



AMIC first series of views on ESMA's letter regarding the AIFMD review
12/10/2020

Executive summary

AMIC appreciates the need to review on a regular basis the legislative frameworks to make sure that they are fit for purpose. But in the case of AIFMD and the UCITS Directive this has been an on-going process and finetuning of these texts via level 2, 3 and 4 measures has not stopped since the level 1 was adopted and is currently continuing (see Annex 2).

This constant work has contributed to the development of a robust framework for investment funds, which inspires other regulators around the globe and has proved to be fit for purpose during the unprecedented market downturn we experienced in March/April 2020.

In the context of sudden shift to remote work and massive stress felt across all asset classes, AIFs and UCITS have shown that they are operationally resilient and have sound fund liquidity management processes in place: only 0.33% of investment funds had to suspend redemptions temporarily between the second half of March and May, mainly due to market price uncertainties rather than fund liquidity issues¹. In addition, EU funds were not the source of any occurrence of systemic risk.

Re-writing AIFMD and UCITS [as suggested by ESMA](#) is not only unnecessary, it would also be a major distraction for policy makers, supervisors and asset managers at a time when collective energy should be devoted to the post-COVID 19 recovery, the Sustainable Finance action plan and the Capital Markets Union.

We therefore call on the EC to focus on vehicles which, with changes, could foster growth in European capital markets (e.g. ELTIF²) rather than those which have been successful in ensuring EU's competitiveness and attractiveness (e.g. UCITS). We strongly believe that most of the concerns raised in ESMA's letter can be dealt with by ESMA and NCAs by making use of their existing and recently reinforced powers (i.e. Guidelines, Q&As, Common Supervisory Action) or via targeted level 2 measures.

Our main concerns on ESMA's letter (see our detailed views in Annex 1):

- **Harmonisation of UCITS and AIFMD:** UCITS and AIFs were intentionally created as distinct labels/vehicles. It is therefore not surprising to find different requirements and the harmonisation of both regulatory frameworks should not be an objective per

¹ Page 5 ESMA Report on Trends, Risks and Vulnerabilities No. 2, 2020

² [AMIC Discussion Paper on the Review of the European Long-Term Investment Fund \(ELTIF\) Regulation, January 2020](#)

se (e.g. regarding fund liquidity in Section 1 of Annex 1 below). It is important to avoid a harmonisation exercise which would fail to recognize the diversity of underlying asset classes and asset management structures and undermine both labels and the Capital Markets Union.

- **Delegation:** We believe that the risks of loopholes, regulatory arbitrage and lack of substance are already being tackled by existing regulation and supervisory action by NCAs and ESMA. Curbing delegation beyond what is currently authorised would not be in the interest of EU investors, since it would leave them with narrower diversification and investment options. It would also put asset managers with a European footprint at disadvantage vis-à-vis overseas competitors, because of increased costs and the inability to leverage internal and external expertise.
- **Leverage:** AIFMD already provides the necessary reporting on leverage to comply with IOSCO recommendations (GNE and commitment approaches) and there is therefore no need to amend this directive for that purpose as suggested by ESMA. That being said, AMIC members would be able to report the GNE broken down by positions as recommended by ESMA. We also are sympathetic to the suggestion to adjust the notional amount of interest rate derivatives as proposed by ESMA. These two elements could be achieved via level 2 and 3 measures.
- **AIFMD reporting:** We believe that AIFMD already sets out extensive reporting requirements (around 300 fields) including data on the characteristics of each AIF (type, strategy, concentration of investors) along with detailed information on assets (principal exposures, exposures by asset type and regional investment focus), as well as several risk features (market risk, liquidity profile, use of leverage and stress test results). We believe these comprehensive reporting requirements, which come on top of leverage, liquidity stress testing, SFTR, EMIR and MiFID reporting, are sufficient to perform an adequate supervision of AIFs and monitor potential systemic risks. One simpler way to upgrade the current reporting framework would be for instance to ask central banks to share in real time information they receive directly from fund managers with securities regulators instead of requiring AIFs to report it twice and potentially in different formats (see Regulation ECB/2013/38 of 18 October 2013 concerning statistics on the assets and liabilities of investment funds, which leads to the provision of fund inventories to ECB and national central banks).

