-prudential risks of AIFs by enhanced transparency (including use of leverage, monitoring of systemic risks, sharing of data at EU level) and ensuring better practices of risk and liquidity management.

3.2.1. Reporting to authorities (Art. 24)

[Display these questions only if Q3 = "A public authority" and Q16 a = Yes]

Q 57) Please indicate to what extent you agree with the following statements:
[Scale for each statement: fully agree – somewhat agree – neutral – somewhat disagree – fully disagree – no opinion]

- We receive complete, accurate and timely reports from all AIFMs we authorise
- There is a consistent understanding among the AIFMs we authorise of what must be reported in each cell of the reporting template
- There is a consistent understanding across the EU of what must be reported in each cell of the template
- The reporting template covers all the data that we need
- The reporting template covers only those data that are essential for us to receive
- We monitor the reports of individual AIFMs for consistency
- We maintain a database of all the reports that can be interrogated for trends and outliers
- We regularly analyse the reports/database to monitor market trends
- We pass on the collated data to ESMA
- There is sufficient exchange of data between all NCAs and EMSA to enable market trends to be monitored at a pan-EU/EEA level

Q 58) Prior to AIFMD implementation, did you require AIFMs to report similar data (or a subset of the data)?

- Yes
- No

[End of questions for public authorities]

[Display these questions only if Q3 = "Alternative Investment Fund Manager]

Q 59) Please indicate to what extent you agree with the following statements:
[Scale for each statement: fully agree – somewhat agree – neutral – somewhat disagree – fully disagree – no opinion]

- We are able to provide complete, accurate and timely reports from all AIFMs we authorise
- There is a consistent understanding within our Member State of what must be reported in each cell of the reporting template
- There seems to be a consistent understanding across the EU of what must be reported in each cell of the template

- The reporting template covers all the data that the authorities need
- The reporting template covers only those data that are essential for the authorities
- We believe that the NCA monitors our reports for consistency
- We believe that the NCA maintains a database of all the reports it receives, which can be interrogated for trends and outliers
- We believe that the NCA regularly analyses the reports/database to monitor market trends
- The NCA occasionally publishes commentary on the trends it has observed from AIFMD reporting
- The NCA regularly publishes commentary on the trends it has observed from AIFMD reporting

3.2.2. Leverage (Art. 25)

[Display these questions only if Q3 = "A public authority" and Q16 a = Yes]

Q 60) Since AIFMD implementation, have you observed any trend in the levels of leverage reported to you?

- Yes
- No

[If answer = Yes]

Please briefly describe the key trends in leverage levels and the main sources of leverage: _____

Q 61) Since AIFMD implementation, have you imposed or proposed limits on, or otherwise restricted, the level of leverage in AIFs (other than as part of additional rules that you apply to retail AIFs in your jurisdiction)?

- Number of instances of imposition of limits or other restrictions: _____
- Number of measures proposed to ESMA: _____
- Number of measures executed in agreement with ESMA advice: _____
- Number or measures executed contrary to ESMA advice: _____

[End of questions for public authorities]

Q 62) ***[Display only if Q3 = "Alternative Investment Fund Manager" OR "An AIF depositary"]***

What is the average level of leverage of AIFs under your management or your AIF depositary activity? [in %]: _____

Q 63) *[Display this question only for AIFMs, institutional investors, Entity marketing, selling or selecting AIFs, depositaries, investment managers/advisors, industry bodies]*

Since AIFMD implementation, have you observed any changes in:

[Scale for each statement: strongly increased – somewhat increased – unchanged – somewhat decreased – strongly decreased – no opinion]

- The level of leverage in EU/EEA AIFs?
- The sources of leverage in EU/EEA AIFs?

- The level of leverage in non-EU/EEA AIFs?
- The sources of leverage in non-EU/EEA AIFs?

3.3. Limitation of micro-prudential risk and investor protection

AIFMD aims to ensure monitoring and limitation of micro-prudential risks. To enable a common approach to investor protection, risk management controls are imposed on major AIF risks (market, liquidity, counterparty, operational). Appropriate disclosures to investors are required to enable effective due diligence by them of the AIF. AIFMs must ensure proper management of conflicts of interest, and have appropriate controls and processes in place for key areas, such as valuation.

3.3.1. Remuneration (Art. 13)

Q 64) **[Display only if Q3 = "A public authority" and Q16 a = Yes]**

Do you make use of the proportionality principle related remuneration, as foreseen in AIFMD and ESMA guidelines?

- Yes
- No

Q 65) *[Display only if Q3 = AIFM]*

Has the level of remuneration of risk takers changed because of AIFMD?

- Yes
- No

[Display only if previous question = Yes]

What change has there been to:

[Scale for each statement: strongly increased – somewhat increased – unchanged – somewhat decreased – strongly decreased | N/A]

- The overall remuneration level
- The fixed remuneration component
- The variable remuneration component

3.3.2. Conflict of interests (Art. 14)

Q 66) *[Display only if Q3 = AIFM]*

Have you reviewed and / or adjusted procedures for the management of conflicts because of AIFMD?

- Reviewed and significantly adjusted
- Reviewed, but without significant adjustments
- Not reviewed

Q 67) *[Display only for AIFMs, institutional investors, Entity marketing, selling or selecting AIFs, depositaries, investment managers/advisors, industry bodies]*

Please indicate to what extent you agree with the statement that AIFMs are required to have appropriate conflicts of interest management

[fully agree – somewhat agree – neutral – somewhat disagree – fully disagree
– no opinion]

3.3.3. Risk Management (Art. 15)

Q 68) *[Display only if Q3 = AIFM]*

Have you reviewed and / or adjusted your risk management processes because of AIFMD?

- Reviewed and significantly adjusted
- Reviewed, but without significant adjustments
- Not reviewed

Q 69) *[Display only for AIFMs, institutional investors, Entity marketing, selling or selecting AIFs, depositaries, investment managers/advisors, industry bodies]*

Please indicate to what extent you agree with the statement that AIFMs are required to have appropriate risk management processes.

[fully agree – somewhat agree – neutral – somewhat disagree – fully disagree
– no opinion]

3.3.4. Liquidity Management (Art. 16)

Q 70) *[Display only if Q3 = AIFM]*

Have you reviewed and / or adjusted your liquidity management processes because of AIFMD?

- Reviewed and significantly adjusted
- Reviewed, but without significant adjustments
- Not reviewed

Q 71) *[Display only for AIFMs, institutional investors, entities marketing, selling or selecting AIFs, depositaries, investment managers/advisors, industry bodies]*

Please indicate to what extent you agree with the statement that AIFMs are required to have appropriate liquidity management processes.

[fully agree – somewhat agree – neutral – somewhat disagree – fully disagree
– no opinion]

3.3.5. Valuation (Art. 19)

Q 72) *[Display only for AIFMs, institutional investors, entities marketing, selling or selecting AIFs, depositaries, investment managers/advisors, industry bodies, another type of entity]*

Please indicate to what extent you agree with the following statements relating to valuation.

[Scale for each statement: fully agree – somewhat agree – neutral – somewhat disagree – fully disagree – no opinion]

- Net Asset Values of AIFs are calculated more frequently than before
- AIF assets are valued more frequently than before
- The AIFMD valuation requirements provide for an appropriate level of governance, including in relation to potential conflicts of interest
- The AIFMD requirements have led to an overall improvement in valuation processes

Q 73) *[Display only for AIFMs, depositaries, investment managers/advisors, industry bodies, another type of entity]*

What was/is the leading market practice of valuation for non-listed assets?

a. Prior to AIFMD coming into force:

- Internal valuation by the AIFM
- Valuation by the investment manager/adviser
- Valuation by an external valuer
- Valuation by the depositary
- Other (please specify: _____)
- **Don't know**

b. Today

- Internal valuation by the AIFM
- Valuation by the investment manager/adviser
- Valuation by an external valuer
- Valuation by the depositary
- Other (please specify: _____)
- **Don't know**

3.3.6. Delegation (Art. 20)

[Display this section only if Q3 = AIFM]

Q 74) Which of the following functions do you delegate (in whole or in part) to other entities? (Please indicate all that apply)

- Portfolio management
- Risk management
- Fund administration
- Fund accounting
- Marketing functions

- Activities related to the assets of AIFs*
- Other (please specify: _____)
- None of the above

* Activities related to the assets of AIFs might include facilities management, real estate administration activities, advice to undertakings on capital structure, industrial strategy and related matters, advice and services relating to mergers and the purchase of undertakings and other services connected to the management of the AIF and the companies and other assets in which it has invested.

Q 75) Please indicate to what extent AIFMD impacted your delegation activity.

[Scale for each statement: strongly increased – somewhat increased – unchanged – somewhat decreased – strongly decreased – no opinion]

- The range of functions you delegate
- The amount of each function you delegate
- The firms to which you delegate
- The fees you incur
- The duration or frequency of review of contracts
- Operational risks

[End of section for AIFM]

3.3.7. Depositary (Art. 21)

[Display this section only for AIFMs, institutional investors, distributors, depositaries, investment managers/advisors, industry bodies]

Q 76) Please indicate to what extent you agree with the following statements about AIF depositaries.

[Scale for each statement: fully agree – somewhat agree – neutral – somewhat disagree – fully disagree – no opinion]

- A depositary is essential for all types of AIFs
- The value to professional investors of the depositary oversight function outweighs its cost
- AIF depositaries provide for an appropriate level of protection for professional investors
- The oversight responsibilities for depositaries cover the appropriate activities of the AIFM/AIF
- The cash monitoring requirements for depositaries are necessary and appropriately detailed
- The asset segregation and omnibus account requirements for sub-custodians provide additional benefits for professional investors that clearly outweigh the additional costs
- The requirements for non-custody assets are necessary and appropriate
- The depositary requirements are implemented in a similar way across the EU/EEA
- The way in which the depositary operates and interfaces with the AIFM/AIF is similar across the EU/EEA

3.3.8. Disclosure to public and investors (Art. 22, 23)

[Display this section for all types of respondents]

Q 77) Please indicate to what extent you agree with the following statements on the impact of AIFMD on the information provided to investors prior to investment.

[Scale for each statement: fully agree – somewhat agree – neutral – somewhat disagree – fully disagree – no opinion]

- Content of disclosure has expanded
- Quality of disclosure has improved
- Disclosure is consistent across the EU/EEA

Q 78) Please indicate to what extent you agree with the following statements on the impact of AIFMD on periodic disclosures to investors.

[Scale for each statement: fully agree – somewhat agree – neutral – somewhat disagree – fully disagree – no opinion]

- Frequency of reporting has increased
- Content of reporting has expanded
- Quality of reporting has improved
- Reporting is consistent across the EU

3.4. Rules for investing in non-listed companies by private equity and venture capital funds

[Display this section only if Q3 = AIFM, public authority, non-listed company]

To ensure greater accountability of AIFMs/AIFs holding controlling stakes in companies and enterprises, AIFMD aims to ensure increased transparency when acquiring a controlling stake in and managing companies and enterprises.

Q 79) *[Display this question only if Q3 = AIFM]*

Do AIFs you manage invest, or have they ever invested, in non-listed entities?

- a. No
- b. Yes, but we have not (individually or collectively with other AIFMs) acquired or aimed to acquire control of non-listed entities
- c. Yes, and we have (individually or collectively with other AIFMs) acquired or aimed to acquire control of non-listed entities, but they fell within the Article 26 exemptions
- d. Yes, and we have (individually or collectively with other AIFMs) acquired or aimed to acquire control of non-listed entities that did not fall within the Article 26 exemptions (including UCITS or other AIFs).

Q 80) *[Display question only if Q3 = AIFM and answer to Q80 = d]*

Please indicate to what extent you agree with the following statements.

Q 81) *[Display question only if Q3= non-listed company]*

Please indicate to what extent you agree with the following statements.

[Question set duplicated for technical reasons, scale for each statement in Q81 and Q82: fully agree – somewhat agree – neutral – somewhat disagree – fully disagree – no opinion or N/A]

- The notifications required to NCAs are useful, essential and not overly burdensome
- AIFMD improved the information provided by the AIF/AIFM to controlled companies.
- Information provided by the AIF/AIFM to controlled companies is essential, useful and not overly burdensome
- AIFMD improved the relationship between AIFs/AIFMs and target or investee enterprises
- The asset stripping rules* provide an appropriate level of protection

* *Guidance:* Asset stripping means that the AIFM shall for a period of 24 months following the acquisition of control of the company by the AIF:

- (a) *not be allowed to facilitate, support or instruct any distribution, capital reduction, share redemption and/or acquisition of own shares by the controlled company;*
- (b) *in so far as the AIFM is authorised to vote on behalf of the AIF at the meetings of the governing bodies of the controlled company, not vote in favour of a distribution, capital reduction, share redemption and/or acquisition of own shares by the controlled company; and*
- (c) *in any event use its best efforts to prevent distributions, capital reductions, share redemptions and/or the acquisition of own shares by the controlled company.*

Q 82) *[Display only if Q3 = AIFM and answer to Q80 = d]*

Are there similar rules regarding transparency and asset stripping for non-AIF investors in your country?

- Yes
- No

[Display only if previous question = No]

In your view, does this discourage investment via AIFs?

- Yes
- No

Q 83) *[Display only if Q3 = non-listed company – questions duplicated for technical reasons]*

Are there similar rules regarding transparency and asset stripping for non-AIF investors in your country?

- Yes
- No

[Display only if previous question = No]

In your view, does this discourage investment via AIFs?

- Yes
- No

Q 84) *[Display only if Q3 = AIFM]*

Does an AIF you manage control an unlisted special purpose investment vehicle?

- Yes
- No

[If answer = yes] Is it clear how the Article 26 rules do or do not apply?

Q 85) *[Display only if Q3 = AIFM]*

Does an AIF you manage control an unlisted UCITS or another AIF?

- Yes
- No

[If answer = yes] Is it clear how the Article 26 rules do or do not apply?

[Display these questions only if Q3 = "A public authority" and answer to Q16a = Yes]

Q 86) How many notifications of changes of voting right held by AIFs have you received with regard to the thresholds of Art. 27 (1) AIFMD?

- 2013: _____
- 2014: _____
- 2015: _____
- 2016: _____
- 2017 ytd: _____

Q 87) How many AIFMs have notified you of changes of voting rights in non-listed companies held by AIFs they manage with regards to the thresholds of Art. 27 (1) AIFMD?

- 2013: _____
- 2014: _____
- 2015: _____
- 2016: _____
- 2017 ytd: _____

Q 88) How many notifications of acquisition of control over a non-listed company or an issuer by an AIF (individually or jointly) have you received under Art. 28 (1) AIFMD?

- 2013: _____
- 2014: _____
- 2015: _____
- 2016: _____
- 2017 ytd: _____

Q 89) How many AIFMs have notified you of acquisition of control over a non-listed companies or issuers by AIFs (individually or jointly) under Art. 28 (1) AIFMD?

- 2013: _____
- 2014: _____
- 2015: _____
- 2016: _____
- 2017 ytd: _____

[End of questions for "A public authority" & Q16a = Yes]

3.5. Single Market / European Passport

In order to develop the Single Market, AIFM aims to remove barriers to the efficient cross-border distribution of AIFs to professional investors, without compromising the effectiveness of regulation and supervision.

[Display these questions only if Q3 = AIFM]

Q 90) Are any of the EU/EEA AIFs you manage marketed into countries other than their domicile?

- No
- Yes, only to other EU/EEA countries
- Yes, only to non-EU/EEA countries
- Yes, to both EU/EEA and non-EU/EEA countries
- N/A

Q 91) Are any of the non-EU/EEA AIFs you manage marketed into the EU?

- No
- Yes
- N/A

Q 92) Are any of the EU/EEA AIFs you manage marketed to EU retail or semi-professional investors?

- No
- Yes, but only in the domicile of the AIF
- Yes, to other EU/EEA countries
- N/A

Q 93) Are you the AIFM for AIFs domiciled in jurisdictions other than your own?

- Yes
- No

[If answer = yes]

Please indicate all jurisdictions that apply.

[Dropdown with list of EU countries (alphabetical order), then Iceland, Norway, Liechtenstein, Switzerland, Channel Islands, Bermuda, British Virgin Islands, Hong Kong, Singapore, US and other (please specify)]

Q 94) To what extent has AIFMD impacted your ability or commercial desire to be the AIFM for AIFs in jurisdictions other than your own?
[strongly increased – somewhat increased – unchanged – somewhat decreased – strongly decreased – no opinion]

Q 95) Please indicate to what extent AIFMD has impacted the marketing of an EU/EEA AIF into Member States other than the domicile of the AIF.
[Scale for each statement: strongly increased – somewhat increased – unchanged – somewhat decreased – strongly decreased – no opinion]

- Time to market
- Complexity of registration or authorisation
- Reliability of the process with the NCA

Q 96) Please indicate to what extent AIFMD has impacted the marketing of non-EU/EEA AIFs into the EU.

[Scale for each statement: strongly increased – somewhat increased – unchanged – somewhat decreased – strongly decreased – no opinion]

- Number of Member States that permit non-EU/EEA AIFs to be marketed into the country
- Restrictions on the types of non-EU/EEA AIFs that can be marketed into the EU
- Ability to market non-EU/EEA AIFs to retail investors
- Time to obtaining approval under the national private placement regime

3.6. Specific investment types

Q 97) *[Only display if answer to Q3 is not public authority or non-listed entity]*

To what extent do you believe AIFMD has impacted:

[Scale for each question: strongly increased – somewhat increased – unchanged – somewhat decreased – strongly decreased – **don't know**]

- investment in private equity or venture capital?
- investment in or for the benefit of developing countries?
- investment in real assets?

[if investment in private equity or venture capital has changed]

Please briefly explain why investment in private equity or venture capital has changed. ____

[if investment in or for the benefit of developing countries has changed]

Please briefly explain why investment in or for the benefit of developing countries has changed. _

[if investment in real assets has changed]

Please briefly explain why investment in real assets has changed. ____

4. Market and commercial impacts

This section seeks to identify the main market impacts of the AIFMD.

[Display these questions only if Q3 = AIFM]

Q 98) Please indicate to what extent you agree with the following **statements. Acquiring AIFM authorisation allowed us to...**

[Scale for each statement: fully agree – somewhat agree – neutral – somewhat disagree – fully disagree – no opinion]

- ...rationalise our organisational set-up
- ...enhance our central support services hubs
- ...improve our business prospects
- ...increase our reputation with domestic investors
- ...market our AIFs in other EU/EEA countries
- ...access new investors outside EU/EEA
- ...manage AIFs in other EU/EEA countries
- ...better manage risks in AIFs
- ...compete with other AIFMs under the same rules
- ...access a broader range of professional investors
- ...access (more) retail or semi-professional investors

Q 99) Please indicate to what extent AIFMD has caused you to rationalise or expand your product offerings:

[Scale for each statement: significantly rationalised – somewhat rationalised – unchanged – somewhat expanded – significantly expanded – N/A]

- AIF range overall
- Hedge funds
- Private equity/venture capital funds
- Funds of funds
- Securities funds
- Commodity funds
- Leverage level with funds
- Funds for specific types of investors (please specify: _____)

Q 100) Please indicate to what extent the costs of undertaking or purchasing the following services have been impacted by AIFMD:

[Scale for each statement: strongly increased – somewhat increased – unchanged – somewhat decreased – strongly decreased – **don't know**]

- AIFM services overall
- Portfolio management
- Risk management
- Reporting to regulators
- Disclosures to investors
- Fund administration
- Distribution costs

Q 101) **[If any answers to Q 101 are other than unchanged or don't know, display only those selected services and ask:]**

Please indicate which factor you believe to have most contributed to this change:

[Factors for each statement: processes we would not others undertake – processes we would otherwise undertake more efficiently – processes that duplicate other requirements – investors demand something different – additional national rules – variations in interpretation between countries – no opinion]

- AIFM services overall
- Portfolio management
- Risk management
- Reporting to regulators
- Disclosures to investors
- Fund administration
- Distribution costs

[End of AIFM-only section]

[Display this question set only if Q3 = AIFMs, depositaries or custodians]

Q 102) Please indicate to what extent you believe competition in the AIF depositary and custody market has changed since AIFMD came into force (over and above any other influences):

[Scale for each statement: strongly increased – somewhat increased – unchanged – somewhat decreased – strongly decreased – no opinion]

- For AIF depositaries
- For AIF (sub)custodians

[Display this question set only if Q3 = depositaries]

Q 103) Please indicate to what extent the costs of undertaking or outsourcing the following services have changed since AIFMD came into force (over and above the impact of other regulatory or market developments):

[Scale for each statement: strongly increased – somewhat increased – unchanged – somewhat decreased – strongly decreased – **don't know**]

- Depositary services overall
- AIF/AIFM oversight functions
- Custody functions
- Functions relating to non-custody assets
- Cash monitoring
- Analysis of disclosures from AIFs/AIFMs
- Provision of information to AIFs/AIFMs

[Display this question only for AIFMs, depositaries and fund accountants.]

Q 104) Please indicate to what extent the following fees charged to AIFs have changed since AIFMD came into force (over and above the impact of other regulatory or market developments):

[Scale for each statement: strongly increased – somewhat increased – unchanged – somewhat decreased – strongly decreased – no opinion]

- Investment management fee
- Fund administration fee (where separately charged)
- Depositary
- Custody fee
- Foreign exchange fees
- Audit fee
- External valuation costs
- Payments to distributors from the AIF
- Other (please specify: _____)

[Display these questions only if Q 3 = investment managers/advisers]

Q 105) Please indicate to what extent AIFMD has caused you to restrict or expand your investment management service offerings:

[Scale for each statement: significantly restricted – somewhat restricted – unchanged – somewhat expanded – significantly expanded – N/A]

- AIFs overall
- Hedge funds
- Private equity/venture capital funds
- Funds of funds
- Securities funds
- Commodity funds
- Leverage level with funds
- Funds for specific types of investors (please specify: _____)

[Display these questions only if Q3 = investment managers/advisors and other entities involved in the operation of AIFs]

Q 106) Please indicate to what extent you believe competition in the AIF market for the services you provide has changed since AIFMD came into force (over and above any other influences):

[Scale for each statement: strongly increased – somewhat increased – unchanged – somewhat decreased – strongly decreased – no opinion]

Q 107) Please indicate to what extent your fees for AIFs/AIFMs have changed since AIFMD came into force (over and above the impact of other regulatory or market developments):

[Scale for each statement: strongly increased – somewhat increased – unchanged – somewhat decreased – strongly decreased – no opinion]

[Display only for distributors with retail clients (Q24 = a)]

Q 108) To what extent has AIFMD impact **the level of your retail clients' investment:**
[Scale: strongly increased – somewhat increased – unchanged – somewhat decreased – strongly decreased – no opinion]

- ...in EU/EEA AIFs?
- ...in non-EU/EEA AIFs?

[Display only if Q 3 = institutional investors and trade bodies representing institutional investors]

Q 109) Has AIFMD influenced your decisions to invest through AIFs?

- Yes
- No

[Display only if previous question = Yes]

Please explain briefly how AIFMD has influenced your investment decisions (including whether you might previously have invested only via UCITS or direct): _____

Q 110) Has AIFMD influenced your decisions to invest through EU/EEA AIFs rather than third country AIFs (or vice versa)?

- Yes
- No

[Display only if previous question = Yes]

Please explain briefly how AIFMD has influenced your investment decisions:

[Display for all respondents]

Q 111) Do you believe that retail investors are impacted by AIFMD?

- Yes
- No

Q 112) *[Display only if answer to Q112 = Yes]*

Do you believe that AIFMD has had positive impacts for retail investors, directly or indirectly?

- Yes
- No

[Display only if above answer = Yes]

If yes, please briefly explain the main positive impacts _____

Q 113) *[Display only if answer to Q112 = Yes]*

Do you believe that AIFMD has had adverse impacts for retail investors, directly or indirectly?

- Yes
- No

[Display only if above answer = Yes]

If yes, please briefly explain the main adverse impacts _____

5. Impact of and interplay with other legislation

[Display only if Q3 = public authorities and if answer to Q16 e and f = yes]

Q 114) Do you apply product rules to retail AIFs in your jurisdiction (as permitted by AIFMD Article 43)?

- Yes
- No

Q 115) *[If answer to Q115 = Yes]*

Have you registered any incoming retail AIFs from other EU/EEA Member States that apply similar product rules?

- Yes
- No

[Display for all respondents]

Q 116) Do you believe that other legislation has assisted or hindered achievement of the objectives of AIFMD?

[Scale: strongly assisted – somewhat assisted – unchanged – somewhat hindered – strongly hindered – no opinion]

- National product regulation of AIFs for professional investors only
- National product regulation for AIFs available to retail investors
- Other regulatory reporting
- Tax Legislation
- National savings policies
- Other EU legislation or regulation
- Other national requirements

[After each question to which the answer is other than "no opinion"]

Please briefly explain why: _____

Source: KPMG (2018)

Annex 2 – General survey: Questions and stakeholders

Table 17: Overview of which questions of the general survey were posed to which type(s) of participants

Question	Individuals							Institutions							
	Individual (a)	AIFM (b)	Industry body, representing any parties in the operation of AIFs (c)	AIF- depository (d)	External valuer (e)	Institutional investor/eligible counterparty investing in AIFs for own account (f)	Other (incl. directors/partners of AIFs) (g)	Fund administrator (h)	Public authority (i)	Investment manager/adviser to AIFs (j)	Other type of entity with activities relating to the assets of the AIF (k)	Representative body of investors and/or retail consumers (l)	Entity marketing, selling or selecting AIFs to/for investors (m)	AIF sub-custodian (n)	Prime Broker (o)
No. Section 2: information about the respondent															
1) Please include your contact details in case we have any questions.															
Full name	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x
Email address	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x
Phone number	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x
2) Are you answering on behalf of an institution or as an individual?	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x
3) Please specify what type of stakeholder you are: (Single Choice)	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x
4) Please include the name and postal address of your institution															
Name	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x
Trade mark or brand, if different from name	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x
Street name and number	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x
City	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x
Postal code	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x
Country	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x
5) [Display only if Q3 = c] What category of investor are you?						x									
6) Was your institution active in or involved in any way with the AIF market prior to AIFMD coming into force?		x	x	x	x	x	x	x	x	x	x	x	x	x	x
7) If you are on the transparency register of the European Commission, please provide your registry number.		x	x	x	x	x	x	x	x	x	x	x	x	x	x
8) [Display only if Q2 = "Individual"] Are you an investor in Alternative Investment Funds (AIFs)?	x														
9) [Display only if Q8 = Yes] What type of investor are you?	x														
10) In which country is the head office of the AIFM?		x													
11) Are you a full-scope or sub-threshold AIFM?		x													
12) Please complete the following details regarding the AIFs under your management:															
Number of AIFs:		x													
Domiciles of the AIFs (please indicate all that apply)		x													
Approximate net asset value of total AIF assets under management in EUR		x													
13) Which types of AIFs do you manage? (please indicate all that apply)		x													
14) In which of the following asset types are AIFs under your management invested? (Please indicate all that apply)		x													
15) Which of the following specialist investment strategies are executed within the AIFs you manage? (Please indicate all that apply)		x													
16) Please indicate whether you have responsibility for the following (Please indicate all that apply):								x							
17) [Display only if Q16 = "none of the above"] You state that you have no authorisation or registration responsibilities relevant to the AIFMD. Please describe your interest in the AIFMD and this survey:									x						
18) What type of investor are you?						x									
19) Do you invest in EU/EEA AIFs?						x									
[Display only previous question = Yes] Please complete the following details:															
number of AIFs:						x									
approximate total net asset value of investments in EUR:						x									
approximate leverage range of the AIFs (%): (min./max.)						x									
domiciles of the AIFs						x									

Question	Individuals		Institutions												
	Individual (a)	AIFM (b)	Industry body, representing any parties in the operation of AIFs (c)	AIF- depository (d)	External valuer (e)	Institutional investor/eligible counterparty investing in AIFs for own account (f)	Other (incl. directors/partners of AIFs) (g)	Fund administrator (h)	Public authority (i)	Investment manager/adviser to AIFs (j)	Other type of entity with activities relating to the assets of the AIF (k)	Representative body of investors and/or retail consumers (l)	Entity marketing, selling or selecting AIFs for investors (m)	AIF sub-custodian (n)	Prime Broker (o)
20) Do you invest in non-EU/EEA AIFs? <small>(Display only previous question = Yes) Please complete the following details:</small>						x									
number of AIFs:						x									
approximate total net asset value of investments in EUR:						x									
approximate leverage range of the AIFs (%): (min./max.):						x									
domiciles of the AIFs						x									
21) Please describe briefly your coverage:															
Jurisdictional coverage											x				
Types of investors/consumers you represent											x				
22) [If answer to Q21 b i or ii = Yes] What types of professional or institutional investor do you represent?											x				
23) What type of firm are you (please indicate all that apply)?													x		
24) Of what types are your clients (please indicate all that apply)?													x		
25) Do you market, sell or select? (Multiple Choice)													x		
26) Are you a small or medium-sized enterprise															
27) Are you controlled by one or more AIFMs?															
28) Please provide the following information regarding the AIFs for which you are the depository or sub-custodian:															
Number of AIFs:						x									x
Total assets under management of those AIFs: (EUR 1,000s)						x									x
Asset classes (please indicate all that apply):						x									x
Types of AIFs (please indicate all that apply):						x									x
29) Please provide the following information regarding the AIFs to which you provide investment management or related services:															
Number of AIFs:										x					
Total assets under management of those AIFs: (EUR 1,000s)										x					
Asset classes (please indicate all that apply):										x					
Investment strategies (please indicate all that apply):										x					
30) Which of the following functions do you carry out (please indicate all that apply)?										x					
31) What are the total assets under management of the AIFs that you administer? (EUR 1,000s):								x							
33) Please specify what type of stakeholders you represent or are your members (please indicate all that apply):			x												
34) Please briefly describe your jurisdictional coverage:			x												

Question	Individuals		Institutions												
	Individual	AIFM	Industry body, representing any parties in the operation of AIFs	AIF-depositary	External valuer	Institutional investor/eligible counterparty investing in AIFs for own account	Other (incl. directors/partners of AIFs)	Fund administrator	Public authority	Investment manager/adviser to AIFs	Other type of entity with activities relating to the assets of the AIF	Representative body of investors and/or retail consumers	Entity marketing, selling or selecting AIFs to/for investors	AIF sub-custodian	Prime Broker
	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)	(l)	(m)	(n)	(o)
No. Section 3: the objectives of AIFMD															
35) Were you already authorised by the NCA as an AIFM (i.e. subject to broadly equivalent national rules) prior to AIFMD?		x													
36) What was the approximate cost of obtaining a new AIFM authorisation from the NCA or of revising your existing authorisation to comply with AIFMD implementation, excluding passport notifications and ongoing costs? Please state in EUR thousands															
NCA fees:		x													
People resources:		x													
Other costs (including professional advisors):		x													
37) How long did it take to obtain a new AIFM authorisation or a revised authorisation to comply with AIFMD implementation, after all requisite documents had been delivered to the NCA?		x													
38) What is the approximate annual cost of maintaining your AIFM authorisation (taking into account time spent, adviser fees for instance for inspections etc but excluding passport notifications)? Please state in EUR thousands.															
NCA fees:		x													
Contributions to Ombudsman and Compensation schemes:		x													
Fees paid to external advisors (lawyers, auditors etc):		x													
Fees paid to other parties (eg for data reporting, investor disclosures):		x													
Resources (including people) expended on NCA inspections, data requests etc:		x													
Other costs to maintain the authorisation:		x													
39) What is the approximate annual cost of maintaining your passport notifications? Please state in EUR thousands.		x													
40) Where you already licenced by the NCA as a depositary for UCITS or AIFs (i.e. subject to broadly equivalent national rules) prior to AIFMD?				x											
41) What was the approximate cost of obtaining a new AIF depositary licence from the NCA or of revising your existing licence to comply with AIFMD implementation, excluding ongoing costs? Please state in EUR thousands															
NCA fees:				x											
People resources:				x											
Other costs (including professional advisors):				x											
42) How long did it take to obtain a new AIF depositary licence or a revised licence to comply with AIFMD implementation, after all requisite documents had been delivered to the NCA?				x											
43) What is the approximate annual cost of maintaining your AIF depositary licence, over and above costs you might in any case incur as a firm? (Please state in EUR thousands)															
NCA fee:				x											
Contributions to Ombudsman and Compensation schemes:				x											
Fees paid to external advisors (lawyers, auditors etc):				x											
Resources (including people) expended on NCA inspections, data requests etc:				x											
Other costs to maintain the authorisation:				x											
44.1) What are your minimum and maximum charges for: (Please state in EUR)															
A new full-scope AIFM licence									x						
A new sub-threshold AIFM licence									x						
Revision to a full-scope AIFM licence									x						
Revision to a sub-threshold AIFM licence									x						
Annual supervisory fee for full-scope AIFM									x						
Annual supervisory fee for sub-threshold AIFM									x						
Processing an incoming AIFM passport notification									x						

Question	Individuals	Institutions													
	Individual	AIFM	Industry body, representing any parties in the operation of AIFs	AIF-depository	External valuer	Institutional investor/eligible counterparty investing in AIFs for own account	Other (incl. directors/partners of AIFs)	Fund administrator	Public authority	Investment manager/adviser to AIFs	Other type of entity with activities relating to the assets of the AIF	Representative body of investors and/or retail consumers	Entity marketing, selling or selecting AIFs to/for investors	AIF sub-custodian	Prime Broker
	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)	(l)	(m)	(n)	(o)
44.2) What are your minimum and maximum charges for: (Please state in EUR)															
A new AIF depository licence									x						
Revision to an AIF depository licence									x						
Annual supervisory fee for AIF depository									x						
45) Please indicate to what extent you agree that AIFMD is applied consistently and without significant variation by all NCAs		x	x	x	x	x	x	x	x	x	x				x
45) [Display only if answer = somewhat or fully disagree] Please briefly explain the main areas where AIFMD is not applied consistently by all NCAs:		x	x	x	x	x	x	x	x	x	x				x
46) How often since AIFMD implementation have you been subject to an on-site inspection by the NCA in relation to your AIFMD activities?		x		x										x	
47) [if answer to Q16 = a or c] How regularly do you undertake on-site inspections of AIFMs or AIF depositories in relation to their AIFMD activities?									x						
48) [Display only if answer to Q16 = a] What were the three aspects of AIFMD requirements on which you most frequently found AIFMs' governance, controls or processes to be lacking?															
First aspect									x						
Second aspect									x						
Third aspect									x						
49) [Display only if answer to Q16 = c] What were the three aspects of AIFMD requirements on which you most frequently found AIF depositories' governance, controls or processes to be lacking?															
First aspect									x						
Second aspect									x						
Third aspect									x						
50) Display only if answer to Q16 = a) Since AIFMD implementation, how often have you used your AIFMD sanctioning powers?									x						
51) Display only if answer to Q16 = a) What were the three most frequent types of sanctions (please indicate all that apply)?									x						
52) Are you aware of differences in interpretation of the definition of an AIF or in the formation of investment vehicles that might adversely impact competitiveness within the industry or investor protection?	x	x	x	x		x	x	x	x	x	x	x	x	x	x
52) [Display only if answer = yes] Please provide a brief explanation	x	x	x	x		x	x	x	x	x	x	x	x	x	x
53) Are you aware of any market practices that enable AIFM-like firms not to be classified as AIFMs and therefore to be outside the AIFMD requirements for AIFMs?	x	x	x	x		x	x	x	x	x	x	x	x	x	x
53) [Display only if answer = yes] Please provide a brief explanation	x	x	x	x		x	x	x	x	x	x	x	x	x	x
54) Please indicate to what extent you agree with the following statements about AIFMs that are, or that choose to be, subject to the full AIFMD requirements.															
AIFMs provide for a high standard in AIF management that is comparable to or better than standards in other jurisdictions around the globe	x	x	x	x		x	x	x	x	x	x	x	x	x	x
AIFMs provide for a high level of investor protection	x	x	x	x		x	x	x	x	x	x	x	x	x	x
AIFMs provide a high level of transparency with regard to their services	x	x	x	x		x	x	x	x	x	x	x	x	x	x
AIFMs provide a high level of transparency with regard to the AIFs they manage	x	x	x	x		x	x	x	x	x	x	x	x	x	x
55) Please indicate to what extent you agree with the following statements about sub-threshold AIFMs?															
In practice there is no significant difference in the professional standards of sub-threshold and full-scope AIFMs	x	x	x	x		x	x	x	x	x	x	x	x	x	x
Sub-threshold AIFMs provide similar disclosures to full-scope AIFMs	x	x	x	x		x	x	x	x	x	x	x	x	x	x
Sub-threshold AIFMs follow similar risk management standards to full-scope AIFMs	x	x	x	x		x	x	x	x	x	x	x	x	x	x
Sub-threshold AIFMs manage conflicts of interest to the same standards as full-scope AIFMs	x	x	x	x		x	x	x	x	x	x	x	x	x	x
56) Is it clear to you whether an AIFM is "full-scope" or "sub-threshold" (and therefore not subject to the full AIFMD requirements)?	x					x							x		

Question	Individuals					Institutions									
	Individual (a)	AIFM (b)	Industry body, representing any parties in the operation of AIFs (c)	AIF-depository (d)	External valuer (e)	Institutional investor/eligible counterparty investing in AIFs for own account (f)	Other (incl. directors/partners of AIFs) (g)	Fund administrator (h)	Public authority (i)	Investment manager/adviser to AIFs (j)	Other type of entity with activities relating to the assets of the AIF (k)	Representative body of investors and/or retail consumers (l)	Entity marketing, selling or selecting AIFs to/for investors (m)	AIF sub-custodian (n)	Prime Broker (o)
57) Please indicate to what extent you agree with the following statements															
We receive complete, accurate and timely reports from all AIFMs we authorise									x						
There is a consistent understanding among the AIFMs we authorise of what must be reported in each cell of the reporting template									x						
There is a consistent understanding across the EU of what must be reported in each cell of the template									x						
The reporting template covers all the data that we need									x						
The reporting template covers only those data that are essential for us to receive									x						
We monitor the reports of individual AIFMs for consistency									x						
We maintain a database of all the reports that can be interrogated for trends and outliers									x						
We regularly analyse the reports/database to monitor market trends									x						
We pass on the collated data to ESMA									x						
There is sufficient exchange of data between all NCAs and ESMA to enable market trends to be monitored at a pan-EU/EEA level									x						
58) Prior to AIFMD implementation, did you require AIFMs to report similar data (or a subset of the data)?									x						
59) Please indicate to what extent you agree with the following statements															
We are able to provide complete, accurate and timely reports from all AIFMs we manage		x													
There is a consistent understanding within our Member State of what must be reported in each cell of the reporting template		x													
There seems to be a consistent understanding across the EU of what must be reported in each cell of the template		x													
The reporting template covers all the data that the authorities need		x													
Please indicate briefly what other types of data you believe the NCAs should collect:		x													
The reporting template covers only those data that are essential for the authorities		x													
Please indicate briefly which areas of the template include data that are not essential in your view (please indicate all that apply):		x													
The reporting template does not duplicate data that are reported in another section of template or that are required to be reported elsewhere.		x													
Please indicate which areas of the template include data that are reported in another section of the template or elsewhere here (please indicate all that apply):		x													
The NCA has communicated with us about the contents of one or more of our AIFMD reports.		x													
We are aware that the NCA has included our reports in its analyses of overall market trends.		x													
60) Since AIFMD implementation, have you observed any trend in the levels of leverage reported to you?									x						
60) [If answer = Yes] Please briefly describe the key trends in leverage levels and the main sources of leverage:									x						
61) Since AIFMD implementation, have you imposed or proposed limits on, or otherwise restricted, the level of leverage in AIFs (other than as part of additional rules that you apply to retail AIFs in your jurisdiction)?															
Number of instances of imposition of limits or other restrictions: ____									x						
Number of measures proposed to ESMA: ____									x						
Number of measures executed in agreement with ESMA advice: ____									x						
Number of measures executed contrary to ESMA advice: ____									x						

