

MFSA

MALTA FINANCIAL SERVICES AUTHORITY

Circular addressed to the financial services industry regarding the European Securities and Markets Authority opinion on the practical arrangements for the late transposition of the AIFMD

On 1st August 2013 the European Securities and Markets Authority published its opinion on arrangements for the late transposition of the AIFMD.

Arrangements before implementation of the Directive in all Member States

Notification of marketing of EU AIFs when the host Member State (MS) of the AIFM has not transposed the Directive (Articles 31 and 32 of the Directive)

ESMA believes that, if the Directive has been transposed in the home MS of the AIFM, the competent authority of the host MS of the AIFM (Article 32) or home MS of the AIFM (Article 31) may not refuse a valid notification under the Directive on the ground that the Directive has not yet been transposed in the host MS. This applies irrespective of whether the marketing is done using the freedom to provide services or by means of a branch.

Management passport (Article 33 of the Directive)

ESMA believes that AIFMs established in a MS that has transposed the Directive should be able to manage an EU AIF via the management passport, both using the freedom to provide services or by means of a branch, in a MS where the Directive has not been transposed. This applies irrespective of the provisions currently in place in the jurisdiction which has not transposed the Directive, since the relevant provisions of the Directive are of a self-executing nature, and provided the AIFM is authorised to manage that type of AIF in accordance with Article 33(1) of the AIFMD. Any local restrictions on AIFMs that are not in accordance with the AIFMD will need to be disapplied.

More information about ESMA's Opinion can be viewed on the following website:

http://www.esma.europa.eu/system/files/2013-1072_opinion_on_practical_arrangements_for_late_transposition_of_aifmd.pdf

Contacts

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