1-Harmonisation of UCITS and AIFM Directives

We are opposed to a general approach seeking to harmonise UCITS and AIFM Directives. UCITS and AIFs were intentionally created as distinct labels/vehicles. It is therefore not surprising to find different requirements and the harmonisation of both regulatory frameworks should not be an objective per se. Another element to remember is that the UCITS Directive is a product directive when AIFMD is a player directive. It is also important to avoid a harmonisation exercise, which would fail to recognize the diversity of underlying asset classes and asset management structures (e.g. real estate, infrastructure debt, private equity) and undermine both labels and the Capital Markets Union.

Fund liquidity

ESMA states that UCITS are subject to lesser requirements than AIFs with respect to risk management and liquidity management and recommends aligning UCITS on AIFMD Level 2 requirements. **But when assessing both regimes it is important to remember that UCITS are actually subject to specific stringent requirements regarding risk management and in particular liquidity risk management** (see [AMIC-EFAMA report on Managing Fund Liquidity Risks in Europe](#)):

- UCITS funds have to comply with concentration and diversification ratios (known as the “5-10-40 Rule”) intrinsically shielding retail investors from a fund liquidity perspective. Reporting requirements allow national supervisors to enforce these ratios;
- UCITS are also required to invest in liquid assets (Article 50 on eligible assets) and according to the ESMA Guidelines concerning eligible assets (CESR/07-044b) the liquidity of any financial instrument should not be assumed but assessed considering several criteria;
- According to the implementing Directive 2010/43/EU, UCITS have to employ an appropriate liquidity risk management process in order to ensure that each UCITS they manage is able to comply at any time with allowing investors to redeem their units on demand and that the liquidity profile of the investments of the UCITS is appropriate to the redemption policy. All these requirements have to be applied and controlled ex-ante and ex-post by both fund managers and supervisors.

In its assessment ESMA also omits to quote recent enhancements achieved at national and EU levels regarding fund liquidity requirements:

- In the context of the COVID-19 market downturn in March/April 2020, NCAs across the EU, in coordination with ESMA, asked fund managers to notify any significant redemption (>10% daily, > 30% weekly) in order to closely monitor fund liquidity issues. UCITS reporting can be upgraded at any moment by ESMA in coordination with NCAs. This type of reporting should remain occasional only in case of exceptional circumstances where this information is necessary.
- We also welcome the fact that the recent crisis has already contributed to accelerating the **adoption of LMT tools in EU jurisdictions** where they were not yet available (e.g. Germany) and that some national supervisors have encouraged and

facilitated the use of LMTS, which proved again to be very helpful in tackling redemption shocks (c.f. [AMIC COVID 19 regulatory grid](#)).

- It must also be noted that UCITS and AIFs have from September 2020 to comply with **ESMA Guidelines on liquidity stress testing in UCITS and AIFs**, which is already contributing to converge and enhance liquidity risk management practices;
- **ESMA stress Simulation for Investment Funds**: the first one conducted in September 2019 and covering 6000 UCITS bond funds found that *“overall most funds are able to cope with such extreme but plausible shocks, as they have enough liquid assets to meet investors’ redemption requests”*.
- This comes on top of **ESMA 2020 convergence exercise between NCAs regarding compliance with UCITS fund liquidity rules** (which has already prompted asset managers to respond to questionnaires sent by EU NCAs in coordination with ESMA).

Finally, we want to highlight the fact that in practice UCITS liquidity framework has proven to be fit for purpose in the recent crisis. Despite the redemption shock in March-April 2020, the significant deterioration of market liquidity and operational constraints (e.g. remote work), the vast majority of funds were able to meet redemption requests. ESMA estimated that only 0.33% of investment funds between the second half of March and May had to suspend redemptions temporarily, mainly due to price uncertainties rather than liquidity issues.³ And overall it appeared that there was no transmission of systemic risk via EU investment funds up to the moment of central bank intervention to support underlying markets.