Question	Individuals			Institutions												
	Individual	AIFM	Industry body, representing any parties in the operation of AIFs	AIF-depository	External valuer	Institutional investor/eligible counterparty investing in AIFs for own account	Other (incl. directors/partners of AIFs)	Fund administrator	Public authority	Investment manager/adviser to AIFs	Other type of entity with activities relating to the assets of the AIF	Representative body of investors and/or retail consumers	Entity marketing, selling or selecting AIFs to/for investors	AF sub-custodian	Prime Broker	
	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)	(l)	(m)	(n)	(o)	
62) What are the minimum, average and maximum levels of leverage of AIFs under your management or your AIF depository activity? [in %]:																
Minimum leverage		x														
Average leverage		x														
Maximum leverage		x														
63) Since AIFMD implementation, have you observed any changes in:																
The level of leverage in EU/EEA AIFs?	x	x	x	x		x				x			x		x	
The sources of leverage in EU/EEA AIFs?	x	x	x	x		x				x			x		x	
The level of leverage in non-EU/EEA AIFs?	x	x	x	x		x				x			x		x	
The sources of leverage in non-EU/EEA AIFs?	x	x	x	x		x				x			x		x	
64) Do you make use of the proportionality principle in relation to remuneration, as foreseen in AIFMD and ESMA guidelines?									x							
65) Has the level of remuneration of risk takers changed because of AIFMD?		x														
65) [Only display, if previous question = Yes] What change has there been to:																
The overall remuneration level		x														
The fixed remuneration component		x														
The variable remuneration component		x														
66) Have you reviewed and / or adjusted procedures for the management of conflicts because of AIFMD?		x														
67) Please indicate to what extent you agree with the statement that AIFMs are required to have appropriate conflicts of interest management	x	x	x	x		x	x		x	x			x		x	
67) Please briefly explain the main reason(s) for your answer																
68) Have you reviewed and / or adjusted your risk management processes because of AIFMD?		x														
69) Please indicate to what extent you agree with the statement that AIFMs are required to have appropriate risk management processes.	x	x	x	x		x	x		x	x			x		x	
69) Please briefly explain the main reason(s) for your answer:	x	x	x	x		x	x		x	x			x		x	
70) Have you reviewed and / or adjusted your liquidity management processes because of AIFMD?		x														
71) Please indicate to what extent you agree with the statement that AIFMs are required to have appropriate liquidity management	x	x	x	x		x	x		x	x			x		x	
71) Please briefly explain the main reason(s) for your answer:	x	x	x	x		x	x		x	x			x		x	
72) Q 72) Please indicate to what extent you agree with the following statements relating to valuation.																
Net Asset Values of AIFs are calculated more frequently than before	x	x	x	x	x	x	x	x	x	x			x			
AIF assets are valued more frequently than before	x	x	x	x	x	x	x	x	x	x			x			
The AIFMD valuation requirements provide for an appropriate level of governance, including in relation to potential conflicts of interest	x	x	x	x	x	x	x	x	x	x			x			
The AIFMD requirements have led to an overall improvement in valuation processes	x	x	x	x	x	x	x	x	x	x			x			
The liability requirement for external valuers has not limited the ability or willingness of such entities to perform this function.	x	x	x	x	x	x	x	x	x	x			x			
73) Q 73) What was/is the leading market practice of valuation for non-listed assets?																
Prior to AIFMD coming into force:		x	x	x	x					x						
Today		x	x	x	x					x						
74) Q 74) Which of the following functions do you delegate (in whole or in part) to other entities?		x														

Question	Individuals		Institutions												
	Individual	AIFM	Industry body, representing any parties in the operation of AIFs	AIF-depositary	External valuer	Institutional investor/eligible counterparty investing in AIFs for own account	Other (incl. directors/partners of AIFs)	Fund administrator	Public authority	Investment manager/adviser to AIFs	Other type of entity with activities relating to the assets of the AIF	Representative body of investors and/or retail consumers	Entity marketing, selling or selecting AIFs to/for investors	AIF sub-custodian	Prime Broker
	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)	(l)	(m)	(n)	(o)
75) Q 75) Please indicate to what extent AIFMD impacted your delegation activity.															
The range of functions you delegate		x													
The amount of each function you delegate		x													
The firms to which you delegate		x													
The fees you incur		x													
The duration or frequency of review of contracts		x													
Operational risks		x													
76) Q 76) Please indicate to what extent you agree with the following statements about AIF depositaries.															
A depositary is essential for all types of AIFs	x	x	x	x		x	x	x	x	x			x		
The types of entities that can be a depositary are appropriate.	x	x	x	x		x	x	x	x	x			x		
The value to professional investors of the depositary oversight function outweighs its cost	x	x	x	x		x	x	x	x	x			x		
AIF depositaries provide for an appropriate level of protection for professional investors	x	x	x	x		x	x	x	x	x			x		
The oversight responsibilities for depositaries cover the appropriate activities of the AIFMAIF	x	x	x	x		x	x	x	x	x			x		
The cash monitoring requirements for depositaries are necessary and appropriately detailed	x	x	x	x		x	x	x	x	x			x		
The delegation requirements are appropriately set and do not unnecessarily constrain non-EU investments by AIFs.	x	x	x	x		x	x	x	x	x			x		
The asset segregation and omnibus account requirements for sub-custodians provide additional benefits for professional investors that clearly outweigh the additional costs	x	x	x	x		x	x	x	x	x			x		
The requirements for non-custody assets are necessary and appropriate	x	x	x	x		x	x	x	x	x			x		
The depositary requirements are implemented in a similar way across the EU/EEA	x	x	x	x		x	x	x	x	x			x		
The way in which the depositary operates and interfaces with the AIFMAIF is similar across the EU/EEA	x	x	x	x		x	x	x	x	x			x		
Please provide additional brief information on any of these points, if you wish:	x	x	x	x		x	x	x	x	x			x		
77) Of the EU/EEA AIFs that you manage or for which you are the depositary:															
Is the depositary in a different domicile to (one or more of) the AIFs?		x		x											
Did the AIF previously have a depositary in a different domicile to (one or more of) the AIFs?		x		x											
Do you believe it essential that the transitional provision (Art.61(5)), allowing the depositary to be in a different domicile to the AIF, be extended?		x		x											
78) Please indicate to what extent you agree with the following statements on the impact of AIFMD on the information provided to investors prior to investment.															
Content of disclosure has expanded		x	x	x	x	x	x	x	x	x	x	x	x	x	x
Quality of disclosure has improved		x	x	x	x	x	x	x	x	x	x	x	x	x	x
The disclosure does not duplicate information provided elsewhere.		x	x	x	x	x	x	x	x	x	x	x	x	x	x
Disclosure is consistent across the EU/EEA		x	x	x	x	x	x	x	x	x	x	x	x	x	x
Please provide brief information on any of these points, if you wish:		x	x	x	x	x	x	x	x	x	x	x	x	x	x
79) Please indicate to what extent you agree with the following statements on the impact of AIFMD on periodic disclosures to investors.															
Frequency of reporting has increased		x	x	x	x	x	x	x	x	x	x	x	x	x	x
Content of reporting has expanded		x	x	x	x	x	x	x	x	x	x	x	x	x	x
Quality of reporting has improved		x	x	x	x	x	x	x	x	x	x	x	x	x	x
This reporting does not duplicate information provided in other reports.		x	x	x	x	x	x	x	x	x	x	x	x	x	x
Reporting is consistent across the EU		x	x	x	x	x	x	x	x	x	x	x	x	x	x
Please provide brief information on any of these points, if you wish:		x	x	x	x	x	x	x	x	x	x	x	x	x	x
80) Q 80) Do AIFs you manage invest, or have they ever invested, in non-listed entities?		x													

Question	Individuals		Institutions													
	Individual	AIFM	Industry body, representing any parties in the operation of AIFs	AIF-depository	External valuer	Institutional investor/eligible counterparty investing in AIFs for own account	Other (incl. directors/partners of AIFs)	Fund administrator	Public authority	Investment manager/adviser to AIFs	Other type of entity with activities relating to the assets of the AIF	Representative body of investors and/or retail consumers	Entity marketing, selling or selecting AIFs to/for investors	AIF sub-custodian	Prime Broker	
	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)	(l)	(m)	(n)	(o)	
81/82, Q 81/82) Please indicate to what extent you agree with the following statements.																
The notifications required to NCAs are useful, essential and not overly burdensome		x														
AIFMD improved the information provided by the AIF/AIFM to controlled companies.		x														
Information provided by the AIF/AIFM to controlled companies is essential, useful and not overly burdensome		x														
AIFMD improved the relationship between AIFs/AIFMs and target or investee enterprises		x														
The asset stripping rules* provide an appropriate level of protection		x														
83) Are there similar rules regarding transparency and asset stripping for non-AIF investors in your country?		x														
83) [Display only if previous question = No] In your view, does this discourage investment via AIFs?		x														
84) Are there similar rules regarding transparency and asset stripping for non-AIF investors in your country? (question duplicated for technical reasons)																
84) [Display only if previous question = No] In your view, does this discourage investment via AIFs?																
85) Does an AIF you manage control an unlisted special purpose investment vehicle?		x														
85) [if answer = yes] Is it clear how the Article 26 rules do or do not apply?		x														
86) Does an AIF you manage control an unlisted UCITS or another AIF?		x														
86) [if answer = yes] Is it clear how the Article 26 rules do or do not apply?		x														
87) How many notifications of changes of voting right held by AIFs have you received with regard to the thresholds of Art. 27 (1) AIFMD?																
2013									x							
2014									x							
2015									x							
2016									x							
2017 ytd									x							
88) How many AIFMs have notified you of changes of voting rights in non-listed companies held by AIFs they manage with regards to the thresholds of Art. 27 (1) AIFMD?																
2013									x							
2014									x							
2015									x							
2016									x							
2017 ytd									x							

Question	Individuals		Institutions												
	Individual (a)	AIFM (b)	Industry body, representing any parties in the operation of AIFs (c)	AIF-depository (d)	External valuer (e)	Institutional investor/eligible counterparty investing in AIFs for own account (f)	Other (incl. directors/partners of AIFs) (g)	Fund administrator (h)	Public authority (i)	Investment manager/adviser to AIFs (j)	Other type of entity with activities relating to the assets of the AIF (k)	Representative body of investors and/or retail consumers (l)	Entity marketing, selling or selecting AIFs to/for investors (m)	AIF sub-custodian (n)	Prime Broker (o)
89) How many notifications of acquisition of control over a non-listed company or an issuer by an AIF (individually or jointly) have you received under Art. 28 (1) AIFMD?															
2013									x						
2014									x						
2015									x						
2016									x						
2017 ytd									x						
90) How many AIFMs have notified you of acquisition of control over a non-listed companies or issuers by AIFs (individually or jointly) under Art. 28 (1) AIFMD?															
2013									x						
2014									x						
2015									x						
2016									x						
2017 ytd									x						
91) Are any of the EU/EEA AIFs you manage marketed into countries other than their domicile?		x													
92) Are any of the non-EU/EEA AIFs you manage marketed into the EU?		x													
93) Are any of the EU/EEA AIFs you manage marketed to EU retail or semi-professional investors?		x													
94) Are you the AIFM for AIFs domiciled in jurisdictions other than your own?		x													
94) [If answer = yes] Please indicate all jurisdictions that apply.		x													
95) To what extent has AIFMD impacted your ability or commercial desire to be the AIFM for AIFs in jurisdictions other than your own?		x													
96) Please indicate to what extent AIFMD has impacted the marketing of an EU/EEA AIF into Member States other than the domicile of the AIF.															
Access to national markets		x				x			x						
Time to market		x				x			x						
Complexity of registration or authorisation		x				x			x						
Reliability of the process with the NCA		x				x			x						
96.1) Please indicate to what extent AIFMD has impacted the marketing of non-EU/EEA AIFs into the EU.															
Number of Member States that permit non-EU/EEA AIFs to be marketed into the country		x				x			x						
Restrictions on the types of non-EU/EEA AIFs that can be marketed into the EU		x				x			x						
Ability to market non-EU/EEA AIFs to retail investors		x				x			x						
Time to obtaining approval under the national private placement regime		x				x			x						
97) To what extent do you believe AIFMD has impacted:															
investment in private equity or venture capital?		x	x	x	x	x	x	x	x	x	x	x	x	x	x
investment in or for the benefit of developing countries?		x	x	x	x	x	x	x	x	x	x	x	x	x	x
investment in real assets?		x	x	x	x	x	x	x	x	x	x	x	x	x	x
[if investment in private equity or venture capital has changed] Please briefly explain why investment in private equity or venture capital has changed.		x	x	x	x	x	x	x	x	x	x	x	x	x	x
[if investment in or for the benefit of developing countries has changed] Please briefly explain why investment in or for the benefit of developing countries has changed.		x	x	x	x	x	x	x	x	x	x	x	x	x	x
[if investment in real assets has changed] Please briefly explain why investment in real assets has changed.		x	x	x	x	x	x	x	x	x	x	x	x	x	x

Question	Individuals		Institutions												
	Individual	AIFM	Industry body, representing any parties in the operation of AIFs	AIF-depository	External valuer	Institutional investor/eligible counterparty investing in AIFs for own account	Other (incl. directors/partners of AIFs)	Fund administrator	Public authority	Investment manager/adviser to AIFs	Other type of entity with activities relating to the assets of the AIF	Representative body of investors and/or retail consumers	Entity marketing, selling or selecting AIFs to/for investors	AIF sub-custodian	Prime Broker
	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)	(l)	(m)	(n)	(o)
No. Section 4: market and commercial impacts															
100) Please indicate to what extent you agree with the following statements: Acquiring AIFM authorisation allowed us to...															
...rationalise our organisational set-up		x													
...enhance our central support services hubs		x													
...improve our business prospects		x													
...increase our reputation with domestic investors		x													
...market our AIFs in other EU/EEA countries		x													
...access new investors outside EU/EEA		x													
...manage AIFs in other EU/EEA countries		x													
...better manage risks in AIFs		x													
...compete with other AIFMs under the same rules		x													
...access a broader range of professional investors		x													
...access (more) retail or semi-professional investors		x													
101) Please indicate to what extent AIFMD has caused you to rationalise or expand your product offerings															
AIF range overall		x													
Hedge funds		x													
Private equity/venture capital funds		x													
Funds of funds		x													
Securities funds		x													
Commodity funds		x													
Leverage level with funds		x													
Funds for specific types of investors		x													
Please specify the specific types of investors:		x													
102) Please indicate to what extent the costs of undertaking or purchasing the following services have been impacted by AIFMD:															
AIFM services overall		x													
Portfolio management		x													
Risk management		x													
Reporting to regulators		x													
Disclosures to investors		x													
Fund administration		x													
Distribution costs		x													
103) [If any answers to Que 102 are other than unchanged or don't know, display only those selected services] Please indicate which factor you believe to have most contributed to this change:															
AIFM services overall		x													
Portfolio management		x													
Risk management		x													
Reporting to regulators		x													
Disclosures to investors		x													
Fund administration		x													
Distribution costs		x													

Question	Individuals		Institutions													
	Individual	AIFM	Industry body, representing any parties in the operation of AIFs	AIF-depository	External valuer	Institutional investor/eligible counterparty investing in AIFs for own account	Other (incl. directors/partners of AIFs)	Fund administrator	Public authority	Investment manager/adviser to AIFs	Other type of entity with activities relating to the assets of the AIF	Representative body of investors and/or retail consumers	Entity marketing, selling or selecting AIFs to/for investors	AIF sub-custodian	Prime Broker	
	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)	(l)	(m)	(n)	(o)	
104) Please indicate to what extent you believe competition in the AIF depository and custody market has changed since AIFMD came into force (over and above any other influences):																
For AIF depositories		x		x							x					x
For AIF (sub)custodians		x		x							x					x
105) Please indicate to what extent the costs of undertaking or outsourcing the following services have changed since AIFMD came into force (over and above the impact of other regulatory or market developments):																
Depository services overall				x												
AIF/AIFM oversight functions				x												
Custody functions				x												
Functions relating to non-custody assets				x												
Cash monitoring				x												
Analysis of disclosures from AIFs/AIFMs				x												
Provision of information to AIFs/AIFMs				x												
106) Please indicate to what extent the following fees charged to AIFs have changed since AIFMD came into force (over and above the impact of other regulatory or market developments):																
Investment management fee		x		x												
Fund administration fee (w here separately charged)		x		x												
Depository		x		x												
Custody fee		x		x												
Foreign exchange fees		x		x												
Audit fee		x		x												
External valuation costs		x		x												
Payments to distributors from the AIF		x		x												
Other (please specify: _____)		x		x												
106) Please indicate to what extent AIFMD has caused you to restrict or expand your investment management service offerings:																
AIFs overall										x						
Hedge funds										x						
Private equity/venture capital funds										x						
Funds of funds										x						
Securities funds										x						
Commodity funds										x						
Leverage level with funds										x						
Funds for specific types of investors										x						
Please specify the specific types of investors:										x						
107) Please indicate to what extent you believe competition in the AIF market for the services you provide has changed since AIFMD came into force (over and above any other influences):					x			x		x	x			x		x
108) Please indicate to what extent your fees for AIFs/AIFMs have changed since AIFMD came into force (over and above the impact of other regulatory or market developments):					x			x		x	x			x		x

Question	Individuals		Institutions													
	Individual (a)	AIFM (b)	Industry body, representing any parties in the operation of AIFs (c)	AIF-depository (d)	External valuer (e)	Institutional investor/eligible counterparty investing in AIFs for own account (f)	Other (incl. directors/partners of AIFs) (g)	Fund administrator (h)	Public authority (i)	Investment manager/adviser to AIFs (j)	Other type of entity with activities relating to the assets of the AIF (k)	Representative body of investors and/or retail consumers (l)	Entity marketing, selling or selecting AIFs to/for investors (m)	AIF sub-custodian (n)	Prime Broker (o)	
109) To what extent has AIFMD impacted the level of your retail clients' investment: ...in EU/EEA AIFs? ...in non-EU/EEA AIFs? Has AIFMD influenced your decisions to invest through AIFs?																
110) [Display only if answer = Yes] Please explain briefly how AIFMD has influenced your investment decisions (including whether you might previously have invested only via UCITS or direct): Has AIFMD influenced your decisions to invest through EU/EEA AIFs rather than third country AIFs (or vice versa)? [Display only if previous question = Yes] Please explain briefly how AIFMD has influenced your investment decisions:	x		x			x										
112) Do you believe that retail investors are impacted by AIFMD?		x	x	x	x	x	x	x	x	x	x	x	x	x	x	x
113) [Display only if answer to Q112 = Yes] Do you believe that AIFMD has had positive impacts for retail investors, directly or indirectly?	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x
113) [Display only if above answer = Yes] If yes, please briefly explain the main positive impacts		x	x	x	x	x	x	x	x	x	x	x	x	x	x	x
114) [Display only if answer to Q112 = Yes] Do you believe that AIFMD has had adverse impacts for retail investors, directly or indirectly? [Display only if above answer = Yes] If yes, please briefly explain the main adverse impacts		x	x	x	x	x	x	x	x	x	x	x	x	x	x	x

Question	Individuals				Institutions										
	Individual (a)	AIFM (b)	Industry body, representing any parties in the operation of AIFs (c)	AIF-depository (d)	External valuer (e)	Institutional investor/eligible counterparty investing in AIFs for own account (f)	Other (incl. directors/partners of AIFs) (g)	Fund administrator (h)	Public authority (i)	Investment manager/adviser to AIFs (j)	Other type of entity with activities relating to the assets of the AIF (k)	Representative body of investors and/or retail consumers (l)	Entity marketing, selling or selecting AIFs to/from investors (m)	AIF sub-custodian (n)	Prime Broker (o)
No. Section 5: impact of and interplay with other legislation															
115) Do you apply product rules to retail AIFs in your jurisdiction (as permitted by AIFMD Article 43)?									x						
116) [If answer to Q115 = Yes] Have you registered any incoming retail AIFs from other EU/EEA member States that apply similar product rules?									x						
117) Do you believe that other legislation has assisted or hindered achievement of the objectives of AIFMD?															
National product regulation of AIFs for professional investors only [unless no opinion] Please briefly explain why	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x
National product regulation for AIFs available to retail investors [unless no opinion] Please briefly explain why	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x
Other regulatory reporting [unless no opinion] Please briefly explain why	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x
Tax Legislation [unless no opinion] Please briefly explain why	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x
National savings policies [unless no opinion] Please briefly explain why	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x
Other EU legislation or regulation [unless no opinion] Please briefly explain why	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x
Other national requirements [unless no opinion] Please briefly explain why	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x

Source: KPMG (2018)

Annex 3 – Overview of the semi-structured interviews

Table 18: Semi-structured interviews

Country	Planned interviews	Scheduled interviews		Conducted interviews	
	Number	Number	Quota	Number	Quota
Austria	3	3	100%	3	100%
Belgium	3	2	67%	2	67%
Cyprus	3	4	133%	4	133%
Czech Republic	3	3	100%	3	100%
Germany	7	7	100%	7	100%
Denmark	3	3	100%	3	100%
Spain	7	3	43%	3	43%
France	7	7	100%	7	100%
Hungary	3	3	100%	3	100%
Ireland	7	7	100%	6	86%
Italy	3	3	100%	3	100%
Luxembourg	7	12	171%	12	171%
Malta	3	3	100%	3	100%
Netherlands	3	4	133%	4	133%
UK	10	10	100%	10	100%
EU/International	8	8	100%	7	88%
Total	80*	82		80	

Source: KPMG (2018). *Note: Number of planned interviews was indicatively set.

1. Questionnaire for the semi-structured interview

- 1) The online survey asked stakeholders to what extent they agreed that AIFMD is applied consistently and without significant variation by all NCAs. Only a small minority agreed with this statement.
 - a) How much are you concerned if AIFMD is not applied consistently across the EU?

If any answers are "major concern", what in brief is the reason for this answer?

	No concern	Some concern	Major concern	No opinion
Marketing requirements				
If "major concern", what is the reason?				
Passport process				

If "major concern", what is the reason?				
Variation in NCA fees				
If "major concern", what is the reason?				
Reporting to NCAs				
If "major concern", what is the reason?				
Disclosures to investors				
If "major concern", what is the reason?				
Depository requirements				
If "major concern", what is the reason?				
Remuneration				
If "major concern", what is the reason?				
Definition of an AIF or an AIFM				
If "major concern", what is the reason?				
Asset stripping rules				
If "major concern", what is the reason?				
Other (please specify):				
If "major concern", what is the reason?				

b) Are there specific factors in the transposition of AIFMD into domestic regulation that enhance or impair the effectiveness of the AIFMD requirements, in the areas listed above or in any other aspects of AIFMD?

2) For NCAs and AIFMs:
 In response to a question about how long it takes to obtain a new or revised **AIFM authorisation, more than 65% of AIFMs selected "longer than 3 months" and more than 35% selected "longer than 6 months"**.

Does this seem reasonable?

- Yes
- No
- No opinion

Please briefly explain your answer:

3) For NCAs:

In relation to reporting to regulators (and in addition to the question on consistent application covered in question 1 above), only a minority of NCAs agreed that the template covers all data needed by the regulators. In contrast, the majority of AIFMs believe that the template covers all the data you need.

Please indicate up to three main types of data that you believe are needed in addition to data already reported:

4) A number of AIFMs indicated that the template includes data that are duplicated elsewhere in the template or in other regulatory reports.

a) For NCAs:

Do you agree?

- Yes
- No
- No opinion

If yes or no, please briefly explain why:

b) For all interviewees

How important is it that this duplication be eradicated or reduced?

- Very important
- A little bit important
- Not important
- No Opinion

If "very important", what in brief is the reason for your answer?

5) For NCAs:

The survey results indicate that excessive leverage is rare in AIFs, with the vast majority using low average leverages (43% < 1.1, 88% < 2). Also, in so far as there has been any change in the levels of leverage used by certain AIFs, the driving factors have been external market conditions and not AIFMD.

a) To what extent are you concerned by leverage levels or practices that you observe in AIFs in your jurisdiction?

- No concern
- Some concern
- Major concern
- No opinion

If "major concern", please briefly explain why:

b) What is your view on the general contribution of AIFMs to the build-up of systemic risk or disorderly markets?

- No or minimal contribution
- Some contribution
- Significant contribution
- No opinion

If "significant contribution", please briefly explain why:

6) Nearly half of AIFM respondents said that AIFMD has caused them to review and significantly adjust their risk management process.

For AIFMs:

If you adjusted your risk management processes, please describe briefly the main adjustments you made:

For other interviewees:

If you have observed that AIFMs adjusted their risk management processes because of AIFMD, please describe briefly what you observed:

7) Some respondents commented that the risk management requirements, and specifically the need for functional and hierarchical separation, are not straightforward to implement where the underlying assets are not listed or are illiquid.

Do you agree with these comments?

- Yes
- No
- No opinion

If yes or no, please briefly explain why:

8) In relation to liquidity risk management, respondents had diverse views on whether the AIFMD requirements are operable or necessary in relation to closed-ended funds or for AIFs with only professional investors.

What is your view – are AIFMD requirements operable or necessary?

- Yes
- No
- **Don't know**

If yes or no, please briefly explain why:

9) Among those respondents who expressed an opinion, views were split on whether the liability requirement for external valuers has limited the ability or willingness of such entities to perform this function.

Do you believe that the requirement is limiting?

- Yes

- No
- **Don't know**

If yes or no, please briefly explain why:

- 10) In relation to investments in non-listed enterprises, there was widespread disagreement with the following statements.

Please provide your view and brief reasons (for example: are the impediments technical, economic, other; are they material). Where possible indicate sources of supporting evidence for your view.

Statements that participants disagreed with	Your view / reasons / sources of evidence
AIFMD notifications to NCAs are useful, essential and not overly burdensome.	
AIFMD improved the information provided by the AIF/AIFM to controlled companies.	
Information provided by the AIF/AIFM to controlled companies is essential, useful and not overly burdensome	
AIFMD improved the relationship between AIFs/AIFMs and target or investee enterprises	
The asset stripping rules provide an appropriate level of protection	

- 11) One of the main aims of AIFMD was improved financial stability.

Are you aware of statistical and/or other quantitative information that evidences achievement or otherwise of this aim?

- 12) What three areas of the AIFMD requirements do you believe most need to be clarified, or more consistently applied across the EU, or reviewed? And what would be your preferred mechanism for addressing these points (eg rule amendments, guidance, supervisory convergence, standardised templates, technological applications etc)?

Any other comments:

Annex 4 – Results of the quantitative data collection and analysis

1. Research Questions

Table 19: Research question to guide the quantitative analysis

Research Questions	Sub-Questions	Indicators
How has AIFMD impacted the level of integration of the EU AIF market?	<ul style="list-style-type: none"> Has AIFMD impacted the attractiveness of AIFs for professional investors or otherwise changed their investing behaviour? Has AIFMD impacted investors' access to the EU AIF market? 	Number of AIFs available only to professional investors / AuM of such AIFs domiciled in a Member State, prior to implementation of AIFMD (time series: before 2011, 2012, 2013, 2014 etc.)
	<ul style="list-style-type: none"> Is the management of EU AIFs by AIFMs authorised in accordance with the AIFMD ("EU AIFMs") taking place through the AIFM passport regime ("EU management passport") working efficiently? 	Number of AIFs / AuM of AIFs domiciled in a Member State and managed by an AIFM domiciled in another Member State, prior to implementation of AIFMD (time series: before 2011, 2012, 2013, 2014 etc.)
	<ul style="list-style-type: none"> Is the marketing of AIFs in the Union by EU AIFMs taking place through the AIF passport regime ("EU marketing passport") working efficiently? Did AIFMD enable AIFMs to access more investors in a wider range of countries? 	Number of AIFs / AuM of AIFs domiciled in a Member State and marketed by an AIFM domiciled in another Member State, before implementation of AIFMD (time series: before 2011, 2012, 2013, 2014 etc.)
	<ul style="list-style-type: none"> Has AIFMD impacted the marketing of non-EU AIFs by EU AIFMs in the Member States taking place through national regimes? 	Number of AIFs / AuM of AIFs <u>not</u> domiciled in a Member State and marketed by an <u>EU AIFM</u> , prior to implementation of AIFMD (time series: before 2011, 2012, 2013, 2014 etc.)
	<ul style="list-style-type: none"> Has AIFMD impacted the marketing of AIFs in the Member States by non-EU AIFMs taking place through national regimes? 	Number of AIFs / AuM of AIFs domiciled <u>within</u> a Member State and marketed by a <u>non-EU AIFM</u> , prior to implementation of the AIFMD (time series: before 2011, 2012, 2013, 2014 etc.)

Research Questions	Sub-Questions	Indicators
How has AIFMD impacted the structure of the EU depositories market?	<ul style="list-style-type: none"> Did the AIFMD depository rules have any impact on the depository market in the Union? Has the number of depositories / AuM of the AIFs for which depository services are provided changed? Are there shifts/changes regarding the domiciles of depositories? 	<p>Number of depositories / AuM of the AIFs for which depository services are provided, prior to implementation of AIFMD (time series: before 2011, 2012, 2013, 2014 etc.)</p> <p>Has the number of depositories / custodians domiciled within the EU changed from 2013 onwards compared to the time prior to implementation of AIFMD?</p>
How has AIFMD impacted the cost structure of EU depository services?	<ul style="list-style-type: none"> Has the cost structure of depository services changed since implementation of AIFMD? 	Costs of depository services prior to implementation of AIFMD (time series: before 2011, 2012, 2013, 2014 etc.)
How has AIFMD impacted the market share of AIFs available to EU retail investors?	<ul style="list-style-type: none"> Has AIFMD impacted the attractiveness of AIFs for retail investors or otherwise changed their investing behaviour? Has AIFMD impacted investors' access to the EU AIF market? 	Number of AIFs available to retail investors) / AuM of such AIFs domiciled in a Member State, prior to implementation of AIFMD (time series: before 2011, 2012, 2013, 2014 etc.)

Source: KPMG (2018).

2. Data sources

2.1. NCAs and national and pan-European associations

Table 20: Data coverage by Member State and source

Member State	Source	Areas covered			
		Level of EU AIF market integration	Structure of the EU depositories market	Cost structure of the EU depositories market	Market share of AIFs available to EU retail investors
Europe	European Fund and Asset Management Association (EFAMA)	✓			
	Invest Europe	(✓)			(✓)

Member State	Source	Areas covered			
		Level of EU AIF market integration	Structure of the EU depositaries market	Cost structure of the EU depositaries market	Market share of AIFs available to EU retail investors
	European Association for Non-Listed Real Estate Vehicles (INREV)			(✓)	
	ESMA	(✓)			(✓)
Austria	FMA	✓	✓		✓
	Vereinigung Österreichischer Investmentgesellschaften (VÖIG)	✓			✓
Belgium	FSMA	(✓)			
	Belgian Asset Managers Association (BEAMA)	✓			
Cyprus	CySEC		✓		
	Cyprus Investment Funds Association (CIFA)				
Czech Republic	CNB	✓			✓
	Czech Capital Market Association ⁴⁵⁵	(✓)	(✓)		(✓)
Denmark	Finanstilsynet	✓	✓		✓
	Finans-denmark				
France	AMF	(✓)			(✓)

⁴⁵⁵ The Czech Capital Market Association makes no distinction between UCITS and AIFs.

Member State	Source	Areas covered			
		Level of EU AIF market integration	Structure of the EU depositaries market	Cost structure of the EU depositaries market	Market share of AIFs available to EU retail investors
	Association Française de la Gestion Financière (AFG)				
Germany	BaFin	✓	✓		
	Bundesverband Alternative Investments (BAI)				
	Bundesverband Investment und Asset Management (BVI)		(✓)		
Hungary	MNB		✓		
	BAMOSZ	✓			✓
Ireland	CBI		✓		
	Irish Funds	✓	✓		✓
Italy	CONSOB		✓		
	Assogestioni	(✓)			(✓)
Luxembourg	CSSF		✓		
	Association of the Luxembourg Fund Industry (ALFI)				
Malta	MFSA	✓	(✓)		✓
	Malta Funds Industry Association (MFIA)				
Netherlands	AFM	(✓)			(✓)

Member State	Source	Areas covered			
		Level of EU AIF market integration	Structure of the EU depositaries market	Cost structure of the EU depositaries market	Market share of AIFs available to EU retail investors
	De Nederlandsche Bank (DNB)	(✓)			
	Dutch Fund and Asset Management Association (DUFAS)				
Spain	CNMV	✓			(✓)
	Asociación de Instituciones de Inversión Colectiva y Fondos de Pensiones (INVERCO)				
United Kingdom	FCA				
	The Investment Association	(✓)			(✓)
	Depositary and Trustee Association (DATA)		✓		
	The Association of Investment Companies (AIC)				(✓)
	The Association of Real Estate Funds (AREF)	(✓)			(✓)

Source: KPMG (2018).
 (✓) Limited coverage.

2.2. ESMA's central AIFMD database

Table 21 and Table 22 show the number of year-end AIFM and AIF reports (respectively) contained in the database copy obtained from ESMA. The numbers comprise Q4 reports for AIFMs with quarterly reporting obligations, H2 for AIFMs with

semi-annual reporting obligations and annual reports for AIFMs with annual reporting obligations.⁴⁵⁶ Amending reports have not been taken into account. According to ESMA, additional reports for 2017 were entered into the database after this snapshot was taken.

An analysis of the reports shows that not all NCAs were reporting national data to ESMA. While an increase in the number of NCAs reporting to ESMA is observable in the data (2016: 17 NCAs, 2017: 19 NCAs), some significant AIF markets were not covered, including the Netherlands and the United Kingdom. Other countries missing were Cyprus, Denmark and Greece.

Table 21: Number of AIFM year-end reports contained in the ESMA database

Member State	2013	2014	2015	2016	2017	Total
Austria		24	46	47		117
Belgium				105		105
Czech Republic		49	59	76		184
Denmark						0
France		245	340	330		915
Germany	9	219	357	422		1,007
Hungary			32	35		67
Ireland		4	213	245	1	463
Italy			54	107		161
Luxembourg		383	684	687	1	1,755
Malta		12	112	119		243
Netherlands						0
Spain			64	192		256
United Kingdom		625	4			629
Total	9	1,561	1,965	2,365	2	5,902

Source: KPMG calculations. Based on a snapshot of ESMA's AIF(M) database (27 April 2018).

⁴⁵⁶ In line with the methodology used by ESMA. See ESMA. (2017). *AIFMD Risk Indicators – Data and indicator update*. ESMA50-157-949. CEAMA meeting, Paris, 8 March 2017. p. 3.

Table 22: Number of AIF year-end reports contained in the ESMA database

Member State	2013	2014	2015	2016	2017	Total
Austria		386	1,064	1,057		2,507
Belgium				727		727
Czech Republic		41	42	24	2	109
Denmark						0
France	2	3,275	3,022	5,011		11,310
Germany	92	1,195	3,530	2,345		7,162
Hungary			380	445	20	845
Ireland		4	1,359	982		2,345
Italy			213	304		517
Luxembourg		2,655	3,298	3,523		9,476
Malta		51	330	289		670
Netherlands						0
Spain			2,620	3,291		5,911
United Kingdom						0
Total	94	7,607	15,858	17,998	22	41,579

Source: KPMG calculations. Based on a snapshot of ESMA's AIF(M) database (27 April 2018).

2.3. Investor complaints

One aspect of the assessment of AIFMD's impact on retail investors was the analysis of consumer complaints to validate the findings from the desk research and quantitative analysis. To do so, members and affiliates of the European Commission's FIN-Net network contacted (see Table 23).

Table 23: Overview of organisations responsible for settling (retail) investor complaints

Member State	Name (national language)	Name (EN)	Webpage
Austria	Schlichtung für Verbrauchergeschäfte	Arbitration board for consumer businesses	https://www.verbraucherschlichtung.at/
Belgium	Ombudsfin	Ombudsman in financial conflicts	https://www.ombudsfin.be/en/Individuals/home
Czech Republic	Finanční arbitr České Republiky	Office of the Financial Arbitrator	https://www.finarbitr.cz/en/
Denmark	Ankenævnet for investeringsfonde	The Danish Complaint Board of Investment Funds	https://fanke.dk/ankenaevnet-for-investeringsfonde/en/
France	AMF	AMF Ombudsman	http://www.amf-france.org/en_US/Le-mediateur-de-l-AMF/Presentation.html
Germany	Ombudsstelle für Sachwerte und Investmentvermögen e.V.	Real Asset Investment Arbitration Board	https://ombudsstelle.com/ https://ombudsstelle.com/ https://ombudsstelle.com/
Germany	Ombudsstelle für Investmentfonds	Ombudsman Schemme for Investment Funds	http://www.ombudsstelle-investmentfonds.de/start/
Germany	BaFin	Arbitration Board at BaFin	https://www.bafin.de/EN/Verbraucher/BeschwerdenAnsprechpartner/Ansprechpartner/Schlichtungsstelle/schlichtungsstelle_artikel_en.html
Hungary	Pénzügyi Békéltető Testület	Financial Arbitration Board (FAB)	https://www.mnb.hu/bekeltetes
Ireland	Bíúró an Ombudsman um Sheirbhísí Airgeadais	Financial Services Ombudsman	https://www.financialombudsman.ie/
Italy	Arbitro per le Controversie Finanziarie	ACF – Securities and Financial Ombudsman	https://www.acf.consob.it/

Member State	Name (national language)	Name (EN)	Webpage
Italy	Conciliatore Bancario Finanziario	Banking Ombudsman	http://www.conciliatorebancario.it/
Luxembourg	CSSF		http://www.cssf.lu/en/
Malta	Uffiċċju tal-Arbitru għas-Servizzi Finanzjarji	Office of the Arbitrator for Financial Services	https://financiarbiter.org.mt/en/Pages/Home.aspx
Netherlands	Klachteninstituut Financiële Dienstverlening	Financial Services Complaints Institute	http://www.kifid.nl/
Spain	Oficina de Atención al Inversor – Dirección de Inversores de la CNMV	Investor Assistance Office – Investors Division of the CNMV	http://www.cnmv.es/portal/Inversor/Indice.aspx
United Kingdom	Financial Ombudsman Service		http://www.financial-ombudsman.org.uk/
Channel Islands	Channel Islands Financial Ombudsman		https://www.ci-fo.org/

Source: KPMG (2018).

