



EUROPEAN PRIVATE EQUITY AND
VENTURE CAPITAL ASSOCIATION

AIFMD Implementation Fund Marketing

A closer look at marketing
under national placement
rules across Europe

Edition 3 March 2015



Introduction

The EU Alternative Investment Fund Managers Directive (Directive 2011/61/EU or AIFMD) aims to create a harmonised regulatory and supervisory framework for the management and **marketing** of private equity, venture capital and other alternative investment funds (AIFs) in the European Economic Area (comprising EU and EFTA members).

The AIFMD entered into force on 22 July 2011. From that date, EU member states had 24 months to transpose the Directive into national law. The deadline for this was **22 July 2013**, the date that the **AIFMD took effect in national law across the European Union**.

This was followed by a one-year transition period during which EEA-based AIFMs had to submit an application for authorisation under the AIFMD. Since **22 July 2014 EEA-based AIFMs are obliged to comply in full with the Directive's requirements**.

In order to maintain a level playing field it is vital that the AIFMD is consistently implemented across the member states. **This memorandum focuses on one particular aspect of the AIFMD and aims to give an overview of how the AIFMD provisions in relation to marketing private equity funds under national placement rules have been implemented and apply across the EU.**

Three different situations are examined:

- **SCENARIO A:** Marketing non-EEA AIFs managed by non-EEA AIFMs under Article 42* (no passport)
- **SCENARIO B:** Marketing non-EEA AIFs managed by an EEA AIFM under Article 36 (no passport)
- **SCENARIO C:** Marketing by sub-threshold AIFMs

It should be noted that not all countries have finalised their national transposition measures (for example, Poland and Romania). As an evolving document, the emphasis in this edition is on those EU countries that have completed (or are close to completing) the transposition process: Austria, Belgium, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, the Netherlands, Romania, Slovakia, Spain, Sweden and the United Kingdom. Switzerland is also covered for comparative reasons.

Note: This briefing has been prepared in cooperation with the EVCA Tax, Legal and Regulatory Committee and the Representative Group. It does not intend to give legal advice or be an exhaustive or definitive explanation of the AIFMD marketing provisions. Some of the information remains subject to change due to the on-going negotiations on (the interpretation of the) AIFMD transposition (rules) in the member states.

* Full extracts of the relevant Articles from the AIFMD are available in the Glossary.

What's inside this document?

Structure of the paper

This paper describes the circumstances under which European and non-European private equity fund managers are able to market their funds under national placement rules across the EU since 22 July 2013.

The information is accessible in two different formats:

1	Marketing in the EU according to the three scenarios	03-109
	SCENARIO A: Marketing non-EEA AIFs managed by non-EEA AIFMs under Article 42 (no passport)	04
	SCENARIO B: Marketing non-EEA AIFs managed by an EEA AIFM under Article 36 (no passport)	56
	SCENARIO C: Marketing by sub-threshold AIFMs	84
2	Marketing in the EU on a country-by-country basis	110-250
	1. Austria	111
	2. Belgium	116
	3. The Czech Republic	125
	4. Denmark	132
	5. Estonia	137
	6. Finland	145
	7. France	154
	8. Germany	162
	9. Hungary	168
	10. Ireland	176
	11. Italy	180
	12. Latvia	185
	13. Lithuania	190
	14. Luxembourg	195
	15. The Netherlands	201
	16. Romania	208
	17. Slovakia	217
	18. Spain	225
	19. Sweden	232
	20. Switzerland	242
	21. The United Kingdom	243
3	Glossary	251-257

This memorandum concerns (only) the marketing of interests in a private equity fund with the following features.

Structure

Closed-ended, structured as a limited partnership or similar legal arrangement.

Strategy

A typical private equity strategy (such as venture, development or growth capital or leveraged buyout).

Fund vehicle

The main fund vehicle for external investors (as opposed to staff co-investment vehicles or friends-and-family vehicles).

Prospective investors

Only institutional investors which are “professional investors” and specifically “per se professional clients” within the meaning of Article 4(1)(a) and the Markets in Financial Instruments Directive (2004/39/EC) (“**MiFID**”) respectively.

Regulatory categorisation of the fund

An Alternative Investment Fund within the meaning of Article 4(1)(a), which is (subject to Article 61(1) - see below) fully within the scope of the Directive. This is as opposed to the fund being subject to any transitional provision such as those in Articles 61(3) (run-off) or 61(4) (limited life).

Marketing activity

To include a number of channels over a period of time: roadshows, meetings, phone calls and mailings initiated by the manager, including in your jurisdiction either at hired event spaces (such as hotels) or at the offices of prospective investors, hosted and/or attended by the manager’s staff. Investors may be visited more than once. Documents will include a private placement memorandum, fund constitutional documents, subscription documents and ancillary materials, such as Powerpoint presentations. All documents will be only in English. Other information will be available on request, which may include access to a data room of documents relating to the manager and its past funds. The manager does not intend to make any personal recommendations to prospective investors (within the meaning of MiFID). There will be no offer to the public.

The purpose of this Guide is to allow firms to understand quickly and easily in which EEA jurisdictions they are likely to be able to market so that they can focus appropriately their marketing efforts.

The Guide is clearly not a replacement for detailed legal advice and should not be relied upon by firms as a basis for an organised marketing campaign.

¹ Unless otherwise specified, reference to ‘Articles’ are to Articles of the Level 1 Directive text.

Section one: Marketing in the EU according to the three scenarios

1

In this section

Marketing in the EU according to the three scenarios

SCENARIO A: Marketing non-EEA AIFs managed by non-EEA AIFMs under Article 42 (no passport)	04-55
SCENARIO B: Marketing non-EEA AIFs managed by an EEA AIFM under Article 36 (no passport)	56-83
SCENARIO C: Marketing by sub-threshold AIFMs	84-109

Marketing in the EU according to the three scenarios

SCENARIO A: MARKETING NON-EEA AIFS MANAGED BY NON-EEA AIFMS UNDER ARTICLE 42 (NO PASSPORT)

Further assumptions for the purpose of Scenario A only



Licensing

No person concerned has any form of licence in the target market, or any EEA licence which entitles it to a passport.

Who markets?

The legal person engaging in marketing is the Alternative Investment Fund Manager (AIFM) of the AIF. There is no placement agent or other intermediary involved.





1. Is it possible in some manner to market a fund in the circumstances described above, in the respective jurisdictions and/or to investors established in those jurisdictions since 22 July 2013?

Country	Details
Austria² 	<p>Yes, such funds can be marketed if § 47 of the Alternative Investment Fund Manager Gesetz (Austrian Federal Gazette I No. 135/2013 ("AIFMG")) is complied with (notification requirement by the AIFM; marketing only possible after notification by the Financial Market Authority; this may take up to four months).</p>
Belgium 	<p>Yes, subject to notification to and approval by the competent Belgian regulatory authority, the Financial Services and Markets Authority (the "FSMA"), marketing by non-EEA AIFMs of non-EEA AIFs in Belgium is possible. Please refer to (our answer to) Question 8 for further details.</p> <p>A distinction must be made between:</p> <ul style="list-style-type: none"> • the marketing by non-EEA AIFMs under the AIFMD and the EU Member States' respective private placement regimes (as provided for in Article 42 AIFMD), which apply until the termination of the private placement regimes set out in Article 68 AIFMD (the "Private Placement Regime"); and • the marketing by non-EEA AIFMs with an AIFMD passport, as may be introduced in accordance with Article 67 AIFMD (the "Third Country Passport Regime"). <p>In this paper we will only discuss the Private Placement Regime and not the Third Country Passport Regime.</p>

² In areas where the AIFMD does not provide full harmonisation, i.e. inter alia national country-by-country placement regimes and rules for sub-threshold AIFMs, the Austrian Alternative Investment Fund Manager Gesetz (AIFMG) still requires further clarification by the Austrian authorities.

Given that the requirements to comply with the AIFMG depend on the specifics of the fund structure and the activities conducted by the AIFM and the AIF, it is highly recommended that legal advice is sought prior to engaging in any marketing activity in Austria.


Section one: Marketing in the EU according to the four scenarios

Country	Details
The Czech Republic 	<p>The Czech Republic implemented the AIFMD via Act no. 240/2013 Coll., on Investment Companies and Investment Funds (the "AICIF") which became effective on 19 August 2013. The AICIF was amended with effect as of 1 January 2015.</p> <p>EEA and non-EEA funds may be offered only after prior registration in the registry held by the Czech National Bank. Marketing also requires the fulfillment of certain conditions (existing memoranda of cooperation between regulators, no FATF blacklist, etc.).</p> <p>Private placement is allowed under the AICIF, provided that the shares or units are allowed to be marketed "publicly" (e.g. the fund is registered with the Czech National Bank) or are marketed to less than 20 investors. There is no requirement of a prior registration of non-EEA funds managed by sub-threshold non-EEA AIFMs in case of private placement (i.e. registration will be required only for above-threshold fund managers).</p>
Denmark 	<p>Yes, it is possible to market a fund in the circumstances described, subject to certain conditions.</p>
Estonia 	<p>Yes, it is possible to market non-EEA AIFs managed by non-EEA AIFMs in Estonia. Although Estonia did not exercise the discretion provided in Article 42 of the Directive upon the initial transposition of the Directive on 22 July 2013, the provision was incorporated into Estonian law in May 2014. Regulation of AIFMs' operations is laid down in the Estonian Investment Funds Act but also, to a great degree, in a respective regulation adopted by the Estonian Minister of Finance on 30 May 2014.</p> <p>However, a draft legislation concentrating all provisions related to investment funds and their managers, including AIFMs, was proposed by the Estonian Ministry of Finance in June 2014³.</p>
Finland 	<p>Yes, subject to the conditions laid down in the act and other regulations implementing the Directive (see Questions 7 and 8).</p>

³ It should be noted that as the documents serving as the basis of this country report (i.e. the draft legislation and its explanatory memoranda) have not yet been officially approved or adopted, the statements included herein remain somewhat uncertain and the entry into force of the principles expressed herein cannot be fully assured.

However, as such draft documents should still reflect the general legal direction into which the Estonian legislator desires to move, it can be assumed that this report, based on such draft documents, adequately reflects the principles to be applied in Estonia in the near future.