Conclusion: Overall, recent enhancements at EU and national levels and the live stress test which our members experienced in spring 2020 confirm that UCITS Directive and AIFMD are fit for purpose from a liquidity perspective. There is therefore no real need to further align or amend respective frameworks on this aspect. Our perception is that use of the peer review process and the new common supervisory action process by ESMA which is already under way be a quicker and more effective way further converging risk management practices.

The other areas where the harmonisation between the UCITS and AIFMD regimes are envisaged by ESMA (but are, in our opinion, not appropriate) are further detailed in the next paragraphs, in particular the ones on UCITS harmonised reporting (see point 2) and on delegation (see point 4).

2-UCITS harmonised reporting

Leverage reporting: it would be disproportionate for UCITS to become subject to similar requirements as AIFs. This is in particular because the UCITS Directive includes specific and strict limits on leverage. UCITS may borrow up to a limit of 10% of their net assets, and only on a temporary basis, for example for liquidity management purposes. Therefore, in UCITS, leverage cannot be created through borrowing. Furthermore exposures related to derivatives and SFTs cannot exceed the total net value of the portfolio.⁴ Finally *ESMA*

³ Page 5 *ESMA Report on Trends, Risks and Vulnerabilities No. 2, 2020*

⁴ *AMIC/EFAMA Joint Paper on the Use of Leverage in Investment Funds in Europe, July 2017*

Guidelines on ETFs and other UCITS prescribe that collateral collected in the course of OTC derivative and SFT transactions must be of high quality, liquid and that assets that exhibit high price volatility should not be accepted as collateral unless suitability conservative haircuts are in place. Also, the Guidelines prohibit collateral reuse and limit strictly the items, which may be used to “park” the cash collateral received.

Liquidity reporting: Like ESMA we note that several NCAs already require UCITS to report portfolio liquidity profiles of fund. We thought it was ESMA intention to bridge these different approaches via its 2020 convergence exercise between NCAs regarding compliance with UCITS fund liquidity rules, which has already prompted asset managers to respond to questionnaires sent by EU NCAs in coordination with ESMA. As part of this first step a questionnaire was sent to UCITS fund managers requiring among others information on:

- Information on the UCITS (size, NAV, performance)
- Investment strategy (% asset class, geographical focus, types of market, type of fund)
- Underlying assets (% cash, type of equities/bonds according to rating, derivatives, closed vs opened-ended funds, concentration, SFTs)
- Portfolio liquidity profile (% of assets according to liquidity buckets, potential redemptions according to similar buckets, liquidity management tools, defaulted assets)
- Breakdown of ownership per investor category (retail, feeder fund, other fund, insurance/pension fund, professional investors, others)
- Existence for alerts and adverse findings by auditors, depositary, risk management, others
- Others: leverage, collateral received/given, and historical redemption rate, % of equity/bonds not actively traded

Conclusion: A brand-new reporting system would represent a significant implementation project. It would be preferable to use existing reporting and ensuring NCAs/ESMA are given access to existing central bank reporting (e.g. fund inventories) to deliver synergies between micro and macro monitoring.

3-Scope of additional MiFID services and application of rules

The slight differences in interpretation regarding MiFID services that can be performed under UCITS and AIFM licences are not a significant issue for our members. We consider that the existing AIFMD and UCITS framework are sufficiently robust and properly designed for the monitoring of these MIFID services performed by authorised AIFMs and UCITS management companies. Therefore we don't share ESMA's concern regarding potential level playing field issues nor the need to clarify this at level 1.

4-Delegation

In its letter to the European Commission ESMA takes issue with three types of delegation of portfolio management functions, but also any other ancillary functions, by regulated EU entities:

- Delegation to third parties within the group of the fund management company,
- Delegation to third parties outside of the group, and
- Delegation to non-EU entities.