Note: The Channel Islands Financial Ombudsman is not a member of FIN-Net but affiliated with the network.

1 The Office of the Arbitrator for Financial Services (OAFS) started operating in 2016.

An overview of the complaints received regarding AIF investments can be found in Table 24. Since most organisations did not collect statistics on AIF (retail) investor complaints or observed only few complaints, an in-depth analysis of the data was not feasible.

Table 24: Investor complaints related to AIF(M)s

Member State	2011	2012	2013	2014	2015	2016	2017	2018
Austria	0	0	0	0	0	0	0	NA
Belgium	0	0	0	0	0	0	0	NA
Czech Republic	NA	NA	NA	NA	NA	NA	NA	NA
Denmark	1	1	0	0	0	0	1	NA
France	NA	NA	NA	53	35	24	29	18

Member State	2011	2012	2013	2014	2015	2016	2017	2018
Germany	54	856*	15	19	6	4	5	NA
Hungary	0	0	0	0	0	0	0	NA
Ireland	Request pending							
Italy	0	0	0	0	0	0	0	NA
Italy	NA	NA	NA	NA	NA	NA	NA	NA
Luxembourg	Not answered							
Malta	NA	NA	NA	NA	NA	0	0	NA
Netherlands	NA	NA	NA	NA	NA	NA	NA	NA
Spain	Not answered							
United Kingdom	NA	NA	NA	NA	NA	NA	NA	NA
Channel Islands	NA	NA	NA	NA	NA	NA	NA	NA

* The peak in complaints in 2012 is the result of a mass appeal filed on behalf of over 750 consumers and related to a single fund.

Source: KPMG (2018). Based on an information request at the FIN-Net members listed in the table above.

3. Regression analysis

To analyse the quantitative data obtained from various sources and to underpin the findings from the other research streams, we assessed which data sources allowed for analysis using inferential statistical models. As mentioned in previous sections of the report, the availability of data spanning the period from pre-AIFMD until today was limited, making it difficult to provide results that allow comparisons between pre- and post-AIFMD.

As the only source of comparable data available for the period 2011 to 2018, the EFAMA Investment Fund Industry data were used to perform a regression analysis on the potential effects of AIFMD on size of the AIF sector (i.e. assets under management).

3.1. Method

The panel data the regression analysis is based on come from a cross-section of Member States, by quarter between 2011 and 2018. Using an appropriate panel model enabled us to account for heterogeneity and interdependencies of the different countries, and to make the data more informative by containing more variability and less co-linearity among variables, among other benefits.⁴⁵⁷

Since we believe that the assumption of no correlation between the error term in each period with the explanatory variables in each period is too strong, a model that weakens this assumption needs to be used in this case to avoid an omitted variable

⁴⁵⁷ Baltagi, B. (2008). *Econometric analysis of panel data*. Wiley, p. 4f.

bias resulting from unobserved effects.⁴⁵⁸ As we were performing our analysis on a specific set of 10 countries and not on a randomly drawn sample of countries, our inference is restricted to the 10 countries included in our sample.⁴⁵⁹ Therefore – and considering the risk of omitted variable bias – we used a so-called “fixed effects” model suitable for the analysis of the available data.

The fixed effects model includes a fixed parameter α_i that captures the country-specific unobserved effects to avoid omitted variable bias. In this case, we extended the model to include time fixed effects, λ_t , that include the time-specific unobserved effects common to all countries. This model specification is called the “two-way error components model”.⁴⁶⁰

This leaves a “pure” effect that is stripped of all variance components that are constant in either the time or cross-section dimension.⁴⁶¹

The basic structure of this model is:

$$y_{it} = \beta x_{it} + u_{it}, \quad (1)$$

where $i = 1, \dots, N$ is the country index, $t = 1, \dots, T$ is the time index, x_{it} is the set of explanatory variables on K explanatory variables and u_{it} is a residual term:

$$u_{it} = \alpha_i + \lambda_t + \epsilon_{it},$$

with α_i, λ_t being fixed parameters, where α_i is the country-specific effect, λ_t the time-specific effect and ϵ_{it} the idiosyncratic error.

As a next step, we took the means of variables over time and countries, and performed the so-called “within transformation”:

$$\bar{y}_t = \beta \bar{x}_t + \lambda_t + \bar{\epsilon}_t \quad (2)$$

$$\bar{y}_i = \beta \bar{x}_i + \alpha_i + \bar{\epsilon}_i \quad (3)$$

$$\bar{y} = \frac{1}{TN} \sum_{t=1}^T \sum_{i=1}^N y_{it} \quad (4)$$

Subtracting the country (2) and time means (3) from (1) and adding the mean over time *and* country (4) removes the time- and country-specific effects and yields the following model expression, which can be estimated as a next step:

$$(y_{it} - \bar{y}_i - \bar{y}_t + \bar{y}) = \beta(x_{it} - \bar{x}_i - \bar{x}_t + \bar{x}) + (\epsilon_{it} - \bar{\epsilon}_i - \bar{\epsilon}_t + \bar{\epsilon}).^{462}$$

⁴⁵⁸ Wooldridge, J. (2002). *Econometric Analysis of Cross Section and Panel Data*. The MIT Press, p. 247f.

⁴⁵⁹ Baltagi, B. (2008). *Econometric analysis of panel data*. Wiley, p. 12.

⁴⁶⁰ *Ibid.*, p. 33.

⁴⁶¹ Kittel, B. and Winner, H. (2002). *How reliable is Pooled Analysis in Political Economy? The Globalization-Welfare State Nexus Revisited*. MPIfG Discussion Paper 02/3, p. 9.

⁴⁶² Baltagi, B. (2008). *Econometric analysis of panel data*. Wiley, p. 33f and Balestra, P. and Krishnakumar, J. (2008). *Fixed Effects Models and Fixed Coefficients Models*. In: *The Econometrics of Panel Data: Fundamentals and Recent Developments in Theory and Practice*. Eds: Mátyás, L. and Sevestre, P. Springer: Berlin. pp. 23-48.

By subtracting the country- and time-specific effects, any common trends and shocks to which all countries are exposed are controlled for.⁴⁶³ This helps to *reduce* potential omitted variable bias.

For an overview of the common assumptions in this model, see e.g. Wooldridge.⁴⁶⁴ We address a particular assumption of this model – the strict exogeneity assumption – in the *Limitations* section below.

3.2. Data

EFAMA's data were collected on a quarterly basis from national member associations, which capture the main national investment fund markets. In some cases, member associations capture only parts of the market, e.g. in Italy, where closed-ended funds are not included in some periods.

Table 25: Member States included in the regression analysis

Member States	Included?	Reason for exclusion
Austria	x	
Belgium		Unreliable data
Cyprus		Data incomplete
Czech Republic	x	
Denmark	x	
France	x	
Germany	x	
Hungary	x	
Ireland	x	
Italy	x	
Luxembourg	x	
Malta		Data incomplete
Netherlands		Unreliable data
Spain		Unreliable data
United Kingdom	x	

Source: KPMG (2018).

⁴⁶³ *Ibid.*

⁴⁶⁴ Wooldridge, J. (2002). *Econometric Analysis of Cross Section and Panel Data*. The MIT Press, pp. 265–269.

To ensure the reliability of the data, we checked the data against other available sources of data on the AIF market. Data that did not seem plausible were excluded, e.g. in the case of Belgium, where the data obtained from ESMA shows an entirely different trend than the EFAMA data. An overview of the countries included in our sample can be found in Table 25.

For Belgium, the Netherlands and Spain, we found data to be unreliable. In the case of the Netherlands, this was also confirmed by EFAMA⁴⁶⁵. Additionally, we excluded Cyprus and Malta from the sample, as the data sets for these two countries were incomplete (an estimation of an unbalanced two-way fixed effects model leads to additional difficulties in the estimation of the panel regression).⁴⁶⁶

From the countries mentioned above, EFAMA data on the AIF net assets spanning the period from Q1 2011 to Q1 2018 were used to estimate a regression model to assess and quantify potential effects of AIFMD.

One important restriction to the EFAMA data set is a change in the category classification introduced in 2015 and the correcting of AIF net assets figures for 2014 Q4. According to EFAMA, the categorisation of funds into UCITS and AIFs was reviewed after the introduction of AIFMD, leading to some major shifts in the net assets of AIFs in some countries.⁴⁶⁷ To mitigate a potential bias from the change in the classification method, we introduced a dummy variable in the regression model to control for the effect of the change in the calculation base.

3.3. Variables included in the model

For all Member States and time periods, the following variables were collated:

Table 26: Regression model variables

Variable	Description	Source
<i>logassets</i>	<i>ln</i> of AIF Net Assets – dependent variable	EFAMA ⁴⁶⁸
<i>cpi</i>	Quarterly consumer price index	OECD ⁴⁶⁹
<i>qtr.gdp.growth</i>	Quarterly GDP growth	OECD ⁴⁷⁰
<i>stock.index</i>	Quarterly national share price indices. See Table 14 below for an overview of the national share price indices.	OECD ⁴⁷¹
<i>calcchg</i>	Dummy variable indicating whether the AIF net assets	EFAMA ⁴⁷²

⁴⁶⁵ For the time prior to 2015.

⁴⁶⁶ See Croissant, Y. and Millo, G. (2008). *Panel Data Econometrics in R: The plm Package*. JstatSoft 2008 (27)2, p. 13 and Wooldridge, J. (2002). *Econometric Analysis of Cross Section and Panel Data*. The MIT Press, p. 250.

⁴⁶⁷ EFAMA. (2015). *Trends in the European Investment Fund Industry in the First Quarter of 2015*. https://www.efama.org/Publications/Statistics/Quarterly/Quarterly%20Statistical%20Reports/150623_Quarterly%20Statistical%20Release%20Q1%202015.pdf, p. 2.

⁴⁶⁸ EFAMA. *European Quarterly Statistical Release*.

<http://www.efama.org/statistics/SitePages/European%20Quarterly%20Statistical%20Release.aspx>.

⁴⁶⁹ OECD (2018). *Inflation (CPI) (indicator)*. doi: 10.1787/eee82e6e-en [Accessed on 13 August 2018].

⁴⁷⁰ OECD (2018). *Quarterly GDP (indicator)*. doi: 10.1787/b86d1fc8-en [Accessed on 9 August 2018].

⁴⁷¹ OECD (2018). *Share prices (indicator)*. doi: 10.1787/6ad82f42-en [Accessed on 10 August 2018].

⁴⁷² EFAMA (2015). *Trends in the European Investment Fund Industry in the First Quarter of 2015*.

https://www.efama.org/Publications/Statistics/Quarterly/Quarterly%20Statistical%20Reports/150623_Quarterly%20Statistical%20Release%20Q1%202015.pdf, p. 2.

Variable	Description	Source
	changed due to a change in EFAMA's classification (0=no change in the AIF net assets 1=change in the AIF net assets)	
<i>aifmd</i>	Dummy variable indicating when the AIFMD was transposed into national law (0=not transposed 1=transposed)	KPMG ⁴⁷³

Source: KPMG (2018).

Table 27: OECD national share price indicators

Member State	Indicator Source	Explanation
Austria	Vienna Stock Exchange	WBI Share Index – The index is compiled and published by the Vienna Stock Exchange and is available on the Internet. The Official Market is the largest and most important segment of the exchange dealing with securities of high trading volumes, warrants and almost all bonds (currently over 100 stocks are traded). Criteria for admission to the Official Market relate to a specified minimum nominal value of the company's shares, to a three year financial history of the company and to a lack of any buying restrictions on trading in the company's shares, to the number of 'free' shares available for trading, etc. Foreign registered companies and investment funds are not included.
Czech Republic	Czech National Bank	PX Index – A base composed of 50 issues was chosen following an analysis of share trades effected in the central market between 1 November 1993 and 1 March 1994. Investment Funds are excluded. Initially, the issues incorporated in the index base accounted for 88.3% of the trade value transacted in shares. Issues are selected in accordance with IFC (International Finance Corporation) methodology according to: market capitalisation; liquidity; representativeness. In the first year no changes were made to the list of base issues. From January 1997 the list of base issues is updated semi-annually.
Denmark	Copenhagen Stock Exchange	KAX CSE All Shares price index – All Danish shares quoted on the primary and secondary markets of the exchange are used in the calculation of the index, with the exception of foreign registered companies, investment funds and two large holding companies. Some 250 companies are presently listed.

⁴⁷³ KPMG Luxembourg. (2015). *AIFMD Transposition State Of Play across EU Member States & EEA Countries*. <https://assets.kpmg.com/content/dam/kpmg/pdf/2015/05/AIFMD-transposition-overview-08052015.pdf>; Norton Rose Fulbright. (2015). *AIFMD – Implementation in Italy is finally at the end*. <http://www.nortonrosefulbright.com/knowledge/publications/127569/aifmd-implementation-in-italy-is-finally-at-the-end> [Accessed 13 August 2018].

Member State	Indicator Source	Explanation
France	Bank of France	The SBF250 is compiled as a total index and for 12 sectors which are aggregated into 3 groups (industrial, service and financial). Selection of the sample is based on the representativeness of each company to the total capitalisation in each of 12 economic sectors and is based on the regularity of trading. Units in investment funds are excluded but shares of foreign companies listed on the Paris Stock Exchange may be included.
Germany	Federal Bank of Germany	NA – Share price indices are usually calculated by the stock exchange, although occasionally agencies such as central banks will compile them.
Hungary	National Bank of Hungary	The BUX index monitors share prices of companies traded on the Budapest Stock Exchange. The index describes actual market conditions, the degree and size of movement in prevailing market prices.
Ireland	Central Statistical Office of Ireland	The ISEQ (Irish Stock Exchange Equity Index) Overall share price index measures the change in the prices of ordinary stocks and shares quoted on the Irish Stock Exchange.
Italy	MIB (Mercato Italiano di Borsa)	MIB (Mercato Italiano di Borsa) measures the general evolution of the share prices in Italian Stock Exchange.
Luxembourg	Luxembourg Stock Exchange	The Lux General Index includes all listed Luxembourg shares.
United Kingdom	Bank of England	The FTSE-100 is a capitalisation-weighted price index of the 100 largest UK companies by market value.

Source: OECD. (2018). Monthly Monetary and Financial Statistics (MEI): Share prices. <https://stats.oecd.org/Index.aspx?querytype=view&queryname=84> [Accessed 9 August 2018].

3.4. Results

Using the general model structure described above, we formulated a model to regress the log net assets of the AIF sector on the explanatory variables introduced in Table 8. The results of the analysis are shown in Table 28.

The standard errors reported for the model are robust against cross-sectional and serial correlation.⁴⁷⁴ Since the dependent variable is log-transformed, the estimated coefficients shall be assessed after an exponential transformation.⁴⁷⁵

⁴⁷⁴ A robust covariance matrix has been computed according to Driscoll and Kraay (1998) together with a HC3 estimation of the matrix, which performs well with small samples. See Zeileis, A. (2004). *Econometric Computing with HC and HAC Covariance Matrix Estimators*. *JStatSoft* (11)10. p. 4.

⁴⁷⁵ Since the dependent variable has been log-transformed, a x unit change in the coefficient multiplies the expected value of Y by $100 \cdot (e^{x\beta} - 1)$, *ceteris paribus*.

The model explains 23.02% of the variance in the dependent variable. Only the stock index and the change in the category classification by EFAMA are significant (both at 0.1% level).

Table 28: Results of the regression analysis

Variable	Estimate	Std. Error	t-value	
<i>Stock index</i>	0.0033	0.0008	3.9343	***
<i>CPI</i>	-0.0042	0.0633	-0.0670	
<i>GDP growth (quarterly)</i>	0.0037	0.0034	1.0920	
<i>Change in EFAMA classification</i> (1=Classification had an effect)	0.5977	0.0691	8.6506	***
<i>AIFMD transposed</i> (1=AIFMD transposed into national law)	0.0648	0.0487	0.1840	
n=10, T=29, N=290 R ² : 0.2302 F-statistic: 14.7684 on 5 and 247 DF, p-value: < 0.0001 Significance codes: *** .001; ** .01; * .05; .1				

Source: KPMG (2018).

For the stock index, there is a *slightly positive correlation between the stock index and the AIF net assets*. A one unit increase in the stock index on the AIF net assets on average leads to an approximate increase in the AIF net assets of 0.33% (95% confidence interval: 0.1647%; 0.4958%), *ceteris paribus*.

Looking at the within variation in the 10 countries in the sample, the non-significance of the AIFMD dummy variable suggests that *there was no statistically significant effect of AIFMD on the AIF net assets in the sample*, after controlling for national share prices indices, inflation (consumer price index) and **the change in EFAMA's** categorisation. However, these results shall be interpreted as the effects within countries, stripped of country-specific and time-specific unobserved variables.

3.5. Limitations of the model

One general remark regarding the fixed effects model presented here regards the reduction in variance by the within transformation. As the model estimates are stripped of country- and time-specific effects, the variation used to estimate the model coefficients is reduced considerably.⁴⁷⁶

Moreover, we **found the model's residuals to be serially correlated, which could pose a threat to the consistency of the Ordinary Least Squares (OLS) estimates**, as it potentially indicates a model misspecification and violation of the exogeneity assumption. Even though we have introduced cross-sectional and serial correlation

⁴⁷⁶ Mummolo, J., & Peterson, E. (2018). *Improving the Interpretation of Fixed Effects Regression Results*. *Political Science Research and Methods*. p. 2f.

robust standard errors, the presence of endogeneity in the model could lead to inconsistent estimates of the coefficients.

Judging from the sample size and properties ($T > N$), we believe that specifying a dynamic panel model (i.e. the Arellano-Bond estimator) – which is usually a way to handle endogeneity by introducing lags of the dependent variable as explanatory variables – would not be suitable in this case.⁴⁷⁷ *We therefore advise readers to interpret the results with these caveats in mind.*

⁴⁷⁷ See Arellano, M. and Bond, S. (1991). *Some Tests of Specification for Panel Data: Monte Carlo Evidence and an Application to Employment Equations*. *The Review of Economic Studies*, (58) 2, p. 278.

Annex 5 – Country level quantitative data and analysis

1. Exchange rates used for conversion

The following exchange rates were used to convert national currency units to Euro.

Table 29: Euro to currency unit – end-of-year rates

1 EUR = ...	2011	2012	2013	2014	2015	2016	2017
Czech Koruna (CZK)	25.787	25.151	27.427	27.735	27.023	27.021	25.535
Pound sterling (GBP)	0.835	0.816	0.834	0.779	0.734	0.856	0.887
Hungarian Forint (HUF)	314.58	292.30	297.04	315.54	315.98	309.83	310.33

Source: BaFin. (2017). Exchange rate statistics.

https://www.bundesbank.de/Redaktion/EN/Downloads/Statistics/External_Sector/Reference_Exchange_Rates/stat_eurefj_en.pdf?__blob=publicationFile [30 July 2018].

Table 30: Euro to Danish Krone (DKK) – monthly average rates

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2010	7.4424	7.4440	7.4416	7.4428	7.4413	7.4409	7.4522	7.4495	7.4476	7.4567	7.4547	7.4528
2011	7.4518	7.4555	7.4574	7.4574	7.4566	7.4579	7.4560	7.4498	7.4462	7.4442	7.4412	7.4341
2012	7.4353	7.4341	7.4354	7.4393	7.4335	7.4325	7.4384	7.4454	7.4539	7.4582	7.4587	7.4604
2013	7.4614	7.4598	7.4553	7.4553	7.4536	7.4576	7.4579	7.4580	7.4579	7.4592	7.4587	7.4602
2014	7.4614	7.4622	7.4638	7.4656	7.4641	7.4588	7.4564	7.4551	7.4449	7.4448	7.4415	7.4402
2015	7.4406	7.4501	7.4593	7.4655	7.4612	7.4603	7.4616	7.4627	7.4610	7.4601	7.4602	7.4612
2016	7.4619	7.4628	7.4569	7.4427	7.4386	7.4371	7.4390	7.4408	7.4475	7.4402	7.4406	7.4362

Source: Central Bank of Ireland. (2018). Monthly averages 2005–present. <https://www.centralbank.ie/statistics/interest-rates-exchange-rates/exchange-rates> [5 July 2018].

2. The level of integration of the EU AIF market

The following **graphs are based on EFAMA's** quarterly statistics on the AIF market. **Note that EFAMA's data do not cover the whole of the EU AIF market.** EFAMA is dependent on the data provided to it by its national member associations. Some of these collect statistics that cover all or much of the national AIF market, but some do not. For example, in general the statistics include all authorised AIFs in that country, but a number of EFAMA member trade associations (including some significant AIF markets) do not collect data on unauthorised AIFs.

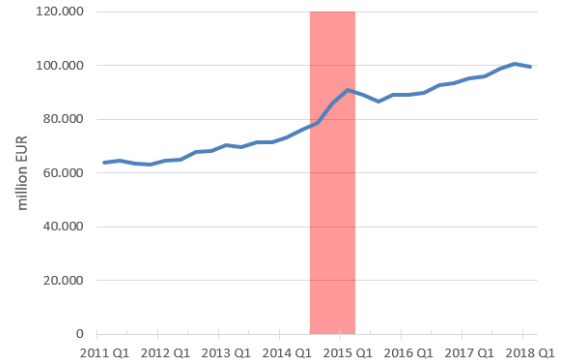
Therefore, *the graphs are useful indicators of the trends in the national AIF markets, but should not be used for direct transnational comparisons.*

Figure 72: Austria – number of AIFs



Source: EFAMA (2018).

Figure 73: Austria – net AIF assets



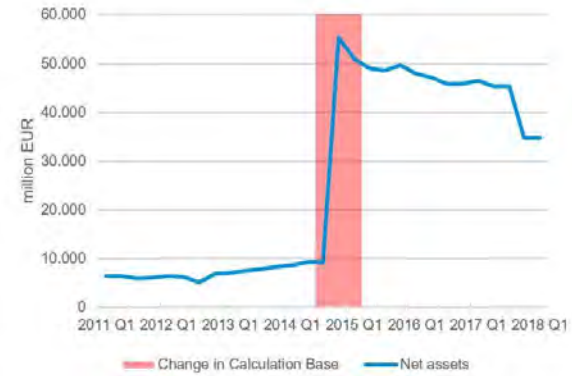
Source: EFAMA (2018).

Figure 74: Belgium – number of AIFs



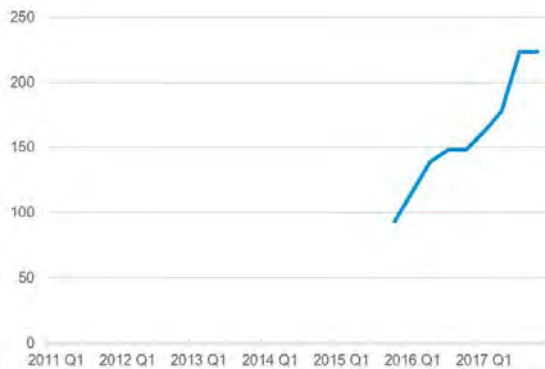
Source: EFAMA (2018).

Figure 75: Belgium – net AIF assets



Source: EFAMA (2018).

Figure 76: Cyprus – number of AIFs



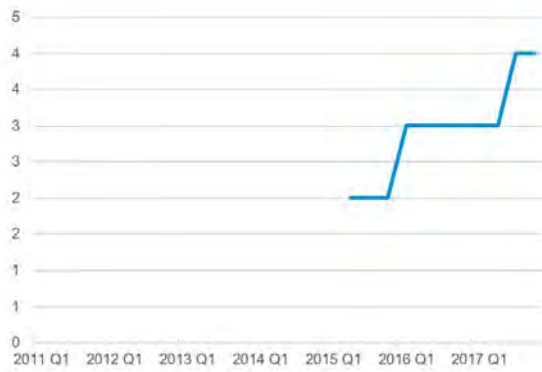
Source: EFAMA (2018).

Figure 77: Cyprus – net AIF assets



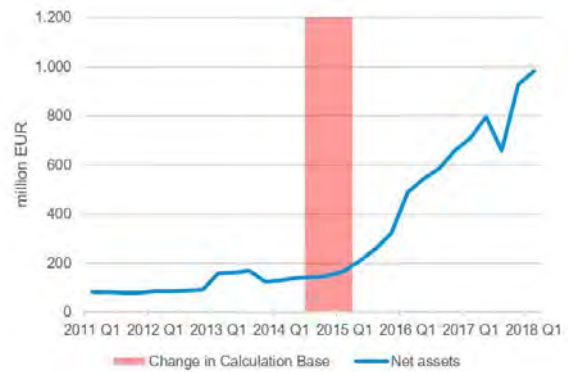
Source: EFAMA (2018).

Figure 78: Czech Republic – number of AIFs



Source: EFAMA (2018).

Figure 79: Czech Republic – net AIF assets



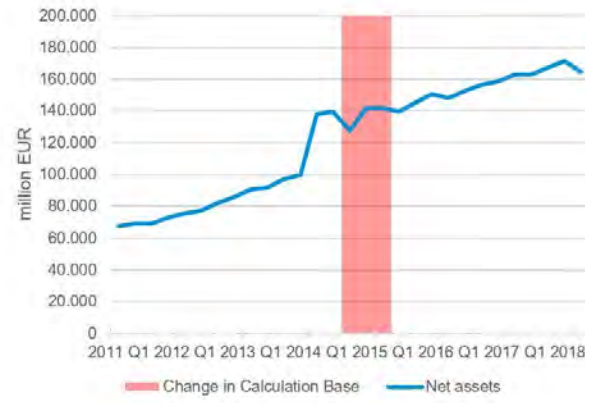
Source: EFAMA (2018).

Figure 80: Denmark – number of AIFs



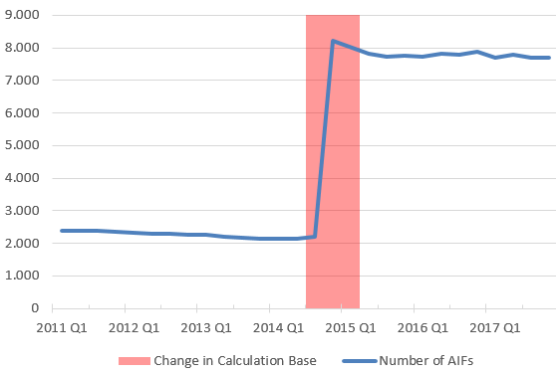
Source: EFAMA (2018).

Figure 81: Denmark – net AIF assets



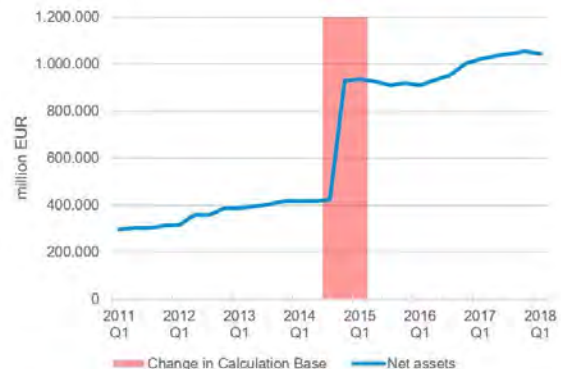
Source: EFAMA (2018).

Figure 82: France – number of AIFs



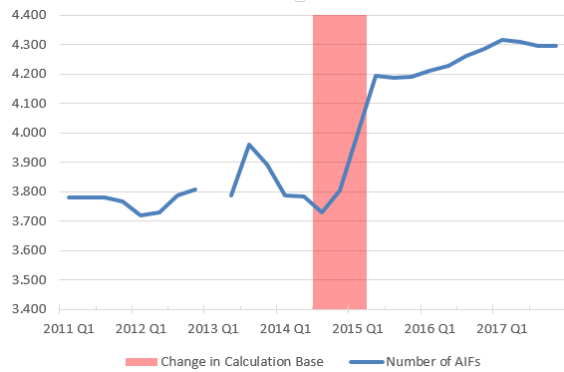
Source: EFAMA (2018).

Figure 83: France – net AIF assets



Source: EFAMA (2018).

Figure 84: Germany – number of AIFs



Source: EFAMA (2018).

Figure 85: Germany – net AIF assets



Source: EFAMA (2018).

Figure 86: Hungary – number of AIFs



Source: EFAMA (2018).

Figure 87: Hungary – net AIF assets



Source: EFAMA (2018).

Figure 88: Ireland – number of AIFs



Source: EFAMA (2018).

Figure 89: Ireland – net AIF assets



Source: EFAMA (2018).

Figure 90: Italy – number of AIFs



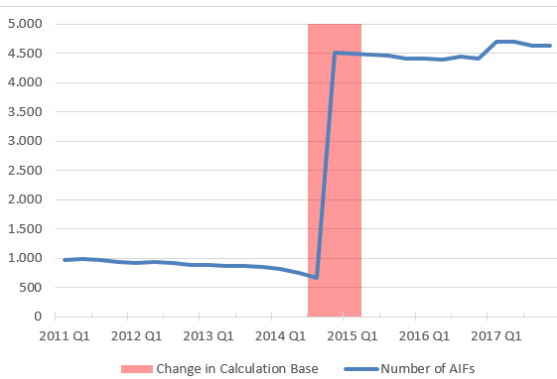
Source: EFAMA (2018).

Figure 91: Italy – net AIF assets



Source: EFAMA (2018).

Figure 92: Luxembourg – number of AIFs



Source: EFAMA (2018).

Figure 93: Luxembourg – net AIF assets



Source: EFAMA (2018).

Figure 94: Malta – number of AIFs



Source: EFAMA (2018).

Figure 95: Malta – net AIF assets



Source: EFAMA (2018).

Figure 96: Netherlands – number of AIFs



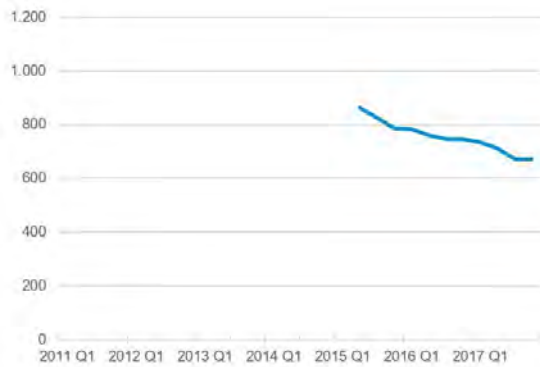
Source: EFAMA (2018).

Figure 97: Netherlands – net AIF assets



Source: EFAMA (2018).

Figure 98: Spain – number of AIFs



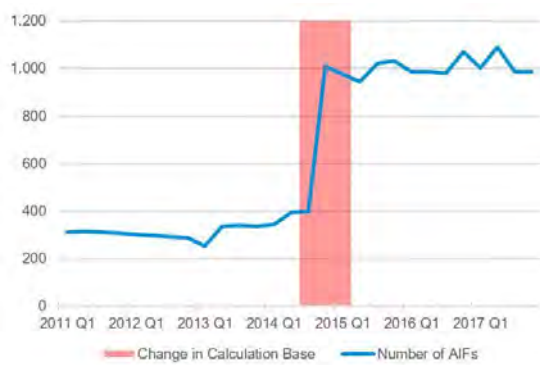
Source: EFAMA (2018).

Figure 99: Spain – net AIF assets



Source: EFAMA (2018).

Figure 100: United Kingdom – number of AIFs



Source: EFAMA (2018).

Figure 101: United Kingdom – net AIF assets

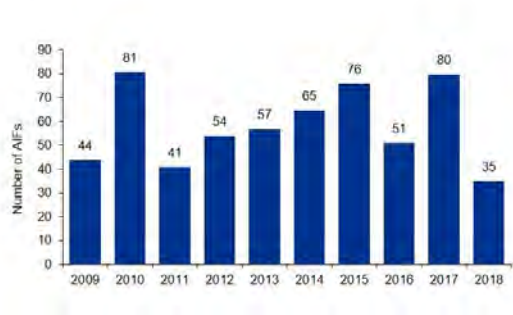


Source: EFAMA (2018).

3. The structure of the EU depositaries market

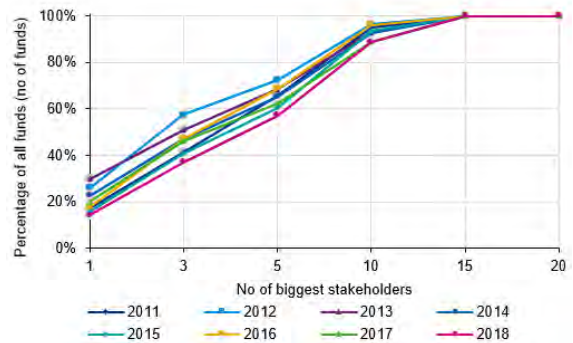
The following country analyses are based on data provided by NCAs and national associations (see section 2.1).

Figure 102: Number of AIFs serviced by Austrian depositaries



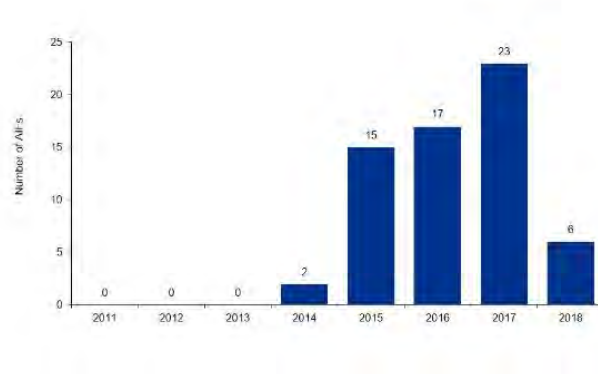
Source: FMA.

Figure 103: Number of AIFs serviced by the largest depositaries in Austria



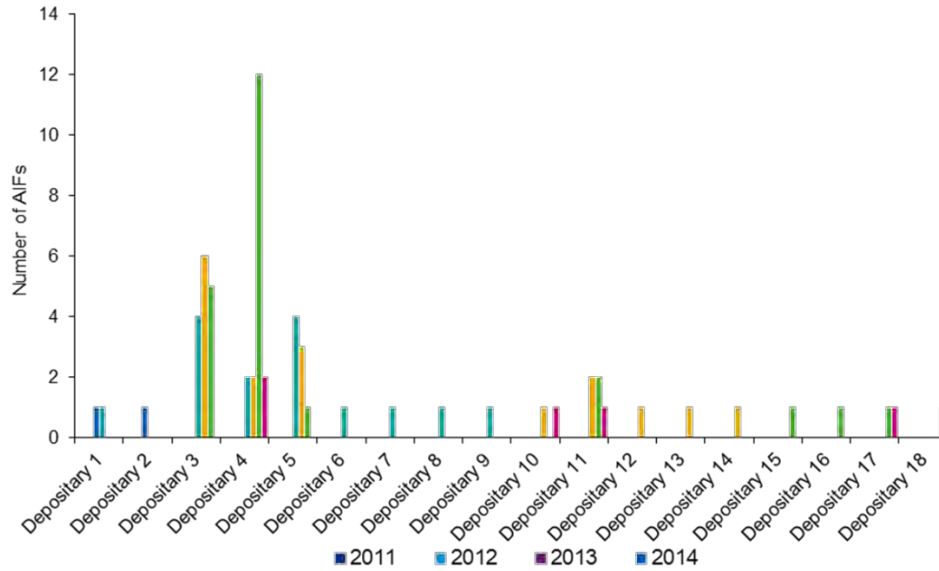
Source: FMA.

Figure 104: Number of AIFs serviced by Cypriot Depositaries



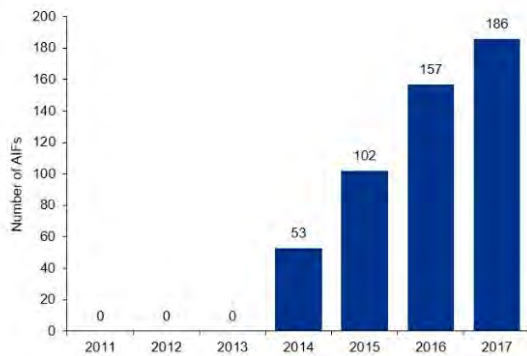
Source: CySEC (2018)

Figure 105: Cyprus - number of AIFs serviced by depositary by year



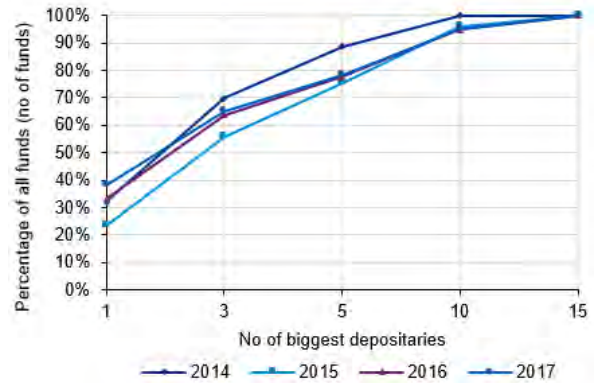
Source: CySEC (2018)

Figure 106: Number of AIFs serviced by Danish depositaries



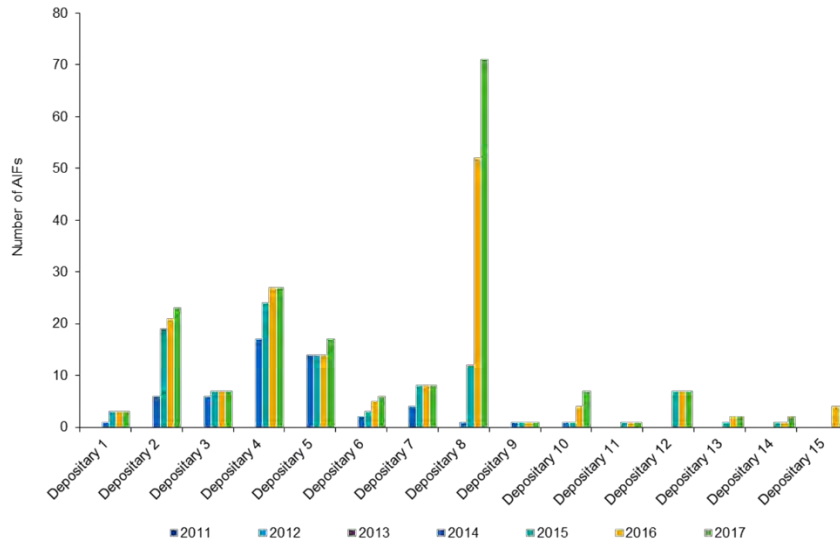
Source: Finanstilsynet (2018)

Figure 107: Denmark – number of AIFs serviced by the largest depositaries



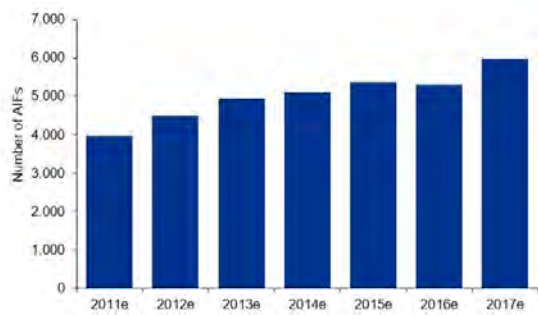
Source: Finanstilsynet (2018)

Figure 108: Denmark – number of AIFs by depositary and by year



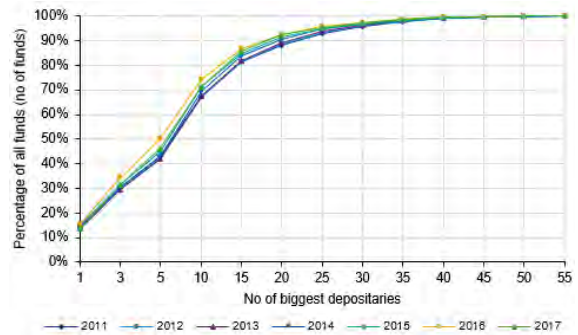
Source: BaFin (2018)

Figure 109: Number of AIFs serviced by German depositaries



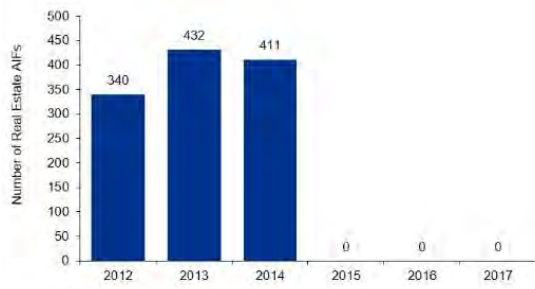
Source: BaFin (2018)

Figure 110: Germany – number of AIF serviced by the largest depositaries



Source: BaFin (2018)

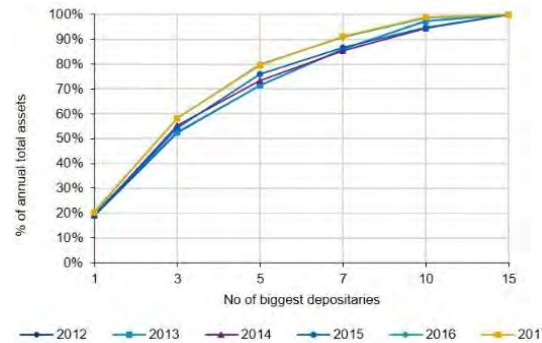
Figure 111: Number of Real Estate AIFs serviced by German depositaries



Source: BVI (2018).