Section one: Marketing in the EU according to the four scenarios




Country	Details
<p>France</p> 	<p>The private placement regime was abolished from 22 July 2013. The only way for an EU AIFM to market an EU AIF to professional clients in France is through obtaining the marketing passport.</p> <p>Given the removal of the private placement regime, the regime for the marketing of AIFs by non-EU AIFMs without a passport is now found under Article L. 214-24-1 (I) and Article D. 214-32 of the French <i>Code Monétaire et Financier</i> (CMF).</p> <ul style="list-style-type: none"> • Article L. 214-24-1 (I) of the CMF requires AIFMs to notify the French competent authority, <i>Autorité des Marchés Financiers</i> (AMF), before marketing any AIF in France. • Article D. 214-32 of the CMF sets out the requirements for the marketing in France of units or shares of an AIF established in a third country managed by a management company (<i>société de gestion</i>) established in an EU Member State or a portfolio management company (<i>société de gestion de portefeuille</i>), as well as the marketing in France of units or shares of an AIF established in an EU Member State or a third country managed by a manager (<i>gestionnaire</i>) established in a third country without a passport. More specifically, it requires compliance with the following conditions: <ol style="list-style-type: none"> 1. the manager (whether a <i>société de gestion de portefeuille</i>, a <i>société de gestion</i> established in an EU Member State or a <i>gestionnaire</i> established in a third country) needs to comply with the legislative provisions and regulations applicable to management companies (<i>sociétés de gestion</i>) under the AIFMD, Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011, with the exception of those articles pertaining to custodians (Articles L. 214-24-4 to 214-24-11). It must however ensure that the tasks listed under Article L. 214-24-8 (cash flow monitoring, custody of assets and the verification of the compliance of certain operations with the laws and regulations applicable to the AIF, as well as with its articles of association and prospectus) are performed by one or several entities designated by the portfolio management company, the management company or the manager established in a third country who is not legally entitled to undertake these himself. The AIFM needs to inform the French authority (AMF) of the identity of this or these entities charged with these tasks;

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Section one: Marketing in the EU according to the four scenarios

Country	Details
<p>France</p> 	<ol style="list-style-type: none"> 2. the existence of appropriate cooperation arrangements for the monitoring of systemic risk and consistent with international standards, between the French authority AMF and the relevant EU competent authority(ies) of the AIF or the competent authorities of the third country(ies) where the AIF or its manager (<i>gestionnaire</i>) is established, in order to ensure an exchange of information allowing the AMF to carry out its tasks provided by law; 3. (in those cases where the AIF or its manager (<i>gestionnaire</i>) is established in a third country) that third country is not listed as a Non-Cooperative Country and Territory by the FATF. <p>Details of the required notification are available in the Instruction AMF n° 2014-03 (Section III, Appendix 3).</p> <p>Regarding the terminology used, the expression “portfolio management company” refers to the manager authorised in France, the expression “management company” refers to the manager authorised in another EU Member State and the term “manager” refers to a manager established in a third country.</p>
<p>Germany</p> 	<p>Yes, subject to certain conditions.</p>
<p>Hungary</p> 	<p>At the time of publication of this document there are no statutory provisions in force in Hungary that would expressly deal with a scenario similar to the above.</p> <p>Though the purpose of Act XVI of 2014 on Collective Investment Firms and Managers and Amendments to Financial Laws (“Collective Investments Act”), is the implementation of Directive 2011/61/EU of the European Parliament and of the Council (the “Directive”), rules applying to non-EEA AIFMs marketing non-EEA AIFs have not yet been adopted and elaborated in Hungarian law; the respective Part V of the Collective Investments Act on the marketing of non-EEA AIFs as well as the operation and licensing of non-EEA AIFMs⁴ shall enter into force on the 15th day after the adoption of the delegated act by the Commission based on paragraph 6 of Article 67 of the Directive.</p> <p>Based on information received from the Hungarian National Bank in March 2015, marketing non-EEA AIFs in the above scenario would be possible through the licenced Hungarian subsidiary of such a non-EEA AIFM. The interpretation of the Hungarian rules as to whether the provisions of Act CXX of 2001 on Capital Markets (the “Capital Markets Act”) on public offering and private placement of securities would apply to this scenario has not been supported by the Hungarian National Bank. Even if such rules were to apply, the involvement of an investment service provider to organize and execute the marketing procedure of the public offering is a statutory requirement in Hungary.</p>

⁴ Title of the respective Part V (currently in draft form): Provisions applicable to AIFMs and AIFs in relation to third countries.

Section one: Marketing in the EU according to the four scenarios





Country	Details
<p>Ireland</p> 	<p>Under Regulation 43 of the Irish AIFMD Regulations (referred to in the response to Question 3 below), marketing of both EEA and non-EEA (pre and post 22 January 2013) AIFs to professional investors in Ireland is permitted.</p> <p>Written notification must be given to the Central Bank of Ireland (the “Central Bank”) in a prescribed form before marketing to professional investors in Ireland. Such a notification must include the name and identity of the jurisdiction of domicile of both the AIFM and the AIF. Marketing may commence once the Central Bank has informed the AIFM that it may do so.</p> <p>For AIFMs which were marketing in Ireland before 22 July 2013, compliance with the Irish AIFMD Regulations is required on a ‘best efforts’ basis and this notification must have been supplied before 22 July 2014, at the latest.</p> <p>Regulation 43 also provides that where the Central Bank considers it necessary for the proper and orderly regulation and supervision of AIFMs, it may impose on the AIFM conditions or requirements in addition to those set out in Article 42.</p>
<p>Italy</p> 	<p>Under the Transposition Decree (Legislative Decree No. 44 of 4 March 2014, which amended the Italian Financial Consolidated Act of 1998 (“FCA”), starting from the date on which the European passport for non-EU AIFMs comes into force (2015):</p> <ul style="list-style-type: none"> (a) non-EU AIFMs shall be authorised in Italy by the Banca d’Italia, if Italy is the “EU Member State of reference” pursuant to the AIFMD. A regulation to be issued by the Banca d’Italia will set the conditions and procedure for such authorisation and the conditions which the non-EU AIFMs authorised in Italy should comply with in order to operate in other EU Member States; (b) non-EU AIFMs authorised in another EU Member State pursuant to the AIFMD may market EU AIFs and non-EU AIFs to professional investors in Italy pursuant to a notification made to Consob by the Home Member State regulator in the same way as for the Article 32 Notification. <p>In light of these provisions, some tentative conclusions can be drawn:</p> <ul style="list-style-type: none"> (a) once the passport for non-EU AIFMs comes into force, it would be the sole avenue for non-EU AIFMs to access the Italian market (i.e. there would be no dual marketing system after 2015); (b) until the entry into force of the passport for non-EU AIFMs, no national private placement regime for non-EEA AIFMs marketing non-EEA AIFs in Italy is provided. <p>In other words, marketing non-EEA AIFs managed by non-EEA AIFMs will not be allowed in Italy until the third country passport enters into force (Article 42.5 of the Italian FCA has been removed).</p>
<p>Latvia</p> 	<p>Latvia transposed the Directive into a new AIFM law, which came into force on 7 August 2013.</p> <p>When transposing the Directive Latvia decided not to exercise the discretion provided in Article 42 of the Directive. Therefore, marketing of non-EEA AIFs managed by non-EEA AIFMs is not allowed in Latvia.</p>

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3

Section one: Marketing in the EU according to the four scenarios


Country	Details
Lithuania 	<p>Lithuania has decided not to exercise the discretion provided in Article 42 of the Directive. According to the Law, every Collective Investment Fund Manager established in a third country must have a licence issued by the Republic of Lithuania or other reference Member State in order to engage in marketing in the Republic of Lithuania. Thus, such AIFs may be offered in Lithuania only according to Article 40 of the Directive.</p>
Luxembourg 	<p>Yes, marketing via private placement continues to be permitted. Since 22 July 2014 Article 45 of the 2013 AIFM Law (which reproduces Article 42 of the AIFMD) came into effect and applies.</p>
The Netherlands 	<p>Yes.</p>
Romania 	<p>Based on the principle that Norm 13/2013 shall prospectively apply to EU AIFMs distributing EU AIFs towards professional investors, it may be construed that the distribution of non-EU AIFs by non-EU AIFMs should not fall within the scope of Norm 13/2013. However, it is currently unclear which norm applies to such distribution of funds, i.e. whether this remains governed by Article 176 Regulation 15/2004 (which appears to be currently abrogated) and Article 10 CNVM Decision 9/2010 (which was a norm in application of Article 176 Regulation 15/2004) or not (and if not, what norms apply to them).</p> <p>According to Article 176 Regulation 15/2004 and Article 10 CNVM Decision 9/2010, in order to proceed to such marketing in Romania, the funds must be registered with the FSA and are subject to the following conditions:</p> <ul style="list-style-type: none"> • the funds must invest exclusively in certain types of asset expressly provided by law; • the funds must be authorised, regulated and supervised by a competent authority; • the funds must be subject to a prudential regulation and to an effective supervision equivalent to the provisions of the national regulation; • their assets must be deposited with a depositary; • a financial institution, subject to prudential supervision, established in Romania must be assigned as a contact point with the investors; • the existence of a cooperation agreement with the competent authority from the origin state of the funds; • the establishment of a branch in Romania. <p>However, as Article 176 Regulation 15/2004 and Article 10 CNVM Decision 9/2010 have been repealed, it is unclear whether the above-listed criteria continue to apply or not.</p>

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Section one: Marketing in the EU according to the four scenarios

Country	Details
<p>Slovakia</p> 	<p>Provided that a non-European alternative investment fund is not registered as an AIF in any member state of the European Union and that a non-European alternative investment fund does not have its registered seat or headquarters in any member state of the European Union, it is considered as a non-European Alternative Investment Fund (non-EU AIF) according to the Slovak Act No. 203/2011 Coll. on Collective Investments (the “Collective Investment Act”) which implemented Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers (the AIFMD).</p> <p>Provided that non-EU AIFs are managed by managers which have their registered seat outside of the European Union and which have been granted authorisation by the local regulator in the country of their residency to act as management companies and which have not been granted any licence or any other form of permission in the Slovak Republic (non-EU managers), such managers can market non-EU AIFs in the Slovak Republic only if the following conditions are fulfilled:</p> <ul style="list-style-type: none"> • in the course of marketing non-EU AIFs in the Slovak Republic, the non-EU managers should meet various conditions stipulated by the Collective Investment Act, namely: <ul style="list-style-type: none"> – making available an annual report for each non-EU AIF which is marketed in the Slovak Republic; – making available to investors certain information before they invest, as well as notifying them of any material changes to that information; – regular reporting by the non-EU managers to the National Bank of Slovakia, for example reporting in relation to the percentage of the non-EU AIFs’ assets which are subject to special arrangements arising from their illiquid nature and also reporting in relation to the main categories of assets in which the non-EU AIFs invest; – where the non-EU AIFs acquire control over an unlisted company, the non-EU managers must make a number of disclosures to that company, its shareholders and also to the National Bank of Slovakia. • the local regulator in the country of residence of the non-EU managers has signed a cooperation agreement with the National Bank of Slovakia in line with international standards. • the country of residence of the non-EU managers is not listed as a non-cooperative country by the Financial Action Task Force.