We would like to emphasise that delegation of portfolio management functions is very often agreed between two regulated EU entities that belong to the same group. This form of intra-group delegation allows asset managers with operations in two or more EU countries to minimise costs and optimise internal centres of excellence. We believe that regulatory efforts of forcing asset managers to replicate identical services in individual EU member states would create massive inefficiencies and would run counter to the overreaching target of establishing an integrated internal market for financial services.

We see no point in further limiting and defining the delegation of portfolio management or other functions to third parties within a group of authorised AIFM or UCITS management companies, as long as all group entities involved are authorised by supervisors. Existing UCITS and AIFMD provisions on delegation are already crystal clear in this respect. For instance, Article 13 of the UCITS Directive level 1 provision requires that *“The management company shall not delegate its functions to the extent that it becomes a letter-box entity”*. In addition, ESMA already issued far-reaching Legal Opinions covering delegation in 2017, which apply to both UCITS and AIFMD. These Legal Opinions are far more granular than AIFMD level 2 measures and have prompted a number of changes in individual national practices and requirements. Following the publication of these Legal Opinions, NCAs have sought to align their national practices with ESMA requirements, notably in Ireland and Luxembourg. For instance, management companies are now required to have at least two Senior Managers, and additional scrutiny is applied to management companies with less than three full-time employees for the investment function and/or monitoring of delegates. The future focus should be on how supervisors ensure appropriate levels of senior management oversight and accountability at a supervisory level rather than additional quantitative requirements in legislation.

The same applies to delegation of portfolio management functions and other functions to third parties outside of the group, as long as all group entities involved are authorised by NCAs. In our view the current regulatory framework already tackles potential problems identified by ESMA.

With respect to delegation of portfolio management functions to non-EU entities: compliance with EU rules is achieved because (1) the EU delegating entity remains responsible for the operation of the fund and all activities related thereto and (2) the entity receiving the delegation is required to comply with the appropriate EU legislation by NCAs (e.g. paragraphs 491 and 492 [CSSF 18/698](#)). The current framework already requires compliance with EU rules to be monitored continuously where delegation takes place. This needs to be ensured early according to ESMA legal opinion issued on 13 July 2017⁵: *“NCAs should be satisfied that the non-EU delegate has the required knowledge, expertise and experience and is up-to-date with EU investment management legislation and all regulatory requirements that apply to both the authorised entities and the funds managed by them.”* As a result, NCAs increasingly require to see details of ongoing due diligence plans to ensure the

⁵ Paragraph 70 of *ESMA opinion to support supervisory convergence in the area of investment management in the context of the United Kingdom withdrawing from the European Union*, 13 July 2017

Manco? is maintaining appropriate supervision to oversee delegates – not just of portfolio management but also fund accounting, custody, transfer agency, marketing, and any other ancillary functions, and whether within or outside the EU – and about the standard to which that oversight should be carried out. We see this delegation model as trustworthy because it is underpinned by MoUs giving EU NCAs the right to ensure proper monitoring of delegated activities: ESMA has recently reaffirmed this by adopting a MoU with the FCA on behalf of EU NCAs in the context of Brexit.

In any case, as for intra-EU delegations, we think that “intra-group” delegations out of the EU, i.e. to non-EU entities part of the same group, should remain unchanged, as long as the parent firm remains in the EU.

Conclusion: We believe that the risks of loopholes, regulatory arbitrage and lack of substance are already being properly tackled by existing regulation. Curbing delegation beyond what is currently authorised would not be in the interest of EU investors, since it would leave them with narrower diversification and investment options. It would also put asset managers with a European footprint at disadvantage vis-à-vis overseas competitors, because of increased costs and the inability to leverage internal and external expertise. The future focus might be on how supervisors ensure appropriate levels of senior management oversight and accountability at a supervisory level rather than additional quantitative requirements in legislation.