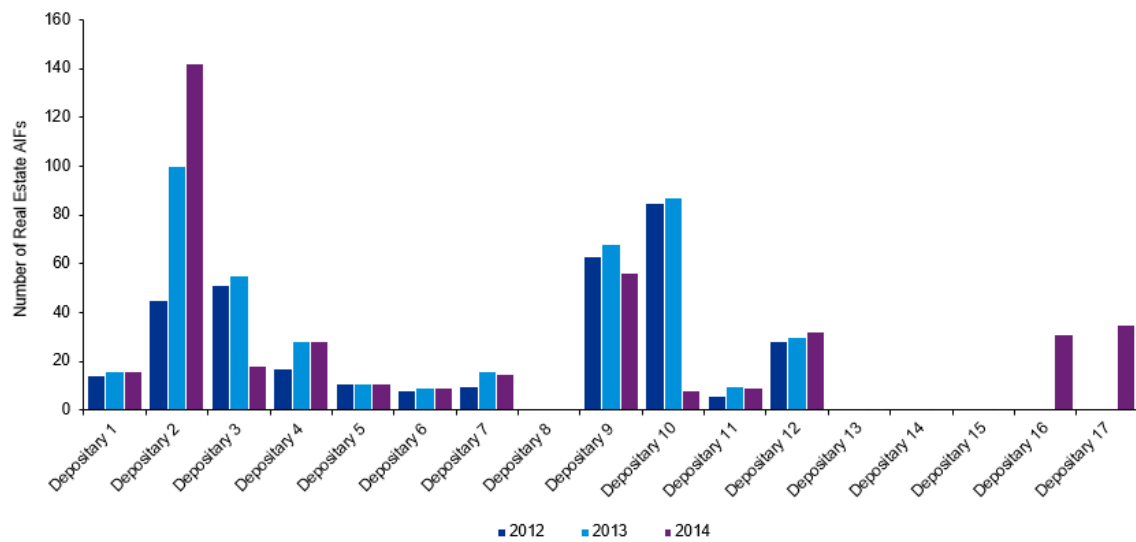
Note: BVI stopped reporting the number of AIFs managed by depositaries but continued to report on the net assets.

Figure 112: Germany – Real Estate AIFs serviced by the largest depositaries



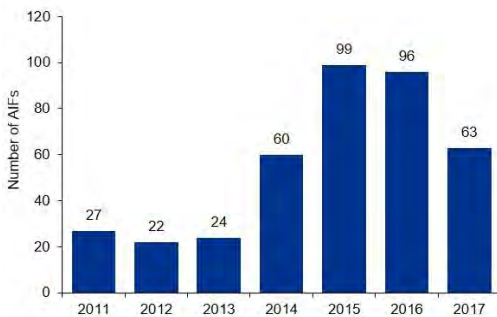
Source: BVI (2018).

Figure 113: Germany – number of Real Estate AIFs by depositary and by year



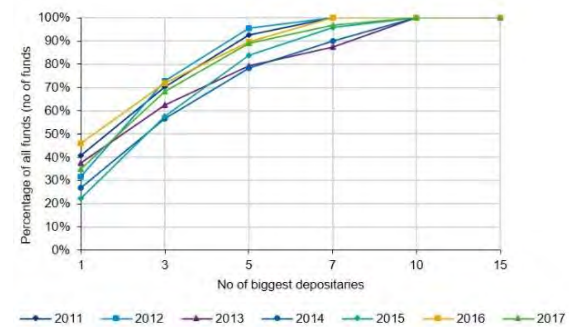
Source: BVI (2018).

Figure 114: Number of AIFs serviced by Hungarian depositaries



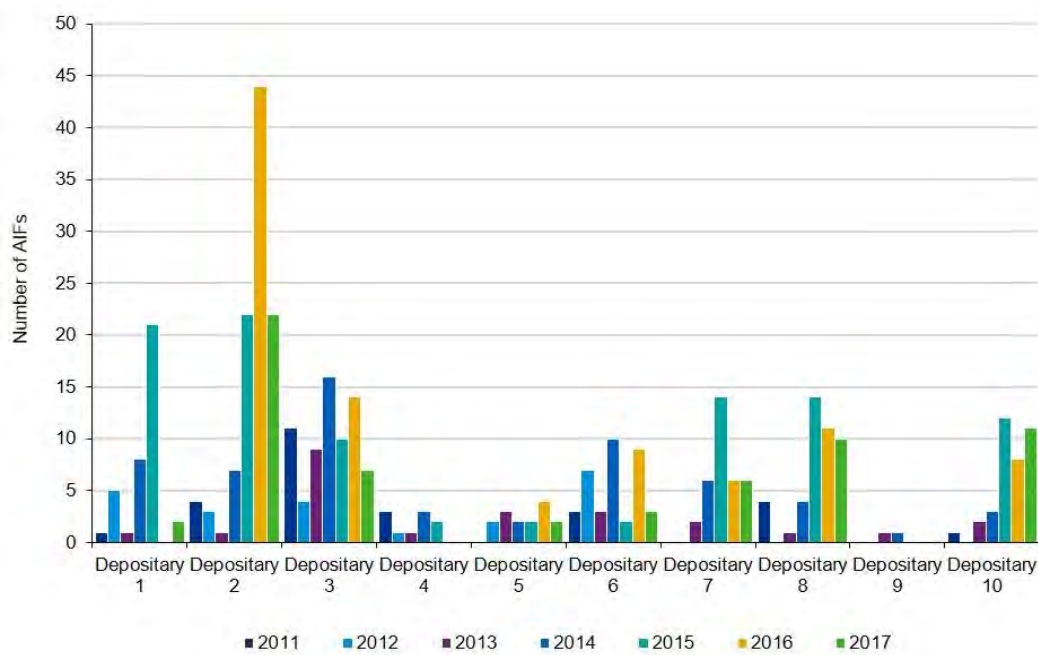
Source: MNB (2018).

Figure 115: Hungary – number of AIFs serviced by the largest depositaries



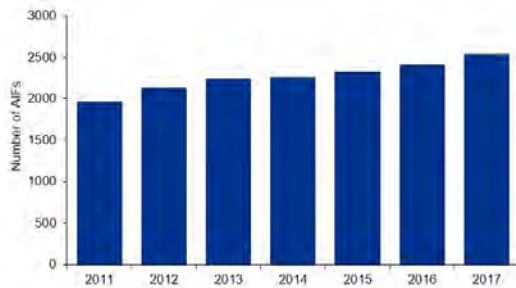
Source: MNB (2018).

Figure 116: Hungary – number of AIFs by depositary and by year



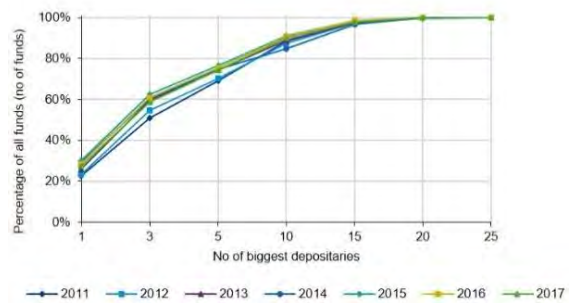
Source: MNB (2018).

Figure 117: Number of AIFs serviced by Irish depositaries



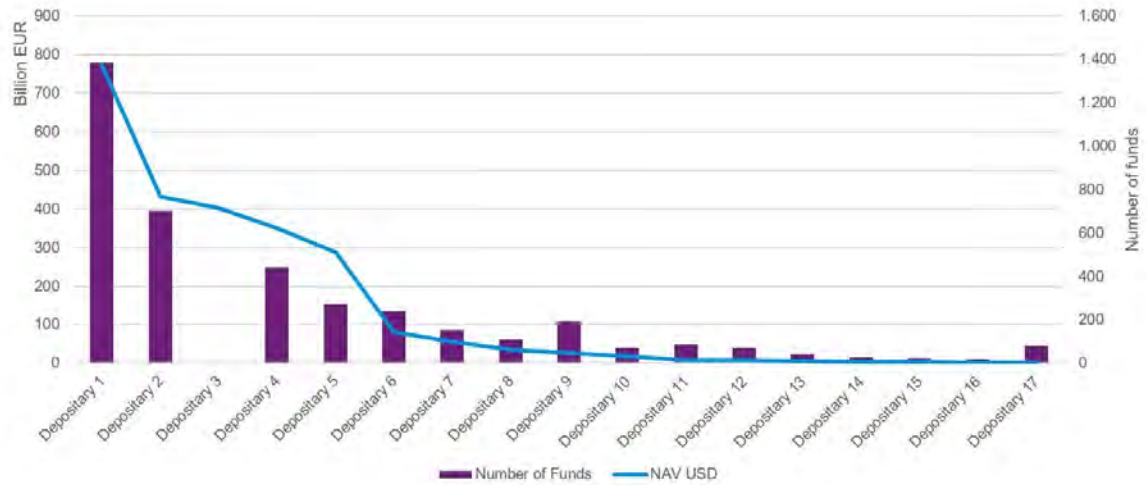
Source: Central Bank of Ireland (2018).

Figure 118: Ireland – number of AIFs serviced by the largest depositaries



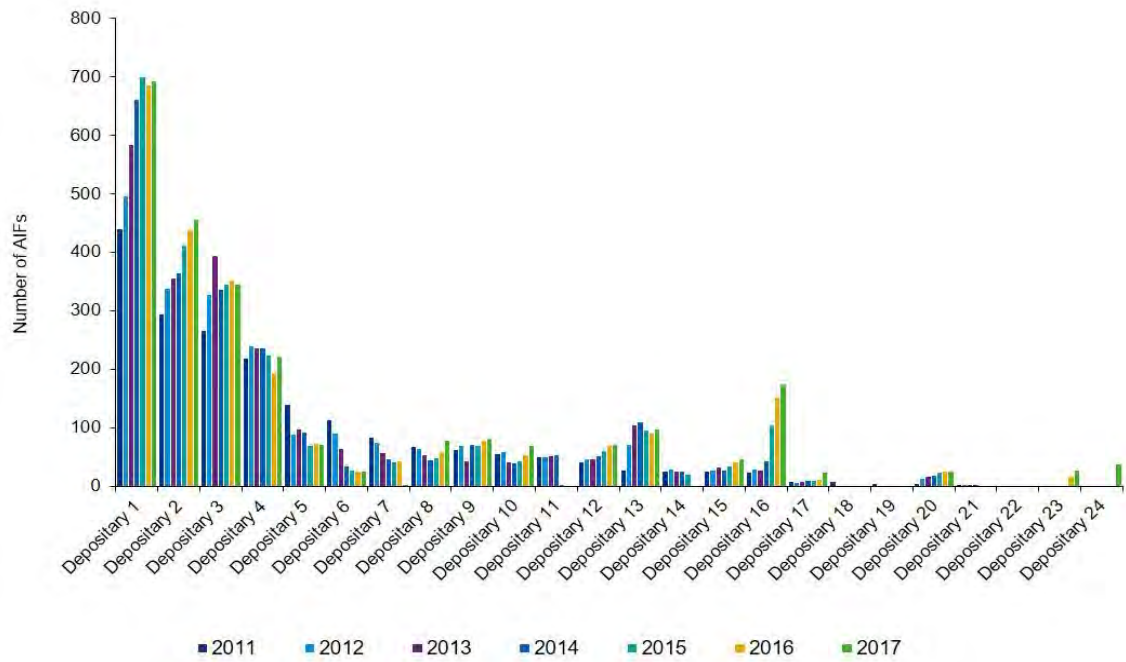
Source: Central Bank of Ireland (2018).

Figure 119: Depositaries of Irish funds*



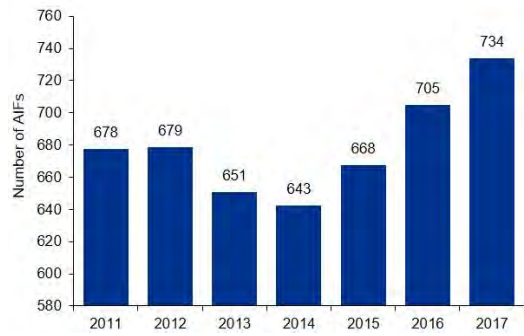
Source: © Monterey Ireland Fund Report (2017). * Disclaimer: Includes UCITS

Figure 120: Ireland – number of AIFs by depositary and by year



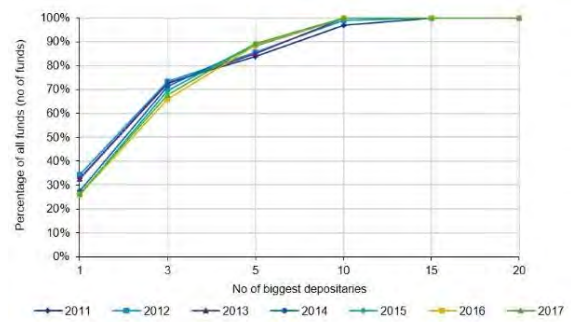
Source: Central Bank of Ireland (2018).

Figure 121: Number of AIFs serviced by Italian depositaries



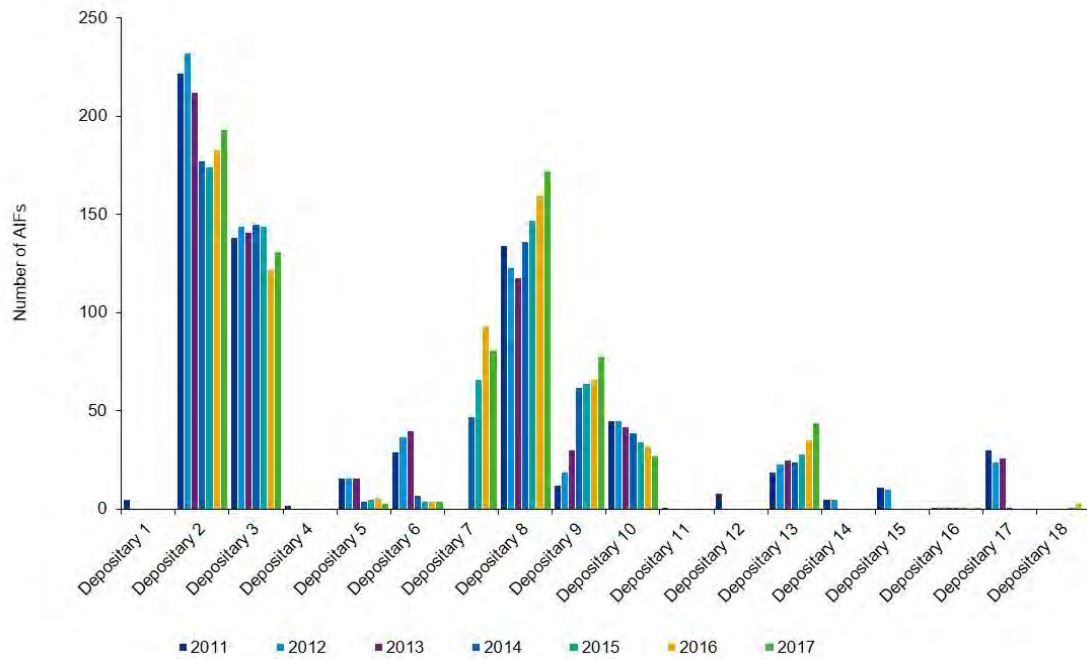
Source: CONSOB (2018).

Figure 122: Italy – number of AIFs serviced by the largest depositaries



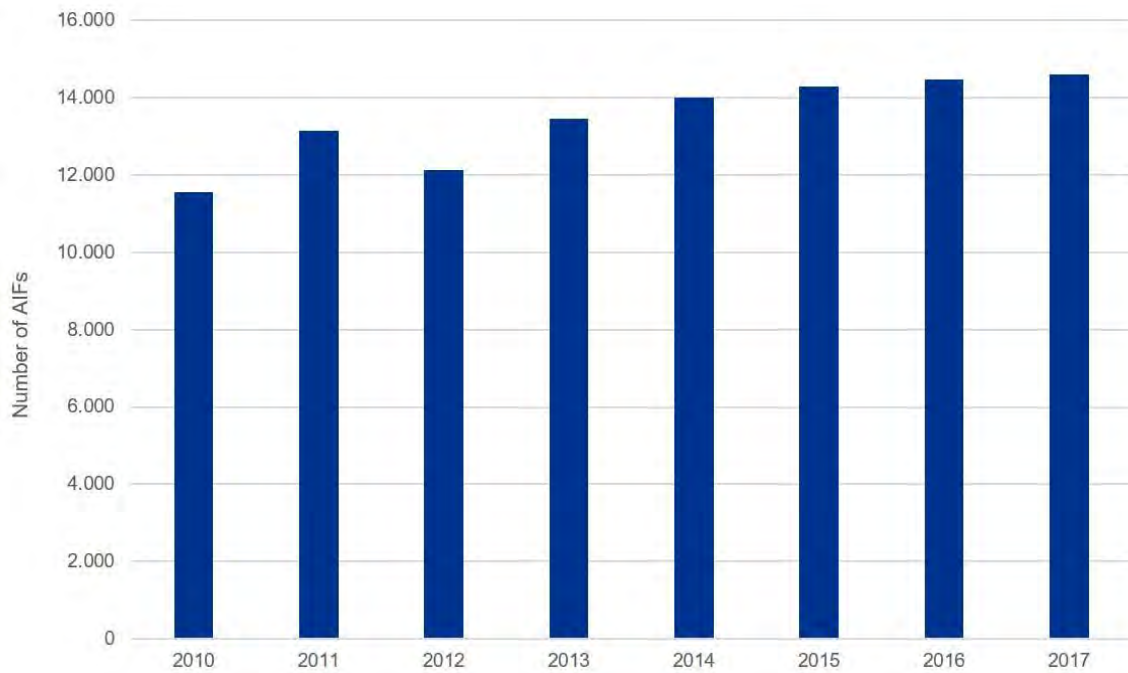
Source: CONSOB (2018).

Figure 123: Italy – number of AIFs by depositary and by year



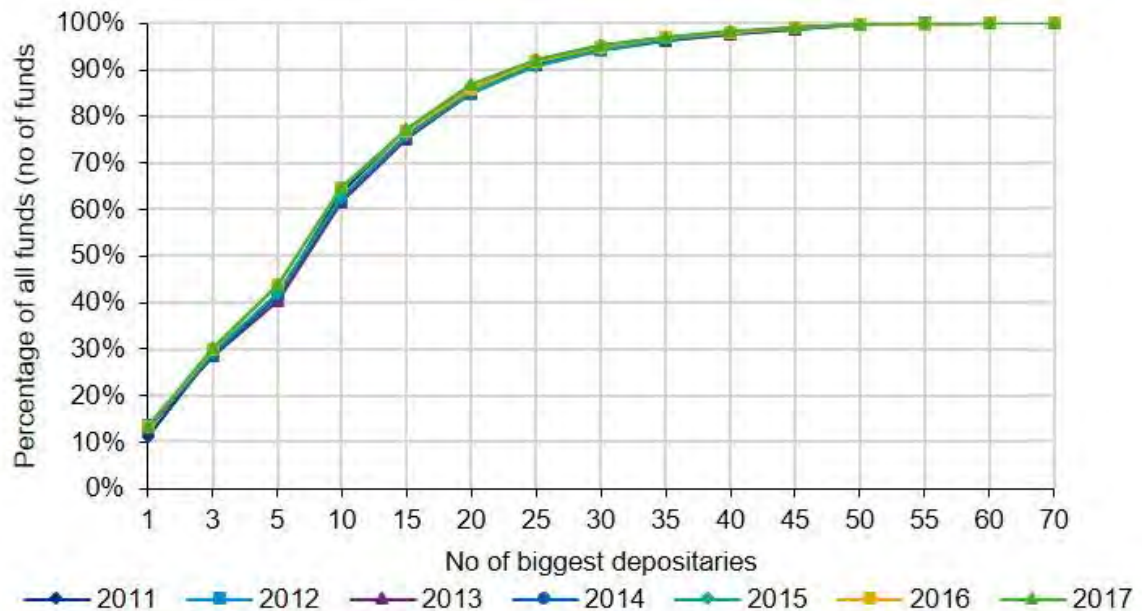
Source: CONSOB (2018).

Figure 124: Number of funds* serviced by Luxembourgish depositaries



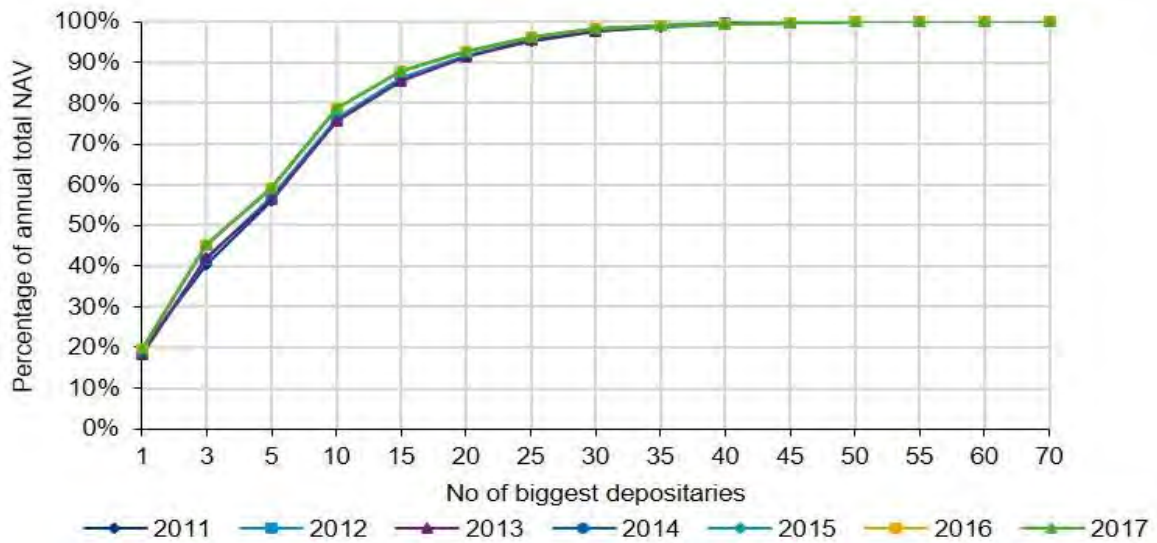
Source: © Monterey Insight Luxembourg Fund Report (2018). * Note: Includes UCITS

Figure 125: Luxembourg – number of funds* serviced by the largest depositaries



Source: © Monterey Insight Luxembourg Fund Report (2018). * Note: Includes UCITS

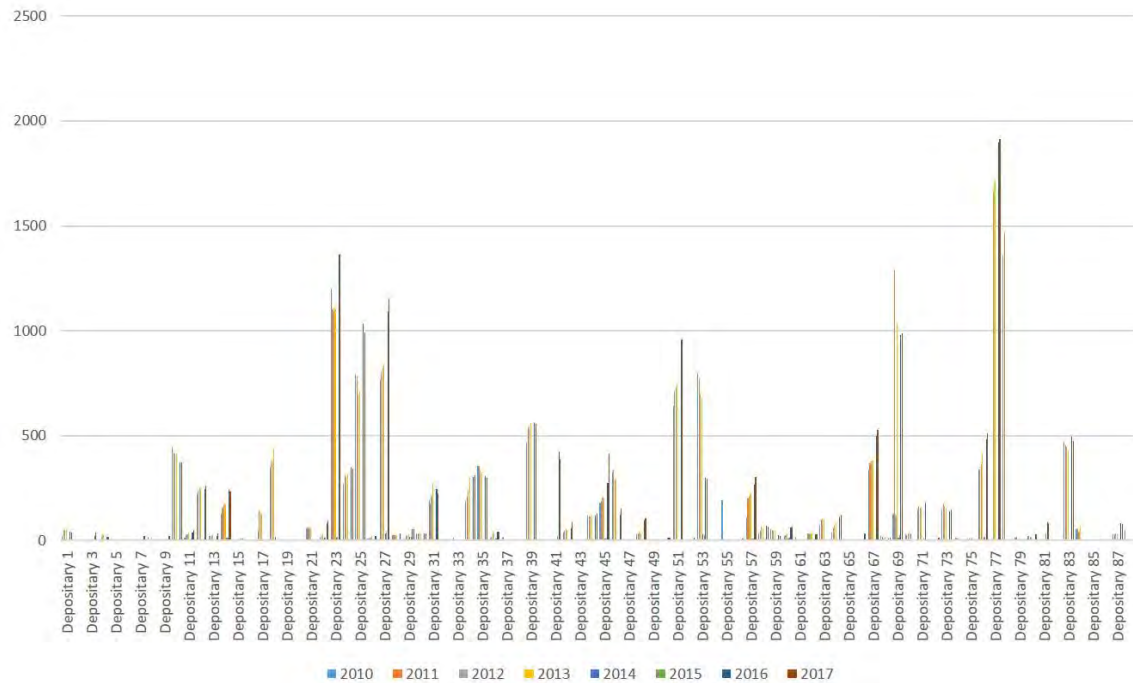
Figure 126: Luxembourg – total fund* NAV serviced by the largest depositaries



Source: © Monterey Insight Luxembourg Fund Report (2018).

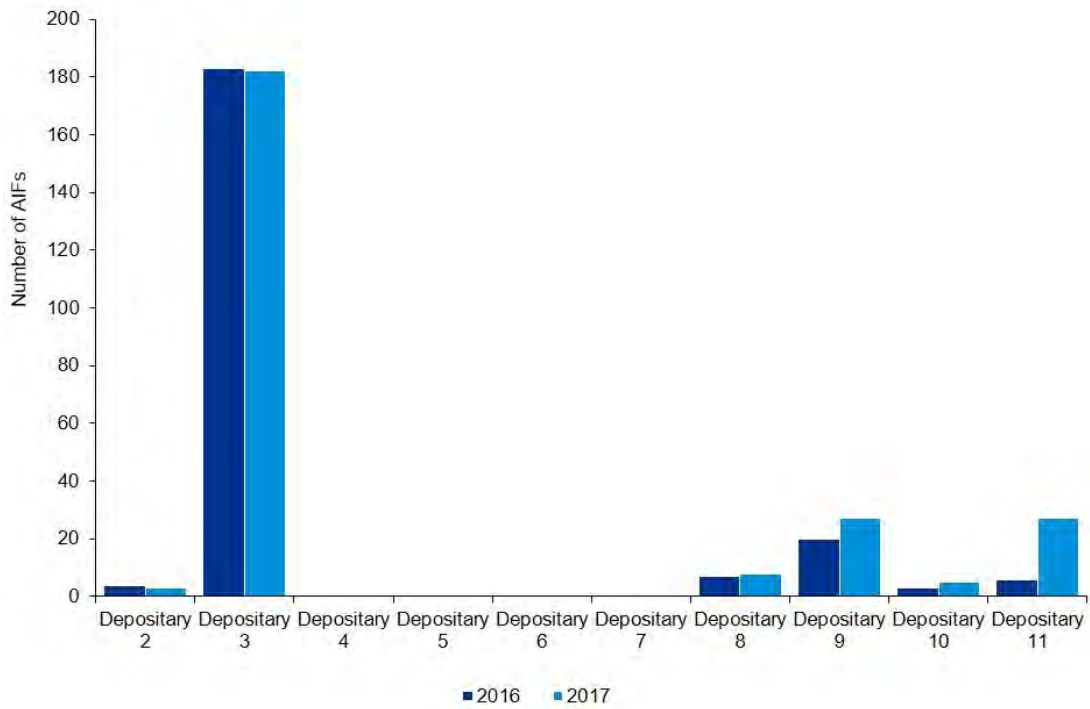
* Note: Includes UCITS

Figure 127: Luxembourg – number of funds* by depositary and by year



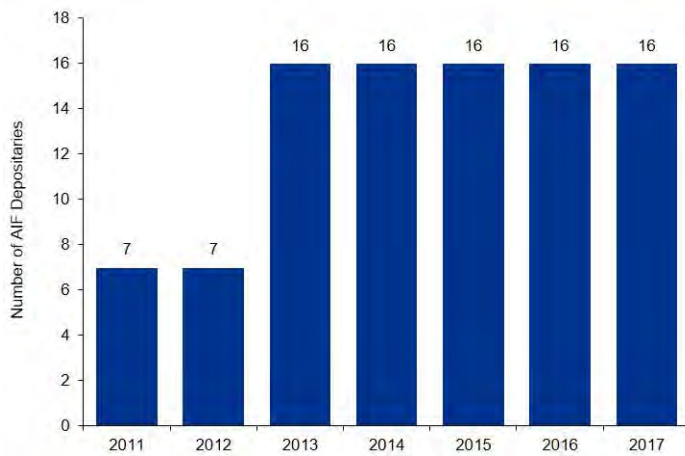
Source: © Monterey Insight Luxembourg Fund Report (2018). * Note: Includes UCITS.

Figure 128: Number of AIFs serviced by Maltese depositaries



Source: MFSA (2018).

Figure 129: Number of UK AIF depositaries by year



Source: KPMG UK (2018).

4. Member State statistics

Table 31: Austria – AIF net assets and other indicators

	AIF net assets (million EUR)	National share price index	Quarterly GDP growth	CPI
2011 Q1	63,740 €	115.47	1.53%	2.87
2011 Q2	64,668 €	112.66	0.15%	3.31
2011 Q3	63,394 €	95.39	0.14%	3.54
2011 Q4	63,158 €	79.95	0.22%	3.41
2012 Q1	64,584 €	88.47	0.74%	2.59
2012 Q2	64,854 €	83.85	-0.63%	2.22
2012 Q3	67,843 €	85.10	0.14%	2.35
2012 Q4	68,233 €	92.01	-0.07%	2.78
2013 Q1	70,355 €	98.94	-0.43%	2.49
2013 Q2	69,786 €	96.71	0.28%	2.14
2013 Q3	71,296 €	96.54	0.58%	1.82
2013 Q4	71,354 €	101.67	0.29%	1.56
2014 Q1	73,361 €	103.03	0.06%	1.59
2014 Q2	76,319 €	101.11	-0.01%	1.76
2014 Q3	78,541 €	95.66	0.36%	1.67
2014 Q4	85,751 €	89.50	0.35%	1.41
2015 Q1	90,854 €	95.42	-0.05%	0.85
2015 Q2	89,055 €	103.21	0.51%	1.02
2015 Q3	86,684 €	96.56	0.46%	0.94
2015 Q4	89,033 €	97.49	0.24%	0.78
2016 Q1	89,226 €	90.14	0.33%	0.97
2016 Q2	89,917 €	93.04	0.40%	0.56
2016 Q3	92,809 €	94.34	0.30%	0.70
2016 Q4	93,497 €	103.22	0.70%	1.33
2017 Q1	95,314 €	114.35	1.08%	2.03
2017 Q2	96,025 €	125.36	0.86%	1.95
2017 Q3	98,742 €	132.18	0.71%	2.15
2017 Q4	100,654 €	137.72	0.84%	2.20
2018 Q1	99,558 €	142.38	0.91%	1.79

Note: Gray rows indicate AIFMD in effect in national law.

CPI: Consumer Price index (Inflation).

Source: EFAMA (2018); OECD (2018), Share prices (indicator). doi: 10.1787/6ad82f42-en (Accessed on 09 August 2018); OECD (2018), Inflation (CPI) (indicator). doi: 10.1787/eee82e6e-en (Accessed on 09 August 2018); OECD (2018), Quarterly GDP (indicator). doi: 10.1787/b86d1fc8-en (Accessed on 09 August 2018).

Table 32: Czech Republic – AIF net assets and other indicators

	AIF net assets (million EUR)	National stock index	Quarterly GDP growth	CPI
2011 Q1	84 €	105.82	0.74%	1.76
2011 Q2	84 €	106.10	0.20%	1.75
2011 Q3	81 €	90.86	-0.16%	1.79
2011 Q4	79 €	76.78	0.20%	2.36
2012 Q1	87 €	83.16	-0.11%	3.64
2012 Q2	85 €	77.07	-0.54%	3.38
2012 Q3	88 €	79.43	-0.53%	3.27
2012 Q4	91 €	84.65	-0.28%	2.87
2013 Q1	159 €	86.48	-0.47%	1.81
2013 Q2	162 €	81.14	0.15%	1.53
2013 Q3	169 €	80.03	0.32%	1.26
2013 Q4	124 €	84.85	1.27%	1.16
2014 Q1	131 €	85.83	-0.15%	0.17
2014 Q2	139 €	86.35	0.94%	0.17
2014 Q3	144 €	83.16	1.30%	0.60
2014 Q4	151 €	82.55	1.31%	0.44
2015 Q1	168 €	84.97	1.60%	0.10
2015 Q2	212 €	87.32	1.47%	0.67
2015 Q3	258 €	85.78	1.08%	0.37
2015 Q4	321 €	82.56	0.68%	0.10
2016 Q1	489 €	76.12	0.29%	0.47
2016 Q2	544 €	74.76	0.34%	0.27
2016 Q3	584 €	73.54	0.37%	0.53
2016 Q4	657 €	77.06	0.79%	1.47
2017 Q1	710 €	81.66	1.34%	2.43
2017 Q2	796 €	85.10	2.35%	2.22
2017 Q3	657 €	87.31	0.53%	2.55
2017 Q4	928 €	90.51	0.68%	2.60
2018 Q1	983 €	95.21	0.54%	1.85

Note: Gray rows indicate AIFMD in effect in national law.

CPI: Consumer Price index (Inflation).

Source: EFAMA (2018); OECD (2018), Share prices (indicator). doi: 10.1787/6ad82f42-en (Accessed on 09 August 2018); OECD (2018),

Inflation (CPI) (indicator). doi: 10.1787/eee82e6e-en (Accessed on 09 August 2018); OECD (2018), Quarterly GDP (indicator). doi:

10.1787/b86d1fc8-en (Accessed on 09 August 2018).

Table 33: Denmark – AIF net assets and other indicators

	AIF net assets (million EUR)	National share price index	Quarterly GDP growth	CPI
2011 Q1	67,827 €	113.56	0.22%	2.70
2011 Q2	69,020 €	109.69	1.00%	3.03
2011 Q3	69,322 €	92.49	-1.24%	2.71
2011 Q4	73,151 €	88.18	0.82%	2.59
2012 Q1	75,688 €	102.85	-0.07%	2.70
2012 Q2	77,499 €	104.45	0.08%	2.18
2012 Q3	81,972 €	111.98	0.09%	2.46
2012 Q4	85,781 €	114.27	-0.16%	2.25
2013 Q1	90,770 €	124.39	0.56%	1.16
2013 Q2	91,632 €	124.84	0.07%	0.85
2013 Q3	96,990 €	131.00	0.63%	0.51
2013 Q4	99,590 €	140.33	0.20%	0.64
2014 Q1	137,645 €	159.63	0.25%	0.61
2014 Q2	139,486 €	168.39	-0.07%	0.61
2014 Q3	127,432 €	173.55	1.67%	0.57
2014 Q4	141,396 €	172.04	0.36%	0.47
2015 Q1	141,561 €	192.68	0.42%	0.27
2015 Q2	139,562 €	217.07	0.13%	0.60
2015 Q3	145,471 €	215.23	0.10%	0.60
2015 Q4	150,669 €	215.50	-0.18%	0.33
2016 Q1	148,051 €	208.92	1.12%	0.30
2016 Q2	153,005 €	212.34	0.64%	0.13
2016 Q3	156,790 €	213.38	0.47%	0.17
2016 Q4	158,514 €	199.36	0.68%	0.40
2017 Q1	162,957 €	211.72	2.32%	0.97
2017 Q2	162,957 €	227.94	-1.07%	0.83
2017 Q3	167,465 €	236.05	-0.82%	1.53
2017 Q4	171,671 €	238.62	0.94%	1.26
2018 Q1	164,894 €	235.71	0.42%	0.59

Note: Gray rows indicate AIFMD in effect in national law.

CPI: Consumer Price index (Inflation).

Source: EFAMA (2018); OECD (2018), Share prices (indicator). doi: 10.1787/6ad82f42-en (Accessed on 09 August 2018); OECD (2018),

Inflation (CPI) (indicator). doi: 10.1787/eee82e6e-en (Accessed on 09 August 2018); OECD (2018), Quarterly GDP (indicator). doi:

10.1787/b86d1fc8-en (Accessed on 09 August 2018).