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Section one:

Marketing in the EU according to the four scenarios




Country	Details
<p data-bbox="225 297 300 331">Spain</p> 	<p data-bbox="453 297 1366 477">It is not clear whether non-EEA AIFs managed by non-EEA AIFMs without a passport will be regulated under the legislation implementing Directive 2011/61/EU. The implementing law may require evidence of compliance with the following requirements to be provided to the Spanish Securities Market Commission (“CNMV”):</p> <ol data-bbox="453 495 1366 1037" style="list-style-type: none"><li data-bbox="453 495 1366 633">(a) That Spanish legislation regulates the same category of AIF used by the non-EEA AIFM and that the non-EEA AIF is subject to a specific norm in its home State that protects the interests of unitholders in the same way as Spanish legislation, in this area;<li data-bbox="453 651 1366 757">(b) A favourable report of the home State authority responsible for monitoring and inspecting the non-EEA AIF, with respect to the development of the activities of the non-EEA AIFM;<li data-bbox="453 775 1366 913">(c) That adequate arrangements are in place for cooperation between the competent authorities of the home member state of the non-EEA AIFM and the supervisory authorities of the third country in which the non-EEA AIF is established;<li data-bbox="453 931 1366 1037">(d) That the country in which the non-EEA AIFM is established, or if applicable, the non-EEA AIF, is not on the list of non-cooperative countries and territories set by the Financial Action Task Force on Money Laundering. <p data-bbox="453 1055 1366 1122">Furthermore, the following information may have to be provided and registered with the CNMV:</p> <ol data-bbox="453 1140 1366 1659" style="list-style-type: none"><li data-bbox="453 1140 1366 1211">(a) identification of the non-EEA AIF that the non-EEA AIFM intends to commercialise, and the place where it is established;<li data-bbox="453 1229 1366 1301">(b) mechanisms and methods of marketing shares or units in Spain, and when appropriate, the classes or series of shares or units;<li data-bbox="453 1319 1366 1352">(c) management regulation of the non-EEA AIF or documents of incorporation;<li data-bbox="453 1370 1366 1442">(d) prospectus of the non-EEA AIF or equivalent document and the latest annual report;<li data-bbox="453 1460 1366 1494">(e) identification of the depositary of the non-EEA AIF;<li data-bbox="453 1512 1366 1583">(f) description of the non-EEA AIF, or any other information on it, available to the investors;<li data-bbox="453 1601 1366 1659">(g) information about the place where the main AIF is located if the non-EEA AIF to be marketed is a subordinated entity;

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Section one: Marketing in the EU according to the four scenarios

Country	Details
<p>Spain</p> 	<p>(h) when applicable, information on the measures taken to prevent the marketing of the non-EEA AIF to retail investors;</p> <p>(i) registration with and delivery to the CNMV of the documents that certify the subjection of the non-EEA AIF and the stocks, shares or equity securities or assets to the applicable legal regime.</p> <p>For the shares or units of the non-EEA AIF to be marketed in Spain, the non-EEA AIFM must be expressly authorised for such purpose by the CNMV and registered in the CNMV records.</p> <p>The authorisation of a non-EEA AIFM or a non-EEA AIF may be refused:</p> <p>(a) for prudential reasons;</p> <p>(b) if Spanish AIFs or their Spanish AIFMs are not given equal treatment in that non-EEA country;</p> <p>(c) for not ensuring compliance with the management standards and discipline of the Spanish securities markets;</p> <p>(d) if the protection of investors resident in Spain is not sufficiently guaranteed; and</p> <p>(e) in case of disturbances in the conditions of competition between the non-EEA AIF and AIFs authorised in Spain.</p> <p>Once authorised and registered in the CNMV register, the non-EEA AIF and/or the non-EEA AIFM must facilitate the shareholders and unitholders of the non-EEA AIF with the exercise of all their rights generally, and in particular with respect to payments, the acquisition by the non-EEA AIF of their shares, and the dissemination of the information to be supplied to shareholders and unitholders resident in Spain.</p>
<p>Sweden</p> 	<p>Yes, it is possible to market a fund in these circumstances. If the AIFM does not qualify for the transitional provisions, marketing AIFs in Sweden will require authorisation.</p> <p>If the AIFM qualifies for the transitional provisions it may continue to market AIFs subject to the previous legal regime.</p>
<p>UK</p> 	<p>Yes, it is possible to market a fund in these circumstances, subject to certain conditions, which are outlined in further detail below.</p>

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Section one:

Marketing in the EU according to the four scenarios

2. Has there been any local elaboration on what constitutes 'marketing' within the meaning of Article 4(1)(x)? If not, what is the better interpretation of that term? For example, are distinctions made between concepts such as 'making the fund available for investment', 'offering', 'placing', circulating documents marked "draft", 'pre-marketing', 'soft marketing' or 'reverse solicitation'?

Questions 3 to 8 below relate to 'marketing' as that term is understood in the respective jurisdictions. Question 9 relates to pre-marketing, if relevant. Question 10 relates to reverse solicitation.




Country	Details
Austria 	<p>The definition of 'marketing' in sec. 2 (1) Nr. 24 of the Austrian Alternative Investment Funds-Manager Act corresponds with the AIFMD definition. Further to that and according to the Austrian Financial Market Authority, marketing is to be interpreted in line with what constitutes a "public offer" pursuant to sec. 1 (1) lit, 1 Capital Markets Act. However, for purposes of the AIFMG, this also includes private placements.</p> <p>In order to constitute an offer, any marketing activity must provide sufficient information on the terms of the offer and the fund units and/or shares to be offered so as to enable an investor to decide to purchase or subscribe to the fund units and/or shares.</p> <p>Marketing would therefore include soft marketing, pre-marketing and other forms if sufficiently detailed information is provided.</p>
Belgium 	<p>The definition of "marketing" in the Belgian AIFM Act (as defined in our response to Question 3) is nearly the same as under the AIFMD, namely:</p> <p><i>"a direct or indirect offering or placement upon the initiative of or on behalf of the AIFM of units in the AIF concerned to or with investors domiciled or with a registered office in the European Economic Area."</i></p> <p>Given the AIFMD's fairly recent implementation into Belgian law, it is difficult to predict the interpretation of the term "marketing" in Belgium. Furthermore, the FSMA has not issued any guidelines on the concept of "marketing". It seems that the FSMA will be strict on this topic and will require funds and their managers to take the most prudent route.</p> <p>It is preferable to focus on the "offering of units" element of the definition, but again no guidance has been issued in this respect. The FSMA may apply the Belgian rules on "public offering" by analogy under which an offering takes place when sufficient information is provided on terms enabling an investor to purchase or subscribe to the units.</p> <p>It could also be that, concerning the interpretation of "offering of units", the FSMA and a Belgian judge would follow the same interpretation as the UK Financial Conduct Authority's. The Financial Conduct Authority stated that "offering" means "making a unit or share of an AIF available for purchase by a potential investor".</p>

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3

Section one: Marketing in the EU according to the four scenarios



Country	Details
<p>The Czech Republic</p> 	<p>The Czech Ministry of Finance has published several short guidelines in which it states that marketing includes, among others, private placement as well as public offering.</p> <p>Under the AICIF, “marketing” is defined as the marketing of (i) units (or similar securities) or shares issued by an investment fund or (ii) other possibilities to become an investor (e.g. a stakeholder, beneficiary, founder, shareholder, silent shareholder or person increasing the assets of a trust). The AICIF does not provide any further guidance as to the interpretation of the term “marketing” except for the statement that investing at the initiative of the investor is not considered to be marketing. Further, it does not distinguish between “pre-marketing” and “marketing”.</p> <p>The Czech Securities Commission (now replaced by the Czech National Bank) issued guidance on the meaning of public marketing under the Act on Collective Investment (replaced by the AICIF) in the past. Under this guidance ‘public marketing’ is any active provision or availability of information (irrespective of its form) to the public which is sufficient for a potential investor to decide on the investment. We are of the view that this rule may also apply to marketing under the AICIF (i.e. without the ‘public’ element) but this remains to be confirmed.</p>
<p>Denmark</p> 	<p>No. The definition of “marketing” included in the Danish rules implementing the Directive is basically identical to the definition included in the Directive. However, the Danish FSA has provided some guidance as to what constitutes “marketing”:</p> <ul style="list-style-type: none"> (a) Marketing efforts will be considered “marketing” even if the AIF will only be established if sufficient commitments are made, and (b) Marketing efforts towards a single investor will be considered “marketing”. On the other hand, preliminary meetings with potential investors, which take place prior to the formation of the AIF and before a private placement memorandum, prospectus or similar document has been made available, will not be considered “marketing”, provided that the potential investors are not able to commit to investments in the AIF at such meetings.
<p>Estonia</p> 	<p>Estonian law does not include a specific denotation of “marketing” for the purposes of AIFMs and/or AIFs. In the Investment Funds Act, “marketing” is defined as the “organisation of the purchase and sale of units of an investment fund”. Therefore, the current specification of “marketing” is relatively broad and does not allow for a distinction between the activities described above. However, the draft legislation referred to under Question 1 reflects that the definition of “marketing” included in Article (4)(1)(x) of the Directive, although not expressly transposed into the Investment Funds Act, is considered when assessing the activities of AIFMs. Therefore, in light of the activities of AIFMs, “marketing” should be understood as contemplated by the Directive i.e. “direct or indirect offering or placement at the initiative of the AIFM or on behalf of the AIFM of units or shares of an AIF managed by that AIFM to or with investors domiciled or with a registered office in Estonia”.</p>

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Section one: Marketing in the EU according to the four scenarios