5-Availability of additional liquidity management tools

We are pleased to see that: (1) the recent crisis has already contributed to accelerating the adoption of LMT tools in jurisdictions where they were not yet available (e.g. Germany); (2) some national supervisors have encouraged and facilitated the use of LMTs, which proved again to be very helpful to tackle redemption shocks (see [AMIC COVID 19 regulatory grid](#)); and (3) that efficiency of these tools was once again recognised by the ESRB on 14 May 2020: “ (...) *management tools available to fund managers can help to mitigate first-mover advantage dynamics and the risk of asset fire sale*”.

Conclusion: Now that LMT tools are available in most Member States and in the main EU fund domicile centres (France, Germany, Luxembourg, Ireland) the need to amend the level 1 on that basis is not as critical as it was a few years ago. The adoption of these tools locally, where they are not yet available and in line with IOSCO recommendations, would be welcome. The peer review process and the new common supervisory action process by ESMA, which is already under way, would be the quickest and most effective way to deal with this matter.

6-Leverage

We note that AIFMD has largely inspired IOSCO recommendations on leverage and that **AIFMD is already in line with IOSCO recommendations as it already requires AIFs to report to NCAs both the gross leverage (which allows to comply step 1 under IOSCO recommendations) and net leverage (commitment approach).**

Thanks to these reporting obligations, ESMA was able to establish (EU Alternative Investment Funds - 2019 statistical report) that, considering all AIFs, the average leverage (gross exposures excluding interest rate derivatives) was only 1.63 times the NAV and that leverage used by AIFs has not posed a threat to financial stability.

Furthermore, we would like to point out that the tolerance for leverage varies depending upon the asset types involved, the strategy of the fund or the types of clients and that leverage is not a conclusive indicator of riskiness by itself and that thorough analysis should be performed at fund level (in line with step 2 recommendations of IOSCO).

Some funds may look optically significantly leveraged under the gross methodology, but this can often be biased by the use of derivatives. Liability-driven investment, which can be both asset and derivative intensive, will tend to show moderate to significant gross leverage. In that case, one needs to be careful when drawing conclusions based on leverage observations: curbing leverage for this type of investment strategy would mean selling assets and increase liability shortfalls, which is obviously not a desired outcome for pension clients.

Conclusion: AIFMD already provides the necessary reporting on leverage to comply with IOSCO recommendations (GNE and commitment approaches). Therefore, we do not see the need to develop in addition an adjusted GNE standard as a mandatory method, but our members would be able to report the GNE broken down by positions. Finally, considering the liability-driven investment example above, we are also sympathetic to adjusting the notional amount of interest rate derivatives via level 2 or 3 measures.

7-AIFMD reporting

Detailed information on the composition of assets and liabilities of the fund

We believe AIFMD already sets out extensive reporting requirements (around 300 fields) including data on the characteristics of the AIF (type, strategy, concentration of investors) along with detailed information on assets (principal exposures, exposures by asset type and regional investment focus), as well as several risk features (market risk, liquidity profile, use of leverage and stress test results). NCAs transfer received AIF reports to the ESMA central database. ESMA was therefore able to product to its first two Annual Statistical Report on EU Alternative Investment Funds in 2019 and 2020. Data inventory of the 2020 Annual Statistical Report on EU Alternative Investment Funds⁶ shows the depth and the extent of the current reporting regime for AIFs. Combined with other AIFMs reporting obligations we believe NCAs/ESMA have already a good overview of both assets and liabilities (see summary table below):

| Asset | Liability |
|--|--|
| Values of assets under management for all AIFs managed Breakdown of investment strategies per AIF types | Top five beneficial owners of AIF See: ESMA Guidelines, point 100. |