Table 34: France – AIF net assets and other indicators

	AIF net assets (million EUR)	National share price index	Quarterly GDP growth	CPI
2011 Q1	297,841 €	107.96	1.07%	1.80
2011 Q2	303,513 €	107.64	0.05%	2.07
2011 Q3	303,513 €	91.81	0.21%	2.14
2011 Q4	312,812 €	84.81	0.25%	2.44
2012 Q1	315,013 €	93.23	0.07%	2.31
2012 Q2	360,000 €	87.10	-0.07%	2.00
2012 Q3	360,000 €	93.19	0.14%	1.98
2012 Q4	389,250 €	97.16	-0.05%	1.53
2013 Q1	389,500 €	103.77	-0.03%	1.06
2013 Q2	394,000 €	106.35	0.68%	0.81
2013 Q3	404,700 €	111.77	-0.01%	0.94
2013 Q4	419,000 €	118.01	0.42%	0.65
2014 Q1	419,100 €	121.12	0.08%	0.73
2014 Q2	419,000 €	126.57	0.25%	0.63
2014 Q3	425,300 €	122.60	0.44%	0.40
2014 Q4	931,530 €	119.05	0.11%	0.28
2015 Q1	936,024 €	133.99	0.43%	-0.24
2015 Q2	926,829 €	143.53	-0.04%	0.21
2015 Q3	911,549 €	136.03	0.38%	0.08
2015 Q4	919,879 €	135.29	0.25%	0.09
2016 Q1	909,137 €	123.61	0.67%	-0.04
2016 Q2	934,659 €	125.41	-0.25%	-0.01
2016 Q3	954,360 €	126.44	0.20%	0.28
2016 Q4	1,002,948 €	131.46	0.61%	0.50
2017 Q1	1,020,575 €	140.83	0.79%	1.23
2017 Q2	1,033,907 €	151.38	0.64%	0.89
2017 Q3	1,046,682 €	149.88	0.68%	0.87
2017 Q4	1,055,247 €	155.83	0.67%	1.14
2018 Q1	1,043,812 €	154.47	0.15%	1.36

Note: Gray rows indicate AIFMD in effect in national law.

CPI: Consumer Price Index (Inflation).

Source: EFAMA (2018); OECD (2018), Share prices (indicator). doi: 10.1787/6ad82f42-en (Accessed on 09 August 2018); OECD (2018), Inflation (CPI) (indicator). doi: 10.1787/eee82e6e-en (Accessed on 09 August 2018); OECD (2018), Quarterly GDP (indicator). doi: 10.1787/b86d1fc8-en (Accessed on 09 August 2018).

Table 35: Germany – AIF net assets and other indicators

	AIF net assets (million EUR)	National share price index	Quarterly GDP growth	CPI
2011 Q1	892,521 €	114.50	1.77%	1.88
2011 Q2	893,203 €	114.93	0.17%	2.00
2011 Q3	882,378 €	97.97	0.47%	2.20
2011 Q4	907,418 €	92.00	0.02%	2.22
2012 Q1	946,584 €	104.37	0.32%	2.14
2012 Q2	961,561 €	99.66	0.10%	1.86
2012 Q3	1,002,030 €	105.02	0.23%	2.02
2012 Q4	1,037,202 €	111.85	-0.45%	2.01
2013 Q1	1,065,772 €	118.58	-0.22%	1.55
2013 Q2	1,059,962 €	120.53	0.89%	1.51
2013 Q3	1,092,088 €	124.13	0.51%	1.63
2013 Q4	1,126,744 €	135.37	0.41%	1.34
2014 Q1	1,166,082 €	140.85	0.88%	1.21
2014 Q2	1,206,904 €	142.14	-0.17%	1.08
2014 Q3	1,244,289 €	138.28	0.32%	0.85
2014 Q4	1,285,218 €	136.71	0.89%	0.50
2015 Q1	1,423,649 €	158.90	0.11%	0.03
2015 Q2	1,394,977 €	166.06	0.45%	0.47
2015 Q3	1,385,110 €	153.23	0.32%	0.12
2015 Q4	1,419,383 €	152.82	0.42%	0.31
2016 Q1	1,460,124 €	139.73	0.63%	0.25
2016 Q2	1,504,241 €	142.20	0.46%	0.09
2016 Q3	1,551,564 €	146.17	0.34%	0.47
2016 Q4	1,558,587 €	151.76	0.42%	1.12
2017 Q1	1,592,806 €	164.76	0.90%	1.88
2017 Q2	1,616,785 €	173.41	0.63%	1.68
2017 Q3	1,650,052 €	170.99	0.74%	1.73
2017 Q4	1,666,413 €	182.00	0.61%	1.66
2018 Q1	1,665,597 €	177.79	0.30%	1.50

Note: Gray rows indicate AIFMD in effect in national law.

CPI: Consumer Price index (Inflation).

Source: EFAMA (2018); OECD (2018), Share prices (indicator). doi: 10.1787/6ad82f42-en (Accessed on 09 August 2018); OECD (2018), Inflation (CPI) (indicator). doi: 10.1787/eee82e6e-en (Accessed on 09 August 2018); OECD (2018), Quarterly GDP (indicator). doi: 10.1787/b86d1fc8-en (Accessed on 09 August 2018).

Table 36: Hungary – AIF net assets and other indicators

	AIF net assets (million EUR)	National share price index	Quarterly GDP growth	CPI
2011 Q1	4,592 €	100.62	0.74%	4.21
2011 Q2	4,602 €	103.92	0.04%	4.03
2011 Q3	4,031 €	84.87	0.29%	3.39
2011 Q4	2,700 €	75.93	0.84%	4.09
2012 Q1	4,134 €	83.11	-2.25%	5.60
2012 Q2	4,142 €	76.92	-0.23%	5.48
2012 Q3	4,092 €	79.14	0.39%	6.14
2012 Q4	4,281 €	82.25	-0.20%	5.39
2013 Q1	4,470 €	83.73	0.66%	2.94
2013 Q2	4,858 €	82.90	0.84%	1.80
2013 Q3	5,028 €	82.42	1.24%	1.47
2013 Q4	5,264 €	82.86	1.08%	0.75
2014 Q1	5,469 €	80.19	0.96%	0.02
2014 Q2	5,659 €	81.79	1.21%	-0.17
2014 Q3	5,884 €	80.15	0.80%	-0.07
2014 Q4	17,139 €	76.85	0.58%	-0.69
2015 Q1	18,036 €	78.80	1.39%	-1.06
2015 Q2	17,527 €	97.65	0.20%	0.25
2015 Q3	17,541 €	96.77	0.72%	0.05
2015 Q4	17,634 €	100.89	0.97%	0.52
2016 Q1	17,493 €	107.18	-0.43%	0.35
2016 Q2	17,216 €	118.29	1.23%	-0.05
2016 Q3	17,751 €	123.12	0.58%	0.05
2016 Q4	18,065 €	133.78	0.71%	1.23
2017 Q1	17,931 €	146.02	1.37%	2.60
2017 Q2	18,150 €	151.23	1.06%	2.08
2017 Q3	17,946 €	163.98	1.07%	2.42
2017 Q4	18,189 €	173.32	1.31%	2.29
2018 Q1	18,276 €	173.17	1.21%	1.98

Note: Gray rows indicate AIFMD in effect in national law.

CPI: Consumer Price index (Inflation).

Source: EFAMA (2018); OECD (2018), Share prices (indicator). doi: 10.1787/6ad82f42-en (Accessed on 09 August 2018); OECD (2018),

Inflation (CPI) (indicator). doi: 10.1787/eee82e6e-en (Accessed on 09 August 2018); OECD (2018), Quarterly GDP (indicator). doi:

10.1787/b86d1fc8-en (Accessed on 09 August 2018).

Table 37: Ireland – AIF net assets and other indicators

	AIF net assets (million EUR)	National share price index	Quarterly GDP growth	CPI
2011 Q1	201,501 €	99.10	3.14%	2.25
2011 Q2	204,370 €	100.51	0.41%	2.82
2011 Q3	215,671 €	89.72	0.13%	2.43
2011 Q4	235,227 €	91.19	-0.05%	2.73
2012 Q1	245,699 €	106.57	-0.11%	2.20
2012 Q2	254,110 €	106.60	0.63%	1.76
2012 Q3	258,983 €	109.45	-0.85%	1.76
2012 Q4	259,863 €	112.43	0.51%	1.08
2013 Q1	277,318 €	125.45	-1.65%	0.94
2013 Q2	278,612 €	134.30	2.73%	0.53
2013 Q3	291,318 €	142.31	2.17%	0.37
2013 Q4	299,819 €	150.22	-0.94%	0.20
2014 Q1	317,989 €	166.59	4.05%	0.10
2014 Q2	338,926 €	166.98	3.91%	0.33
2014 Q3	366,303 €	162.14	0.67%	0.30
2014 Q4	388,423 €	166.98	0.65%	0.00
2015 Q1	435,058 €	194.40	22.64%	-0.57
2015 Q2	445,268 €	211.84	-0.89%	-0.36
2015 Q3	438,373 €	217.93	1.48%	-0.13
2015 Q4	451,952 €	223.51	0.38%	-0.10
2016 Q1	443,217 €	213.84	1.97%	-0.10
2016 Q2	469,556 €	210.93	0.32%	0.13
2016 Q3	495,373 €	203.48	-1.34%	0.13
2016 Q4	505,828 €	210.89	10.15%	-0.13
2017 Q1	536,478 €	224.41	-4.73%	0.50
2017 Q2	537,479 €	235.95	3.05%	0.23
2017 Q3	551,466 €	229.87	4.52%	0.13
2017 Q4	565,569 €	235.81	2.76%	0.50
2018 Q1	591,852 €	233.07	-0.58%	0.30

Note: Gray rows indicate AIFMD in effect in national law.

CPI: Consumer Price index (Inflation).

Source: EFAMA (2018); OECD (2018), Share prices (indicator). doi: 10.1787/6ad82f42-en (Accessed on 09 August 2018); OECD (2018), Inflation (CPI) (indicator). doi: 10.1787/eee82e6e-en (Accessed on 09 August 2018); OECD (2018), Quarterly GDP (indicator). doi: 10.1787/b86d1fc8-en (Accessed on 09 August 2018).

Table 38: Italy – AIF net assets and other indicators

	AIF net assets (million EUR)	National share price index	Quarterly GDP growth	CPI
2011 Q1	57,475 €	104.62	0.31%	2.34
2011 Q2	56,589 €	102.71	0.06%	2.67
2011 Q3	55,218 €	81.46	-0.58%	2.81
2011 Q4	53,599 €	76.57	-0.90%	3.30
2012 Q1	53,792 €	81.47	-0.88%	3.25
2012 Q2	53,308 €	71.70	-0.92%	3.28
2012 Q3	52,720 €	75.49	-0.45%	3.17
2012 Q4	52,763 €	79.73	-0.56%	2.47
2013 Q1	52,719 €	84.54	-1.03%	1.91
2013 Q2	52,061 €	85.03	0.01%	1.16
2013 Q3	54,173 €	87.52	0.34%	1.13
2013 Q4	67,006 €	96.61	-0.12%	0.69
2014 Q1	59,274 €	103.93	0.04%	0.50
2014 Q2	52,188 €	110.86	-0.07%	0.44
2014 Q3	52,392 €	105.58	0.24%	-0.06
2014 Q4	56,622 €	98.77	0.00%	0.09
2015 Q1	56,987 €	109.02	0.23%	-0.25
2015 Q2	56,517 €	120.49	0.42%	0.06
2015 Q3	55,887 €	117.06	0.22%	0.19
2015 Q4	64,985 €	115.92	0.29%	0.16
2016 Q1	50,550 €	99.42	0.23%	-0.09
2016 Q2	54,360 €	97.25	0.10%	-0.39
2016 Q3	63,742 €	92.46	0.23%	-0.02
2016 Q4	68,945 €	96.01	0.48%	0.13
2017 Q1	68,738 €	107.48	0.51%	1.34
2017 Q2	65,389 €	116.35	0.39%	1.50
2017 Q3	65,206 €	120.09	0.34%	1.13
2017 Q4	64,983 €	124.50	0.35%	0.93
2018 Q1	60,954 €	125.89	0.28%	0.73

Note: Gray rows indicate AIFMD in effect in national law.

CPI: Consumer Price index (Inflation).

Source: EFAMA (2018); OECD (2018), Share prices (indicator). doi: 10.1787/6ad82f42-en (Accessed on 09 August 2018); OECD (2018),

Inflation (CPI) (indicator). doi: 10.1787/eee82e6e-en (Accessed on 09 August 2018); OECD (2018), Quarterly GDP (indicator). doi:

10.1787/b86d1fc8-en (Accessed on 09 August 2018).

Table 39: Luxembourg – AIF net assets and other indicators

	AIF net assets (million EUR)	National share price index	Quarterly GDP growth	CPI
2011 Q1	321,105 €	103.06	1.65%	3.49
2011 Q2	327,320 €	95.90	-0.89%	3.61
2011 Q3	327,099 €	78.98	0.88%	3.17
2011 Q4	336,357 €	71.71	-0.45%	3.37
2012 Q1	353,497 €	77.23	-1.20%	2.87
2012 Q2	362,973 €	68.76	1.32%	2.55
2012 Q3	373,225 €	71.32	-0.35%	2.66
2012 Q4	381,428 €	72.68	0.61%	2.58
2013 Q1	402,921 €	72.02	1.47%	2.12
2013 Q2	399,964 €	65.37	2.26%	1.81
2013 Q3	412,618 €	67.63	1.22%	1.70
2013 Q4	417,797 €	76.11	-2.97%	1.31
2014 Q1	420,707 €	80.18	5.75%	1.08
2014 Q2	429,005 €	79.39	-1.22%	0.89
2014 Q3	444,017 €	77.27	3.11%	0.64
2014 Q4	516,564 €	74.24	1.88%	-0.08
2015 Q1	568,877 €	79.29	1.42%	-0.01
2015 Q2	565,353 €	81.48	-1.35%	0.53
2015 Q3	546,456 €	71.37	-1.34%	0.56
2015 Q4	559,341 €	63.88	2.13%	0.82
2016 Q1	547,986 €	58.60	0.26%	0.25
2016 Q2	555,406 €	63.47	2.25%	0.02
2016 Q3	570,913 €	66.21	0.31%	0.17
2016 Q4	584,972 €	70.48	1.48%	0.73
2017 Q1	648,254 €	76.82	-1.34%	1.74
2017 Q2	655,260 €	74.08	1.24%	1.71
2017 Q3	656,197 €	72.92	1.78%	1.88
2017 Q4	673,169 €	73.89	0.09%	1.60
2018 Q1	675,655 €	76.56	1.95%	1.09

Note: Gray rows indicate AIFMD in effect in national law.

CPI: Consumer Price index (Inflation).

Source: EFAMA (2018); OECD (2018), Share prices (indicator). doi: 10.1787/6ad82f42-en (Accessed on 09 August 2018); OECD (2018), Inflation (CPI) (indicator). doi: 10.1787/eee82e6e-en (Accessed on 09 August 2018); OECD (2018), Quarterly GDP (indicator). doi: 10.1787/b86d1fc8-en (Accessed on 09 August 2018).

Table 40: United Kingdom – AIF net assets and other indicators

	AIF net assets (million EUR)	National share price index	Quarterly GDP growth	CPI
2011 Q1	117,548 €	108.79	0.75%	3.50
2011 Q2	149,244 €	108.19	0.15%	3.80
2011 Q3	142,156 €	100.00	0.27%	4.00
2011 Q4	174,391 €	99.33	0.17%	4.00
2012 Q1	189,490 €	106.42	0.65%	3.10
2012 Q2	193,134 €	101.53	-0.05%	2.50
2012 Q3	204,582 €	105.09	1.19%	2.20
2012 Q4	248,405 €	106.96	-0.23%	2.40
2013 Q1	227,908 €	115.22	0.65%	2.50
2013 Q2	217,521 €	117.69	0.55%	2.40
2013 Q3	255,521 €	119.43	0.90%	2.40
2013 Q4	258,255 €	121.01	0.47%	1.90
2014 Q1	270,074 €	122.17	0.84%	1.60
2014 Q2	288,480 €	123.67	0.83%	1.60
2014 Q3	307,671 €	123.54	0.70%	1.50
2014 Q4	325,507 €	119.49	0.67%	1.10
2015 Q1	389,822 €	124.21	0.44%	0.40
2015 Q2	399,687 €	126.58	0.57%	0.30
2015 Q3	374,711 €	116.92	0.43%	0.40
2015 Q4	396,214 €	114.72	0.74%	0.40
2016 Q1	361,382 €	109.56	0.32%	0.70
2016 Q2	353,643 €	113.51	0.16%	0.70
2016 Q3	366,403 €	123.70	0.47%	1.00
2016 Q4	394,970 €	126.71	0.74%	1.50
2017 Q1	394,628 €	132.95	0.39%	2.20
2017 Q2	416,542 €	135.05	0.21%	2.60
2017 Q3	413,055 €	134.96	0.35%	2.70
2017 Q4	421,322 €	136.81	0.36%	2.80
2018 Q1	416,818 €	134.36	0.23%	2.50

Note: Gray rows indicate AIFMD in effect in national law.

CPI: Consumer Price index (Inflation).

Source: EFAMA (2018); OECD (2018), Share prices (indicator). doi: 10.1787/6ad82f42-en (Accessed on 09 August 2018); OECD (2018),

Inflation (CPI) (indicator). doi: 10.1787/eee82e6e-en (Accessed on 09 August 2018); OECD (2018), Quarterly GDP (indicator). doi:

10.1787/b86d1fc8-en (Accessed on 09 August 2018).

Annex 6 – Questions to guide the analysis

List of questions to guide the analysis to what extent the AIFMD rules mentioned in Table 1 of the tender specifications have achieved the general, specific and operational objectives in an effective, efficient, relevant and coherent way, with an EU value added.

A) Thresholds determining the Scope of the AIFMD

Among other objectives, AIFMD aimed to provide appropriate authorisation and registration requirements for managers.

The evidence-based study evaluates the rules on the thresholds determining the scope of AIFMD against the five principles.

The specific questions are:

- I) In each member state, has the difference between licensing and registration in Art. 3 AIFMD been adopted?
- II) How many AIFMs in each member state are licenced and how many are registered? Are there in total more AIFMs in the market than before the transposition of the AIFMD? Is the number of licenced AIFMs increasing or decreasing, if so to what extent?
- III) What are the average costs for obtaining a licence from the NCA? How long does it take to obtain a licence?
- IV) Have there been licensing requirements before AIFMD or has there been any regulation before AIFMD? Is there information as to how many AIFM already in existence prior to AIFMD gained a licence after the implementation of AIFMD?

B) Reporting Rules & Monitoring

The evidence-based study also evaluates whether the objective of AIFMD of monitoring macro-prudential risks have been achieved; in particular, AIFMD aimed to

- create a common frame of supervisory rules on AIME;
- increase transparency of macro prudential risks (such as high leverage, company holding, excessive use of derivate instruments)

Against this backdrop, the following questions guided the study:

- I) Have the local NCA or the local AIFMs built processes and competences with regard to monitoring systemic risk and using the mandatory reports? Is there information available about the expenses the NCA / the local AIFMs had with regard to implementing or maintaining such structures? Are these expenses passed on to the market participants?
- II) Does the NCA usually comply **with ESMA's guidelines (esp. Remuneration ESMA/2013/232 EN, Reporting ESMA/2014/869 EN and Cooperation ESMA/2013/998)** or are there intentions to refuse compliance ("comply or explain")? Are there any reports from the NCA about the cooperation with ESMA regarding AIFMD?

- III) Has the AIFMD had any impact on the level of leverage in AIFs? Has there been a rise in job offers in the AIFM industry for qualified personnel in the area of credit risk in relation to bank borrowing, collateral or derivative counterparties? What, if any, are the qualitative and quantitative limits concerning leverage? Do the regular AIFM reports to the NCA or any other data sources indicate that leverage and/or credit risk has increased or decreased?

C) Governance, Risk and Protection of Investors

One element of AIFMD is rules on governance, in order to improve investor protection (or to reduce micro prudential risk) by risk management controls and appropriate disclosures to investors, to ensure a proper management of conflict of interests, and to apply safeguards such as liquidity management, valuation and custody.

Regarding these Governance-Rules, the following questions guided the study:

- I) AIFMs had to implement certain risk management mechanisms, such as delegation, valuation rules, remuneration rules, risk and liquidity management rules. Also, rules were introduced for depositaries.
- a. To what extent did such governance requirements exist before the implementation of AIFMD?
 - b. Is there any evidence regarding the costs the industry had to bear when implementing these governance rules (e.g. estimated costs from the legislator, industry surveys)?
 - c. Are there any impact analyses concerning the extent to which these governance rules have improved investor protection? Are there any findings in the scientific literature or by market participants?
 - d. *Delegation Rules*
Is there any evidence showing an increase in the delegation of portfolio management or risk management? What kind of undertakings are the services delegated to?
 - e. *Remuneration Rules*
Have remuneration rules been implemented by the domestic legislator and/or NCA?
 - Have remuneration rules made it easier or more difficult for AIFMs to recruit qualified personnel?
 - Have remuneration rules changed the ratio of variable/fixed salary components?
 - Have there been changes in personnel costs ("payroll") of AIFMs, e.g. as shown in annual accounts or financial statements.
 - Has the overall workforce in the AIFM industry changed since the implementation of AIFMD?
 - Has there been a trend of migration of AIFM personnel towards or away from your member state?

The rules on disclosures to investors (e.g. Art. 23 AIFMD) aim to keep the investor informed about their investment. Insufficient disclosure bears the

risk that the investor cannot make well-informed decisions. Furthermore, AIFMD contains several rules on reporting to the NCA in Art. 22 and 24.

- a. To what extent have the disclosure rules in Art. 23 AIFMD helped investors to be better informed about their investment decision than before AIFMD? Were there similar disclosure requirements before AIFMD?
 - b. Is there any evidence as to the extent to which these rules have enhanced or influenced consumer protection? Is the distribution of AIFs to non-professional investors allowed in your national law? If so, which types and are they subject to additional requirements?
 - c. Where there any reporting requirements to the NCA, similar to those in Art. 22 and 24 AIFMD before AIFMD?
 - d. Are there any estimates/data regarding the costs the industry had to bear regarding the disclosures to investors and reporting to the NCA, and have AIFMs materially enlarged their workforce in order to comply with the disclosure requirements?
 - e. Are there any estimates of/data on the costs the regulator/state had to bear regarding the collection and monitoring of this reporting? Has the NCA enlarged its workforce in order to monitor and examine the reporting?
- II) Regarding asset segregation, were there any rules before the implementation of AIFMD? Are there any specific and additional provisions in national law about asset segregation? Are there any data regarding bankruptcy/administration and creditor satisfaction concerning AIF assets before and after AIFMD?
- D) Rules for investing in non-listed companies by private equity and venture capital funds
- I) Were investments into non-listed companies (private equity/venture capital) by funds regulated before AIFMD?
 - II) Has there been an increase or a decrease of such investments; if so, to what extent? Are there any data as to beneficial or detrimental effects of AIF investments compared to other investments? Is there any evidence that investments in other countries are preferred since AIFMD?
- E) Single Market / European Passport
- Creating a single EU market for the distribution of AIFs and the services of AIFMs was a major objective of AIFMD.
- The following questions guided the study:
- I) Are there statistics and studies as to how many AIFMs in your member state manage EU AIFs and/or non-EU AIFs? Were there any restrictions before AIFMD in your member state on cross border AIF management? Has the number of EU AIFMs doing business in your member state increased since the implementation of AIFMD?
 - II) Are there any restrictions – besides from supervisory law – that hinder EU AIFs in managing AIFs in your member state (e.g. tax restrictions)? Are

there any other impacts or national rules that may be considered as a barrier for EU AIFMs to conduct business in your member state?

- III) Is the treatment different to that researched under No. 1 and 2 of this chapter if the EU AIFMs intends to market EU AIFs into your member state?

Annex 7 – References

- Association française de la gestion financière (AFG). (2018 March). Overview of French market third-party management.
- Autorité des marchés financiers (AMF). (2014 March 21). Annual Report 2013. Paris: Autorité des marchés financiers.
- Autorité des marchés financiers (AMF). (2015 May 05). Annual Report 2014. Paris: Autorité des marchés financiers.
- Autorité des marchés financiers (AMF). (2016 May 2017). Annual Report 2015. Paris: Autorité des marchés financiers.
- Autorité des marchés financiers (AMF). (2017 June 21). Annual Report 2016. Paris: Autorité des marchés financiers.
- Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin). (2013 May 28). Annual Report 2012. Bonn/Frankfurt am Main: Bundesanstalt für Finanzdienstleistungsaufsicht.
- Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin). (2014 May 20). Annual Report 2013. Bonn/Frankfurt am Main: Bundesanstalt für Finanzdienstleistungsaufsicht.
- Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin). (2015 May 12) Annual Report 2014. Bonn/Frankfurt am Main: Bundesanstalt für Finanzdienstleistungsaufsicht.
- Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin). (2016 May 10). Annual Report 2015. Bonn/Frankfurt am Main: Bundesanstalt für Finanzdienstleistungsaufsicht.
- Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin). (2017 May 09). Annual Report 2016. Bonn/Frankfurt am Main: Bundesanstalt für Finanzdienstleistungsaufsicht.
- Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin). (2018 May 03). Annual Report 2017. Bonn/Frankfurt am Main: Bundesanstalt für Finanzdienstleistungsaufsicht.
- Bank of International Settlement (BIS). (2010). Review of the Differentiated Nature and Scope of Financial Regulation.
- Central Bank of Ireland. (2018). Monthly averages 2005–present. <https://www.centralbank.ie/statistics/interest-rates-exchange-rates/exchange-rates> [5 July 2018].
- Commission of the European Communities. (2009). Commission Staff Working Document accompanying the Proposal for a Directive of the European Parliament and of the Council on Alternative Investment Fund Managers and amending Directives 2004/39/EC and 2009/.../EC.
- Commission de Surveillance du Secteur Financier (CSSF). (2013). Newsletter, No 152.
- Commission de Surveillance du Secteur Financier (CSSF). (2014). Newsletter, No 164.
- Commission de Surveillance du Secteur Financier (CSSF). (2015). Newsletter, No 176.
- Commission de Surveillance du Secteur Financier (CSSF). (2016). Newsletter, No 188.
- Commission de Surveillance du Secteur Financier (CSSF). (2017). Newsletter, No 200.
- Cronbach, L.J. (1951). Coefficient alpha and the internal structure of tests. *Psychometrika*, 16, 297-334.
- ESMA. Final report – **ESMA’s technical advice to the European Commission on possible implementing measures of the Alternative Investment Fund Managers Directive**. (2011 November 16).
- ESMA. (2013 October 01). Guidelines – Remuneration policies and practices (MIFID).
- ESMA. (2013 July 03). Guidelines on sound remuneration policies under the AIFMD.
- ESMA. (2012 February 27). Discussion paper – Key concepts of the Alternative Investment Fund Managers Directive and types of AIFM.

- ESMA. (2016 October 16). Guidelines on sound remuneration policies under the AIFMD.
- ESMA. (2018 February 09). ESMA Risk Assessment Work Programme 2018.
- ESMA. (2017). AIFMD Risk Indicators – Data and indicator update. ESMA50-157-949. CEMA meeting, Paris, 8 March 2017.
- European Commission. (2009 April 30). Commission Staff Working Document - Impact Assessment accompanying the Proposal for a Directive of the European Parliament and of the Council on Alternative Investment Fund Managers and amending Directives 2004/39/EC and 2009/.../EC.
- European Commission, Deloitte Luxembourg. (2018 April 24). Distribution systems of retail investment products across the European Union. DOI: 10.2874/037900. Retrieved from https://ec.europa.eu/info/sites/info/files/180425-retail-investment-products-distribution-systems_en.pdf, 2018 August 7.
- European Commission. (2018 June 29). Opening speech by Vice-President Valdis Dombrovskis: **“Making the Capital Markets work for retail investors.”** Retrieved from https://ec.europa.eu/commission/commissioners/2014-2019/dombrovskis/announcements/opening-speech-vice-president-valdis-dombrovskis-making-capital-markets-union-work-retail-investors_en, 2018 August 7.
- European Fund and Asset Management Association (efama). (2017 May). Asset Management Report
- Deloitte, White Paper, AIFMD depositary pricing and capital, 2014, p. 4, https://www2.deloitte.com/content/dam/Deloitte/ie/Documents/FinancialServices/investmentmanagement/2014_AIFMD_depositary_pricing_and_capital_White_Paper_deloitte_ireland.pdf.
- Financial Stability Board (FSB). (2011 February 15). Progress in the Implementation of the G20 Recommendations for Strengthening Financial Stability: Report to G20 Finance Ministers and Central Bank Governors.
- IOSCO. (2009 June 22). Hedge Funds Oversight – Final Report.
- IOSCO. (2018 February 01). FR02/18. Open-ended Fund Liquidity and Risk Management – Good Practices and Issues for Consideration – Final Report.
- IOSCO. (February 2018 01). FR01/2018. Recommendations for Liquidity Risk Management for Collective Investment Schemes - Final Report.
- Krosnick, J. A. & Fabrigar L. R. (1997). L. Lyberg, P. Biemer, M. Collins, E. de Leeuw, C. Dippo, N. Schwarz & D. Trewin (Eds.), Survey measurement and process quality (pp. 141-164). New York: John Wiley & Sons, Inc.
- Krosnick, J. A., Holbrook, A. L., Berent, M. K., Carson, R. T., Hanemann, W. M., Kopp, R. J., Mitchell, R. C., Presser, S., Rudd, P. A., Smith, V. K., Moody, W. R., Green, M. C., & Conaway, M. In: **Green, M. C., & Conaway, M. (2002). The impact of “no opinion” response options on data quality: non-attitude reduction or an invitation to satisfice?** The Public Opinion Quarterly, 66, 371-403.
- Krosnick, J. A. & Presser, S. (2010). Handbook of Survey Research (Second Edition). Bingley: Emerald Group Publishing Limited.
- Lienert, G. A. & Raatz, U. (1998). Testaufbau und Testanalyse, (Sixth Edition). Weinheim: Beltz.
- Mattner A. (2014). Angekommen in der neuen regulierten Welt – Auswirkungen des KAGB auf die Branche der alternativen Investments, figure 22, p. 30. Zentraler Immobilienausschuss (ZIA)
- Menold, N., Kaczmirek, L., Lenzner, T. & Neusar, A. (2014). How do respondents attend to verbal labels in rating scales? Field Methods, 26(1), 21-39.
- Moritz, J., Klebeck, U. & Jesch, T. A. (2016). Frankfurter Legal Commentary on the German **“Kapitalanlagegesetzbuch”**. Frankfurt: Deutscher Fachverlag GmbH.

- O'Muircheartaigh, C., Krosnick, J. A. & Helic, A. (2000). **Middle alternatives, acquiescence, and the quality of questionnaire data.** Chicago: Irving B. Harris Graduate School of Public Policy Studies.
- Saris, W. E. & Gallhofer, I. N. (2007). **Design, evaluation, and analysis of questionnaires for survey research.** Hoboken, New Jersey: John Wiley & Sons, Inc.
- Schuman, H. & Presser, S. (1981). **Questions and answers in attitude surveys: Experiments on question form, wording and context.** New York: Academic Press.
- Sturgis, P., Roberts, C. & Smith, P. (2014). **Middle alternatives revisited: How the neither/nor response acts as a way of saying "I don't know"?**, *Sociological Methods & Research*, 43(1), 15-38.
- Wallsten, T. S., Budescu, D. V., & Zwick, R. (1993). **Comparing the calibration and coherence of numerical and verbal probability judgments.** *Management Science*, 39, 176-190.
- Wolf Theiss Law Firm. (2015). **Implementation of the Directive 2011/61/EU on AIFMD in selected CEE/SEE countries.** Retrieved from <https://www.wolftheiss.com/knowledge/wolf-theiss-guides/detail/implementation-of-the-directive-201161eu-on-alternative-investment-fund-managers-aifmd-in-sele/>.
- Zetsche D. (2015). **The AIFM Directive - Overview, Regulatory History and Technique (Second Edition).** Kluwer Law International.
- Zetsche D. & Eckner D. (2015). **The Alternative Investment Fund Managers Directive (Second Edition).** Kluwer Law International.

Annex 8 – List of AIFMD-related national transformation laws

Table 41: AIFMD-related national transformation acts

Member State	AIFMD-related national transformation laws
Austria	Alternative Investment Fund Managers Act (Alternative Investmentfonds Manager Gesetz, – AIFMG), Federal Gazette I no. 135/2013
Belgium	Law of 19 April 2014 on Alternative Investment Funds and their Managers (Wet betreffende de alternatieve instellingen voor collectieve belegging en hun beheerders), Official Gazette 17.06.2014, p. 45353
Cyprus	The Alternative Investment Fund Managers Law, L. 56(I)2013, 4 July 2013
Czech Republic	Act No. 240/2013 Sb on Investment Companies and Investment Funds
Denmark	Law on Alternative Investment Fund Managers, LOV no. 598 of 12 June 2013
France	Order 2013-676 and Decree 2013-687, of 25 July 2013 amending the legal framework of asset management
Germany	Investment Code (Kapitalanlagegesetzbuch – KAGB), 4 July 2013 (Federal Gazette I p. 1981)
Hungary	Law XVI of 2014, 16 March 2014
Ireland	European Union (Alternative Investment Fund Managers) Regulations 2013 (S.I. no. 257 of 2013)
Italy	Legislative Decree of 4 March 2014 (“Decree 44”), Official Gazette, no. 70 of 25 March 2014
Luxembourg	Law of 12 July 2013 on Alternative Investment Fund Managers
Malta	L.N. 115 of 2013, Investment Services Act (CAP. 370), Investment Services Act (Alternative Investment Fund Managers) Regulations
Spain	Law 22/2014, 12 November 2014, Official Bulletin No. 275, 13 November 2014, sec. I. p. 93215
Netherlands	Act amending the Financial Markets Supervision Act (FMSA), Parliamentary Papers (Kamerstukken) II, 2011/2012, 33 235, No. 3
United Kingdom	The Alternative Investment Fund Managers Regulations 2013, SI 2013/1773, The Alternative Investment Fund Managers (Amendment) Regulations 2013, SI 2013/1797 and The Alternative Investment Fund Managers Directive Instrument, FCA 2013/81

Annex 9 – List of similar domestic regulations prior to AIFMD

Table 42: Similar pre-AIFMD domestic regulations

EU-Member State	Regulation
Austria	Investment Fund Act 2011 (InvFA)
	Real Estate Investment Funds Act (REIFA)
Belgium	Law of 3 August 2012 on certain forms of collective management of investment portfolios
Cyprus	Prior to the transposition of the AIFMD there was no legal framework in place in Cyprus governing the portfolio management of alternative investment funds (AIFs).
Czech Republic	Act No. 189/2004 Coll. Collective Investment Act
	Decree No. 233/2009 Coll. on applications, approval of persons and methods of demonstrating professional competence, credibility and experience of persons and on the minimum amount of financial resources provided by a branch of a foreign bank
	Act No. 634/2004 Coll., Act on Administrative Fees
Denmark	No regulation before the introduction of AIFMD.
France	French Monetary and Financial Code (MFC)
	General Regulations of the AMF
Germany	Investmentgesetz (German Investment Act of 15 December 2003 as amended from time to time)
Hungary	Act CXCVIII of 2011 on Investment Fund Management Companies and Collective Investment Trusts)
Ireland	Prior to AIFMD, all non-UCITs funds were managed by a management company (depending on the legal structure of the fund) or by the board of directors of the fund (again dependent on legal structure). The legislation underpinning the legal structure e.g. investment company, partnership, unit trust, common contractual fund applied and also the Central Bank's non-UCITS Notices .
Italy	Italian Legislative Decree 58/98 Testo Unico della Finanza
Luxembourg	Law of 17 December 2010 relating to undertakings for collective investment Regime prior the AIFMD: Managers managing regulated alternative fund vehicles (Specialised Investment Funds, Investment Companies in Risk Capital or UCIs regulated by the Part II of the above mentioned Law of 2010 which refers to retail AIFs) had to apply for an authorisation as a management company as regulated under the Chapter 16 of the Law of 2010 (so-called Chapter 16 Management Company)

EU-Member State	Regulation
Malta	Investment Services Act
Spain	Regulation on Hedge Funds and Funds of Hedge Funds
	Ley 25/2005, de 24 de noviembre, reguladora de las entidades de capital-riesgo y sus sociedades gestoras. Law 25/2005, of November 24, regulating Private Equity entities and their management companies.
Netherlands	Art. 1: 12, 2: 65 and 2: 66 Wet op het financieel toezicht 2013
	Art. 4 Vrijstellingsregeling Wft Kamerstukken II, 2011/2012, 33 235, nr.3, (Memorie van Toelichting)
United Kingdom	Financial Services and Markets Act 2000 (FSMA) and rules made by the FCA in its Collective Investment Schemes Handbook (COLL)

Annex 10 – Desk Research

Table 43 includes the cross-referenced Table 1 from section 3.2.2.2 of the tender specifications. The specific rule to be assessed is referred to in the second row, followed by the relevant principle to which to source provides the relevant evidence.

It also includes further legal commentaries, and publications of NCAs, ESMA or associations, which were used in the evidence-based study, as far as relevant.

Please note that the total amount of sources reflected for this report is larger than this focussed list. A complete overview can be provided upon request.

Table 43: Desk research findings

No.*	Specific Rule	Principle	Literature Type	Name of the Source	Author	Year	Country	Status	No.
A.I.	Thresholds	Coherence	Irish Legislation	European Union (Alternative Investment Fund Managers) Regulations 2013 (S.I. No. 257 of 2013) – <i>Regulation 4 Exemptions</i>	Law	2013	Ireland	Reviewed	1
A.I.	Thresholds	Coherence	National Requirements	Italian Legislative Decree 58/1998: Testo Unico della Finanza – Art. 34	Law	2017	Italy	Reviewed	2
A.I.	Thresholds	Effectiveness	Statutory Law	Alternative Investment Fund Managers Act (AIFMA), Art. 1 para 5	Law	2013	Austria	Reviewed	3
A.II.	Thresholds	Effectiveness	NCA Website	Reports on www.fma.gv.at	NCA AUT	2017	Austria	Incorporated	4
A.III.	Thresholds	Effectiveness	NCA Information Sheet	Konzessionsinfo ohne BWG Konzession_2014-04-15	NCA AUT	2014	Austria	Incorporated	5
A.III.	Thresholds	Effectiveness	NCA Information Sheet	Konzessionsinfo mit BWG Konzession_2014-04-02	NCA AUT	2014	Austria	Incorporated	6
A.IV.	Thresholds	Effectiveness	Supervisory Law	Investment Fund Act 2011 (InvFA), Art. 163, 166 168	Law	2011	Austria	Reviewed	7
A.IV.	Thresholds	Effectiveness	Supervisory Law	Real Estate Investment Funds Act (REIFA)	Law	2003	Austria	Reviewed	8
A.I.	Thresholds	Effectiveness	Law	Law of 19 April 2014 on alternative investment funds and their managers https://www.fsma.be/nl/file/39082/download?token=KEgVXM6S	Law	2014	Belgium	Reviewed	9
A.I.	Thresholds	Effectiveness	Circular of the National Competent Authority : Financial Services & Markets Authority (FSMA)	Circular FSMA_2017_07 dd. 27/03/2017 on registration of small managers of non-public AIF https://www.fsma.be/nl/file/51989/download?token=qgjz7cAA	NCA BE	2017	Belgium	Incorporated	10

* The number refers to the respective question in Appendix 3, Part II.