Country	Details
<p>Finland</p> 	<p>Yes, the act implementing the Directive defines 'marketing' as 'direct or indirect offering or allotting of units in the AIF to investors and carried out on the initiative of the AIFM (or on its behalf)'. The governmental bill (which is significant in respect of interpreting the act) further elaborates the concept of 'marketing'. For an activity to be qualified as 'marketing' it shall always include the offering of units, the purpose of which is to conclude a binding contract/commitment. Therefore, 'soft circling', 'road shows' or 'reverse solicitation' are not considered as marketing.</p> <p>Further, the government bill implies that the AIF shall be duly formed before the offering of its interests may take place (and trigger the obligations under the act). In other words, if the AIF is not yet formed, providing related agreements would not be considered as marketing.</p> <p>On the other hand, the governmental bill states that providing offering documents concerning an existing AIF would be considered as negotiating of fund terms and thereby 'marketing'.</p> <p>Where a fund has already been formed and for example a placement memorandum (but not subscription documentation etc.) is circulated, it is not entirely clear whether this constitutes "marketing".</p>
<p>France</p> 	<p>The AMF Guidelines (Position AMF n° 2014-04) concerning the marketing of AIFs (and UCITS), define marketing as:</p> <p><i>"the presentation on the French territory of a financial instrument through different means (advertising, direct marketing, placement, advice, etc.) with a view to encouraging an investor domiciled or having its registered office in France to subscribe to it or to buy it"</i>.</p> <p>The concept of pre-marketing does not exist as such under French Law.</p> <p>The AMF position provides that the following activities do not constitute an act of marketing in France:</p> <ol style="list-style-type: none"> 1. the purchase, sale or subscription of units or shares of an AIF in response to a request from an investor (not following a solicitation). This is only relevant for AIFs that were specifically identified by the investor, and to the extent that he is authorized to do so; 2. the purchase, sale or subscription of units or shares of an AIF taking place in the context of a portfolio management agreement for a third party, provided that such financial instruments are allowed/authorised in the management of the portfolio of the investor; 3. the purchase, sale or subscription of units or shares of an AIF in the context of the financial management of an AIF provided that such financial instruments are allowed to be included in the assets of the AIF.

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Section one: Marketing in the EU according to the four scenarios

Country	Details
Germany 	<p>There is no clear guidance available from the German regulator as to the exact scope of marketing. However, the German regulator made some comments on the scope of pre-marketing which would currently not trigger license requirements. Pre-marketing should not cross the line to marketing of the Fund as long as the Fund is not yet established, does not yet have a name and only incomplete draft fund documents are distributed in Germany. The draft status should be clear. In addition, it should be communicated to the prospective investor that a subscription is currently not possible and no offers for a subscription are currently sought, and that the documents are still subject to change.</p>
Hungary 	<p>The Collective Investments Act fully implements the term 'marketing' as used in the Directive, with the following meaning:</p> <p><i>marketing means a direct or indirect offering or placement at the initiative of the AIFM or on behalf of the AIFM of units or shares of an AIF it manages to or with investors domiciled or with registered office in the European Union.</i></p>
Ireland 	<p>The Irish AIFMD Regulations adopt the AIFMD Article 4.1(x) definition of 'marketing'. There is currently no regulatory guidance in Ireland on the topic of marketing or any distinction between the concepts referred to in Question 2 above.</p>
Italy 	<p>Under Title II, Chapter 3 of Section 2 of the Banca d'Italia draft Regulation on collective investment, a general definition of "marketing" is introduced, as given below:</p> <p><i>Constitutes any marketing offer, invitation to offer or promotional message, addressed to investors in whichever form by the initiative of the manager or on behalf of him, both directly and indirectly, to subscribe or purchase share of fund.</i></p>
Latvia 	<p>According to the AIFM law, marketing is defined as "distribution" which means:</p> <p><i>"initial placement or offering of investment units, made by the manager or on behalf of the manager, to the investors domiciled or having a registered office in the member state"</i></p>
Lithuania 	<p>According to the Law on Management Companies of Investment Undertakings for Professional Investors of the Republic of Lithuania, marketing is defined as "direct or indirect offering of units or shares of a collective investment undertaking controlled by a collective investment management company under the initiative or on behalf of such management company to professional investors domiciled or established in the EU or in the EEA".</p> <p>Therefore, marketing is considered to be an active conduct of a collective investment management company.</p>



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Section one:

Marketing in the EU according to the four scenarios



Country	Details
Luxembourg 	<p>The 2013 AIFM Law has implemented the term as used in the AIFMD, i.e., any “direct or indirect offering or placement at the initiative of the AIFM or on behalf of the AIFM of units or shares of an AIF it manages to or with investors domiciled or with registered office in the European Union”.</p> <p>There is currently no regulatory guidance as to what constitutes pre-marketing, soft marketing or reverse solicitation in Luxembourg.</p>
The Netherlands 	<p>The Dutch Act on Financial Supervision (<i>Wet op het financieel toezicht</i>, ‘the AFS’) does not refer to ‘marketing’ but rather to ‘offering’.</p> <p>‘Offering’ is defined in the AFS as ‘making directly or indirectly an offer, which is sufficiently specific, to enter into an agreement regarding units in an alternative investment fund (AIF) (...), or directly or indirectly requesting or obtaining monies of a client for the purpose of participating in an AIF (...)’</p> <p>There is no hard and fast rule on which activities constitute an offering. Calls or meetings with a prospective investor to discuss the AIF may or may not qualify as an offering: this would depend on further facts. Care is advised. The same applies to providing a teaser (term sheet) or flip book outlining the terms of the AIF.</p> <p>However, where a final form prospectus is being provided to a prospective Dutch investor (including the subscription form), it will in any event constitute an offering.</p>

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Section one: Marketing in the EU according to the four scenarios



Country	Details
<p>Romania</p> 	<ol style="list-style-type: none"> 1. (As opposed to the Draft Transposition Norm - see 2 below), the current legal framework (i.e. Article 176 Regulation 15/2004, Article 10 Decision 9/2010 - however, please see the comments on these articles under Question 1) does not mention a definition of "marketing". Certain types of marketing methods are prohibited, e.g.: <ul style="list-style-type: none"> • Unsolicited calls (based on Decision 9/2010); • Commercial communications through the use of automatic calling and communication systems that do not require human intervention, by fax or by electronic mail or by any other method that uses publicly available electronic communications services, unless the subscriber or user concerned has given their prior express consent to receive such communications. This rule has an exception, i.e. a person or an entity directly obtaining the email address of a client, while selling goods or providing services, may use that address for the purpose of commercial communication relating to the goods which they market, subject to clearly and expressly providing the customers with the possibility to resist through a simple and free method to such use, not only when obtaining the e-mail address, but also with the occasion of each message in case the customer has not initially opposed (Article 12 Law 506/2004); • It can be considered that marketing methods based on those prohibited shall be prohibited as well (e.g. flyers, circulating documents marked "draft" or meetings fixed based on unsolicited calls, etc.); • Data protection provisions may need to be observed as well (if personal data are used). 2. The definition offered by the Draft Transposition Norm of the term "marketing" overlaps with the definition offered to this concept by the AIFMD. Thus, the Draft Transposition Norm includes direct or indirect offering and placement in "marketing".
<p>Slovakia</p> 	<p>According to the Collective Investment Act, marketing shall be understood as the "direct or indirect offering of units or shares of collective investment undertakings or their placing at the initiative or on behalf of a manager of such collective investment undertaking with investors with their permanent address or registered seat situated in a member state of the European Union".</p> <p>Apart from the implementation of the word 'marketing', there has not been any other elaboration of this term in the Slovak law.</p>

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Section one: Marketing in the EU according to the four scenarios


Country	Details
<p>Spain</p> 	<p>According to Law 22/2014, which has implemented the AIFMD in Spain, the marketing of an AIF shall be understood as the acquisition of clients through an advertising activity on behalf of the AIF or any entity acting on its behalf or on behalf of one of its traders, or customers, for their contribution to the AIF funds, assets or rights.</p> <p>For this purpose, advertising activity means any form of communication addressed to potential investors in order to promote, directly or through third parties acting on behalf of the AIF or the management company of AIF, the subscription or acquisition of units/shares of the AIF. In any case, there is an advertising activity when the means used to address the public are either telephone calls initiated by the AIF or its management company, home visits, personal letters, e-mail or any electronic means, which are part of a publicity campaign, marketing or promotion.</p> <p>The campaign will be deemed to be carried out within Spain's national territory if it is addressed to investors resident in Spain. In the case of e-mail or any electronic means, it shall be presumed that the offer is addressed to investors resident in Spain when the AIF or its management company, or any person acting on their behalf online, propose the purchase or subscription of shares or facilitate to the Spanish residents the information needed to assess the features of the issue or offer and adhere to it.</p>
<p>Sweden</p> 	<p>The concept of marketing under the Swedish Alternative Investment Fund Managers Act ("AIFMA") implementing the Directive is broad, covering direct and indirect offerings and placements to investors domiciled or with their registered office within the EEA. This includes all sale promoting actions, i.e. advertising, telemarketing, brochures, flyers, e-mail, Internet and investor events.</p> <p>Notably, the preparatory works to the AIFMA express the view that marketing is not possible until the AIF actually exists. Activities that are conducted before the fund vehicle meets the criteria of an AIF should therefore not be considered as marketing for the purpose of the Directive. In relation to launching a private equity fund, it is argued that the fund vehicle would meet the definition of an AIF at the earliest by 'first closing' since there is typically nothing to be classified as an AIF nor any assets to be managed before a 'first closing'. Investor contacts or similar activities before a 'first closing' should therefore typically not be viewed as 'marketing'.</p>

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Section one: Marketing in the EU according to the four scenarios

Country	Details
UK 	<p>Yes. The UK Financial Conduct Authority (FCA) has published guidance on the definition of 'marketing' in the context of the AIFMD in chapter 8 of its Perimeter Guidance Manual ("PERG"). The specific section on AIFMD marketing in PERG 8.37 is available here.</p> <p>In the FCA's view, an offering or placement takes place when a person seeks to raise capital by making an interest in an AIF available for purchase by a potential investor. This includes situations which constitute a contractual offer that can be accepted by a potential investor in order to make the investment and form a binding contract, and situations which constitute an invitation to the investor to make an offer to subscribe for the investment. An 'offer' is to the public, whereas a 'placement' is to a select group of potential investors. In the FCA's opinion, secondary trading is not caught within the definition of either an 'offer' or a 'placement' because it does not involve capital raising in that AIF, except where there is an indirect offering or placement (e.g. distribution via a chain of intermediaries).</p> <p>Communication in relation to draft documentation is generally not caught, but this should not be a means to avoidance. In a private equity context, this usually means circulating the final form PPM plus limited partnership agreement plus subscription document. Pre- or soft marketing is not 'marketing' but is regulated under the UK domestic financial promotion regime.</p>

3. When was the Directive transposed into national law?

If later than 22 July 2013, as a matter of local law, is the best advice generally to proceed as if the Directive were transposed, or as if the domestic law was unchanged?