⁶ Page 86 of ESMA’s Annual Statistical Report on EU Alternative Investment Funds, 10 January 2020

| | |
|---|--|
| See: ESMA Guidelines Annex II table 3 Principal markets and instruments in which it trades on behalf of the AIFs it manages See: ESMA Guidelines Annex II table 1 Predominant AIF type: Hedge Fund; Private Equity Fund; Real Estate Fund; Fund of funds; Other; None. | |
| Predominant AIF type: Hedge Fund; Private Equity Fund; Real Estate Fund; Fund of funds; Other; None. | Investor concentration for retail and professional investors of AIF See: ESMA Guidelines, point 101; Q&As Section III, 80. |
| Main instruments in which the AIF is trading 10 principal exposures of the AIF at the reporting date Principal markets in which the AIF trades See: ESMA Guidelines Annex II table 1 | Ownership of units in the AIF beneficially owned by investor type. See: ESMA Guidelines, point 123 and Annex II. |
| Geographical breakdown of the investments held by the AIF by percentage of the total NAV of the AIF. See: ESMA Guidelines, point 83; Q&As Section III, 4 and 73. | AIF investors provided with withdrawal / redemption rights in the ordinary course |
| Portfolio liquidity profile. Percentage of the portfolio capable of being liquidated within each period (1 day or less; 2-7 days; ...; more than 365 days). See: ESMA Guidelines, points 118-120; Q&As Section III, 10, 11, 42 and 78. | Frequency of investor redemptions. In case of multiple classes of shares or units, the largest share class by NAV shall be considered. See: ESMA Guidelines, point 121 and Annex II. |
| Value of unencumbered cash. | Investor liquidity profiles. See: ESMA Guidelines, points 118-120; Q&As Section III, 10, 11, 42 and 78. |
| Estimated % in terms of trade volumes of derivatives that are traded on regulated exchange and OTC markets and that that are cleared by a CCP and bilaterally. See: ESMA Guidelines, point 112; Q&As Section III, 22; Q&As Section III, 9 | Total financing amount by the longest period during which the creditor is contractually committed to providing such financing. See: Q&As Section III, 2, 67 |
| Estimated % in terms of market value of securities traded on regulated exchange and OTC markets. See: Q&As Section III, 8 and 27. | Leverage created by direct borrowing of money or securities from counterparties. See: ESMA Guidelines, point 124; Q&As Section III, 34, 44 and 69. |
| Estimated % in terms of market value of repo trades that are cleared by a CCP, bilaterally and via tri-party repo. See: ESMA Guidelines point 113; Q&As Section III, 23. | |

Conclusion: We believe these reporting requirements, which come on top of leverage and liquidity stress testing reporting, SFTR, EMIR and MiFID are sufficient to perform an adequate supervision of AIFs and monitor potential systemic risks.

Given the level of existing data analytics and the resilience of AIFs and the fact that NCAs can always request additional information if they need to do so, we do not see significant added value in changing the format or reporting standard of current AIFMD reporting requirements. Any change would imply yet another modification of firms' reporting systems, another operational challenge and another cost.

When it comes to ECB's statistics and national central banks' collection of data on assets and liabilities in investment funds, it would be more appropriate to require central banks to share this information contained in fund inventories that they receive from fund managers, with securities regulators to enhance synergies in the monitoring of funds at both micro and macro levels.

Remaining aspects still under study by AMIC members

- Obligation to acquire an LEI for the manager and its funds:
- Definition of leveraged fund
- Scope of entities in ESMA register
- Timeline for the NCAs to update ESMA register
- Reporting in percentages
- Restrictions in the use and publication of the reported data
- Delegated act defining reporting
- Reporting exemptions for Private Equity funds
- Requirement to report ESG metrics
- European mandate for ESMA and ESRB to analyse systemic risks

8-Harmonisation of supervision of cross-border entities

ESMA estimates *“that there is still a lack of clarity in what the precise responsibilities of home and host supervisors are in some cross-border marketing, management and delegation cases.”*

If the principle is accepted that the AIFM is accountable for its activities and for the operation of the funds under its management, then there is a clear role for the home state regulator to ensure supervision. It is then for NCAs to work out whether provisions need to be clarified amongst themselves in areas such as marketing in different jurisdictions. In any case, the EU cross-border distribution of collective investment undertakings legislative package largely, largely taking effect from 2 August 2021, will clarify many aspects in this area. The framework is yet to be finalised with level 2 measures. It's too early to assess the extent to which this package is not sufficient and requires to be improved.