No.*	Specific Rule	Principle	Literature Type	Name of the Source	Author	Year	Country	Status	No.
A.I.	Thresholds	Effectiveness	Statutory Law	The Alternative Investment Fund Managers Law 56(I)2013 section 4(3)	Law	2013	Cyprus	Reviewed	11
A.I.	Thresholds	Effectiveness	NCA Circular	No. Circular C052 "Arrangements for the registration of AIFMs who do not exceed the threshold of section 4(2) of the Alternative Investment Fund Managers Law of 2013" (which replaces circular CI56-2013-01)	NCA CY	2014	Cyprus	Incorporated	12
A.II.	Thresholds	Effectiveness	NCA website	Authorised AIFMs https://www.cysec.gov.cy/en-GB/entities/aifm/authorised/	NCA CY	2017	Cyprus	Incorporated	13
A.II.	Thresholds	Effectiveness	NCA website	Registered AIFMs https://www.cysec.gov.cy/en-GB/entities/aifm/registered/	NCA CY	2017	Cyprus	Incorporated	14
A.I.	Thresholds	Effectiveness EU Added Value	Statutory Law	Act No. 240/2013 Coll., Act on Management Companies and Investment Funds	Law	2013 / 2017	Czech	Reviewed	15
A.I.	Thresholds	Effectiveness EU Added Value	NCA Q&A	Asset management comparable to investment funds management (Správa majetku srovnatelná s obhospodařováním)	NCA Cz	2014	Czech	Legal Text	16
A.II.	Thresholds	Effectiveness Efficiency	Quantitative data source	CNB: Basic indicators on the financial market sectors (Základní ukazatele o sektorech finančního trhu)	Central Bank CZ (CNB)	2006 / 2017	Czech	Legal Text	17
A.II.	Thresholds	Effectiveness Efficiency	Quantitative data source, NCA Reports	Reports on the performance of financial market supervision	CNB	2006 / 2017	Czech	Legal Text	18
A.II.	Thresholds	Effectiveness Efficiency	Quantitative data source	AKAT CR: INVESTMENTS IN THE FUNDS HAVE REACHED 400 BILLIONS	AKAT (Czech Cap. Markets Association)	2016	Czech	Legal Text	19
A.II.	Thresholds	Effectiveness Efficiency	Press release	Glopolis: Alternative investment funds in the Czech Republic (Alternativní investiční fondy v ČR)	Glopolis	2014	Czech	Legal Text	20
A.IV.	Thresholds	Effectiveness	Statutory Law	Act No. 189/2004 Coll. Collective Investment Act	Law	2004 / 2013	Czech	Reviewed	21

No. *	Specific Rule	Principle	Literature Type	Name of the Source	Author	Year	Country	Status	No.
A.IV.	Thresholds	Effectiveness	Statutory Law	Decree No. 233/2009 Coll. on applications, approval of persons and methods of demonstrating professional competence, credibility and experience of persons and on the minimum amount of financial resources provided by a branch of a foreign bank	Law	2009 / 2013	Czech	Legal Text	22
A.I.	Thresholds	Effectiveness EU Added Value	Commentary on National Law	Commentary on Act on Management Companies and Investment Funds (D. a kol. Zákon o investičních společnostech a investičních fondech: komentář, 1. vydání, Praha)	ŠOVAR, J., Králík, A., Beran, J., Doležalová	2015	Czech	Legal Text	23
A.I.	Thresholds	Effectiveness	Statutory Law (RG AMF)	Instruction DOC-2008-03	Statutory Law (RG AMF)	2014	France	Incorporated	24
A.I.	Thresholds	Effectiveness	Statutory Law (RG AMF)	Instruction DOC-2013-21	Statutory Law (RG AMF)	2013	France	Reviewed	25
A.II.	Thresholds	Effectiveness	Regulator's Website	AMF – Annual Report - 2016 - P45	Regulator's Website	2016	France	Incorporated	26
A.II.	Thresholds	Effectiveness	Regulator's Website	AMF – Annual Report - 2014 - P24 - PO	Regulator's Website	2014	France	Incorporated	27
A.II.	Thresholds	Effectiveness	Regulator's Website	AMF – Annual Report - 2015 - P54 - P09	Regulator's Website	2015	France	Incorporated	28
A.II.	Thresholds	Effectiveness	Regulator's Website	AMF – Annual Report - 2013 - P156	Regulator's Website	2013	France	Incorporated	29
A.II.	Thresholds	Effectiveness	Professional Association Guidance	AFG – Panorama du marché français de la gestion pour compte de tiers / Overview of French market third-party management March 2017, Page 4	Professional Association Guidance	2017	France	Incorporated	30
A.I.	Thresholds	Effectiveness	Law	Kapitalanlagegesetzbuch / "German Investment Code", KAGB	Law	2013	Germany	Incorporated	31
A.I.	Thresholds	Effectiveness	BaFin Decision	Interpretative Decision regarding the Applicability of the KAGB and the meaning of "Investmentvermögen" / "investment funds", Q 31-Wp 2137-2013/0006	BaFin	2013/2015	Germany	Incorporated	32
A.II.	Thresholds	Effectiveness	BaFin-Annual Report	BaFin-Annual Report 2012, Pages 203 – 207	BaFin	2013	Germany	Incorporated	33

No. *	Specific Rule	Principle	Literature Type	Name of the Source	Author	Year	Country	Status	No.
A.II.	Thresholds	Effectiveness	BaFin-Annual Report	BaFin-Annual Report 2013, Pages 182 – 189	BaFin	2014	Germany	Incorporated	34
A.II.	Thresholds	Effectiveness	BaFin-Annual Report	BaFin-Annual Report 2014, Pages 236 – 239	BaFin	2015	Germany	Incorporated	35
A.II.	Thresholds	Effectiveness	BaFin-Annual Report	BaFin-Annual Report 2015, Pages 252 – 256	BaFin	2016	Germany	Incorporated	36
A.II.	Thresholds	Effectiveness	BaFin-Annual Report	BaFin-Annual Report 2016, Pages 194 – 197	BaFin	2017	Germany	Incorporated	37
A.II.	Thresholds	Effectiveness	BaFin-Annual Report	<i>BaFin-Annual Report 2017 Expected May 2018</i>	BaFin	2018	Germany	Incorporated	38
A.IV.	Thresholds	Effectiveness Relevance	Law	Former Law (Investmentgesetz), incl. legal commentaries to the former requirements	Germany	2012	Germany	Reviewed	39
A.III.	Thresholds	Effectiveness	National Requirements	Regolamento sulla gestione collettiva del risparmio issued by Bank of Italy- TITOLO II - CAPITOLO I	Law	2016	Italy	Legal Text	40
A.IV.	Thresholds	Effectiveness	National Requirements	Italian Legislative Decree 58/98 Testo Unico della Finanza – Art. 34	Law	2010	Italy	Legal Text	41
A.I.	Thresholds	Effectiveness	Statutory Law	Law of 12 July 2013 on alternative investment fund managers	Law	2013	Luxembourg	Reviewed	42
A.II.	Thresholds	Effectiveness	Quantitative data source	CSSF Newsletter No 200 – September 2017	NCA Lux	2017	Luxembourg	Incorporated	43
A.II.	Thresholds	Effectiveness	Quantitative data source	CSSF Newsletter No 188 – September 2016	NCA Lux	2016	Luxembourg	Incorporated	44
A.II.	Thresholds	Effectiveness	Quantitative data source	CSSF Newsletter No 176 – September 2015	NCA Lux	2015	Luxembourg	Incorporated	45
A.II.	Thresholds	Effectiveness	Quantitative data source	CSSF Newsletter No 164 – September 2014	NCA Lux	2014	Luxembourg	Incorporated	46
A.II.	Thresholds	Effectiveness	Quantitative data source	CSSF Newsletter No 152 – September 2013	NCA Lux	2013	Luxembourg	Incorporated	47
A.I.	Thresholds	Effectiveness	Governmental explanatory memorandum	Kamerstukken II, 2011/2012, 33 235, nr.3, (<i>Memorie van Toelichting</i>), p. 12, 35, 56	Gouvernement	2012	Netherlands	Incorporated	48
A.I.	Thresholds	Effectiveness	Statutory Law	Art. 2:65, 2:66a, 2:67 and art. 4:37p Wet op het financieel toezicht 2017/ Act On Financia lSupervision	Statutory Law	2017	Netherlands	Reviewed	49
A.I.	Thresholds	Effectiveness	Statutory Law	§ 10.3.1.1 Besluit Gedragstoezicht financiële ondernemingen Wft 2017 /Resolution On Governance Supervision	Statutory Law	2017	Netherlands	Reviewed	50

No. *	Specific Rule	Principle	Literature Type	Name of the Source	Author	Year	Country	Status	No.
A.II.	Thresholds	Effectiveness	Register from the NCA	AFM, overzicht geregistreerde AIFM's, 8 november 2017	NCA NL	2017	Netherlands	Incorporated	51
A.II.	Thresholds	Effectiveness	Register from the NCA	AFM, overzicht vergunninghoudende AIFM's, 8 november 2017	NCA NL	2017	Netherlands	Incorporated	52
A.II.	Thresholds	Effectiveness	Statement of the NCA	AFM, nieuwsbrief AIFM-Richtlijn, maart 2015	NCA NL	2015	Netherlands	Incorporated	53
A.IV.	Thresholds	Effectiveness	Statutory Law	Art. 1:12, 2:65 and 2:66 Wet op het financieel toezicht 2013	Statutory Law	2013	Netherlands	Reviewed	54
A.IV.	Thresholds	Effectiveness	Statutory Law	Art. 4 Vrijstellingsregeling Wft	Statutory Law	2013	Netherlands	Reviewed	55
A.IV.	Thresholds	Effectiveness	Governmental Explanatory memorandum	Kamerstukken II, 2011/2012, 33 235, nr.3, (<i>Memorie van Toelichting</i>), p. 106	Government	2012	Netherlands	Incorporated	56
A.IV.	Thresholds	Effectiveness	Statutory Law	Kamerstukken II, 2011/2012, 33 235, nr. 2, (<i>Voorstel van wet</i>)art. VII	Statutory Law	2017	Netherlands	Legal Text	57
A.IV.	Thresholds	Effectiveness	Register from the NCA	AFM, overzicht vergunninghoudende AIFM's, 8 november 2017	NCA	2017	Netherlands	Legal Text	58
A.I.	Thresholds	Effectiveness	Statutory Law	Law 35/2003, of 4 November, on Investment Collective Schemes (Alternative Investments Schemes). https://www.boe.es/buscar/act.php?id=BOE-A-2003-20331&p=20150729&tn=1#a41bis	Law	2014	Spain	Incorporated	59
A.I.	Thresholds	Effectiveness	Statutory Law	Law 22/2014, of November 12, by which they are regulated the Private Equity funds, closed-end collective investment schemes and its management companies https://www.boe.es/buscar/act.php?id=BOE-A-2014-11714&p=20150729&tn=1#a72	Law	2014	Spain	Reviewed	60
A.II.	Thresholds	Effectiveness	Public Register	Registered AIFs (hedge funds) http://www.cnmv.es/Portal/Consultas/MostrarListados.aspx?id=5	NCA ESP	n/a	Spain	Incorporated	61
A.II.	Thresholds	Effectiveness	Public Register	Registered AIFs (funds of hedge funds) http://www.cnmv.es/Portal/Consultas/MostrarListados.aspx?id=5	NCA ESP	n/a	Spain	Incorporated	62
A.II.	Thresholds	Effectiveness	Public Register	Registered AIFs (non-harmonised funds) http://www.cnmv.es/Portal/Consultas/MostrarListados.aspx?id=17	NCA ESP	n/a	Spain	Incorporated	63

No. *	Specific Rule	Principle	Literature Type	Name of the Source	Author	Year	Country	Status	No.
A.II.	Thresholds	Effectiveness	Public Register	Registered AIFs (non-harmonised investment companies) http://www.cnmv.es/Portal/Consultas/MostrarListados.aspx?id=18	NCA ESP	n/a	Spain	Incorporated	64
A.II.	Thresholds	Effectiveness	Public Register	Registered AIFs (Real Estate funds) http://www.cnmv.es/Portal/Consultas/MostrarListados.aspx?id=4	NCA ESP	n/a	Spain	Incorporated	65
A.II.	Thresholds	Effectiveness	Public Register	Registered AIFs (Real Estate investment companies) http://www.cnmv.es/Portal/Consultas/MostrarListados.aspx?id=8	NCA ESP	n/a	Spain	Incorporated	66
A.II.	Thresholds	Effectiveness	Public Register	Registered AIFM (Private Equity Fund Managers) http://www.cnmv.es/portal/Consultas/ListadoEntidad.aspx?id=4&tipo=0	NCA ESP	n/a	Spain	Incorporated	67
A.IV.	Thresholds	Effectiveness	NCA Circular	CIRCLAR 1/2006, of 3 May, of the Comisión Nacional del Mercado de Valores, on Alternative Collective Investment Schemes. http://www.cnmv.es/DocPortal/legislacion/circulares/1_2006_e.pdf	NCA ESP	2006	Spain	Incorporated	68
A.IV.	Thresholds	Effectiveness	Regulation	Regulation on Hedge Funds and Funds of Hedge Funds https://www.boe.es/buscar/doc.php?id=BOE-A-2007-5677	Law	2007	Spain	Reviewed	69
A.IV.	Thresholds	Effectiveness	Statutory Law (repealed law)	Law 25/2005, of November 24, regulating Private Equity entities and their management companies. https://www.boe.es/buscar/act.php?id=BOE-A-2005-19412&p=20141113&tn=1	Law	2005	Spain	Reviewed	70
A.III.	Thresholds	Efficiency	NCA Directive	DIRECTIVE 131/56-2014-01 OF THE SECURITIES AND EXCHANGE COMMISSION ON THE FEES PAYABLE AND ANNUAL CONTRIBUTIONS OF ALTERNATIVE INVESTMENT FUNDS AND THEIR MANAGERS - Appendix I c	NCA CY	2017	Cyprus	Incorporated	71

No. *	Specific Rule	Principle	Literature Type	Name of the Source	Author	Year	Country	Status	No.
A.III.	Thresholds	Efficiency	Statutory Law	The Alternative Investment Fund Managers Law 56(I)2013 section 8(6)(a) https://www.cysec.gov.cy/CMSPages/GetFile.aspx?guid=35243749-5541-4685-8b69-5fe754ae208f	Law	2013	Cyprus	Incorporated	72
A.III.	Thresholds	Efficiency	Statutory Law	Act No. 240/2013 Coll., Act on Management Companies and Investment Funds	Law	2013 / 2017	Czech	Reviewed	73
A.III.	Thresholds	Efficiency	Statutory Law	Act No. 634/2004 Coll., Act on Administrative Fees	Law	2004 / 2017	Czech	Reviewed	74
A.IV.	Thresholds	Efficiency	Statutory Law	Act No. 634/2004 Coll., Act on Administrative Fees	Law	2005 / 2017	Czech	Reviewed	75
A.IV.	Thresholds	Efficiency	Quantitative data source	CNB: Basic indicators on the financial market sectors	CNB	2006 / 2017	Czech	Incorporated	76
A.III.	Thresholds	Efficiency	Regulator's Website	Authorisation of Management Companies by the AMF	Regulator's Website	2014	France	Incorporated	77
A.IV.	Thresholds	Efficiency	AMF instruction	Instruction n° 2008-03 of 8 February 2008	France	2008	France	Incorporated	78
A.IV.	Thresholds	Efficiency	AMF Report	Report of the AIFMD Stakeholder's Committee on the Transposition of the AIFM Directive and the Development of French Innovative Asset Management – 26 July 2012, Page 4, Page 6-8, Page 14-15	AMF Report	2012	France	Incorporated	79
A.III.	Thresholds	Efficiency	Law	Sec. 22 para 2 KAGB	Law	2013	Germany	Reviewed	80
A.III.	Thresholds	Efficiency	Law	FinDAGKostV – FinDAG-Kostenverordnung, No. 4.1.2.2.1.	Law	2002/ 2017	Germany	Incorporated	81
A.III.	Thresholds	Efficiency	Central website on AIFM authorisation	Bank on https://www.centralbank.ie/380eregulate/industry-market-sectors/funds-service-providers/aifm/authorisation	Central Bank of Ireland	2017	Ireland	Incorporated	82
A.III.	Thresholds	Efficiency	Central website on funding	Bank on https://www.centralbank.ie/docs/default-source/Regulation/how-we-regulate/fees-levies/industry-funding-levy/guidance/a-guide-to-industry-funding-regulations-2017.pdf?sfvrsn=2	Central Bank of Ireland	2017	Ireland	Incorporated	83

No.*	Specific Rule	Principle	Literature Type	Name of the Source	Author	Year	Country	Status	No.
A.III.	Thresholds	Efficiency	Statement of the NCA	AFM, Information regarding the AIFMD application tool, 15 November 2017 / Costs For Obtaining A Licence	NCA	2017	Netherlands	Incorporated	84
A.III.	Thresholds	Efficiency	Statement of the NCA	AFM, Information regarding the AIFMD application tool, 15 november 2017 / Lead Time For Licence Application	NCA	2017	Netherlands	Incorporated	85
A.I.	Thresholds	N/A	NCA (FSMA)	Annual Report 2014 (page 164, point 2.3)	NCA BE	2014	Belgium	Incorporated	86
A.II.	Thresholds	N/A	National Competent Authority : Financial Services & Markets Authority (FSMA)	List of Belgian domiciled management companies of AIF : https://www.fsma.be/nl/file/54148/download?token=qVfP8dNL	NCA BE	2017	Belgium	Incorporated	87
A.II.	Thresholds	N/A	NCA (FSMA)	Annual Report 2014 (page 60-62) https://www.fsma.be/sites/default/files/public/sitecore/media%20library/Files/fsmafiles/pub/en/fsma_2014.pdf	NCA BE	2014	Belgium	Incorporated	88
A.II.	Thresholds	N/A	NCA (FSMA)	Annual Report 2015 (pages 66-68) https://www.fsma.be/sites/default/files/public/sitecore/media%20library/Files/fsmafiles/pub/en/fsma_2015.pdf	NCA BE	2015	Belgium	Incorporated	89
A.II.	Thresholds	N/A	NCA (FSMA)	Annual Report 2016 (page 56) https://www.fsma.be/sites/default/files/public/content/EN/JVRA/fsma_ar2016_en.pdf	NCA BE	2016	Belgium	Incorporated	90
A.III.	Thresholds	N/A	Law	Law of 19 April 2014 on alternative investment funds and their managers https://www.fsma.be/nl/file/39082/download?token=KEgVXM6S	Law	2014	Belgium	Reviewed	91

No. *	Specific Rule	Principle	Literature Type	Name of the Source	Author	Year	Country	Status	No.
A.III.	Thresholds	N/A	Q&A National Competent Authority: Financial Services & Markets Authority (FSMA)	Q&A on the Law of 19 April 2014 on alternative investment funds and their managers https://www.fsma.be/en/file/52017/download?token=77V8BkwO	NCA BE	2014	Belgium	Incorporated	92
A.IV.	Thresholds	N/A	Q&A National Competent Authority: Financial Services & Markets Authority (FSMA)	c: Q&A on on the transitional period provided for by Directive 2011/61/EU, and on the Belgian national provisions for transposing this Directive https://www.fsma.be/en/file/52019/download?token=dsW988-i	NCA BE	2013	Belgium	Incorporated	93
A.IV.	Thresholds	N/A	Law	Law of 3 August 2012 on certain forms of collective management of investment portfolios (no hyperlink available, as the legislation has been replaced in the meantime)	Law	2012	Belgium	Reviewed	94
A.IV.	Thresholds	N/A	Royal Decree	Royal Decree of 12 November 2012 concerning management companies of collective investment undertakings (no hyperlink available, as the legislation has been replaced in the meantime)	Law	2012	Belgium	Reviewed	95
A.I.	Thresholds	N/A	Statutory Law	Directives on Alternate Investment Fund Managers	Law	2013	Denmark	Reviewed	96
A.II.	Thresholds	N/A	NCA (finansstilsynet in Danish)	http://vut.finanstilsynet.dk/da/Tal-og-fakta/Virksomheder-under-tilsyn/VUT-soegning.aspx	NCA DK	2013	Denmark	Incorporated	97
A.II.	Thresholds	N/A	Market analysis by the NCA conducted in 2014	https://www.finanstilsynet.dk/da/Tal-og-fakta/Markedsudvikling/Markedsudvikling/MU-kol-investeringer-2014	NCA DK	2015	Denmark	Incorporated	98
A.III.	Thresholds	N/A	Statutory Law	Act on Financial Business	Law	2017	Denmark	Reviewed	99
A.I.	Thresholds	N/A	Licencing Guide	https://www.mnb.hu/letoltes/befektetesi-alapkezelok-tevekenysegenek-engedelyezese-aktualizalt.pdf	NCA HU	2014	Hungary	Legal Text	100

No. *	Specific Rule	Principle	Literature Type	Name of the Source	Author	Year	Country	Status	No.
A.II.	Thresholds	N/A	Annual Report	https://www.mnb.hu/letoltes/mnb-annual-report-2014.pdf	NCA HU	2014	Hungary	Incorporated	101
A.III.	Thresholds	N/A	Act	Act CXXXIX of 2013 on the Magyar Nenzeti, https://www.mnb.hu/letoltes/mnb-torveny-2017-06-26-en.pdf ; Bank Section 59 and 61 (2)	Law	2013	Hungary	Reviewed	102
A.III.	Thresholds	N/A	Regulation	Regulation 2015/14 MNB, Section 10.1	Law	2015	Hungary	Reviewed	103
A.IV.	Thresholds	N/A	Annual Report	http://www.mnb.hu/letoltes/publikalando-jelentes-v4-digitalis.pdf Page 181	NCA HU	2012	Hungary	Incorporated	104
A.IV.	Thresholds	N/A	Report	http://www.mnb.hu/letoltes/publikalando-jelentes-v4-digitalis.pdf Diagram 57	NCA HU	N/A	Hungary	Incorporated	105
A.IV.	Thresholds	N/A	Report	http://www.mnb.hu/letoltes/kockazati-jelente-s-2017-digitalis.pdf Page 67	NCA HU	N/A	Hungary	Incorporated	106
A.III.	Thresholds	N/A	Quantitative data source	Grand-Ducal regulation of 28 October 2013 relating to the fees to be levied by the CSSF (section II of part D)	NCA Lux	2013	Luxembourg	Incorporated	107
A.IV.	Thresholds	N/A	Law	Law of 17 December 2010 relating to undertakings for collective investment (hereinafter the "Law of 2010") – Chapter 16, Article 125 and 126	Law	2010	Luxembourg	Reviewed	108
A.I.	Thresholds	N/A	Statutory Law	Investment Services Act, Art. 3 Para. 1	Law	1994	Malta	Reviewed	109
A.I.	Thresholds	N/A	Secondary Source	Loan funds, cell companies, de minimis regime: Malta fastest growing EU fund jurisdiction; Opalesque Roundtable Series 15, Malta	Opalesque	2015	Malta	Incorporated	110
A.II.	Thresholds	N/A	Statutory publication	Financial Services Register	NCA ML	2017	Malta	Incorporated	111
A.II.	Thresholds	N/A	Statutory publication	Malta Implementation Process	NCA ML	2013	Malta	Reviewed	112
A.III.	Thresholds	N/A	Statutory publication	Investment Services Act (Fees) Regulations Reg. 3, 4 and 5 of the Schedule	Law	2014	Malta	Reviewed	113

No. *	Specific Rule	Principle	Literature Type	Name of the Source	Author	Year	Country	Status	No.
A.III.	Thresholds	N/A	Statutory Law	Investment Services Act Art. 6 Para. 6	Law	1994	Malta	Reviewed	114
A.IV.	Thresholds	N/A	Statutory Consultation Document	Consultation on the proposed implementation of the AIFMD [MFSA Ref.: 11/2013]	NCA ML	2013	Malta	Reviewed	115
A.IV.	Thresholds	N/A	Secondary Source	The AIFMD Transition in Malta	Hedgeweek	2014	Malta	Incorporated	116
A.III.	Thresholds	N/A	Schedule of fees	Summary of CNMV Fees applicable https://www.cnmv.es/DocPortal/legislacion/leyes/Resumen_tasas_Ley_16_2014.pdf	NCA ESP	2014	Spain	Incorporated	117
A.III.	Thresholds	N/A	Procedure	Procedure for authorization of an asset management company (subject to either UCITSD or AIFMD) https://www.cnmv.es/DocPortal/Quees/Procedimientos/P09-Autorizacion-y-registro.pdf	NCA ESP	2016	Spain	Reviewed	118
A.III.	Thresholds	N/A	Statutory Law	Resolution for authorization of an Asset Management Company (Opened-end type of funds or investment societies) https://www.boe.es/buscar/act.php?id=BOE-A-2003-20331&p=20150729&tn=1#a41	Law	2003	Spain	Reviewed	119
A.III.	Thresholds	N/A	Statutory Law	Resolution for authorization of an AIFM (closed-end type of funds or investment societies) https://www.boe.es/buscar/act.php?id=BOE-A-2014-11714&p=20150729&tn=1#a46	Law	2014	Spain	Reviewed	120
A.II.	Thresholds	Relevance	Central Bank of Ireland AIFM register	http://registers.centralbank.ie/DownloadsPage.aspx	Central Bank of Ireland	2017	Ireland	Incorporated	121
A.II.	Thresholds	Relevance	NCA Register	http://www.consob.it/web/area-pubblica/societa-di-gestione-del-risparmio-sgr-	NCA IT	2017	Italy	Incorporated	122
B.I.	Reporting	Effectiveness	NCA Information Sheet	Engl_AIFMD Reporting	NCA AUT	2015	Austria	Incorporated	123
B.I.	Reporting	Effectiveness	Supervisory Law	AIFM-MV, Fassung vom 18.11.2017	Law	2015	Austria	Reviewed	124

No. *	Specific Rule	Principle	Literature Type	Name of the Source	Author	Year	Country	Status	No.
B.I.	Reporting	Effectiveness EU Added Value	Delegated Regulation	Decree No. 249/2013 Coll. on reporting by a manager and an administrator of an investment fund or foreign fund to the Czech National Bank	Law	2013 / 2017	Czech	Reviewed	125
B.I.	Reporting	Effectiveness Efficiency	BaFin-Annual Report	BaFin-Annual Report 2015, Pages 252 – 256	BaFin	2016	Germany	Incorporated	126
B.I.	Reporting	Effectiveness	National requirements	Manuale delle Segnalazioni Statistiche e di Vigilanza per gli Organismi di Investimento Collettivo del Risparmio	Law	2015	Italy	Incorporated	127
B.I.	Reporting	Efficiency	Legislator impact assessment	AIFMG-MR-MAT	Legislator AUT	2013	Austria	Incorporated	128
B.I.	Reporting	Efficiency	NCA Circular	Circular C037 “Implementation of the Risk Based Supervision Framework - Request for the electronic submission of information” https://www.cysec.gov.cy/en-GB/public-info/circulars/supervised/aif/?page=3	NCA CY	2014	Cyprus	Incorporated	129
B.I.	Reporting	Efficiency	NCA Circular	CI144-2014-27 “Development of a Risk Based Supervision Framework- A brief description” https://www.cysec.gov.cy/CMSPages/GetFile.aspx?guid=97a4083f-7830-4813-aece-9d5296c75faa	NCA CY	2014	Cyprus	Incorporated	130
B.I.	Reporting	Efficiency	Speech Regulator	- Speech of Natasha Cazenave AMF-IBA, Head of the Investment Management Policy Division, Regulatory Policy and International Affair, Pages 1-4	Speech Regulator	- 2014	France	Incorporated	131
B.I.	Reporting	Efficiency	Explanatory Memorandum	German Parliament, Explanatory Memorandum on the KAGB, BT-Drucksache 17/12294, Pages 194-201 (Estimates of Costs by the Legislator)	German Parliament	2013	Germany	Incorporated	132
B.I.	Reporting	N/A	NCA Guidelines, Quantitative data source	Reporting data of Czech National Bank and guidelines for reporting	NCA CZ	2013 / 2017	Czech	Incorporated	133

No. *	Specific Rule	Principle	Literature Type	Name of the Source	Author	Year	Country	Status	No.
B.I.	Reporting	N/A	Yearly report	Markedsudvikling investinger 2014	kollektive NCA DK	2015	Denmark	Incorporated	134
B.I.	Reporting	N/A	Yearly report	Markedsudvikling investinger 2015	kollektive NCA DK	2016	Denmark	Incorporated	135
B.I.	Reporting	N/A	Yearly report	Markedsudvikling investinger 2016	kollektive NCA DK	2017	Denmark	Incorporated	136
B.I.	Reporting	N/A	Webpage	https://www.finanstilsynet.dk/da/Lovgivning/Information-om-udvalgte-tilsynsomraader/Kollektive-investeringer/FAIF/Spoergsmaal-og-svar	NCA DK	Currently	Denmark	Incorporated	137
B.I.	Reporting	N/A	Statutory Publication	Alternative Investment Fund Managers Directive – Frequently Asked Questions –	NCA ML	2017	Malta	Incorporated	138
B.II.	Coop. ESMA	Coherence	ESMA Compliance Table	Guidelines Compliance Tables ESMA/2016/571, 07.04.2016	ESMA	2016	Europe	Incorporated	139
B.II.	REPORTING	Coherence	ESMA	<i>ESMA, Guidelines on reporting obligations under Articles 3(3)(d) and 24(1), (2) and (4) AIFMD, 8 August 2014, ESMA/2014/869.</i>	ESMA	2014	Europe	Incorporated	140
B.II.	Remuneration	Effectiveness	NCA Circular	Circular C174 "Guidelines on sound remuneration policies under the AIFMD (ESMA/2016/579 – the "Amending Guidelines"). https://www.cysec.gov.cy/CMSPages/GetFile.aspx?guid=bf46f74-5cb8-4de0-bf10-24d352e1b65c	NCA CY	2016	Cyprus	Incorporated	141
B.II.	Coop. ESMA	Effectiveness Efficiency EU Added Value	Quantitative data source, NCA Reports	Reports on the performance of financial market supervision	CNB	2006 / 2017	Czech	Incorporated	142
B.II.	Reporting	Effectiveness Coherence	ESMA-Report	Final Report on reporting obligations under Art. 3(3)(d) and 24(1), (2) and (4) of the AIFMD, ESMA/2013/1339 (revised)	ESMA	2013	Europe	Incorporated	143
B.II.	Reporting	Effectiveness Coherence	ESMA Consultation Paper	Consultation Paper on Guidelines on reporting obligations under Art. 3 and 24 of the AIFMD, ESMA/2013/592	ESMA	2013	Europe	Incorporated	144

No. *	Specific Rule	Principle	Literature Type	Name of the Source	Author	Year	Country	Status	No.
B.II.	Reporting	Effectiveness Coherence	Responses	Responses to Consultation ESMA/2013/592, as available under the following domain: https://www.esma.europa.eu/press-news/consultations/consultation-guidelines-aifmd-reporting-obligations	ESMA	2013	Europe	Incorporated	145
B.II.	Remuneration	Effectiveness	NCA communication	Communication from the CNMV regarding the ESMA Guidelines on sound remuneration policies under the AIFMD https://www.cnmv.es/portal/verDoc.axd?t={472fd3b4-992e-4ec7-9320-29634f9f410a}	NCA ESP	2016	Spain	Incorporated	146
B.II.	Remuneration	Effectiveness	NCA communication	Communication from the CNMV regarding the ESMA Guidelines on reporting obligations under Articles 3(3)(d) and 24(1), (2) and (4) of the AIFMD http://www.cnmv.es/portal/verDoc.axd?t={d9602a2a-ff4c-47d1-a1fb-f438dd4e8aa5}	NCA ESP	2014	Spain	Incorporated	147
B.II.	Remuneration	N/A	NCA (FSMA) communication	Communication FSMA_2016_19 dd 23/12/2016 on the implementation of the modified ESMA Guidelines (AIFMD) on remuneration https://www.fsma.be/nl/file/42082/download?token=EY4wDP5i	NCA BE	2016	Belgium	Incorporated	148
B.II.	Remuneration	N/A	NCA recommendation	https://www.mnb.hu/letoltes/3-2017-jav-politika.pdf Point 113	NCA HU	2017	Hungary	Incorporated	149

No. *	Specific Rule	Principle	Literature Type	Name of the Source	Author	Year	Country	Status	No.
B.II.	Coop. ESMA	N/A	Legal Text	The de Larosière Group	Jacques de Larosière Chairman Leszek Balcerowicz Otmar Issing Rainer Masera Callum Mc Carthy Lars Nyberg José Pérez Onno Ruding			Incorporated	150
B.II.	Coop. ESMA	N/A	Legal Commentary	Financial Regulation and Supervision	Eddy Wymeersch, Klaus Hopt, Guido Ferrarini	2012	Europe	Incorporated	151
B.II.	Coop. ESMA	N/A	Legal Text	The Institutional Reforms of the European Financial Supervisory System, an Interim Report https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1541968	Eddy Wymeersch	2010	Europe	Incorporated	152
B.II.	Coop. ESMA	N/A	Legal Commentary	Sec. 9 KAGB in: KAGB in: Frankfurter Kommentar KAGB	Moritz, Klebeck, Jesch	2016	Germany	Incorporated	153
B.III.	Leverage		Regulation	Supervision of qualitative and quantitative limits concerning leverage (Private Equity Funds) https://www.boe.es/buscar/act.php?id=BOE-A-2014-11714&p=20150729&tn=1#a87	Law	N/A	Spain	Reviewed	154
B.III.	Leverage	Effectiveness	Delegated Regulation	Decree No. 244/2013 Coll. on More Detailed Regulation of Some Rules Set Out by the Act on Management Companies and Investment Funds	Law	2013 / 2017	Czech	Reviewed	155
B.III.	Leverage	Effectiveness EU Added Value	Delegated Regulation	Decree No. 249/2013 Coll. on reporting by a manager and an administrator of an investment fund or foreign fund to the Czech National Bank	Law	2013 / 2017	Czech	Reviewed	156

No. *	Specific Rule	Principle	Literature Type	Name of the Source	Author	Year	Country	Status	No.
B.III.	Leverage	Effectiveness Coherence	Industry Paper	Use of Leverage in Investment Funds in Europe, AMIC/EFAMA Joint Report	EFAMA, AMIC	2017	Europe	Incorporated	157
B.III.	Leverage	Effectiveness	Central Bank	AIF Rulebook https://www.centralbank.ie/docs/default-source/Regulation/industry-market-sectors/funds-service-providers/aifm/AIFM/aif-rulebook-march-2017-(002).pdf?sfvrsn=2	Central Bank of Ireland	2017	Ireland	Reviewed	158
B.III.	Leverage	Effectiveness	Regulation	Qualitative and quantitative limits concerning leverage (Hedge Funds) https://www.boe.es/buscar/act.php?id=BOE-A-2012-9716&p=20151003&tn=1#a73	Law	2012	Spain	Reviewed	159
B.III.	Leverage	EU Value Added	National Requirement	Regolamento sulla gestione collettiva del risparmio issued by Bank of Italy- TITOLO V - CAPITOLO III	Law	2016	Italy	Reviewed	160
B.III.	Leverage	N/A	Statistics Central Bank of Cyprus	Investment Fund Statistics – August 2017 "Investment Funds balance sheet data: liabilities" https://www.centralbank.cy/en/publications/investment-funds-statistics/year-2017	Central Bank of Cyprus	2017	Cyprus	Incorporated	161
B.III.	Leverage	N/A	NCA Website	https://www.finanstilsynet.dk/da/Tal-og-Fakta/Markedsudvikling/Markedsudvikling/MU-Kollektiv-17	NCA DK	2016	Denmark	Legal Text	162
B.III.	Leverage	N/A	Legal text	https://www.retsinformation.dk/forms/R0710.aspx?id=151849	Law	Current	Denmark	Legal Text	163
B.III.	Leverage	N/A	Implementation Law	Law of 12 July 2013 on alternative investment fund managers (Article 14(4) and Article 21)	Law	2013	Luxembourg	Reviewed	164
B.III.	Leverage	N/A	Regulation	Qualitative and quantitative limits concerning leverage (Funds of Hedge Funds) https://www.boe.es/buscar/act.php?id=BOE-A-2012-9716&p=20151003&tn=1#a74	Law	N/A	Spain	Reviewed	165

No. *	Specific Rule	Principle	Literature Type	Name of the Source	Author	Year	Country	Status	No.
B.III.	Leverage	N/A	Regulation	Order EHA/1199/2006, of April 25, which develops the provisions of the Regulation of Law 35/2003, of November 4, regulating collective investment institutions, relating to hedge funds and funds of hedge funds (limits concerning leverage) https://www.boe.es/buscar/act.php?id=BOE-A-2006-7409	Law	N/A	Spain	Reviewed	166
B.III.	Leverage	N/A	NCA Circular	CIRCLAR 1/2006, of 3 May, of the Comisión Nacional del Mercado de Valores, on Alternative Collective Investment Schemes Rule 19 - Leverage and indebtedness limits. Rule 18 and Annex- Reporting Obligations on Leverage and indebtedness limits http://www.cnmv.es/DocPortal/legislacion/circulares/1_2006_e.pdf	Law	N/A	Spain	Incorporated	167
C.I.a. and d.	Delegation		Answers BaFin	Potential Answers to specific questions to BaFin			Germany	Incorporated	168
C.I.a and d	Delegation	Effectiveness	Supervisory Law	Investment Fund Act 2011 (InvFA)	Law	2011	Austria	Incorporated	169
C.I.a and d	Delegation	Effectiveness	Supervisory Law	Real Estate Investment Funds Act (REIFA)	Law	2003	Austria	Incorporated	170
C.I.a.	Delegation	Effectiveness	Statutory law	Act No. 189/2004 Coll. Collective Investment Act	Law	2004-2013	Czech	Incorporated	171
C.I.a.	Delegation	Effectiveness	Delegated Regulation	Decree No. 194/2011 Coll, on More Detailed Regulation of Certain Rules in Collective Investment	Law	2011-2013	Czech	Incorporated	172
C.I.a. and d.	Delegation	Effectiveness	Scientific Literature	Outsourcing of the portfolio management function; Recht der Finanzinstrumente 2012, Page 225	Dr. Ulf Klebeck	2012	Germany	Incorporated	173
C.I.a. and d.	Delegation	Effectiveness	Legal Commentary	Sec. 36 KAGB in: KAGB in: Frankfurter Kommentar KAGB	Moritz, Klebeck, Jesch	2016	Germany	Incorporated	174

