

4 November 2020

Review of the Alternative Investment Fund Managers Directive (AIFMD)

The circular seeks to inform the industry that the European Commission (EC) has launched a public [consultation](#) on the review of the Alternative Investment Fund Managers Directive (AIFMD).

Background

Article 69 of AIFMD requires the EC to review the application and the scope of AIFMD. This entails assessing the Directive's impact on investors, AIFs, AIFMs in the EU and in third countries in order to establish how far AIFMD's objectives have been achieved.

The public consultation is the next stage of the EC's formal review of AIFMD and follows the EC's [report](#) to the European Parliament and Council. The report concludes that the AIFMD has contributed to the creation of the EU AIF market, provided a high-level protection to investors and facilitated monitoring of risks to financial stability and it identifies areas in the legal framework that could be improved.

The Consultation also follows the recent intervention by ESMA with its [letter](#) to the Commission in which it raised numerous concerns around areas of both the AIFMD and the UCITS Directive that required in its view "harmonisation" and/or "clarification".

Although the primary focus of the consultation is on suggested areas of "improvement" and harmonisation on areas of detail within AIFMD, there will be issues around the specific direction of travel on delegation in particular and the possible political dimension to an increased focus on delegation to third countries with the backdrop of Brexit.

Areas of focus in the consultation

The consultation is divided into the following sections:

- i. functioning of the AIFMD regulatory framework, scope and authorisation requirement,
- ii. investor protection,
- iii. international relations,
- iv. financial stability,
- v. investing in private companies,
- vi. sustainability/ESG,

vii. miscellaneous.

The questions in the section on authorisation/scope seek views from stakeholders on the scope of the AIFM licence. The investor protection section raises questions on investor access that take into account the differences between retail and professional investors. In the international section, views are sought on how best to achieve the equitable treatment of non-EU AIFs as well as securing a wider choice and reach of AIFs for investors.

Other questions address the depositary regime and the lack of the depositary passport, in particular taking into account amendments that could be introduced in the AIFMD to ensure the efficient functioning of the EU AIF market and the impact associated with the introduction of the depositary passport. Stakeholders are also invited to comment on potential improvements to the AIFMD rules on valuation.

Financial stability seeks stakeholder views on how to ensure National Competent Authorities and AIFMs have the tools necessary to effectively mitigate and deal with systemic risks. The consultation suggests the potential for more centralised supervisory reporting and improved information sharing among the relevant supervisors.

Next Steps

- 25 November 2020 - The EC to hold a Stakeholder Conference.
- 29 January 2021 - End of consultation period.
- Quarter 3 of 2021 – EC legislative proposal.

Looking forward, the MFSA strongly encourages stakeholders' participation in this consultation. Your active participation will be essential in laying the groundwork for the EC to decide on the upcoming proposed changes to the existing EC legislation and to ensure that EU markets function effectively in the interests of all stakeholders.