At this stage we recommend to wait for effective implementation of the EU cross-border distribution of collective investment undertakings legislative package before assessing if this framework functions well or not and in case of negative assessment, then consider alternative proposals with level 2 measures to drive supervisory convergence (i.e. Q&As and convergence supervisory exercise, EU peer reviews, pooling of resources at European level to support the supervisory work of NCAs).

9-Semi-professional investors

AMIC members have diverging views on the merit of introducing this category of investors. If some recognise that it would be helpful, others estimate on the contrary that it will complicate their marketing set-up and flag that ESMA's intention to exclude semi-professional investors from AIFMD passporting activities appears to limit commercial interest in pursuing this definition in fund legislation. We also note that this issue could also be addressed under MiFID rules, by further flexing rules allowing certain retail clients to opt-up to become professional clients.

10-Loan origination in AIFMD

We acknowledge ESMA's previous work here, but it seems to be that they are arguing for these issues to be part of the forthcoming ELTIF review rather than the AIFMD review itself. We also think it's preferable to address the points raised in the context of the ELTIF review.

11-Application of depositary rules to CSD

We agree with ESMA's proposal both from an investor protection and a level playing field perspective.

12-Proportionality principle for remuneration requirements

We note that ESMA published Guidelines on sound remuneration policies under the AIFMD and the UCITS directive (ESMA/2013/232 and ESMA/2016/575) and that except for Denmark all NCAs have decided to fully [comply](#) with them. The Guidelines already include significant clarifications on the proportionality principle for remuneration requirements including on the elements mentioned in ESMA's letter. Should divergence persist between NCAs, we would simply suggest ESMA to update and clarify the current guidelines.

13-Sub threshold AIFMs

We agree that NCAs should have the power to make regulations locally, but that those regulations should be consistent with the AIFMD regime to minimise difficulties for small entities. A clarification may be helpful but is not a priority for AMIC members.

14-External Valuer liability

If we agree with ESMA's suggestion that we should avoid some valuers exiting from this business due to too constraining requirements on standard of liability, we believe further analysis is needed on the basis of respective civil law as to whether the change of negligence standard will have a significant effect on the provision of services. Overall, AMIC members feel they can operate in a satisfactory way with the current legal rules.

15-Amendments to definitions

While ESMA calls for clearer definitions it does not clearly set out which definitions require amendments, so it is difficult to comment meaningfully on this request.

Further defining AIFs, as categories such as ‘Hedge funds’ or even ‘real estate funds’ might be challenging. It is not easy to define clearly homogenous categories. Even within a given category, the actual activity may widely differ from one fund to another. E.g. for real asset funds, there are some important differences between funds investing in infrastructures and in commercial real assets; e.g. impossible definition of hedge fund.

We are sympathetic to ESMA’s proposal in principle to ensure appropriate supervisory oversight and powers relating to funds investing in crypto currency, real estate, certificates and will be interested to review the detailed proposals.

16-Clear definition and rules for reverse solicitation

In practice, AMIC members do not encounter specific issues given that most firms appear to interpret the rules restrictively. We don’t think that there is a need to go beyond Recital 70 of AIFMD. Furthermore, the EU cross-border distribution of collective investment undertakings legislative package, which has not yet been implemented, will have implications for reverse solicitation. It is probably too early and would be more appropriate for it to be dealt with on a cross-sectoral rather than on a piece meal basis.

17-Convergence in treatment of significant influence

We appreciate the point being made by ESMA but believe that the views expressed are very equity centric and we don’t consider that topic as a priority.

18-Increasing digitalisation in AIFMD

We are strongly supportive of moving to the digital provision of documents and information in AIFMD as well as for UCITS.