No. *	Specific Rule	Principle	Literature Type	Name of the Source	Author	Year	Country	Status	No.
C.I.a and d	Delegation	Effectiveness	Regulation	Requirements for delegation of functions https://www.boe.es/buscar/act.php?id=BOE-A-2012-9716&p=20151003&tn=1#a98	Law	2012	Spain	Incorporated	175
C.I.a and d	Delegation	Effectiveness	NCA Circular	CIRCLAR 1/2006, of 3 May, of the Comisión Nacional del Mercado de Valores, on Alternative Collective Investment Schemes (Rule 4(1) and 8). http://www.cnmv.es/DocPortal/legislacion/circulares/1_2006_e.pdf	NCA ESP	2006	Spain	Incorporated	176
C.I.a and d	Delegation	Efficiency	NCA Minimum Standards	FMA-MS_Due Diligence	NCA AUT	2016	Austria	Incorporated	177
C.I.a and d.	Delegation	Efficiency	AMF Report	Report of the AIFMD Stakeholder's Committee on the Transposition of the AIFM Directive and the Development of French Innovative Asset Management – 26 July 2012, Page 17	AMF Report	2012	France	Incorporated	178
C.I.a and d	Delegation	N/A	Law	Law of 13 February 2007 relating to Specialised Investment Funds – Article 42b	Law	2007	Luxembourg	Reviewed	179
C.I.a and d	Delegation	N/A	Law	Law of 15 June 2004 relating to the investment company in risk capital – <i>no specific rules</i>	Law	2004	Luxembourg	Reviewed	180
C.I.a.	Valuation	Effectiveness	Supervisory Law	Investment Fund Act 2011 (InvFA)	Law	2011	Austria	Reviewed	181
C.I.a.	Valuation	Effectiveness	Supervisory Law	Real Estate Investment Funds Act (REIFA)	Law	2003	Austria	Reviewed	182
C.I.a.	Valuation	Effectiveness	Statutory law	Act No. 189/2004 Coll. Collective Investment Act	Law	2004 / 2013	Czech	Legal Text	183
C.I.a.	Valuation	Effectiveness	NCA Q&A	Valuation of shares held by collective investment funds	NCA CZ	2012	Czech	Legal Text	184
C.I.a.	Valuation	Effectiveness	AKAT (Czech Capital Market Association)	AKAT's Recommendation on the Valuation of Shares in Collective Investment Funds Final on the price of the public market where the share is traded (the so-called closing price)	AKAT	2012	Czech	Legal Text	185
C.I.a.	Valuation	Effectiveness	BaFin-Circular	Circular 07/2015 (WA) on external validators	BaFin	2015	Germany	Incorporated	186

No. *	Specific Rule	Principle	Literature Type	Name of the Source	Author	Year	Country	Status	No.
C.I.a.	Valuation	Effectiveness	Law Regulation	Regulation on the content, scope and form of the accounting investments and investment companies as well as over the valuation of assets	BaFin	2013	Germany	Incorporated	187
C.I.a.	Valuation	Effectiveness	Legal Commentary	Sec. 169 KAGB in: KAGB in: Frankfurter Kommentar KAGB	Moritz, Klebeck, Jesch	2016	Germany	Incorporated	188
C.I.a.	Valuation	Effectiveness	Legal Commentary	Sec. 216 KAGB in: KAGB in: Frankfurter Kommentar KAGB	Moritz, Klebeck, Jesch	2016	Germany	Incorporated	189
C.I.a.	Valuation	Effectiveness	National requirements	Regolamento congiunto Bank of Italy – Consob – Art. 58	Law	2015	Italy	Legal Text	190
C.I.a.	Valuation	Effectiveness	Regulation	Requirements for Valuation https://www.boe.es/buscar/act.php?id=BOE-A-2012-9716&p=20151003&tn=1#a106quarter	Law	2015	Spain	Incorporated	191
C.I.a.	Valuation	Effectiveness	NCA Circular	CIRCLAR 1/2006, of 3 May, of the Comisión Nacional del Mercado de Valores, on Alternative Collective Investment Schemes (Rule 21). http://www.cnmv.es/DocPortal/legislacion/circulares/1_2006_e.pdf	NCA ESP	2006	Spain	Incorporated	192
C.I.a.	Valuation	Efficiency	AMF Report	Report of the AIFMD Stakeholder's Committee on the Transposition of the AIFM Directive and the Development of French Innovative Asset Management – 26 July 2012 Page 18, for Private Equity or Real Estate Page 19	AMF Report	2012	France	Incorporated	193
C.I.a.	Valuation	EU Added Value	Governmental Explanatory	Kamerstukken II, 2011/2012, 33 235, nr.3, (<i>Memorie van Toelichting</i>), p. 35 - 40	Government	2012	Netherlands	Legal Text	194
C.I.a.	Valuation	N/A	Royal Decree	Royal Decree of 10 November 2006 on accounting, annual report and periodic reports of certain public collective investment schemes with variable number of units https://www.fsma.be/nl/file/32344/download?token=AdMRsBXR	Law	2006	Belgium	Legal Text	195

No. *	Specific Rule	Principle	Literature Type	Name of the Source	Author	Year	Country	Status	No.
C.I.a.	Valuation	N/A	Statutory Rules	Standard Licence Conditions applicable to Investment Services Licence Holders which qualify as MiFID Firms Relevant sections including s 2, 7	NCA ML	2017	Malta	Incorporated	196
C.I.a. and e.	Remuneration	Coherence	National requirements	Regolamento congiunto Bank of Italy – Consob – Parte V – Titolo III	Law	2015	Italy	Reviewed	197
C.I.a. and e.	Remuneration	Effectiveness	Supervisory Law	Investment Fund Act 2011 (InvFA)	Law	2011	Austria	Reviewed	198
C.I.a. and e.	Remuneration	Effectiveness	Supervisory Law	Real Estate Investment Funds Act (REIFA)	Law	2003	Austria	Reviewed	199
C.I.a. and e.	Remuneration	Effectiveness EU Added Value	Delegated Regulation	Decree No. 244/2013 Coll. on More Detailed Regulation of Some Rules Set Out by the Act on Management Companies and Investment Fund	Law	2013 / 2017	Czech	Reviewed	200
C.I.a. and e.	Remuneration	Effectiveness Coherence	ESMA Guideline	Guidelines on sound remuneration policies under the AIFMD – final report ESMA/2016/411	ESMA	2016	Europe	Incorporated	201
C.I.a. and e.	Remuneration	Effectiveness Coherence	ESMA Guideline Compliance Table	Guidelines Compliance Tables ESMA/2016/675 and ESMA34-32-316	ESMA	2017	Europe	Incorporated	202
C.I.a. and e.	Reporting	Effectiveness Coherence	Responses	Responses to Consultation ESMA/2013/592, as available under the following domain: https://www.esma.europa.eu/press-news/consultations/consultation-guidelines-aifmd-reporting-obligations	ESMA	2012	Europe	Incorporated	203
C.I.a. and e.	Remuneration	Effectiveness	Statutory Law	RG AMF – Article 319-10 of the AMF General Regulation	Statutory Law	2013 and subs. updates	France	Reviewed	204
C.I.a. and e.	Remuneration	Effectiveness	Statutory Law	COMOFI - Article L.533-22-2 of the Monetary and Financial Code	Statutory Law	2013 and subs. update 2016	France	Reviewed	205

No. *	Specific Rule	Principle	Literature Type	Name of the Source	Author	Year	Country	Status	No.
C.I.a. and e.	Remuneration	Effectiveness	Statutory Law	AMF Position DOC-2013-11	Statutory Law	2013 – latest update 2016	France	Reviewed	206
C.I.a. and e.	Remuneration	Effectiveness	Professional Association Guidance	AFG Guidance – Publication of remunerations in AIFs/ AIFMs annual reports (March 16, 2016) – Pdf doc <i>AFG Publications des rémunérations dans les rapports annuels des FIA/SGP (16 March 2016)</i>	Professional Association Guidance	2016	France	Legal Text	207
C.I.a. and e.	Remuneration	Effectiveness	Regulator Guide	AMF Guide on Remuneration for AIFMs	Regulator Guide	2013	France	Legal Text	208
C.I.a. and e.	Remuneration	Effectiveness	AFG Answer Call for Evidence EU Commission	AFG answer Call for Evidence on the EU regulatory framework for Financial Service January 2016, Page 21	AFG Answer Call for Evidence EU Commission		France	Incorporated	209
C.I.a. and e.	Remuneration	Effectiveness	BaFin-Letter	Letter regarding the application of ESMA Guidelines regarding Remuneration – WA 41-Wp 2137-2013/0037	BaFin	2013/2016	Germany	Incorporated	210
C.I.a. and e.	Remuneration	Effectiveness	Legal Commentary	Sec. 37 KAGB in: KAGB in: Frankfurter Kommentar KAGB	Moritz, Klebeck, Jesch	2016	Germany	Incorporated	211
C.I.a. and e.	Remuneration	Effectiveness	Statement of NCA	AFM, Statement ESMA Guidelines	NCA NL	2017	Netherlands	Legal Text	212
C.I.a. and e.	Remuneration	Effectiveness	Statutory law	Requirements on remuneration rules. https://www.boe.es/buscar/act.php?id=BOE-A-2003-20331&p=20150729&tn=1#a46bis	Law	2014	Spain	Reviewed	213
C.I.a. and e.	Remuneration	Effectiveness	Regulation	Requirements on remuneration disclosures. https://www.boe.es/buscar/act.php?id=BOE-A-2012-9716&tn=1&p=20151003 (article 23(1), letter s))	Law	2015	Spain	Reviewed	214
C.I.a. and e.	Remuneration	Efficiency	Research studies	http://www.advisoronline.it/asset-manager/societa-di-gestione-del-risparmio/25861-sgr-aumentano-gli-stipendi-dei-gestori.action	Advisor Online	2014	Italy	Legal Text	215

No. *	Specific Rule	Principle	Literature Type	Name of the Source	Author	Year	Country	Status	No.
C.I.a. and e.	Remuneration	Efficiency	Governmental explanatory memorandum	Kamerstukken II, 2011/2012, 33 235, nr. 3, (<i>Memorie van Toelichting</i>), p. 29		2012	Netherlands	Legal Text	216
C.I.a. and e.	Remuneration	EU Added Value	Statutory Law	Art. 35i Besluit Gedragstoezicht financiële ondernemingen Wft 2013	Statutory Law	2013	Netherlands	Reviewed	217
C.I.a. and e.	Remuneration	N/A	Law	Law of 19 April 2014 on alternative investment funds and their managers https://www.fsma.be/nl/file/39082/download?token=KEgVXM6S Art. 40	Law	2014	Belgium	Reviewed	218
C.I.a. and e.	Remuneration	N/A	Royal Decree	Royal Decree of 25 February 2017 on public AIF and their management companies https://www.fsma.be/nl/file/42837/download?token=dmVVtSay	Law	2017	Belgium	Reviewed	219
C.I.a. and e.	Remuneration	N/A	Recommendation NCA	https://www.mnb.hu/letoltes/3-2017-jav-politika.pdf	NCA HU	2017	Hungary	Legal Text	220
C.I.a. and e.	Remuneration	N/A	Implementation Law	Law of 12 July 2013 on alternative investment fund managers (article 12 & Annex II)	Law	2013	Luxembourg	Reviewed	221
C.I.a. and e.	Remuneration	N/A	Statutory publication	Thematic Review focusing on Compliance with the Remuneration Provisions in terms of the AIFM Directive	NCA ML	2016	Malta	Incorporated	222
C.I.a. and e.	Remuneration	N/A	Regulation	Policies and procedures required related to the remuneration system and the setting of incentives (private equity funds and closed-end funds) https://www.boe.es/buscar/act.php?id=BOE-A-2014-11714&p=20150729&tn=1#a60	Law	N/A	Spain	Reviewed	223
C.I.a.	Risk and Liquidity	Effectiveness	Supervisory Law	Investment Fund Act 2011 (InvFA)	Law	2011	Austria	Reviewed	224
C.I.a.	Risk and Liquidity	Effectiveness	Supervisory Law	Real Estate Investment Funds Act (REIFA)	Law	2003	Austria	Reviewed	225
C.I.a.	Risk and Liquidity	Effectiveness	Statutory law	Act No. 189/2004 Coll. Collective Investment Act	Law	2004 / 2013	Czech	Reviewed	226

No. *	Specific Rule	Principle	Literature Type	Name of the Source	Author	Year	Country	Status	No.
C.I.a.	Risk and Liquidity	Effectiveness	Delegated Regulation	Decree No. 194/2011 Coll, on More Detailed Regulation of Certain Rules in Collective Investment	Law	2011 / 2013	Czech	Reviewed	227
C.I.a.	Risk and Liquidity	Effectiveness	NCA Q&A	Limitations on the use of financial derivatives and the calculation of an open position from financial instruments derivatives with UCITS and non-UCITS public funds	NCA CZ	2012	Czech	Legal Text	228
C.I.a.	Risk and Liquidity	Effectiveness	BaFin-Report	Liquidity-Stress tests of German AIFM – WA 46-AZB 1130-2017/0002	BaFin	2017	Germany	Incorporated	229
C.I.a.	Risk and Liquidity	Effectiveness	Legal Commentary	Sec. 30 KAGB in: KAGB in: Frankfurter Kommentar KAGB	Moritz, Klebeck, Jesch	2016	Germany	Incorporated	230
C.I.a.	Risk and Liquidity	Effectiveness	BaFin Circular	Circular 01/2017 (WA) – Minimum Requirement on the risk management of Investment Companies	BaFin	2017	Germany	Incorporated	231
C.I.a.	Risk and Liquidity	Effectiveness	Legal Commentary	Sec. 29 KAGB in: KAGB in: Frankfurter Kommentar KAGB	Moritz, Klebeck, Jesch	2016	Germany	Incorporated	232
C.I.a.	Risk and Liquidity	Effectiveness	National requirements	Regolamento sulla gestione collettiva del risparmio issued by Bank of Italy - TITOLO V - SEZIONE II	Law	2016	Italy	Reviewed	233
C.I.a.	Risk and Liquidity	Effectiveness	Regulation	Requirements for Risk Management https://www.boe.es/buscar/act.php?id=BOE-A-2012-9716&p=20151003&tn=1#a106bis	Law	2015	Spain	Reviewed	234
C.I.a.	Risk and Liquidity	Effectiveness	Regulation	Requirements for Liquidity Management https://www.boe.es/buscar/act.php?id=BOE-A-2012-9716&p=20151003&tn=1#a106ter	Law	2015	Spain	Reviewed	235
C.I.a.	Risk and Liquidity	Efficiency	AMF Report	Report of the AIFMD Stakeholder's Committee on the Transposition of the AIFM Directive and the Development of French Innovative Asset Management – 26 July 2012, Page 15	AMF Report	2012	France	Incorporated	236
C.I.a.	Risk and Liquidity	EU Added Value	Statutory Law	Art. 48 and 109 Besluit prudentiële regels Wft	Statutory Law	2013	Netherlands	Legal Text	237

No. *	Specific Rule	Principle	Literature Type	Name of the Source	Author	Year	Country	Status	No.
C.I.a.	Risk and Liquidity	N/A	Law	Law of 17 December 2010 relating to undertakings for collective investment (hereinafter the "Law of 2010") – Article 91 and 96	Law	2010	Luxembourg	Reviewed	238
C.I.a.	Risk and Liquidity	N/A	Law	Law of 13 February 2007 relating to Specialised Investment Funds – Article 42a	Law	2007	Luxembourg	Reviewed	239
C.I.a.	Risk and Liquidity	N/A	Law	Law of 15 June 2004 relating to the investment company in risk capital – <i>No specific rules for risk and liquidity management</i>	Law	2004	Luxembourg	Reviewed	240
C.I.a.	Risk and Liquidity	Relevance Effectiveness Coherence	Recommendation on FSB	Policy Recommendations to address Structural Vulnerabilities from Asset Management Activities	FSB	2017	Europe	Incorporated	241
C.I.a.	Risk and Liquidity	Relevance Effectiveness Coherence	Consultation IOSCO	Consultation on CIS Liquidity Risk Management Recommendations	IOSCO	2017	Europe	Incorporated	242
C.I.a.	Risk and Liquidity	Relevance Effectiveness Coherence	Response to Consultation	EFAMA Response to the IOSCO Consultation on CIS Liquidity Risk Management Recommendations (CR04/2017)	EFAMA	2017	Europe	Incorporated	243
C.I.a.	Risk and Liquidity	Relevance Effectiveness Coherence	Industry Paper	Managing fund liquidity risk in Europe - an AMIC/EFAMA report	EFAMA / ICMA	2016	Europe	Incorporated	244
C.I.a.	Depositories	Effectiveness	Supervisory Law	Investment Fund Act 2011 (InvFA)	Law	2011	Austria	Incorporated	245
C.I.a.	Depositories	Effectiveness	Supervisory Law	Real Estate Investment Funds Act (REIFA)	Law	2003	Austria	Reviewed	246
C.I.a.	Depositories	Effectiveness	Statutory law	Act No. 189/2004 Coll. Collective Investment Act	Law	2004-2013	Czech	Incorporated	247
C.I.a.	Depositories	Effectiveness	Delegated Regulation	Decree No. 195/2011 Coll. on the Activities of a Depositary of a Collective Investment Fund	Law	2011-2013	Czech	Incorporated	248
C.I.a.	Depositories	Effectiveness	BaFin-Circular	Circular 08/2015 (WA) – Tasks and Duties of Depositories pursuant to Chapter I Part 3 KAGB	BaFin	2015	Germany	Incorporated	249
C.I.a.	Depositories	Effectiveness	Legal Commentary	Sec. 80 KAGB in: KAGB in: Frankfurter Kommentar KAGB	Moritz, Klebeck, Jesch	2016	Germany	Incorporated	250

No. *	Specific Rule	Principle	Literature Type	Name of the Source	Author	Year	Country	Status	No.
C.I.a.	Depositories	Effectiveness	Legal Commentary	Sec. 81 KAGB in: KAGB in: Frankfurter Kommentar KAGB	Moritz, Klebeck, Jesch	2016	Germany	Incorporated	251
C.I.a.	Depositories	Effectiveness	Legal Commentary	Sec. 82 KAGB in: KAGB in: Frankfurter Kommentar KAGB	Moritz, Klebeck, Jesch	2016	Germany	Incorporated	252
C.I.a.	Depositories	Effectiveness	Legal Commentary	Sec. 85 KAGB in: KAGB in: Frankfurter Kommentar KAGB	Moritz, Klebeck, Jesch	2016	Germany	Incorporated	253
C.I.a.	Depositories	Effectiveness	Legal Commentary	Sec. 86 KAGB in: KAGB in: Frankfurter Kommentar KAGB	Moritz, Klebeck, Jesch	2016	Germany	Incorporated	254
C.I.a.	Depositories	Effectiveness	Legal Commentary	Sec. 88 KAGB in: KAGB in: Frankfurter Kommentar KAGB	Moritz, Klebeck, Jesch	2016	Germany	Incorporated	255
C.I.a.	Depositories	Effectiveness	Statistics	German Association of Investment and Asset Management ("BVI"), Statistics about Depositories in Germany, years 2012-2017	BVI	2012-2017	Germany	Incorporated	256
C.I.a.	Depositories	Effectiveness	Industry Paper	Depositories under AIFMD – EY Study Safekeeping of non-custodial assets and look through principle	EY Lux.	2016	Luxembourg	Incorporated	257
C.I.a.	Depositories	Effectiveness	Statutory law	Rules on Depositary obligations https://www.boe.es/buscar/act.php?id=BOE-A-2003-20331&p=20150729&tn=1#a62	Law	2004	Spain	Reviewed	258
C.I.a.	Depositories	Effectiveness	Regulation	Functions and obligations applicable to Depositories https://www.boe.es/buscar/act.php?id=BOE-A-2012-9716&p=20151003&tn=1#cii-5	Law	2012	Spain	Reviewed	259
C.I.a.	Depositories	Effectiveness	NCA Circular	CIRCLAR 1/2006, of 3 May, of the Comisión Nacional del Mercado de Valores, on Alternative Collective Investment Schemes (several rules apply). http://www.cnmv.es/DocPortal/legislacion/circulares/1_2006_e.pdf	NCA ESP	2006	Spain	Incorporated	260

No. *	Specific Rule	Principle	Literature Type	Name of the Source	Author	Year	Country	Status	No.	
C.I.a.	Depositaries	Effectiveness	NCA Circular	Circular 4/2016, of June 29, of the CNMV, on the functions of the depositaries of collective investment schemes and entities regulated by Law 22/2014, of November 12, by which they are regulated the Private Equity funds, closed-end collective investment schemes and its management companies. http://www.boe.es/diario_boe/txt.php?id=BOE-A-2016-6646	Law	2016	Spain	Incorporated	261	
C.I.a.	Depositaries	Efficiency	AMF Report	Report of the AIFMD Stakeholder's Committee on the Transposition of the AIFM Directive and the Development of French Innovative Asset Management – 26 July 2012, Pages 24-26 and 27	AMF Report	2012	France	Incorporated	262	
C.I.a.	Depositaries	EU Value	Added	Statutory Law	Art. 4:42 Wet op het financieel toezicht 2013	Statutory Law	2013	Netherlands	Reviewed	263
C.I.a.	Depositaries	EU Value	Added	Statutory Law	Art. 4:37j Wet op het financieel toezicht 2017	Statutory Law	2017	Netherlands	Reviewed	264
C.I.a.	Depositaries	N/A		Law	Law of 3 August 2012 on certain forms of collective management of investment portfolios (no hyperlink available, as the legislation has been replaced in the meantime) Art. 50 seq.	Law	2012	Belgium	Reviewed	265
C.I.a.	Depositaries	N/A		Royal Decree	Royal Decree of 12 November 2012 concerning collective investment schemes (no hyperlink available, as the legislation has been replaced in the meantime) Art. 8 seq.	Law	2012	Belgium	Reviewed	266
C.I.a.	Depositaries	N/A		Law	Law of 4 April 1993 of the financial sector – Chapter 1	Law	1993	Luxembourg	Reviewed	267

No. *	Specific Rule	Principle	Literature Type	Name of the Source	Author	Year	Country	Status	No.
C.I.a.	Depositories	N/A	Law	Law of 17 December 2010 relating to undertakings for collective investment (hereinafter the "Law of 2010") - Article 90 (refers to UCITS depository rules, i.e. Article 17-20 for Common Funds and 33 to 37 for Investment Companies)	Law	2010	Luxembourg	Reviewed	268
C.I.a.	Depositories	N/A	Law	Law of 13 February 2007 relating to Specialised Investment Funds - Articles 16, 17, 18, 19 for Common Funds - Articles 33, 34, 35, 36 for Investment Companies	Law	2007	Luxembourg	Reviewed	269
C.I.a.	Depositories	N/A	Circular	Circular CSSF 08/372 - "Guidelines for depositories of specialised investment funds adopting alternative investment strategies, where those funds use the services of a prime broker"	NCA Lux	2008	Luxembourg	Reviewed	270
C.I.a.	Depositories	N/A	Law	Law of 15 June 2004 relating to the investment company in risk capital - Articles 8, 9, 10	Law	2004	Luxembourg	Reviewed	271
C.I.a.	Depositories	N/A	Statutory Rules	Standard Licence Conditions applicable to Investment Services Licence Holders which qualify as Custodians of Collective Investment Schemes	NCA ML	2017	Malta	Incorporated	272
C.I.c.	Costs & Effects Governance	Effectiveness	Essay	AIFMD, AIFMG - leider mehr als (nur) "another European Mess" https://rdb.manz.at/document/rdb.ts.o.Lloeba20160405	Armin Kammel	J. 2016	Austria	Reviewed	273
C.I.b.	Costs & Effects Governance	Efficiency	Legislator impact assessment	AIFMG-MR-MAT	Legislator AUT	2013	Austria	Incorporated	274
C.I.c.	Costs & Effects Governance	Efficiency	Legislator reports	Reasoning report to Act No. 240/2013 Coll., Act on Management Companies and Investment Funds	Governments CZ	2013	Czech	Reviewed	275

No. *	Specific Rule	Principle	Literature Type	Name of the Source	Author	Year	Country	Status	No.
C.I.c.	Costs & Effects Governance	Efficiency	World Bank Report	World bank CZ-Czech Capital Market Assessment-Report	Governments CZ	2017	Czech	Reviewed	276
C.I.c.	Costs & Effects Governance	Efficiency Relevance EU Added Value	Industry Paper	Is Financial Regulation Good or Bad for Real Estate Companies? – An Event Study	Martin Hoesli, Stanimira Micheva, Alex Moss	2016	Europe	Reviewed	277
C.I.b.	Costs & Effects Governance	Efficiency	AFG answer Call for Evidence EU Commission	AFG answer Call for Evidence on the EU regulatory framework for Financial Service January 2016, Pages 25-27	AFG answer Call for Evidence EU Commission	2016	France	Incorporated	278
C.I.c.	Costs & Effects Governance	Efficiency	AFG Answer Call for Evidence EU Commission	AFG Answer Call for Evidence on the EU regulatory framework for Financial Service January 2016, Page 19	AFG Answer Call for Evidence EU Commission	2016	France	Incorporated	279
C.I.b.	Costs & Effects Governance	Efficiency	Explanatory Memorandum	German Parliament, Explanatory Memorandum on the KAGB, BT-Drucksache 17/12294, Pages 194-201 (Estimates of Costs by the Legislator)	German Parliament	2013	Germany	Incorporated	280
C.I.c.	Costs & Effects Governance	Efficiency Relevance EU Added Value	Scientific Opinion	Is an AIFMD-Regulated Fund a better Fund? – View of a professional RDF 2012, Page 73	C. Eckert, KGAL GmbH	2012	Germany	Reviewed	281
C.I.b.	Costs & Effects Governance	Efficiency	Industry Paper	The Cost of Compliance, 2013 KPMG/AIMA/MFA Global Hedge Fund Survey	KPMG Int.	2013	Global	Incorporated	282
C.I.b.	Costs & Effects Governance	Efficiency	Research studies	http://www.advisoronline.it/normative-e-fisco/aifmd.action	Advisory Online	2010	Italy	Reviewed	283
C.I.c.	Costs & Effects Governance	Efficiency	Research studies	http://www.dirittobancario.it/approfondimenti/gestione-collettiva-del-risparmio/processo-attuazione-aifmd-italia-novita-importanti-fronte-finanziamenti	Advisory Online	2014	Italy	Reviewed	284
C.I.c.	Costs & Effects Governance	Efficiency	Governmental explanatory memorandum	Kamerstukken II, 2011/2012, 33 235, nr.3, (<i>Memorie van Toelichting</i>), p. 29		2012	Netherlands	Incorporated	285

No. *	Specific Rule	Principle	Literature Type	Name of the Source	Author	Year	Country	Status	No.
C.I.c.	Costs & Effects Governance	N/A	NCA Analysis	Market analysis by the NCA / Markedsudvikling	NCA DK	2015	Denmark		286
C.I.c.	Costs & Effects Governance	N/A	Research study	AIFMD depository pricing and capital – Taking a risk intelligent approach	Deloitte	2014	Luxembourg	Incorporated	287
C.II.a.	Disclosure	Coherence	National requirements	Regolamento intermediari issued by CONsob – Artt. 76 – 76bis	Law	2017	Italy	Reviewed	288
C.II.b.	Disclosure	Coherence	National requirements	Regolamento intermediari issued by Consob – Artt. 76 – 76bis	Law	2017	Italy	Reviewed	289
C.II.c.	Disclosure	Coherence	National requirements	Decreto Ministeriale 5 marzo 2015 n. 30 – Artt. 2, 3	Law	2015	Italy	Reviewed	290
C.II.a.	Disclosure	Effectiveness	Supervisory Law	Real Estate Investment Funds Act (REIFA)	Law	2003	Austria	Incorporated	291
C.II.a.	Disclosure	Effectiveness	Supervisory Law	Investment Fund Act 2011 (InvFA)	Law	2011	Austria	Incorporated	292
C.II.c.	Disclosure	Effectiveness	Supervisory Law	Real Estate Investment Funds Act (REIFA)	Law	2003	Austria	Incorporated	293
C.II.c.	Disclosure	Effectiveness	Supervisory Law	Investment Fund Act 2011 (InvFA)	Law	2011	Austria	Incorporated	294
C.II.a.	Disclosure	Effectiveness	Delegated Regulation	Decree No. 246/2013 Coll. on the statute of a collective investment fund	Law	2013 / 2017	Czech	Reviewed	295
C.II.a.	Disclosure	Effectiveness EU Added Value	Statutory Law	Act No. 240/2013 Coll., Act on Management Companies and Investment Funds	Law	2013 / 2017	Czech	Reviewed	296
C.II.b.	Disclosure	Effectiveness	Delegated Regulation	Decree No. 246/2013 Coll. on the statute of a collective investment fund	Law	2013 / 2017	Czech	Reviewed	297
C.II.b.	Disclosure	Effectiveness Efficiency	Delegated Regulation	Decree No. 243/2013 Coll. on investment fund investments and techniques and instruments used for the purpose of portfolio management	Law	2013 / 2017	Czech	Reviewed	298
C.II.c.	Disclosure	Effectiveness	Statutory Law	Act No. 189/2004 Coll. Collective Investment Act	Law	2004 / 2013	Czech	Reviewed	299
C.II.c.	Disclosure	Effectiveness	NCA Guidelines	Instructions for sending and publishing the annual report of the investment company and the collective investment fund for 2010	NCA CZ	2010	Czech	Incorporated	300

No. *	Specific Rule	Principle	Literature Type	Name of the Source	Author	Year	Country	Status	No.
C.II.a. and b	Disclosure	Effectiveness	AFG Answer EU Com Call for Evidence	AFG Answer Call for Evidence on the EU regulatory framework for Financial Service January 2016, Pages 19-20	AFG Answer EU Com Call for Evidence	2016	France	Incorporated	301
C.II.b.	Disclosure	Effectiveness	Regulator Guidelines	Guide on Marketing Regimes for UCITS and AIFs applicable as of 17 March 2017	Regulator Guidelines	2017	France	Incorporated	302
C.II.	Disclosure	Effectiveness	Legal Commentary	Sec. 67 KAGB in: KAGB in: Frankfurter Kommentar KAGB	Moritz, Klebeck, Jesch	2016	Germany	Incorporated	303
C.II.a. and b	Disclosure	Effectiveness	Legal Commentary	Sec. 307 KAGB in: KAGB in: Frankfurter Kommentar KAGB	Moritz, Klebeck, Jesch	2016	Germany	Incorporated	304
C.II.a. and b	Disclosure	Effectiveness	Legal Commentary	Sec. 308 KAGB in: KAGB in: Frankfurter Kommentar KAGB	Moritz, Klebeck, Jesch	2016	Germany	Incorporated	305
C.II.b.	Disclosure	Effectiveness	Law	Sec. 295 KAGB, Sec. 317-320 KAGB	N.A.	2013	Germany	Reviewed	306
C.II.b.	Disclosure	Effectiveness Relevance	Industry Paper	General Information on closed investments – Basics, economic background, chances; German Association of non-cash assets and investments ("BSI")	BSI	2015	Germany	Incorporated	307
C.II.c.	Disclosure	Effectiveness	Law and Commentary	Former Law "Investmentgesetz" and respective Legal Commentaries	N.A.	Before 2013	Germany	Incorporated	308
C.II.b.	Disclosure	Effectiveness	Central Bank AIF Rulebook	https://www.centralbank.ie/docs/default-source/Regulation/industry-market-sectors/funds-service-providers/aifm/AIFM/aif-rulebook-march-2017-(002).pdf?sfvrsn=2	Central Bank of Ireland	2017	Ireland	Incorporated	309
C.II.a.	Disclosure	Effectiveness	Statutory law	Information requirements to unitholders and shareholders, to the public in general and publicity. https://www.boe.es/buscar/act.php?id=BOE-A-2003-20331&p=20141113&tn=1#a18	Law	2004	Spain	Reviewed	310
C.II.a.	Disclosure	Effectiveness	Regulation	Additional information to be included in AIFs https://www.boe.es/buscar/act.php?id=BOE-A-2012-9716&p=20151003&tn=1#a23bis	Law	2015	Spain	Reviewed	311

No. *	Specific Rule	Principle	Literature Type	Name of the Source	Author	Year	Country	Status	No.
C.II.a.	Disclosure	Effectiveness	Regulation	Information requirements to unitholders and shareholders of Private Equity Funds. https://www.boe.es/buscar/act.php?id=BOE-A-2014-11714&p=20150729&tn=1#a68	Law	2014	Spain	Reviewed	312
C.II.a.	Disclosure	Effectiveness	NCA Circular	CIRCLAR 1/2006, of 3 May, of the CNMV, on Alternative Collective Investment Schemes (Rule 13, 14). http://www.cnmv.es/DocPortal/legislacion/circulares/1_2006_e.pdf	NCA ESP	2006	Spain	Incorporated	313
C.II.a.	Disclosure	Effectiveness	NCA Circular	Circular 2/2013, of 9 May, on the DFI and prospectus (several rules apply) http://www.boe.es/boe/dias/2013/05/24/pdfs/BOE-A-2013-5453.pdf	Law	2013 and 2006	Spain	Reviewed	314
C.II.b.	Disclosure	Effectiveness	Regulation	Special provision regarding alternative investments schemes (hedge funds) https://www.boe.es/buscar/act.php?id=BOE-A-2012-9716&p=20151003&tn=1#a73	Law	2012	Spain	Reviewed	315
C.II.b.	Disclosure	Effectiveness	Regulation	Special provision regarding alternative investments schemes (funds of hedge funds) https://www.boe.es/buscar/act.php?id=BOE-A-2012-9716&p=20151003&tn=1#a74	Law	2012	Spain	Reviewed	316
C.II.b.	Disclosure	Effectiveness	Statutory Law	Marketing in Spain to non-professional investors of the shares and units of AIF established in another member State or in a third-country but managed by a EU-AIFM. https://www.boe.es/buscar/act.php?id=BOE-A-2003-20331&p=20141113&tn=1#a15bis	Law	2014	Spain	Reviewed	317

No. *	Specific Rule	Principle	Literature Type	Name of the Source	Author	Year	Country	Status	No.
C.II.b.	Disclosure	Effectiveness	Regulation	Marketing of Private Equity Funds and closed-end investment schemes https://www.boe.es/buscar/act.php?id=BOE-A-2014-11714&p=20150729&tn=1#a75 https://www.boe.es/buscar/act.php?id=BOE-A-2014-11714&p=20150729&tn=1#a79	Law	2014	Spain	Reviewed	318
C.II.c.	Disclosure	Effectiveness	Statutory law	Requirement to produce an annual report (Art. 17(4)) https://www.boe.es/buscar/act.php?id=BOE-A-2003-20331&p=20141113&tn=1#a17	Law	2004	Spain	Reviewed	319
C.II.c.	Disclosure	Effectiveness	Regulation	Requirement to produce an annual report (Art. 17(4)) (Alternative Investment Schemes) https://www.boe.es/buscar/act.php?id=BOE-A-2012-9716&p=20151003&tn=1#a26	Law	2012	Spain	Reviewed	320
C.II.c.	Disclosure	Effectiveness	Regulation	Requirement to produce an annual report (Art. 69) (Private Equity Funds) https://www.boe.es/buscar/act.php?id=BOE-A-2014-11714&p=20150729&tn=1#a69	Law	2014	Spain	Reviewed	321
C.II.c.	Disclosure	Effectiveness	NCA Circular	CIRCLAR 1/2006, of 3 May, of the CNMV, on Alternative Collective Investment Schemes (Rule 14). http://www.cnmv.es/DocPortal/legislacion/circulares/1_2006_e.pdf	NCA ESP	2006	Spain	Reviewed	322
C.II.c.	Disclosure	Effectiveness	Regulation	Requirement to report to NCA (Art. 25 bis) (Alternative Investment Schemes) https://www.boe.es/buscar/act.php?id=BOE-A-2012-9716&p=20151003&tn=1#a25bis	Law	2015	Spain	Reviewed	323
C.II.c.	Disclosure	Effectiveness	CNMV Circular	Circular 3/2008, of 11 September, of CNMV, on accounting standards and non-public information to be reported to CNMV. http://www.cnmv.es/DocPortal/legislacion/circulares/3_08.pdf	NCA ESP	2008	Spain	Reviewed	324

No. *	Specific Rule	Principle	Literature Type	Name of the Source	Author	Year	Country	Status	No.
C.II.c.	Disclosure	Effectiveness	Regulation	Requirement to report to NCA (Art. 70) (Private Equity Funds) https://www.boe.es/buscar/act.php?id=BOE-A-2014-11714&p=20150729&tn=1#a70	Law	2014	Spain	Reviewed	325
C.II.d.	Disclosure	Efficiency	Industry Paper	Impact of the proposed AIFM Directive across Europe, prepared for the Financial Services Authority, UK	CRA Charles River Ass.	2009	UK	Incorporated	326
C.II.b.	Disclosure	Effectiveness EU Added Value	Statutory Law	Act No. 240/2013 Coll., Act on Management Companies and Investment Funds	Law	2013 / 2017	Czech	Incorporated	327
C.II.b.	Disclosure	Efficiency	Law	AIFMA, Art. 2 para 1 no. 43 and Art. 48	Law	2013	Austria	Reviewed	328
C.II.d. and e	Disclosure	Efficiency	Legislator impact assessment	AIFMG-MR-MAT https://www.bmf.gv.at/rechtsnews/AIFMG-MR-MAT.pdf?63xqjm	Legislator AUT	2013	Austria	Incorporated	329
C.II.c.	Disclosure	Efficiency Relevance	Statutory Law and NCA Regulations	International Collective Investment Schemes Law 47(I) of 1999 and Central Bank regulations. Regulations issued by the Central Bank of Cyprus pursuant to section 67 of the ICIS Law on "on annual and half-yearly reports" [no longer available via hyperlink as repealed]	NCA CY	1999	Cyprus	Incorporated	330
C.II.d.	Disclosure	Efficiency	Legislator reports	Reasoning report to Act No. 240/2013 Coll., Act on Management Companies and Investment Funds https://www.akatcr.cz/download/3011-zisif_eng_jsk_ing.pdf	Legislator CZ	2013	Czech	Reviewed	331
C.II.d.	Disclosure	Efficiency	AFG Answer for Evidence EU Commission	AFG Answer Call for Evidence on the EU regulatory framework for Financial Service January 2016, Pages 31-37	AFG Answer Call for Evidence EU Commission	2016	France	Incorporated	332
C.II.e.	Disclosure	Efficiency	BaFin Annual Report	BaFin Annual Report 2015	BaFin	2016	Germany	Incorporated	333
C.II.e.	Disclosure	Efficiency	Explanatory Memorandum	German Parliament, Explanatory Memorandum on the KAGB, BT-Drucksache 17/12294, Pages 194-201 (Estimates of Costs by the Legislator)	German Parliament	2013	Germany	Incorporated	288