Country	Details
Austria 	<p>The directive has been transposed into national law through the Alternative Investment Fund Manager Gesetz (Austrian Federal Gazette I No. 135/2013 ("AIFMG")).</p>
Belgium 	<p>The AIFMD was implemented in Belgium through the Act of 19 April 2014 on alternative institutions for collective investment and their managers ("<i>Wet betreffende de alternatieve instellingen voor collectieve belegging en hun beheerders</i>") ("<i>Loi relative aux organismes de placement collectif alternatifs et à leur gestionnaires</i>") (the "AIFM Act"). The AIFM Act was published in the Belgian State Gazette on 17 June 2014. The majority of the AIFM Act's provisions, including the provisions implementing Article 42 AIFMD, entered into force 10 days after that publication date, i.e. 27 June 2014.</p> <p>Since 27 June 2014, non-EEA AIFMs can only market non-EEA AIFs in Belgium after the FSMA has approved such a non-EEA AIFM's request to market in Belgium. Please refer to our answer to Question 8 for further details.</p>



Section one: Marketing in the EU according to the four scenarios

Country	Details
The Czech Republic 	<p>The Czech Republic implemented the AIFMD via Act no. 240/2013 Coll., on Investment Companies and Investment Funds (the "AICIF") which became effective on 19 August 2013. The AICIF was amended with effect as of 1 January 2015.</p>
Denmark 	<p>The Directive was implemented by national rules effective since 22 July 2013.</p>
Estonia 	<p>The Directive has been fully transposed into Estonian law; however, several provisions transposed will enter into force in July 2015. Provisions transposing Article 42 of the Directive have already been effected, wherefore in order for a non-EEA AIFM to market non-EEA-AIFs in Estonia, the respective regulation must be complied with.</p>
Finland 	<p>The Directive has been transposed by an act, which became effective on 15 March 2014.</p>
France 	<p>The AIFMD has been transposed into French Law by an ordinance and a decree published respectively on 27 and 30 July 2013 and amending the French <i>Code Monétaire et Financier</i> (CMF).</p> <p>The French authority has also amended its general regulations to implement the provisions of the AIFMD in December 2013 and February 2014.</p>
Germany 	<p>The Directive was implemented into German law on 22 July 2013.</p>
Hungary 	<p>The Collective Investments Act serving for the implementation of the Directive (amongst other related EU regulation) is already in force. Please see the answer to Question 1. Notwithstanding the above, the implementation / elaboration of the rules on the marketing of non-EEA AIFs as well as the operation and licensing of non-EEA AIFMs has not been completed; such rules exist in draft form only.</p> <p>Based on oral information and informal advice received from the Hungarian National Bank in March 2015, the best way to proceed in the scenario as described above would therefore be to proceed as if the domestic law was unchanged.</p>
Ireland 	<p>The AIFMD was transposed into Irish law in July 2013 pursuant to the European Union (Alternative Investment Fund Managers) Regulations 2013 (S.I. No. 257 of 2013) as amended (the "Irish AIFMD Regulations").</p>








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Section one:

Marketing in the EU according to the four scenarios




Country	Details
Italy 	<p>The AIFMD implementation process started at the primary legislation level with the entry into force of Legislative Decree No. 44 of March 2014, which amended the Italian FCA. The text entered into force on 9 April 2014.</p> <p>The Banca d'Italia and Consob were then delegated the power to issue the appropriate implementing legislations.</p> <p>On 31 December 2014 the Italian Government issued Law Decree No. 192/2014 (published in the Official Gazette No. 302 of 31 December 2014 and entered into force on the same date) containing new terms for the implementation of the laws. The deadline for the implementation of the implementing decrees provided by Legislative Decree No. 44/2014 has been postponed from 31 December 2014 to 30 April 2015.</p> <p>On 21 January 2015 the implementing decrees of Legislative Decree No. 58/1998 (the Italian Consolidated Law on Finance) as modified by Legislative Decree No. 44/2014 issued by the Bank of Italy and Consob were published on their respective web sites for purely informative purposes. These provisions will be published in the Official Gazette for their entry into force. At the same time, the implementing decree of the Economy and Finance Department and the new regulation for the collective management of the investment issued by the Bank of Italy on 19 January 2015 will be published. The publication of the Official Gazette is expected in the next few weeks.</p>
Latvia 	<p>The AIFMD transposition law was voted by the Latvian Parliament on 9 July 2013.</p>
Lithuania 	<p>The Alternative Investment Fund Managers Directive was implemented in the Republic of Lithuania by adopting the Law on Management Companies of Investment Undertakings for Professional Investors (hereinafter - the "Law"). The Law came into force as of 1 January 2015.</p>
Luxembourg 	<p>The Directive was transposed into Luxembourg law on 12 July 2013.</p>
The Netherlands 	<p>The Directive was transposed into Dutch law and became effective on 22 July 2013.</p>
Romania 	<p>There is a draft norm for the transposition of the AIFMD which is currently debated by the issuing authorities ("Draft Transposition Norm"). As at 18 February 2015, the Draft Transposition Norm implementing the AIFM Directive is still in a project phase and the law has not yet been adopted. The period of time required to complete this procedure cannot currently be determined.</p>
Slovakia 	<p>The AIFMD was implemented into national law through the Collective Investment Act, effective since 22 July 2013.</p>

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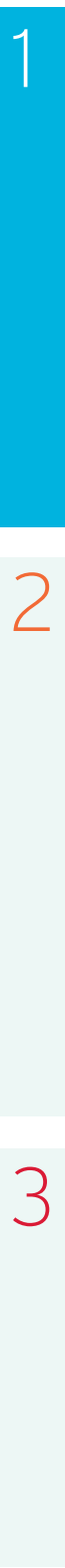
Section one: Marketing in the EU according to the four scenarios

Country	Details
Spain 	<p>The Directive has been transposed in Spain on 22 November 2014 through Law 22/2014.</p>
Sweden 	<p>The Swedish AIFMA implementing the Directive entered into force on 22 July 2013.</p>
UK 	<p>The Directive was transposed into national law on 16 July 2013 through the Alternative Investment Fund Managers Regulations 2013 (SI 2013/1773), which are available here. The Regulations came into force on 22 July 2013.</p> <p>The Alternative Investment Fund Managers (Amendment) Regulations 2013 (SI 2013/1797), which are available here, were made on 17 July 2013. These will implement provisions in the Directive which do not take effect until the European Commission specifies a date in a delegated act. Most of the provisions in the Amendment Regulations will therefore come into effect when the corresponding Directive provisions do so.</p>

4. Under the domestic implementing measures, is the Directive relevant to marketing to investors established in the respective jurisdictions (within the meaning of Article 4(1)(j)) but who are not physically located in those jurisdictions at the time the marketing takes place⁵?











Country	Details
Austria 	<p>Such persons would be covered if they have their domicile (<i>Wohnsitz</i>) or corporate seat (<i>Sitz</i>) in the EEA.</p>
Belgium 	<p>As set out in our answer to Question 3, in Belgium, the definition of marketing refers to investors domiciled or with a registered office in the European Economic Area. Article 6 of the AIFM Act provides that the AIFM Act applies, among other things, to marketing AIFs in Belgium.</p> <p>Currently, no further information is available in Belgium on how the definition of marketing relates to Article 6 of the AIFM Act regarding this question. Given this uncertainty, caution is recommended, resulting in marketing to investors not physically located in Belgium who have their domicile or registered office in Belgium requiring compliance with the Belgian AIFM Act.</p>
The Czech Republic 	<p>No. Although the AICIF recognises marketing both in the Czech Republic and outside the Czech Republic, it does not specifically recognise marketing to a Czech entity physically located abroad.</p>
Denmark 	<p>No. The Danish rules implementing the Directive restrict marketing to "investors in Denmark".</p>

⁵ Article 2(1)(c) may be interpreted as restricting the territorial scope of the Directive in relation to Article 42 firms.



Section one:

Marketing in the EU according to the four scenarios







Country	Details
Estonia 	The provisions of the Estonian law only refer to marketing “in Estonia” (without defining this in more detail).
Finland 	The Finnish law refers only to marketing “in Finland” (without defining this in more detail).
France 	The French marketing rules apply exclusively to acts of marketing on the French territory.
Germany 	There is no clear guidance from BaFin on the territorial scope of the marketing regime. The territorial scope depends on the individual circumstances of the case. As a general rule, the investor must be physically present in Germany at the time the activity takes place. In particular, firms should not create an artificial scenario to circumvent the marketing requirements.
Hungary 	The Collective Investments Act does not distinguish such criteria. It sets out, however, that an AIFM with a seat in Hungary shall ensure that the prospectus of the AIF it manages meets the requirements set out in Annexes 3 and 5 of the Collective Investments Act, by 31 December 2014 at the latest.
Ireland 	The Irish AIFMD Regulation transposing Article 42 of the AIFMD relates to marketing to professional investors in Ireland and the definition of ‘marketing’ refers to the domicile or registered office of the investor.
Italy 	No, it is not. The implementing measures seem to restrict marketing to investors in Italy.
Latvia 	Not applicable.
Lithuania 	As explained under Question 2, the Law in general refers to marketing to professional investors domiciled or established in the EU or in the EEA.
Luxembourg 	<p>The definition of marketing contained in Article 1(9) of the 2013 AIFM Law is the same as the definition of marketing in the AIFMD (i.e. Article 4(1)(x)) and thus refers to investors domiciled or with a registered office in the Union.</p> <p>The relevant marketing provisions in the 2013 AIFM Law further refer to marketing activities carried out on the territory of the Grand Duchy of Luxembourg.</p>

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Section one: Marketing in the EU according to the four scenarios

