

# The European Commission's Report on the Review of the AIFMD

17 June 2020

On 10 June 2020, the European Commission [published](#) a short report (the "Report") on the application and scope of the Alternative Investment Fund Managers Directive (the "AIFMD"). This is a further step towards the Commission's proposal to amend the AIFMD, which is expected in September and follows [publication in 2019](#) of the Commission's detailed survey of the operation and impact of the AIFMD carried out by KPMG.

The Report does not include any concrete proposals. Instead, it refers both to the 2019 survey and to a range of other initiatives (such as work by the Financial Stability Board) that may inform the Commission's approach to recommending amendments to the AIFMD later this year. It gives us some clues as to the provisions and changes that are under active consideration by the Commission.

Key areas covered by the Report are:

**Marketing.** The Report makes reference to the way in which national private placement regimes ("NPPRs") differ among Member States and create an "unlevel playing field" between EU and non-EU alternative investment fund managers ("AIFMs"). At the same time, the Commission takes note of the fact that stakeholders regard them as "an important factor in market development". It is not clear what action the Commission will propose to address this issue, if any, although it is possible that they could either take steps to harmonise (and potentially increase) the requirements for NPPR use or activate the third-country passport and phase out NPPRs altogether.

The Report also suggests that changes may be needed to allow for marketing (on the basis of the marketing "passport") to "semi-professional" investors (generally taken to mean individual and corporate investors who do not meet the professional investor criteria but are sufficiently sophisticated and of sufficient means to invest in alternative investment funds). It also raised the possibility of harmonising requirements for marketing to retail investors (noting the promotion of funds to retail investors via "an expanding market share of online platforms").

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EU “sub-threshold” private equity managers, who do not have the benefit of a pan-EU passport, have raised the difficulties faced in marketing in other Member States and the Report helpfully notes their “significant barriers to market access”, suggesting that changes could be made to the AIFMD to accommodate them. Sub-threshold AIFMs are subject to a light registration regime, where their assets under management do not exceed a threshold of €500 million (where the funds are unleveraged and investors cannot redeem their interest in the first five years after investing).

**Systemic Risk.** The Report comments favourably on recent work by the European Systemic Risk Board on further measures to address systemic risk by funds managed by AIFMs, which is focussed on the information supplied to competent authorities, the imposition of leverage limits on AIFMs and suspension of redemptions in the public interest. It seems likely that the Commission will propose amendments or guidance in this area. The Report also notes the differences between Member States’ “forms and processes” in reporting information to competent authorities on funds’ exposures and the possibility of harmonisation work in this area, while being mindful of the “sunk costs” that AIFMs have already incurred.

No fundamental changes are proposed to the “gross” and “commitment” methods of calculating leverage, although it is likely that the Commission will take into account IOSCO’s work in this area.

The Report also refers to prior proposals to set common standards for “loan originating” funds, although it is unknown whether this will result in any policy proposals.

**Private Equity.** The Report helpfully notes that AIFMD rules on reporting, depositary, risk management and remuneration do not “explicitly take into account the specificities of managing private equity investments.” The Report also notes that the transparency requirements and anti-asset stripping rules that apply to funds that acquire control of EU private companies “are not overly burdensome” but remains neutral on their effectiveness “due to the lack of available data”. At the same time, the Report notes that “AIFMD could be amended to better accommodate the private equity sector by removing unnecessary charges and looking for more effective ways to protect non-listed companies or issuers”. These comments may result in proposals to amend the AIFMD as it affects private equity managers specifically (in particular, the anti-asset stripping rules).

**Other Issues.** Other comments made by the Commission which may translate into concrete policy proposals include the introduction of a depositary “passport” (to allow depositaries in one Member State to provide services to funds established in another Member State, which is not currently permitted) and changes to valuation rules (such as accommodating the use of both internal and external valuers). The Report notes the

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effectiveness of the AIFMD remuneration guidelines and refers to possible further alignment of the AIFMD remuneration rules with those that apply under CRD V.

**Next Steps.** It is expected that that the Commission will publish a proposal to amend the AIFMD in September 2020 and initiate a consultation prior to the adoption of legislative acts. We will keep you updated.

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Please do not hesitate to contact us with any questions.

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