No. *	Specific Rule	Principle	Literature Type	Name of the Source	Author	Year	Country	Status	No.	
C.II.b.	Disclosure	Efficiency	Research studies	http://www.dirittobancario.it/approfondimenti/gestione-collettiva-del-risparmio/gli-impatti-organizzativi-della-aifmd-sulle-sgr	Diritto bancario	2015	Italy	Incorporated	289	
C.II.d.	Disclosure	Efficiency	Research studies	http://www.advisoronline.it/normative-e-fisco/aifmd.action	Advisor Online	2010	Italy	Incorporated	290	
C.II.a.	Disclosure	EU Value	Added	Statutory Law	Art. 4:49, 5:1 and 5:2 Wet op het financieel toezicht 2013	Law	2013	Netherlands	Reviewed	291
C.II.a.	Disclosure	EU Value	Added	Statutory Law	Art. 66, 66a and 118 and Annex I Besluit Gedrags-toezicht financiële ondernemingen Wft	Law	2013	Netherlands	Reviewed	292
C.II.b.	Disclosure	EU Value	Added	Statutory Law	Art. 4:37l , 4:37p, 5:1 and 5: 2 Wet op het financieel toezicht 2017	Law	2017	Netherlands	Reviewed	293
C.II.b.	Disclosure	EU Value	Added	Statutory Law	§10.3.1.1. and Annex I Besluit Gedragstoezicht financiële ondernemingen Wft 2017	Law	2017	Netherlands	Reviewed	294
C.II.c.	Disclosure	EU Value	Added	Statutory Law	Art. 4:35 Wet op het financieel toezicht 2013	Law	2013	Netherlands	Reviewed	295
C.II.c.	Disclosure	EU Value	Added	Statutory Law	Art. 119 - 124 Besluit Gedragstoezicht financiële ondernemingen Wft	Law	2013	Netherlands	Reviewed	296
C.II.c.	Disclosure	EU Value	Added	Statutory Law	§ 9 Boek 2 Burgerlijk Wetboek	Law	2013	Netherlands	Reviewed	297
C.II.a.	Disclosure	N/A		Law	Law of 3 August 2012 on certain forms of collective management of investment portfolios (no hyperlink available, as the legislation has been replaced in the meantime)	Law	2012	Belgium	Reviewed	298
C.II.a.	Disclosure	N/A		Royal Decree	Royal Decree of 12 November 2012 concerning collective investment schemes (no hyperlink available, as the legislation has been replaced in the meantime)	Law	2012	Belgium	Reviewed	299

No.*	Specific Rule	Principle	Literature Type	Name of the Source	Author	Year	Country	Status	No.
C.II.b.	Disclosure	N/A	Law	Law of 19 April 2014 on alternative investment funds and their managers https://www.fsma.be/nl/file/39082/download?token=KEgVXM6S	Law	2014	Belgium	Reviewed	300
C.II.b.	Disclosure	N/A	Royal Decree	Royal Decree of 25 February 2017 on public AIF and their management companies https://www.fsma.be/nl/file/42837/download?token=dmVVtSay	Law	2017	Belgium	Reviewed	301
C.II.c.	Disclosure	N/A	Law	Law of 3 August 2012 on certain forms of collective management of investment portfolios (no hyperlink available, as the legislation has been replaced in the meantime)	Law	2012	Belgium	Reviewed	302
C.II.c.	Disclosure	N/A	Royal Decree	Royal Decree of 12 November 2012 concerning collective investment schemes (no hyperlink available, as the legislation has been replaced in the meantime)	Law	2012	Belgium	Reviewed	303
C.II.c.	Disclosure	N/A	Royal Decree	Royal Decree of 10 November 2006 on accounting, annual report and periodic reports of certain public collective investment schemes with variable number of units	Law	2006	Belgium	Reviewed	304
C.II.b.	Disclosure	N/A	Statutory Law	The Alternative Investment Funds Law 131/2014 <i>section 37</i> https://www.cysec.gov.cy/CMSPages/GetFile.aspx?guid=4c4e1fa0-4fcb-4051-9909-cfe387aaeb5 The Alternative Investment Fund Managers Law 56(I)2013 <i>section 67(1) & 67 (2)</i> https://www.cysec.gov.cy/CMSPages/GetFile.aspx?guid=35243749-5541-4685-8b69-5fe754ae208f	Law	2014	Cyprus	Reviewed	305

No. *	Specific Rule	Principle	Literature Type	Name of the Source	Author	Year	Country	Status	No.	
C.II.b.	Disclosure	N/A	Directive	Directive DI131/56/02 of the Securities and Exchange Commission regarding the procedure and conditions for the marketing of units of AIFs and AIFLNs in the Republic, the organisation of the marketing network, the obligations of the persons that participate in the marketing network, as well as the conditions for the marketing of units of AIFs established in the Republic, in another member state or in a third country. §17-18 and Annex 1 https://www.cysec.gov.cy/CMSPages/GetFile.aspx?guid=931552a5-9eb4-4d29-8a89-a28d5056d874	Law	N/A	Cyprus	Reviewed	306	
C.II.b.	Disclosure	N/A	Law	Directives on Alternate Investment Fund Managers" https://www.retsinformation.dk/forms/R0710.aspx?id=151849	Law	2013	Denmark	Reviewed	307	
C.II.b.	Disclosure	N/A	Financial Consumer Protection Report	https://www.mnb.hu/letoltes/finansial-consumer-protection-report-2016.pdf 4.3.1.2., Annex 3	Report HU	NCA	2016	Hungary	Reviewed	308
C.II.a.	Disclosure	N/A	Law	Law of 17 December 2010 relating to undertakings for collective investment (hereinafter the "Law of 2010") – Article 150 to 156	Law	2010	Luxembourg	Reviewed	309	
C.II.a.	Disclosure	N/A	Law	Law of 13 February 2007 relating to Specialised Investment Funds – Article 52 to 57	Law	2007	Luxembourg	Reviewed	310	
C.II.a.	Disclosure	N/A	Law	Law of 15 June 2004 relating to the investment company in risk capital – Article 23 to 29	Law	2004	Luxembourg	Reviewed	311	
C.II.b.	Disclosure	N/A	Law	Law of 17 December 2010 relating to undertakings for collective investment (hereinafter the "Law of 2010") – Part II	Law	2010	Luxembourg	Reviewed	312	

No. *	Specific Rule	Principle	Literature Type	Name of the Source	Author	Year	Country	Status	No.
C.II.c.	Disclosure	N/A	Law	Law of 17 December 2010 relating to undertakings for collective investment (hereinafter the "Law of 2010") – Annual reports: Part V, Chapter 21, A	Law	2010	Luxembourg	Reviewed	313
C.II.c.	Disclosure	N/A	Law	Law of 13 February 2007 relating to Specialised Investment Funds – Annual report: Article 52, 55, 56 and 57; transmission of information to the CSSF on request: Article 58	Law	2007	Luxembourg	Reviewed	314
C.II.c.	Disclosure	N/A	Circular	Circular CSSF 07/310 as amended by Circular CSSF 08/348 – Financial information to be provided by specialised investment funds ("SIFs")	NCA Lux	2007, then 2008	Luxembourg	Incorporated	315
C.II.c.	Disclosure	N/A	Law	Law of 15 June 2004 relating to the investment company in risk capital – Annual reports: Article 23, 24, 27, 29; transmission of information to the CSSF on request: Article 32	Law	2004	Luxembourg	Reviewed	316
C.II.c.	Disclosure	N/A	Circular	Circular CSSF 08/376 – Financial information to be submitted by investment companies in risk capital (SICARs)	NCA Lux	2008	Luxembourg	Incorporated	317
C.II.c.	Disclosure	N/A	Circular	Circular IML 97/136 as amended by Circular CSSF 08/348 – Financial information for the IML and STATEC (for 2010 Law Part II funds)	IML	1997	Luxembourg	Incorporated	318
C.II.b.	Disclosure	N/A	Statutory Rules	Investment Services Rules For Alternative Investment Funds, SLC 4.32 to SLC 4.58	NCA ML	2017	Malta	Incorporated	319
C.II.c.	Disclosure	N/A	Statutory Rules	Investment Services Rules For Professional Investor Funds, Section 1	NCA ML	2017	Malta	Incorporated	320

No.*	Specific Rule	Principle	Literature Type	Name of the Source	Author	Year	Country	Status	No.
C.II.a.	Disclosure	Relevance	Statutory Law and NCA Regulations	International Collective Investment Schemes Law 47(I) of 1999 and Central Bank regulations. Regulations issued by the Central Bank of Cyprus pursuant to section 67 of the ICIS Law: "on the basic information that must be contained in the Offering Memorandum of an ICIS" [no longer available via hyperlink as repealed]	NCA CY	1999	Cyprus	Incorporated	321
C.II.	Disclosure	N/A	Reporting Survey	EDHEC Hedge Fund Reporting Survey 2008 (http://www.eurekahedge.com/Research/News/598/Hedge_Fund_Reporting_Survey_November_2008).	EDHEC	2008	France	Incorporated	322
C.II.	Disclosure	N/A	Reporting Survey	PricewaterhouseCoopers – March 2008, Transparency versus returns: The institutional investor view of alternative assets (https://www.ipe.com/alternatives-transparency-and-risk-more-important-pwc/www.ipe.com/alternatives-transparency-and-risk-more-important-pwc/27401.fullarticle)	PwC	2008	England	Incorporated	323
C.II.	Disclosure	N/A	Consultation IOSCO	Hedge Funds Oversight - Final Report March 2009	IOSCO	2009	Europe	Incorporated	324
C.II.	Disclosure	N/A	Northern Trust	The Path to Transparency in Alternatives Investing	Northern Trust	2017	Europe	Incorporated	325
C.II.	Disclosure	N/A	Reporting Survey	ESMA Final Report, Peer review on the Guidelines on ETFs and other UCITS issues 30 July 2018	ESMA	2018	Europe	Incorporated	326
C.II.	Disclosure	N/A	Consultation Paper	ESMA's draft technical advice to the European Commission on possible implementing measures of the Alternative Investment Fund Managers Directive	ESMA	2011	Europe	Incorporated	327
C.III.	Asset Segregation	Effectiveness	Supervisory Law	Real Estate Investment Funds Act (REIFA)	Law	2003	Austria	Reviewed	328

No. *	Specific Rule	Principle	Literature Type	Name of the Source	Author	Year	Country	Status	No.
C.III.	Asset Segregation	Effectiveness	Supervisory Law	Investment Fund Act 2011 (InvFA)	Law	2011	Austria	Reviewed	329
C.III.	Asset Segregation	Effectiveness	Statutory Law	Act No. 189/2004 Coll. Collective Investment Act	Law	2004 / 2013	Czech	Reviewed	330
C.III.	Asset Segregation	Effectiveness Coherence Relevance	ESMA Study	Call for Evidence – Asset Segregation and custody services – ESMA/2016/1137	ESMA	2016	Europe	Incorporated	331
C.III.	Asset Segregation	Effectiveness Coherence Relevance	ESMA CP	Consultation Paper – Guidelines on asset segregation under the AIFMD – ESMA/2014/1326	ESMA	2014	Europe	Incorporated	332
C.III.	Asset Segregation	Effectiveness Coherence Relevance	Responses	Responses to Call for Evidence ESMA/2016/1137, as available under the following domain: https://www.esma.europa.eu/press-news/consultations/call-evidence-asset-segregation	ESMA	2016	Europe	Incorporated	333
C.III.	Asset Segregation	Effectiveness Coherence Relevance	Response Call for Evidence	EFAMA Response to the ESMA’s Call for Evidence on asset segregation and custody services (ESMA/2016/1137)	EFAMA	2016	Europe	Incorporated	334
C.III.	Asset Segregation	Effectiveness Coherence Relevance	ESMA Opinion	Opinion on Asset segregation and application of depositary delegation rules to CSDs, ESMA34-45-277	ESMA	2017	Europe	Incorporated	335
C.III.	Asset Segregation	Effectiveness Relevance	Industry Paper	Briefing Note, Asset Segregation and use of CSDs under AIFMD and UCITS V	Clifford Chance	2016	Europe	Incorporated	336
C.III.	Asset Segregation	Effectiveness	Professional Association	AFG – Asset Management Handbook (Cahiers de la gestion)	Professional Association	2011	France	Legal Text	337
C.III.	Asset Segregation	Effectiveness	Statutory Law	COMOFI - Article L.214-24 of the Monetary and Financial Code	Statutory Law	In effect in 2011	France	Incorporated	338
C.III.	Asset Segregation	Effectiveness	Statutory Law	Depositary obligations (asset segregation requirements defined in Art. 60, letter i)) https://www.boe.es/buscar/doc.php?id=BOE-A-2003-20331	Law	2004	Spain	Reviewed	339

No. *	Specific Rule	Principle	Literature Type	Name of the Source	Author	Year	Country	Status	No.
C.III.	Asset Segregation	Effectiveness	Regulation	Depository requirements on asset segregation <u>prior to adoption of AIFMD</u> (Article 92) https://www.boe.es/buscar/act.php?id=BOE-A-2005-18356&p=20051108&tn=1#a92	Law	2005	Spain	Reviewed	340
C.III.	Asset Segregation	Effectiveness	Regulation	Additional requirements for depositaries on asset segregation <u>prior to adoption of AIFMD</u> (Article 5) https://www.boe.es/buscar/act.php?id=BOE-A-2008-4399&p=20080307&tn=1#a5 Specialties of the custody function on Alternative Investment Schemes (Hedge Funds and Funds of Hedge Funds) <u>prior to the adoption of AIFMD</u> (Art. 7) https://www.boe.es/buscar/act.php?id=BOE-A-2008-4399&p=20080307&tn=1#a7	Law	2008	Spain	Reviewed	341
C.III.	Asset Segregation	Effectiveness	Statutory Law	Depository obligations <u>after the adoption of AIFMD</u> (asset segregation requirements defined in Art. 60, letter g)). https://www.boe.es/buscar/act.php?id=BOE-A-2003-20331&p=20031105&tn=1#a60	Law	2014	Spain	Reviewed	342
C.III.	Asset Segregation	Effectiveness	Regulation	Depository requirements on asset segregation <u>after the adoption of AIFMD</u> . https://www.boe.es/buscar/act.php?id=BOE-A-2012-9716&p=20151003&tn=1#a129	Law	2015	Spain	Reviewed	343

No. *	Specific Rule	Principle	Literature Type	Name of the Source	Author	Year	Country	Status	No.
C.III.	Asset Segregation	Effectiveness	Regulation	Additional requirements for depositaries on asset segregation <u>after the adoption of AIFMD</u> (see Rue 3). https://www.boe.es/buscar/act.php?id=BOE-A-2016-6646&p=20160712&tn=1#nt Specialties of the custody function on Alternative Investment Schemes (Hedge Funds and Funds of Hedge Funds) <u>after the adoption of AIFMD</u> (Rule 8). https://www.boe.es/buscar/act.php?id=BOE-A-2016-6646&p=20160712&tn=1#no Specialties of the custody function on Private Equity Funds <u>after the adoption of AIFMD</u> (Rule 9). https://www.boe.es/buscar/act.php?id=BOE-A-2016-6646&p=20160712&tn=1#nn	Law	2016	Spain	Reviewed	344
C.III.	Asset Segregation	EU Value Added	Research studies	http://www.diritto24.ilsole24ore.com/avvocatoAffari/mercatoImpresa/2012/02/misure-attuative-della-direttiva-sui-gestori-dei-fondi-di-investimento-alternativi-aifmd.php	Diritto 24	2012	Italy	Legal Text	345
C.III.	Asset Segregation	N/A	NCA Q&A	Some issues of establishing and investing special property funds under the Collective Investment Act	NCA CZ	2003	Czech	Legal Text	346
C.III.	Asset Segregation	N/A	NCA Guidelines	The procedure of the investment company for the payment of units to unit-holders pursuant to Section 35d, paragraph 3 the Investment Companies and Investment Funds Act	NCA CZ	2002	Czech	Legal Text	347
C.III.	Asset Segregation	N/A	Statutory Regulations	Investment Services Act (Control Of Assets) Regulations, Regulations prior to AIFMD	Law	1998	Malta	Reviewed	348

No. *	Specific Rule	Principle	Literature Type	Name of the Source	Author	Year	Country	Status	No.
D.I.	Non Listed Companies	Coherence	Central Bank non-UCITS Notices	https://www.centralbank.ie/docs/default-source/Regulation/industry-market-sectors/Funds/Non-UCITS/nu-series-of-notices.pdf?sfvrsn=2	Central bank of Ireland	2013	Ireland	Incorporated	349
D.I.	Non Listed Companies	Effectiveness	Statutory Law	Act No. 189/2004 Coll. Collective Investment Act	Law	2004 / 2013	Czech	Reviewed	350
D.II.	Non Listed Companies	Effectiveness	Industry Paper	Global Hedge Fund Managers Respond to the AIFMD; including Datapack	Prequin	2014	Europe	Incorporated	351
D.II.	Non Listed Companies	Effectiveness	Industry Paper	Prequin Special Report: AIFMD in the Hedge Fund Industry, 2015 Update; including Datapack	Prequin	2015	Europe	Incorporated	352
D.II.	Non Listed Companies	Effectiveness	Industry Paper	2016 Prequin Global Hedge Fund Report – Sample Pages	Prequin	2016	Europe	Incorporated	353
D.II.	Non Listed Companies	Effectiveness	Industry Paper	2017 Prequin Global Hedge Fund Report – Sample Pages	Prequin	2017	Europe	Incorporated	354
D.I.	Non Listed Companies	Effectiveness	Statutory Law	Article L 241-30 and art. R 214-47 et subsq. Monetary and financial code	Statutory Law		France	Reviewed	355
D.I.	Non Listed Companies	Effectiveness	Statutory Law	Art: 422-120-1 et subsq. AMF General Regulation	Statutory Law		France	Reviewed	356
D.II.	Non Listed Companies	Effectiveness	Professional association	Overview of French private equity market- AFIC – 2016 – Page 3	Professional association	2017	France	Incorporated	357
D.II.	Non Listed Companies	Effectiveness	Professional association	Overview of French private equity market- AFIC – 2015 – Page 4	Professional association	2016	France	Incorporated	358
D.II.	Non Listed Companies	Effectiveness	Professional association	Overview of French private equity market- AFIC – 2014 – Page 4	Professional association	2015	France	Incorporated	359
D.II.	Non Listed Companies	Effectiveness	Professional association	Overview of French private equity market – AFIC – 2013 – Page 20-21	Professional association	2014	France	Incorporated	360
D.II.	Non Listed Companies	Effectiveness	Professional association	Growth and job creation in companies supported by Private Equity Fr players – AFIC / EY	Professional association	2016	France	Incorporated	361

No. *	Specific Rule	Principle	Literature Type	Name of the Source	Author	Year	Country	Status	No.
D.I.	Non Listed Companies	Effectiveness	Scientific Literature	Private-Equity-Fonds – Strukturierung und Vertrieb unter dem KAGB, RdF 2014, Page 180	Dr. Thomas, A. Jesch	2014	Germany	Incorporated	362
D.I.	Non Listed Companies	Effectiveness	Statutory Law	Law 25/2005, of November 24, regulating the venture capital entities and their management companies. Art. 2 Para 1, Art. 18 Para 2, Art. 19	Law	2005	Spain	Reviewed	363
D.II.	Non Listed Companies	Effectiveness	Survey	2016 Venture Capital & Private Equity in Spain (Spanish) http://www.ascricri.org/wp-content/uploads/2016/06/ASCRICRI-Informe-Venture-Capital-Private-Equity-2016.pdf	ASCRI	2016	Spain	Legal Text	364
D.II.	Non Listed Companies	Effectiveness	Survey	2017 Venture Capital & Private Equity in Spain (Spanish) http://www.ascricri.org/wp-content/uploads/2016/06/Informe-ASCRICRI-2017.pdf	ASCRI	2017	Spain	Legal Text	365
D.II.	Non Listed Companies	Efficiency	Research	AVCO Presseausendung zu den PEVC Kennzahlen 2016 (Austrian Private Equity and Venture Capital Organisation)	AVCO	2017	Austria	Incorporated	366
D.II.	Non Listed Companies	EU Value Added	Statements of association	http://www.aifi.it/studi-ricerche/dati-mercato/	AIFI	2017	Italy	Incorporated	367
D.I.	Non Listed Companies	EU Value Added	Governmental explanatory memorandum	Kamerstukken II, 2011/2012, 33 235, nr.3, (<i>Memorie van Toelichting</i>), p. 106	NA	2012	Netherlands	Incorporated	368
D.I.	Non Listed Companies	N/A	Royal Decree	Royal Decree of 18 April 1997 concerning undertakings for investment in non-listed companies and in growth companies	Law	1997	Belgium	Reviewed	369
D.II.	Non Listed Companies	N/A	Research NCA	research of the NCA: Elemzés a hazai kockázati tőkealap-kezelők és alapok működéséről http://alk.mnb.hu/data/cms2428377/Elemzes_a_kovkazati_tokealapkezeloi_szektorrol_0202.pdf No. 3.2	NCA HU	2014	Hungary	Incorporated	370

No. *	Specific Rule	Principle	Literature Type	Name of the Source	Author	Year	Country	Status	No.
D.I.	Non Listed Companies	N/A	Law	Law of 13 February 2007 relating to Specialised Investment Funds	Law	2007	Luxembourg	Reviewed	371
D.I.	Non Listed Companies	N/A	Law	Law of 15 June 2004 relating to the investment company in risk capital	Law	2004	Luxembourg	Reviewed	372
D.I.	Non Listed Companies	N/A	Statutory Rules	Investment Services Rules For Professional Investor Funds, Section 1	Law	2017	Malta	Reviewed	373
D.I.	Non Listed Companies	N/A	Statutory Law	Investment Services Act, Article 3 Para. 1	Law	1994	Malta	Reviewed	374
E.I.	Single Market	Coherence Relevance EU Added Value	ESMA-Opinion	Opinion to the EP, Council and Commission and responses to the Call for Evidence on the functioning of the AIFMD EU passport and of the National Private Placement Regimes – ESMA/2015/1235	ESMA	2015	Europe	Incorporated	375
E.I.	Single Market	Coherence Relevance EU Added Value	ESMA Advice	ESMA's Advice to the EC, the Council and the Commission on the application of the AIFMD passport to non-EU AIFMs and AIFs – ESMA 2015/1236	ESMA	2015	Europe	Incorporated	376
E.I.	Single Market	Coherence Relevance EU Added Value	ESMA Advice	ESMA's advice to the EP, the Council and the Commission on the application of the AIFMD passport to non-EU AIFMs and AIFs – ESMA 2016/1140	ESMA	2016	Europe	Incorporated	377
E.I.	Single Market	Coherence Relevance EU Added Value	ESMA Study	Notification frameworks and home-host responsibilities under UCITS and AIFMD – ESMA34-43-340	ESMA	2017	Europe	Incorporated	378
E.II.	Single Market	Coherence Relevance EU Added Value	Response Consultation	EFAMA Response to the Commission Consultation Document On CMU action on cross-border distribution of Funds (UCITS, AIF, ELTIF, EUVECA and EUSEF)	EFAMA	2016	Europe	Incorporated	379
E.I.	Single Market	Coherence	Central Bank AIFM register	http://registers.centralbank.ie/DownloadsPage.aspx	Central Bank of Ireland	2017	Ireland	Incorporated	380

No. *	Specific Rule	Principle	Literature Type	Name of the Source	Author	Year	Country	Status	No.
E.I.	Single Market	Effectiveness	NCA	Reports/Statistics on: https://www.fma.gv.at/en/investment-funds-and-investment-fund-managers/aifs-and-aif-managers/search-for-foreign-aif/	NCA AUT	2017	Austria	Incorporated	381
E.I.	Single Market	Effectiveness	Industry Paper	KPMG Report "Alternative Investment Fund Managers"	KPMG Cyprus	2014	Cyprus	Incorporated	382
E.I.	Single Market	Effectiveness	ESMA Study	Call for Evidence – AIFMD passport and third country AIFMs – ESMA/2014/1340	ESMA	2017	Europe	Incorporated	383
E.I.	Single Market	Effectiveness	EFAMA Report	Asset Management in Europe - An overview of the Asset Management Industry with a Special Section on the Capital Markets Union	EFAMA	2017	Europe	Incorporated	384
E.I.	Single Market	Effectiveness	AMF Annual Report	AMF – Annual report – 2016 - P45	AMF Annual Report	2016	France	Incorporated	385
E.I.	Single Market	Effectiveness	Professional Association Guidance	AFG – Overview of French market about the third-party management – March 2017 – P4	AMF Annual Report	2017	France	Incorporated	386
E.I.	Single Market	Effectiveness	BaFin Guidance	Guidance Notice on the marketing of units or shares of EU AIFs or domestic AIFs managed by an AIF management company to professional investors in other member states of the European Union or in signatories to the Agreement on the European Economic Area pursuant to section 331 of the Investment Code (Kapitalanlagegesetzbuch – KAGB)	BaFin	2013	Germany	Incorporated	387
E.I.	Single Market	Effectiveness	BaFin Guidance	Guidance Notice for marketing units or shares of EU AIFs or domestic special AIFs (Spezial-AIF) managed by an EU AIF management company to semi-professional and professional investors in the Federal Republic of Germany pursuant to section 323 of the Investment Code (Kapitalanlagegesetzbuch – KAGB)	BaFin	2013/ 2017	Germany	Incorporated	388

No. *	Specific Rule	Principle	Literature Type	Name of the Source	Author	Year	Country	Status	No.
E.I.	Single Market	Effectiveness	BaFin Guidance	Guidance Notice on the marketing of units or shares in a foreign AIF or EU AIF managed by a foreign AIF management company to professional or semi-professional investors in the Federal Republic of Germany pursuant to section 330 of the Investment Code (Kapitalanlagegesetzbuch - KAGB) Preliminary remark	BaFin	2014	Germany	Incorporated	389
E.I.	Single Market	Effectiveness	BaFin-Annual Report	BaFin-Annual Reports 2012 - 2016 (see above)	BaFin	2017	Germany	Incorporated	390
E.I.	Single Market	Effectiveness	Legal Commentary	Sec. 329 KAGB in: KAGB in: Frankfurter Kommentar KAGB	Moritz, Klebeck, Jesch	2016	Germany	Incorporated	391
E.III.	Single Market	Effectiveness	Central Bank website for AIFMs	https://www.centralbank.ie/regulation/industry-market-sectors/funds-service-providers/aifm/passporting	Central Bank of Ireland	2017	Ireland	Reviewed	392
E.I.	Single Market	Effectiveness	Industry Paper	KPMG Report "AIFMD - How to Access Europe"	KPMG Lux.	2015	Luxembourg	Incorporated	393
E.I.	Single Market	Effectiveness	Public register	Full list of managers of the EEA in free provision of services in Spain http://www.cnmv.es/Portal/Consultas/ListadoEntidad.aspx?id=2&tipo=3	NCA ESP	2014	Spain	Incorporated	394
E.I.	Single Market	Effectiveness	Public register	Full list of managers of the EEA with a branch in Spain http://www.cnmv.es/Portal/Consultas/ListadoEntidad.aspx?id=2&tipo=1	NCA ESP	2014	Spain	Incorporated	395
E.I.	Single Market	Efficiency EU Added Value	Quantitative data source	Regulated institutions and registered financial market entities lists	NCA CZ	2009 / 2017	Czech	Incorporated	396
E.II.	Single Market	Efficiency Coherence	Statutory Law	Act No. 586/1992 Coll. Income Tax Act	Law	2013 / 2017	Czech	Reviewed	397
E.II.	Single Market	Efficiency	Regulator Guide	Guide on Marketing Regimes for UCITS and AIFs applicable as of 17 March 2017	Regulator Guide	2017	France	Incorporated	398

No. *	Specific Rule	Principle	Literature Type	Name of the Source	Author	Year	Country	Status	No.
E.II.	Single Market	Efficiency	AFG Answer to EU Commission Public Consultation on cross-border Distribution of Investment Funds	AFG's Response to the European Commission's Questionnaire on cross-border Distribution of Investment Fund - CONFIDENTIAL DOC with figures	AFG answer to EU Commission Public Consultation on cross-border Distribution of Investment Funds	2017	France	Incorporated	399
E.II.	Single Market	Efficiency	AFG Answer for Evidence EU Commission	AFG Answer Call for Evidence on the EU regulatory framework for Financial Service January 2016, Pages 42-43	AFG Answer Call for Evidence EU Commission	2016	France	Incorporated	400
E.II.	Single Market	EU Value Added	Statutory Law	The Alternative Investment Fund Managers Law 56(I)2013 <i>section 42(1), (2) & (3)</i> https://www.cysec.gov.cy/CMSPages/GetFile.aspx?guid=35243749-5541-4685-8b69-5fe754ae208f	Law	2013	Cyprus	Incorporated	401
E.III.	Single Market	EU Value Added	Statutory Law	The Alternative Investment Fund Managers Law 56(I)2013 <i>section 40</i> https://www.cysec.gov.cy/CMSPages/GetFile.aspx?guid=35243749-5541-4685-8b69-5fe754ae208f	Law	2013	Cyprus	Incorporated	402
E.I.	Single Market	EU Value Added	Register from the NCA	AFM, overzicht aangewezen staten, 22 augustus 2017	NCA NL	2017	Netherlands	Incorporated	403
E.I.	Single Market	EU Value Added	Statutory Law	Art. 2:66 Wet op het financieel toezicht 2013	Law	2013	Netherlands	Reviewed	404
E.I.	Single Market	EU Value Added	Statutory Law	Art. 34 Besluit markttoegang financiële ondernemingen Wft	Law	2013	Netherlands	Reviewed	405

No. *	Specific Rule	Principle	Literature Type	Name of the Source	Author	Year	Country	Status	No.
E.I.	Single Market	EU Value Added	Statutory Law	Art. 2 Besluit aangewezen staten Wft	Law	2013	Netherlands	Reviewed	406
E.III.	Single Market	EU Value Added	Statutory Law	Art. 2:66 and 2:70 Wet op het financieel toezicht 2017	Law	2017	Netherlands	Reviewed	407
E.I.	Single Market	N/A	Law	Law of 3 August 2012 on certain forms of collective management of investment portfolios (no hyperlink available, as the legislation has been replaced in the meantime): Art. 35 § 1 and Art. 42 § 1, 5 b), c)	Law	2012	Belgium	Reviewed	408
E.III.	Single Market	N/A	Law	Article 334 of the Law of 19 April 2014 on alternative investment funds and their managers	Law	2014	Belgium	Reviewed	409
E.III.	Single Market	N/A	NCA Directive	Directive DI131/56/02 of the Securities and Exchange Commission regarding the procedure and conditions for the marketing of units of AIFs and AIFLNs in the Republic, the organisation of the marketing network, the obligations of the persons that participate in the marketing network, as well as the conditions for the marketing of units of AIFs established in the Republic, in another member state or in a third country- Section 16 https://www.cysec.gov.cy/CMSPages/GetFile.aspx?guid=931552a5-9eb4-4d29-8a89-a28d5056d874	NCA CY	2015	Cyprus	Reviewed	410
E.I.	Single Market	N/A	NCA Annual Report	https://www.cssf.lu/fileadmin/files/Publications/Rapports_annuels/Rapport_2016/RA_2016_eng.pdf	NCA Lux	2016	Luxembourg	Incorporated	411
E.I.	Single Market	N/A	Statutory publication	Financial Services Register,	NCA ML	2017	Malta	Incorporated	412
E.I.	Single Market	N/A	Statutory Rules	Investment Services Rules For Professional Investor Funds, Section 1	NCA ML	2017	Malta	Incorporated	413
E.III.	Single Market	N/A	Statutory Publication	Investment Services Act (Fees), Regulations; Schedule Reg. 3, 4 and 5	Law	2014	Malta	Reviewed	414

No. *	Specific Rule	Principle	Literature Type	Name of the Source	Author	Year	Country	Status	No.
E.II.	Single Market	Relevance EU Added Value	EC Consultation	Commission Consultation Document On CMU action on cross-border distribution of Funds	EC	2016	Europe	Incorporated	415
E.I.	Single Market	Relevance	Central Bank website on Non-UCITS	https://www.centralbank.ie/regulation/industry-market-sectors/funds/non-ucits/passporting	Central Bank of Ireland	2017	Ireland	Reviewed	416
E.III.	Single Market	Relevance	Research studies	http://www.dirittobancario.it/approfondimenti/gestione-collettiva-del-risparmio/passaporto-europeo-e-normativa-fiscale-dlgs-442014-recepimento-direttiva-aifm	Diritto Bancario	2014	Italy	Incorporated	417
General sources referring to AIFMD									
	All		EC Commission Staff Working Doc	- Commission Staff Working Document accompanying the Proposal for the AIFMD, 30.04.2009, SEC(2009) 576	EC	2009		Incorporated	418
	All		Master Thesis	AIFMD Impact on European Hedge Fund Industry, Aalto University School of Business	Aato Kokkila, Univ. Aalto	2016		Incorporated	419
	All		EC Commission Staff Working Doc	- Commission Staff Working Document accompanying the COMMISSION DELEGATED REGULATION SWD(2012) 386 final	EC	2012		Incorporated	420
Key documents European Commission									
				http://ec.europa.eu/finance/consultations/2016/cross-borders-investment-funds/docs/consultation-document_en.pdf				Incorporated	421
				https://www.esma.europa.eu/sites/default/files/library/2015/11/2015-1235_opinion_to_ep-council-com_on_aifmd_passport_for_publication.pdf				Incorporated	422
				https://ec.europa.eu/info/law/law-making-process/planning-and-proposing-law/better-regulation-why-and-how/better-regulation-guidelines-and-toolbox_en				Incorporated	423

No. *	Specific Rule	Principle	Literature Type	Name of the Source	Author	Year	Country	Status	No.
				https://www.esma.europa.eu/sites/default/files/library/2015/11/2015-1235_opinion_to_ep-council-com_on_aifmd_passport_for_publication.pdf				Incorporated	424
				Directive 2011/61/EU of the European Parliament and of the Council				Incorporated	425
				Directive 2011/61/EU of the European Parliament and of the Council with regard to exemptions, general operating conditions, depositaries, leverage, transparency and supervision				Incorporated	426
				European Commission, Commission Staff Working Document Accompanying the Proposal for a Directive of the European Parliament and of the Council on Alternative Investment Fund Managers and amending Directives 2004/39/EC and 2009/.../EC				Incorporated	427
				European Commission, Impact Assessment. Commission Staff Working Document Accompanying the document "Commission Delegated Regulation" supplementing Directive 2011/61/EU of the European Parliament and of the Council with regards to exemptions, general operating conditions, depositaries, leverage, transparency and supervision				Incorporated	428
				European Parliament - Committee on Economic and Monetary Affairs (2013) , Questionnaire for the public consultation on enhancing the coherence of EU financial services legislation				Incorporated	429

No. *	Specific Rule	Principle	Literature Type	Name of the Source	Author	Year	Country	Status	No.
				European Private Equity & Venture Capital Association - EVCA (2014), AIFMD Implementation - Fees and Charges. Private correspondence?				Incorporated	430
				European Private Equity & Venture Capital Association - EVCA (2014), Paying agent. Private correspondence?				Incorporated	431
				European Security Market Authority - ESMA (2017), Notification frameworks and home-host responsibilities under UCITS and AIFMD: ESMA Thematic Study among National Competent Authorities				Incorporated	432
				European Security Market Authority - ESMA (2017), Questions and Answers: Application of the AIFMD				Incorporated	433
				European Security Market Authority - ESMA (2016), Advice: ESMA's advice to the European Parliament, the Council and the Commission on the application of the AIFMD passports to non-EU AIFMs and AIFs				Incorporated	434
				European Security Market Authority - ESMA (2015), Opinion: ESMA's opinion to the European Parliament, Council and Commission and responses to the call for evidence on the functioning of the AIFMD EU passport and of the National Private Placement Regimes				Incorporated	435
				European Security Market Authority - ESMA (2016), Call for evidence: Asset segregation and custody services				Incorporated	436
				European Security Market Authority - ESMA (2014), Call for evidence: AIFMD passport and third country AIFMs				Incorporated	437

No. *	Specific Rule	Principle	Literature Type	Name of the Source	Author	Year	Country	Status	No.
				European Security Market Authority - ESMA (2014), Consultation Paper: Guidelines on asset segregation under the AIFMD				Incorporated	438
				"McGuire, Patrick, and Kostas Tsatsaronis. Estimating hedge fund leverage. No. 260. Bank for International Settlements, 2008 "				Incorporated	439
				"Bernhardt, T. (2013). The European Alternative Investment Fund Managers Directive (AIFMD): An Appropriate Approach to the Global Financial Crisis?. BoD-Books on Demand "				Incorporated	440
				Zepeda, R. (2014). To EU, or not to EU: that is the AIFMD question				Incorporated	441
				Sagan, G. (2014). Alternative Investment Fund Managers Directive Impact on Non-EU Managers. Rev. Banking & Fin. L., 34, 506				Incorporated	442
				Clifford Chance (2016), Asset segregation and use of CSDs under AIFMD and UCITS V -ESMA's call for evidence				Incorporated	443
				Deloitte (2013), Alternative Investment Fund Managers Directive (AIFMD): meeting the challenge.				Incorporated	444
				Amenc, N. & Sender, S. (2011), Response to ESMA Consultation Paper to Implementing Measures for the AIFMD. EDHEC-Risk Institute				Incorporated	445
				CESifo DICE (2015), AIFMD* transposition, state of play across countries				Incorporated	446
				Elvinger Hoss (2016), The Alternative Investment Fund Manager Directive: key features & focus on third countries				Incorporated	447

No. *	Specific Rule	Principle	Literature Type	Name of the Source	Author	Year	Country	Status	No.
				Deloitte (2014), Risk management within AIFMD for private equity and real estate funds				Incorporated	448
				EY (2013), AIFMD: the road to implementation				Incorporated	449
				PwC (2013), Risk management, AIFMD Newsbrief: A closer look at the Impact of AIFMD on Risk and Liquidity Management				Incorporated	450
				KPMG (2015), A guide to the Implications of the Alternative Investment Fund Managers directive (AIFMD) for annual reports of Alternative Investment Fund (AIFs)				Incorporated	451
				KPMG (2014), Navigating through AIFMD: a guide for private equity and venture capital funds in Ireland				Incorporated	452

(EV-01-18-484-EN-N)