19-Depositary passport

AMIC members have diverging views on this topic. Some consider that the depositary passport would not really change the existing situation as major depositaries are already present in most member states and as result, this passport will not foster competition in the end. In addition, from an investor protection perspective, not having a local presence of the depositary in the fund’s domicile could be an impediment to the level of expertise required for this highly regulated function and to the permanent dialogue with the local supervisor of the investment funds. Other ones consider that the opportunity to introduce the passport should be reviewed, in particular to assess to what extent it could encourage competition between depositaries.

[AIFMD delegated regulations \(click here\)](#)

AIFMD guidelines

- 2020: draft Guidelines on Article 25 of Directive 2011/61/EU
- 2020: Guidelines on liquidity stress testing in UCITS and AIFs
- 2013: Guidelines on reporting obligations under Articles 3(3)(d) and 24(1), (2) and (4) of the AIFMD
- 2013: Guidelines on the model MoU concerning consultation, cooperation and the exchange of information related to the supervision of AIFMD entities
- 2013: Key concepts of the AIFMD
- 2013/2016: Guidelines on sound remuneration policies under the AIFMD

Scope of AIFMD Q&A (last updated in December 2019)

- Section I: Remuneration
- Section II: Notifications of AIFs
- Section III: Reporting to national competent authorities under Articles 3, 24 and 42 .11
- Section IV: Notification of AIFMs
- Section V: MiFID services under Article 6(4) of the AIFMD
- Section VI: Depositaries
- Section VII: Calculation of leverage
- Section VIII: Delegation
- Section IX: Calculation of the total value of assets under management
- Section X: Additional own funds
- Section XI: Scope
- Section XII: Impact of Regulation (EU) 648/2012 (EMIR) on AIFMD
- Section XIII: Impact of Regulation (EU) 2015/2365 (SFTR) on AIFMD
- Section XIV: Branches

[UCITS delegated regulations \(click here\)](#)

UCITS guidelines

- 2020: Guidelines on liquidity stress testing in UCITS and AIFs
- 2016: Guidelines on sound remuneration policies under the UCITS Directive and AIFMD (UCITS policies)
- 2016: Guidelines on sound remuneration policies under the UCITS Directive and AIFMD (AIFMD policies)
- 2014: Guidelines on ETFs and other UCITS issues
- Guidelines on risk measurement and the calculation of global exposure for certain types of structured UCITS

- 2012: Guidelines on performance fees in UCITS
- 2011: Guidelines on ETFs and other UCITS issues

Scope of UCITS Directive Q&A (last updated in June 2019)

Section I – General

Question 1: Directive 2014/91/EU (UCITS V) – update of documentation

Question 2: Master-feeder structures

Question 3: Regulated markets under the UCITS Directive

Question 4: Investment limits

Question 5: Issuer concentration

Question 6: UCITS investing in other UCITS with different investment policies

Question 7: Supervision of branches

Section II – Key Investor Information Document (KIID) for UCITS

Question 1: Preparation of KIID by UCITS that are no longer marketed to the public or by UCITS in liquidation

Question 2: Communication of KIID to investors

Question 3: Treatment of UCITS with share or unit classes

Question 4: Past performance

Question 5: Clear language

Question 6: Identification of the UCITS

Question 7: Translation requirements in relation to the remuneration disclosure

Question 8: Disclosure of the benchmark index in the objectives and investment policies

Section III – ESMA’s guidelines on ETFs and other UCITS issues

Question 1: Information to be inserted in the prospectus

Question 2: UCITS ETF label

Question 3: Secondary market

Question 4: Efficient portfolio management techniques

Question 5: Financial derivative instruments

Question 6: Collateral management

Question 7: Financial indices

Question 8: Transitional provisions

Section IV – Notification of UCITS and UCITS management companies; exchange of information between competent authorities

Question 1: Notification of new investment compartments

Question 2: Amendments and updates of documents referred to in Article 93(2) of Directive 2009/65/EC

Question 3: UCITS host Member State’s access to documents

Question 4: Part A of the notification letter

Question 5: Exchange of information between competent authorities in the context of establishment of a branch of a UCITS management company

Question 6: Attestation of payment of notification fees

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