Country	Details
The Netherlands 	<p>Yes, the AFS restricts marketing to investors domiciled, or with a registered office, in the Netherlands, irrespective of where they are at the time the promotional activities are undertaken.</p> <p>Please note that under the AFS marketing is (also) deemed to take place in the Netherlands where it concerns the cross-border online marketing to investors domiciled, or with a registered office, outside the Netherlands by an AIFM established in the Netherlands, or by its branch office established in the Netherlands.</p>
Romania 	<p>Article 46 of the Draft Transposition Norm allows non-EU AIFMs to market AIFs to professional investors from Romania, even if they do not have a passport, subject to certain conditions. There is no express definition of “professional investor from Romania”; there is, however, another norm (i.e. the definition of “marketing”) which refers to entities with their headquarters in Romania and individuals domiciled in Romania.</p> <p>So, it appears there is no distinction depending on the physical location of the investor, the only criterion being that of “identity”. This article of the Transposition Norm appears to contradict Article 42 AIFMD, the latter establishing that marketing may be performed exclusively on the territory of the EU Member State.</p>
Slovakia 	<p>No, marketing of alternative investment funds as such is not affected by the AIFMD in general.</p>
Spain 	<p>The implementing legislation seems to refer only to marketing activities addressed to residents in Spain.</p>
Sweden 	<p>Provided that all marketing activities take place outside of Sweden, the domicile of the investor should not be decisive. However, given the wide scope of the marketing definition, the actual activities allowed are very limited since e-mail invitations (depending on content) and telephone contacts could be considered as marketing.</p>
UK 	<p>No. The UK AIFM Regulations restrict marketing “in the United Kingdom”.</p> <p>In PERG 8.37.10, the FCA states that in addition to the requirement that the marketing must take place in the UK, the relevant investor must be domiciled in an EEA State or must have its registered office in an EEA State in order for the marketing to be caught. However, the FCA has declined to give further guidance on the definition of “domicile” for these purposes, other than to state that it must be “construed in line with its meaning under EU law”.</p>

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Section one:

Marketing in the EU according to the four scenarios

5. Once the Directive is in effect in the respective jurisdictions, in relation to 'marketing' (as that term is understood in those jurisdictions) can a non-EEA manager of a non-EEA fund rely on a transitional (or 'grandfathering') provision, for example a transitional provision implementing Article 61(1) to delay compliance with the requirements of Article 42? If it can, what conditions must be met? If the conditions are met, what limits are there on marketing (for example is it possible only to market a fund which was being actively marketed before 22 July 2013 or also other funds managed by the same manager)?

Country	Details
Austria 	<p>The wording of the AIFMG suggests that a non-EEA manager active prior to 22 July 2013 may continue to market all funds, provided that they take all necessary measures to comply with the AIFMG and file an application for approval (<i>Antrag auf Zulassung</i>) by 21 July 2014.</p>
Belgium 	<p>No transitional relief exists regarding the marketing by non-EEA AIFMs of units of non-EEA AIFs in Belgium.</p>
The Czech Republic 	<p>The deadline for AIFMs being fully compliant with the AICIF was 22 July 2014.</p>
Denmark 	<p>Yes. Despite the fact that the Danish rules implementing the Directive do not specifically extend the transitional provisions to non-EEA managers, the Danish FSA has informally confirmed that the transitional provision that allows managers that perform activities covered by the law before 22 July 2013 to delay compliance with the law until 22 July 2014 also applies to a non-EEA manager of a non-EEA fund.</p>
Estonia 	<p>The transition period for non-EEA AIFMs marketing non-EEA AIFs in Estonia expired on 22 July 2014. Non-EEA AIFMs aiming to market non-EEA AIFs under Article 42 of the Directive in Estonia must comply with the national provisions.</p>
Finland 	<p>Yes, a non-EEA manager of a non-EEA fund was entitled to rely on certain transitional provisions. Provided that the marketing of an AIF to professional investors had been commenced before the act coming into effect, the AIFM was entitled to continue marketing that AIF to professional investors until 22 July 2014 subject to a notification to the competent authority by 15 April 2014. To benefit from the transitional provisions, the actions taken by the AIFM shall have been qualified as 'marketing' (see answer to Question 2).</p>
France 	<p>The French transposition text does not include a grandfathering clause for the implementation and application of Article 42 requirements; AMF Position DOC 2014-04 explicitly indicates that there are no transitional rules applicable in such a case.</p> <p>In practice, this means that non-EU AIFMs who wish to market AIFs in France need to comply with the regime for marketing without a passport (provided for under Article D. 214-32 of the CMF) as of the date of applicability of the new regime (i.e. 22 July 2013).</p>









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Section one:

Marketing in the EU according to the four scenarios



Country	Details
Germany 	<p>Yes, a non-EEA AIFM may rely on grandfathering provisions, so long as marketing of the relevant AIF in Germany began pre 22 July 2013. Marketing for this purpose means to have distributed at least a private placement memorandum in its almost final form to a prospective German investor. The grandfathering regime applies only to the particular AIF that has been marketed in Germany prior to 22 July 2013.</p> <p>In respect of a non-EEA AIFM's fund that falls within the grandfathering regime, it is expected that there will be no on-going AIFMD disclosure obligations in respect of such fund provided that it has admitted all its German investors by 21 July 2014.</p>
Hungary 	<p>The Collective Investments Act does not include a transitional provision that would be applicable to the scenario set out above.</p> <p>According to the transitional provisions under the Collective Investments Act, companies that until 15 March 2014 operated under <i>Act CXCIII of 2011 on Investment Fund Management Companies and Collective Investment Trusts</i> as investment funds or as venture capital fund management companies under <i>Act CXX of 2001 on the Capital Market</i> and that now qualify as AIFMs under the Collective Investments Act, were able to carry out their licensed activities until 22 July 2014 provided that they submitted an application for authorization in line with the Collective Investments Act by 22 July 2014.</p> <p>Also as long as their respective prospectuses are valid, the restrictions of the Collective Investments Act with respect to marketing of EEA AIFs in Hungary and another Member State may not apply in case of public placements.</p>
Ireland 	<p>See response to Question 1.</p>
Italy 	<p>The Transposition Decree does not foresee any transition period for non-EEA AIFMs wishing to market non-EEA AIFs (see answer to Question 1).</p>
Latvia 	<p>Not applicable.</p>
Lithuania 	<p>Not applicable.</p>
Luxembourg 	<p>Yes. Marketing under the existing Luxembourg private placement rules continued until 22 July 2014 and was not affected by the 2013 AIFM Law until then. For further detail, please see answer to Question 1.</p>
The Netherlands 	<p>Question 5 is not relevant anymore since the transitional year was applicable until 23 July 2014.</p>

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Section one: Marketing in the EU according to the four scenarios

Country	Details
Romania 	<p>Under Norm 13/2013, there is no such provision regulating transitional situations, given that the distribution of non-EU AIFs towards professional investors is still regulated by the domestic law, prior to any measures of implementation of the AIFMD. However, please see the comments above on Art. 176 Regulation 15/2004 and Art. 10 Decision 9/2010.</p> <p>The Draft Transposition Norm regulates such transitional situations, implementing Article 61(1) of the AIFMD, but only concerning Romanian AIFMs and AIFs.</p>
Slovakia 	<p>According to the Collective Investment Act, there is no transitional provision which would be applicable to the case at hand.</p> <p>A transitional period of one year (counted from 22 July 2013) is applicable for non-EU AIFs managed by non-EU managers only in case they wish to distribute the non-EU AIFs via a public offer.</p> <p>It seems that Article 61 (1) of the AIFMD has been implemented into the Collective Investment Act incorrectly as it applies only to Slovak AIFs.</p> <p>Therefore, for the purpose of ensuring that there is conformity with the EU law, interpretation of the transitional provisions of the Collective Investment Act could be in accordance with the AIFMD.</p>
Spain 	<p>The implementing legislation does not seem to include a grandfathering provision applicable to this scenario.</p>
Sweden 	<p>Yes. In order to qualify for the transitional provisions, the AIFM must have actively marketed an AIF at the date of implementation (i.e. 22 July 2013). Please see the response to Question 2 above for an explanation of what constitutes 'marketing' in Sweden. As explained on page 19, the Swedish regulator's view is that something which does not yet exist, cannot be marketed, i.e. any discussions with investors before the AIF has been legally constituted does not constitute marketing.</p> <p>If the AIFM qualifies for the transitional provisions it may continue to market new and existing AIFs in Sweden under the previous legal regime.</p>
UK 	<p>Yes, the UK government has taken the view that Article 61(1) applies to non-EEA managers of non-EEA funds. If a non-EEA AIFM (a) was managing an AIF (as defined) immediately before 22 July 2013 and (b) at any time prior to 22 July 2013, marketed that AIF to a professional investor anywhere in the EEA, then it may continue to market that AIF to professional investors in the UK until 21 July 2014 in accordance with pre-existing financial promotion laws (only). The same AIFM may also establish and market future funds on the same basis.</p> <p>For this purpose 'marketing' is as defined by the FCA (see Question 2) so pre- or soft marketing before 22 July 2013 is not enough to trigger the transitional provision.</p>

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Section one:

Marketing in the EU according to the four scenarios

6. Is there any list published of the cooperation arrangements which have been entered into (i.e. signed by both parties and dated) between the competent authorities of the respective jurisdictions and those of non-EEA jurisdictions for the purposes of Article 42(1)(b)? What is expected to happen in future?

