

Alternative Investment Fund Managers Directive (AIFMD)

Name	Number	Web address
Alternative Investment Fund Managers Directive (AIFMD)	Directive 2011/61/EU	http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:174:0001:0073:EN:PDF

Status

The AIFMD was published in the Official Journal of the European Union on 1 July 2011 and entered into force on 21 July 2011. Transposition by Member States must be completed by 22 July 2013.

Many of the provisions in the Directive ('level 1' of the framework directive) require further clarification. A significant amount of the detail is to be defined at 'level 2', through subordinate measures. These comprise: implementing measures (including delegated acts, and implementing acts), developed by the Commission in light of advice from ESMA; technical standards drafted by ESMA for subsequent adoption by the Commission; and guidelines, adopted by ESMA.

The European Securities and Markets Authority (ESMA) provided technical advice on subordinate measures to the European Commission on 16 November 2011.¹ The Commission is expected to adopt these subordinate measures (under delegated powers) based on ESMA's advice in the course of 2012. An expert group will be consulted in February 2012 on delegated acts. The European Securities Committee will be required to vote on implementing acts.

During this period, ESMA will continue to draft the technical standards and guidelines for which it has been given responsibility, such as for leverage calculation, remuneration policies and supervisory cooperation arrangements.

UK implementation details

The FSA (and its successor organisations, particularly the FCA) in conjunction with HM Treasury must implement the AIFMD by 22 July 2013. Implementation will require changes to primary and secondary legislation and to the FSA's Handbook. The FSA must also make numerous operational changes, including likely changes to the categorisation of certain firms and to certain regulatory returns.

The FSA is engaged with the development of technical standards and guidelines by ESMA and, in conjunction with HM Treasury, the adoption of implementing measures by the European Commission.

¹ Final Report on ESMA's technical advice to the European Commission on possible implementing measures of the Alternative Investment Fund Managers Directive published on 16 November 2011 (available from http://www.esma.europa.eu/system/files/2011_379.pdf)

FSA aims and areas of interest

The FSA supports the Commission's high-level objectives for the Directive to create a harmonised, comprehensive and effective regulatory and supervisory framework for the management and administration of alternative investment funds (AIFs) across Europe.

The FSA believes that a focused, proportionate and appropriately differentiated framework can play a valuable role at the EU level in addressing the risks arising in the non-UCITS asset management industry, without restricting choice for investors or imposing disproportionate costs. The FSA is committed to working with the non-UCITS asset management industry to ensure that the AIFMD implementation is thoughtful and subject to appropriate consultation.

Purpose of Directive

The Commission's stated objective is to create a comprehensive and effective pan-European regulatory and supervisory framework for alternative investment fund managers (AIFMs). The Commission's original adopted proposal for the Directive was aimed at providing robust and harmonised regulatory standards for all AIFMs within scope, and to enhance the transparency of the activities of AIFMs and AIFs towards investors and public authorities.

The Commission seeks to enable Member States to improve the macro-prudential oversight of the sector and to take coordinated action as necessary to ensure the proper functioning of financial markets and help overcome gaps and inconsistencies in existing regulatory frameworks at national level and to provide a secure basis for the development of the internal market.

Key provisions

The scope of the Directive is broad and with a handful of exceptions covers the management and administration of all 'collective investment undertakings' which are not subject to the UCITS regime including, inter alia, hedge funds, private equity funds and real estate funds.

The Directive is focused on the regulation of the alternative investment fund manager rather than the fund vehicle itself, and it does not, for instance, restrict underlying investments in the manner of the UCITS Directive. It does however introduce the possibility to impose limits on leverage and liquidity and requires notification of alternative investment funds to be made to regulators, prior to the marketing of these funds on a domestic or cross-border basis by an AIFM.

The Directive sets out a timeline, two years after implementation, for the possible entry into force of a passport for the marketing and/or management of non-EU funds including by non-EU fund managers. In addition there is a provision, a further three years after this, for the possible termination of the national regimes for private placement of funds. The European Commission has been given delegated power to adopt both of these aspects of the Directive and will be based on the advice and opinions of ESMA

The extent to which the Directive impacts alternative investment fund managers will depend on, inter alia; where the fund manager is established, the domicile of the fund under management, the marketing within Member States and the manager's operational structure.

Consultation		
Consulting institution	Consulting details	Deadline
No formal prior consultation on full text of draft Commission proposal.	N/A	N/A
ESMA has consulted on the development of advice on the implementing measures under the Directive to the Commission.	<p>Request for advice submitted by the Commission to CESR on 2 December 2010 (http://ec.europa.eu/internal_market/investment/docs/alternative_investments/level2/mandate_en.pdf)</p> <p>Two consultation papers published by ESMA:</p> <p>(i) Consultation paper - ESMA's draft technical advice to the European Commission on possible implementing measures of the Alternative Investment Fund Managers Directive (available from http://www.esma.europa.eu/system/files/2011_209.pdf); and</p> <p>(ii) Consultation paper - ESMA's draft technical advice to the European Commission on possible implementing measures of the Alternative Investment Fund Managers Directive in relation to supervision and third countries (available from http://www.esma.europa.eu/system/files/2011_270.pdf)</p>	<p>16 November 2011 following 2 month extension (see letter from the Commission http://ec.europa.eu/internal_market/investment/docs/alternative_investments/level2/note_en.pdf)</p>
FSA will consult on implementation proposals.	FSA to prepare consultation paper with draft regulations.	Expected CP date of end of July or August 2012

Timetable	Deadline Date
AIFMD Publication in Official Journal	1 July 2011
FSA Discussion Paper published	23 January 2012
FSA firm survey published	March or April 2012
FSA publication of consultation paper with draft regulations	Expected CP date - end of August 2012
FSA Policy Statement published	Q1, 2013
Regulations to be implemented and in force in UK law	22 July 2013

Internal Contacts		
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