

January 2021

DUFAS Public Consultation on the review of the AIFMD

Executive Summary



DUFAS welcomes the opportunity to respond to the European Commission's "Public consultation on the review of the alternative investment fund managers directive (AIFMD)".



We welcome the review of the AIFMD, although in general DUFAS is of the opinion that in most parts the AIFMD functions to the satisfaction of our members.

Overall, we believe the AIFMD functions well and has significantly contributed to the creation of an EU market for the offering and managing of AIFs, whilst providing investors with a high standard of protection. From that perspective we do not anticipate that material changes of AIFMD are necessary.

No amendment Level 1 required

We believe therefore that at this stage no Level 1 amendments of AIFMD is needed, subject to the following exceptions.

Scope of licence

Under the AIFMD, AIFM's can provide limited MiFID 2 services. In our opinion the limited ancillary services that AIFMs can provide should be expanded with client order execution. Our members need to be able to execute orders as part of their services under the AIFMD licence, which currently is missing. This is particularly important, because we understand from our Dutch regulator that if the management company of an AIF has no full discretion in managing an individual portfolio management, the execution of such orders related to such portfolio does not seem to be included in the AIFMD top-up licence.

Retail AIF Passport

Furthermore, we believe there is merit in having an AIF structure in place under the AIFMD that could be marketed to retail investors with a passport. Such European passport obviously (i) will facilitate asset managers to distribute their retail AIFs on a cross-border basis, and (ii) ensure a level playing field. We anticipate that changes of Level 1 may be necessary to accomplish this.



Further to our comments above,
we also have the following
recommendations.

More European convergence

To a certain extent the effectiveness of the AIFMD is indeed impaired by national legislation or existing market practices. The AIFMD intends to procure maximum harmonisation for managing and offering AIFs to professional investors. However, national legislation and/or guidelines issued by regulators on a country-by-country basis have led to significantly different regimes for AIFMs in relation to e.g. cross-border marketing, what constitutes a material change for notification purposes etc. Although more convergence could also be done on level 2 or level 3 level, we do support any initiatives for more supervisory convergence.

Harmonization UCITS and AIFMD framework

We believe that harmonization should not be a goal in itself. Under the current reporting regime, UCITS is quite extensive and more elaborate. UCITS reporting imposes a heavier burden on fund managers than AIFMD which framework leaves more discretion. Therefore total harmonization is a challenge and especially not advisable where it concerns the UCITS and AIFMD framework, where AIFs are offered to professional investors only. However, should the European Commission nonetheless intends some sort of harmonization, this should be done for UCITS and retail AIFS only.

No further rules on top-of, and alignment with other sectoral legislation such as SFDR and MiFID

Furthermore, we believe that any amendments of the AIFMD framework should not be on top-off or in addition what is already covered by other pieces of European legislation. More in particular, we believe that as changes in the context of sustainability & ESG, most requirements should be included in the upcoming SFDR/RTS. We strongly advise not to come up with new requirements, while SFDR still has to be implemented. We furthermore, do believe that AIFMD should align to MiFID concepts, such type of investors, but also the delegation regime, as much as possible in order to ensure consistency and efficiency.

Questions or suggestions?

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