Country	Details
Austria 	<p>Yes. The list of cooperation arrangements is published in sec. VIII of the FAQs zur Anwendung des Alternative Investmentfonds Manager-Gesetzes published by the Austrian Financial Market Authority:</p> <p>http://www.fma.gv.at/de/unternehmen/investmentfonds-kag/informationen-fuer-verwalter-alternativer-investmentfonds.html</p>
Belgium 	<p>Yes, the FSMA has published a list with the cooperation agreements it entered into with the competent authorities of non-EEA jurisdictions. That list is available via the following link:</p> <p>http://www.fsma.be/~media/Files/fsmafiles/mou/list/liste_eng.ashx</p>
The Czech Republic 	<p>As at 18 February 2015 the Czech Republic had concluded 38 cooperation agreements with 29 countries.</p> <p>The up-to-date list of cooperation agreements can be found on the webpage of the Czech Ministry of Finance and the Czech National Bank although it is in Czech language only.</p> <p>We understand that additional cooperation agreements will be concluded soon but the details are not publicly available.</p> <p>Moreover, we understand that further cooperation agreements may be negotiated but no details are available.</p>
Denmark 	<p>The Danish FSA has entered into cooperation arrangements with the competent authorities of a large number of non-EEA jurisdictions. The list is available here.</p>
Estonia 	<p>Yes, there is a list of cooperation arrangements entered into between the Estonian Financial Supervision Authority (the "EFSA") and the respective authorities of non-EEA states under the Directive available on the official website of the EFSA: http://www.fi.ee/index.php?id=11947 (the site is available in Estonian only). In light of the development of the Estonian investment funds market, it is likely that the EFSA will continue to engage in such arrangements.</p>
Finland 	<p>The Finnish Financial Supervisory Authority ("FIN-FSA"), which is the competent authority, has agreed upon cooperation arrangements with certain third country authorities. The FIN-FSA maintains a list of authorities with whom it has arranged cooperation (the current list includes 29 authorities in 24 countries: http://www.finanssivalvonta.fi/en/Regulation/International_Projects/AIFMD/Pages/Default.aspx).</p>

Section one: Marketing in the EU according to the four scenarios











Country	Details
<p>France</p> 	<p>So far, France has signed 29 bilateral cooperation arrangements with non-European regulators of alternative investment fund managers. The list of agreements is published on AMF's website:</p> <p>http://www.amf-france.org/technique/multimedia?docId=27bd86a7-1eb3-4e8b-a3fc-f316038c0a9e</p> <p>For more information, please also see:</p> <p>http://www.amf-france.org/Acteurs-et-produits/Societes-de-gestion/Passage-AIFM.html</p>
<p>Germany</p> 	<p>As at 18 February 2015, BaFin has concluded Memorandums of Understandings with the following supervisory authorities:</p> <ul style="list-style-type: none"> • Australia (ASIC) • Bermuda (BMA) • Cayman Islands (CIMA) • Guernsey (GFSC) • Hong Kong (SFC) • Hong Kong (HKMA) • India (SEBI) • Japan (JFSA) • Japan (METI) • Japan (MAFF) • Jersey (JFSC) • Canada (AMF) • Canada (OSC) • Canada (ASC) • Canada (BCSC) • Canada (OSFI) • Switzerland (FINMA) • Singapore (MAS) • USA (SEC) • USA (CFTC) • USA (FED/CC) <p>The published information leaflet by BaFin can be found here.</p> <p>Please note that BaFin does not automatically follow the cooperation agreements ESMA has negotiated. Rather, BaFin reserves the right to conduct a due diligence with each non-EEA jurisdiction separately.</p>
<p>Hungary</p> 	<p>The published list of cooperation arrangements between the competent authorities mentioned above is accessible through this hyperlink:</p> <p>http://felugyelet.mnb.hu/topmenu/penzugyi_felugyelet/egyuttmukodesi_megallapodasok</p>
<p>Ireland</p> 	<p>As at 18 February 2015, the Central Bank had signed cooperation agreements with 43 of the 45 national securities regulators who had negotiated MoUs with ESMA. As at that date, only Turkey and the Maldives were outstanding.</p>

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2

3

Section one: Marketing in the EU according to the four scenarios

Country	Details
Italy 	<p>As at 18 February 2015 Consob had concluded MoUs with 24 Authorities of non-EEA jurisdictions. The list is available here:</p> <p>http://www.esma.europa.eu/content/AIFMD-MoUs-signed-EU-authorities-updated</p>
Latvia 	<p>The list of countries that the FKTK has concluded cooperation agreements with is available at:</p> <p>http://www.esma.europa.eu/content/AIFMD-MoUs-signed-EU-authorities</p>
Lithuania 	<p>The list of countries that the Central Bank of the Republic of Lithuania has concluded cooperation agreements with is available at:</p> <p>http://www.esma.europa.eu/content/AIFMD-MoUs-signed-EU-authorities</p>
Luxembourg 	<p>Yes, the list can be accessed at:</p> <p>http://www.cssf.lu/fileadmin/files/AIFM/FAQ_AIFMD.pdf</p>
The Netherlands 	<p>Yes, please see the following hyperlink:</p> <p>http://www.esma.europa.eu/content/AIFMD-MoUs-signed-EU-authorities</p>
Romania 	<p>Yes, please see the following hyperlink:</p> <p>http://www.esma.europa.eu/content/AIFMD-MoUs-signed-EU-authorities</p>
Slovakia 	<p>Yes. The list can be found here:</p> <p>http://www.nbs.sk/en/financial-market-supervision/securities-market-supervision/collective-investment/list-of-memorandums-of-understanding-under-aifmd-directive</p> <p>However, the MoUs are not available to the public for review.</p>
Spain 	<p>As at 18 February 2015 the CNMV had concluded MoUs with 30 Authorities of non-EEA jurisdictions. The list is available here:</p> <p>http://www.esma.europa.eu/content/AIFMD-MoUs-signed-EU-authorities-updated</p>
Sweden 	<p>The SFSA has signed the Memoranda of Understanding (MoUs), negotiated by the European Securities and Markets Authority (ESMA) on behalf of the EU/EEA national competent authorities, in relation to, among others, the Cayman Islands, Bermuda, Jersey and Guernsey. Please see:</p> <p>http://www.esma.europa.eu/node/66691</p> <p>http://www.esma.europa.eu/content/AIFMD-MoUs-signed-EU-authorities-updated</p>
UK 	<p>As at 18 February 2015, the FCA had signed agreements with 50 non-EEA supervisory authorities. A list of the relevant authorities is available here, under the “Supervisory co-operation arrangements (MoUs)” heading.</p>

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Section one:


Marketing in the EU according to the four scenarios

7. After the expiry of any transitional provision, is there to be any gold-plating of the requirements of Article 42? In other words, will there be additional domestic restrictions on or conditions for marketing fund interests? Or is it necessary only to consider local implementation of Article 42? There might be restrictions on the type or number of investors who may be approached, or other conditions. For example, in the UK, it will continue to be necessary to comply with the pre-existing financial promotion regime, which (in theory) further restricts the category of 'per se professional client'. In Germany, it will be a requirement that the non-EEA fund has a depositary performing functions specified under Article 21.

Country	Details
Austria 	<p>Yes, there is a detailed regime set out in § 47 AIFMG. It is difficult to give a brief outline of the requirements.</p> <p>The fund has to have a permanent representative in Austria and provide details regarding depositary, fund strategy, payment of fees and certificate the compliance with the requirements of the AIFMG.</p> <p>The certificate of compliance must be issued by the competent supervision authorities of the home State of the non-EEA AIFM and non-EEA AIF, which is a major obstacle in practice.</p> <p>If the additional requirements stated in § 49 AIFMG are met, certain types of AIF may be marketed to retail clients and qualified retail clients.</p>
Belgium 	<p>Belgium has not "gold-plated" the requirements of Article 42 AIFMD. Consequently, no additional restrictions apply except if the particulars filed during the notification substantially change, then the AIFM must inform the FSMA thereof in writing at least one month before implementing a planned change or immediately after an unplanned change has occurred.</p> <p>For an overview of Belgium's implementation of Article 42 AIFMD, please refer to our answer to Question 8.</p>
The Czech Republic 	<p>The AICIF does not provide for any additional marketing requirements ("gold plating") as permitted under paragraph 2 of Article 42.</p>
Denmark 	<p>Yes. The rules implementing the Directive empower the Danish FSA to set out stricter rules regarding the marketing of non-EEA funds managed by non-EEA managers. Under the said rules, the non-EEA manager is required to appoint one or more entities to carry out the depositary functions described in Article 21(7)-(9) (equivalent to Article 36(1)(a) 2nd-4th sentences) and the non-EEA manager must ensure publication in Denmark of information and documents that the non-EEA fund (or the competent authority) is required to publish in its home country.</p>

Section one:

Marketing in the EU according to the four scenarios


Country	Details
Estonia 	<p>Yes, under Estonian law certain requirements are imposed on persons acting as depositories of AIFs managed by non-EEA AIFMs. A person established in a non-EEA country may act as a depository of the AIF managed by the non-EEA AIFM provided that:</p> <ul style="list-style-type: none">(a) a cooperation arrangement has been concluded between the EFSA and the non-EEA country;(b) prudential requirements equivalent to those imposed upon EEA entities are applied towards the depository and effective supervision over the fulfillment of such requirements is in place;(c) sufficient means for combating money laundering and terrorism have been established in the country of origin of the depository, or such country is engaged in international cooperation in the field of money laundering and terrorism prevention;(d) an agreement complying with the standards contemplated by Article 26 of the OECD Model Tax Convention on Income and on Capital, including a multilateral tax agreement ensuring effective communication on tax matters, has been concluded between Estonia and the country of origin of the depository. <p>Please note that in the event the person acting as the depository of the non-EEA AIF does not comply with the criteria set out above, certain other requirements, such as an obligation to notify the investors of the AIF of potential restrictions arising from the law of the non-EEA state, are applied.</p> <p>As to restrictions regarding the number of investors, please see the answer to Question 13.</p>

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Section one: Marketing in the EU according to the four scenarios




Country	Details
<p>Finland</p> 	<p>Compared to Article 42 AIFMD, the Finnish law includes the following requirements, which can be considered as gold-plating:</p> <ul style="list-style-type: none"> (a) the obligation to comply with good securities markets practice (also in 'reverse solicitation' situations); (b) prohibition to give false or misleading information (also in 'reverse solicitation' situations); (c) the obligation to provide material and sufficient information to investors is also applicable in 'reverse solicitation' situations (this can be waived by a professional investor in writing); (d) it is not fully clear whether a domestic lower-level decree (defining the information, which shall be provided to the investors in order to fulfil the provision of "material and sufficient information") is to be applied in these cases; on the other hand, the content of the decree seems to correspond with the content in Article 23(1) (which according to Article 42 shall be applied); (e) the same applies to a domestic lower-level decree regulating the financial statements and auditing relating aspects - technically the law does not include the lower-level regulations in the scope of applicable provisions in Article 42 situations, so it is not fully clear whether those are meant to be complied with or not; (f) requirement that corresponds with Article 40.2(c) (an agreement fully corresponding to the requirements in Article 26 of the OECD Model Tax Convention on Income and on Capital and ensuring effective exchange of information in tax matters shall exist); (g) the AIF may invest funds received from the investors only in accordance with the information given to the investors concerning investment of the funds (this should be self-evident); (h) obligation to comply with the Finnish anti-money laundering legislation (it can be noted that the Finnish anti-money laundering act is based on the EU Directive); (i) marketing may be commenced only after obtaining approval from the FIN-FSA to the notification made by the AIFM; (j) the FIN-FSA charges EUR 2,600 for Article 42-related notification; (k) when reporting to the FIN-FSA, the law requires i.a. regular reporting of "other factors relevant in light of the systemic risk" and "other information and documents necessary for monitoring purposes" (not clear what this means in practice);

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Section one: Marketing in the EU according to the four scenarios





Country	Details
<p>Finland</p> 	<p>(l) the requirement to regularly report information to the FIN-FSA on the leverage of AIFs managed seems to apply to all AIFs (not only when substantial leverage is used);</p> <p>(m) the FIN-FSA has been empowered to appoint an auditor for the AIF in certain situations (e.g. if there is no Finnish qualified auditor for the AIF). The law further states that an AIFM marketing a third-country AIF within the EEA may decide to audit the AIF in accordance with international auditing standards in force in that third country, in which case the requirement for a Finnish qualified auditor and the powers of the FIN-FSA to appoint an auditor are not applicable - however, it is not fully clear whether this exception can be applied to third-country AIFMs.</p> <p>Non-EEA AIFs may be marketed only to professional investors (unless the FIN-FSA grants an exemption permitting marketing also to non-professional investors).</p>
<p>France</p> 	<p>As explained above (see answer to Question 1), the French requirements provide that a non-EU AIFM should respect the following three conditions:</p> <ol style="list-style-type: none"> 1. the non-EU AIFM must comply with the French provisions regarding AIFMD transposition applied to managers within the scope of the AIFM Directive: <ul style="list-style-type: none"> • to appoint one or several entities to fulfil the three duties of the depositary (custody, cash monitoring and compliance duties) • to comply with any other obligations imposed under the AIFMD for the management of AIFs 2. a cooperation arrangement for the purpose of systemic risk oversight and in line with international standards must be in place between the French authority and the competent supervisory authority of the country where the AIF and/or the AIFM is established (see Question 6); 3. the country where the non-EU AIF or the non-EU AIFM is located, is not listed as a Non-Cooperative Country and Territory by the FATF.
<p>Germany</p> 	<p>In addition to compliance with the Article 42 requirements, Germany requires an entity or person to perform certain depositary functions for the AIF.</p> <p>The depositary requirements imported into the German private placement regime are based on the requirements of Article 36(1)(a) AIFMD for marketing by EEA AIFMs without a passport. Germany therefore requires one or more entities to be appointed to carry out the following depositary functions:</p> <ul style="list-style-type: none"> • monitoring of fund cash flows; • safe-keeping of custody assets / verification and record keeping of other assets; • certain general oversight functions (e.g. including oversight of subscriptions and redemptions, valuation, compliance by the fund with local laws and fund terms).

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Section one: Marketing in the EU according to the four scenarios









Country	Details
<p>Germany</p> 	<p>The German regulator has recently imposed an additional requirement (not foreseen under the German laws) that the AIFM must be registered with the regulatory authority of their home country, with which BaFin has entered into the Memorandum of Understanding or entered in another register to which the regulatory authority has access.</p> <p>In addition, the AIF can only be marketed to professional and/or semi-professional investors. If the AIF is marketed to semi-professional investors, the AIF and the AIFM must fully comply with the AIFMD.</p> <p>Professional investors constitute “professional clients” as defined in MiFID. Semi-professional investors may comprise, amongst others:</p> <ul style="list-style-type: none"> • Directors and certain employees of the AIFM who would be subject to the remuneration rules of the AIFMD (i.e. senior management, risk takers, control functions and any employee receiving total remuneration that takes them into the same remuneration bracket as senior management and risk takers) and invest in the AIF managed by the AIFM as well as board members of an externally managed AIF if they invest in the externally managed AIF; • Investors that have a minimum commitment to the AIF of EUR 10,000,000; • Investors that have a minimum commitment to the AIF of EUR 200,000 who confirm they are sufficiently qualified (i.e. have sufficient investment knowledge and experience to appreciate the risks) to invest in the AIF and are assessed by the AIFM (through a questionnaire) as being so.
<p>Hungary</p> 	<p>At the time of publication of this document there are no statutory provisions in force in Hungary that would expressly deal with a scenario similar to the above. Therefore it cannot be excluded that once available the currently missing Part V of the Collective Investments Act will establish such restrictions.</p> <p>Informal contacts with the Hungarian Ministry of National Economy have indicated that based on paragraph 2 of Article 43 of the Directive a Member State may inform the Commission of additional requirements it imposes for the marketing of AIFs to retail investors by 22 July 2014. A proposal of such requirements is currently not available. Please note that it cannot be excluded that such new rules would contain additional domestic restrictions as well. The draft wording of the currently missing Part V contains the requirement of a nomination of a Member State of Reference (MSR) for non-EEA AIFMs.</p>
<p>Ireland</p> 	<p>Regulation 43 of the Irish AIFMD Regulations effectively mirrors the requirements of Article 42 save that there is also a notification requirement (see response to Question 1).</p>
<p>Italy</p> 	<p>As the Third Country regime is not yet finally defined at the moment, it is not possible to answer.</p>

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Section one: Marketing in the EU according to the four scenarios


Country	Details
Latvia 	Not applicable.
Lithuania 	Not applicable.
Luxembourg 	Article 45 of the 2013 AIFM Law mirrors the requirements of Article 42 of the AIFMD. The Luxembourg implementation does not go beyond the AIFMD.
The Netherlands 	There are no additional domestic restrictions or conditions in the Netherlands for marketing such fund interests. Please note that an appropriate selling legend should be included in the private placement memorandum and that the offer should be restricted to qualified investors. In addition, the notification form should be accompanied by an attestation from the supervisor of the AIFM, as set out below.
Romania 	Article 46 of the Draft Transposition Norm does not establish any conditions additional to those provided by Article 42 of the AIFMD (the only difference being that AIFMD refers to marketing within a specific territory, while the Draft Transposition Norm refers to marketing towards Romanian professional investors (as explained under Question 4)).
Slovakia 	Generally, there are no further restrictions if placed only via private placement means.
Spain 	It seems that the requirements may be those described in the answer to Question 1.
Sweden 	<p>Sweden has largely adopted a 'copy-out approach', with no significant gold-plating. The disclosure requirements set out in Article 23 of the AIFMD, i.e. information that needs to be furnished to investors prior to their investment in the AIF, shall in Sweden be presented in an 'information brochure' which also needs to be included in the application for authorisation.</p> <p>Such an information brochure that needs to be supplied for authorisation does not need to be a specific (new) document. As long as the PPM (or other official fund documentation) contains the information which the Swedish competent authority asks for, the PPM can serve this purpose. Ideally, it will then have an index page which shows which sections/pages in the PPM include the requested information.</p>

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Section one: Marketing in the EU according to the four scenarios

Country	Details
<p>UK</p> 	<p>Yes, the current UK financial promotion regime will remain in force. In summary, it is only lawful to make an invitation or inducement to engage in investment activity (including by subscribing for interests in a private equity fund) by addressing it specifically to a person who falls within an exempt category. Relevant exemptions facilitate marketing to: (a) institutions whose business it is to invest (generally, those authorised and regulated by the FCA or the UK Prudential Regulation Authority (“PRA”), such as banks, insurers, fund of funds managers) and (b) large companies or other undertakings with called up share capital or net assets of GBP 5,000,000 or more; and (c) trustees of trusts (including most occupational pension schemes) with gross assets of GBP 10,000,000 or more.</p> <p>If no exemption is available, the content of the communication must be approved by a person authorised and regulated by the FCA and/or PRA. Breach of this restriction may be a criminal offence and/or lead to rescission of investor commitments.</p> <p>Note:</p> <p>This answer concerns only the activity of marketing the fund. If the manager were to take further steps in the UK with a view to arranging an investor’s commitment to the fund (for example by negotiating the detailed terms of investment or receiving completed subscription documents in the UK) this may constitute a regulated activity for which UK Financial Conduct Authority authorisation would be required.</p> <p>This analysis is complicated and would turn on what activities are conducted in the UK, what presence the manager has in the UK and the authorisation status of the prospective investor.</p>

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Section one:

Marketing in the EU according to the four scenarios

8. Must a firm seeking to market in the respective jurisdictions in reliance on Article 42 notify, or register with, the competent authority in those jurisdictions? What kind of information is required, will there be a public register, what fee will be charged etc.? Is there an online notification or registration form? What can be done while awaiting registration (if relevant)?




Country	Details
Austria 	<p>Yes, the required information is set out in § 47 AIFMG and Appendix 3 of the AIFMG. The notification can be submitted in English or German.</p> <p>There is a public register and the fees are EUR 4,500 for the notification (in case of umbrella funds EUR 1,000 for each additional AIF; and an annual fee of EUR 2,500 increased by EUR 600 for each additional AIF).</p>
Belgium 	<p>Under the Private Placement Regime, the non-EEA AIFM must notify its intent to market the units of a non-EEA AIF in Belgium to the FSMA and may only start marketing in Belgium after receiving the FSMA's approval.</p> <p>Following the Belgian equivalent of Article 42 AIFMD, non-EEA AIFMs must at least meet the following requirements (the "Scenario A Requirements") to market in Belgium the AIFs they manage:</p> <ul style="list-style-type: none"> (a) an efficient information exchange agreement must exist between (a) the FSMA, (b) the competent supervisory authority of the home country of the AIFM and (c) the competent supervisory authority of the home country of the AIF; (b) the non-EEA home country of the AIF and/or the AIFM, must not be on the Financial Action Task Force's "black list"; (c) the AIFM must comply with the following obligations: (a) transparency requirements (the Belgian equivalent of Articles 22-24 AIFMD) and (b) the rules applicable to AIFMs managing AIFs that acquire control of non-listed companies and issuers (the Belgian equivalent of Articles 26-30 AIFMD); and (d) upon the FSMA's request, the AIFM must provide it with a detailed overview of all the AIFs it manages on a quarterly basis. <p>A non-EEA AIFM must notify the FSMA of each non-EEA AIF it intends to market in Belgium. Such notification must contain:</p> <ul style="list-style-type: none"> (a) a notification letter that contains a scheme of operations and names the AIF involved and where it is established; (b) the AIF's articles of association (or similar documentation, e.g. limited partnership agreement); (c) a description of the AIF and any other information also provided to the members; (d) information on the place of residence of the master AIF if the AIF involved is a feeder; (e) all information listed in Article 23(1) AIFMD; and (f) evidence that the Scenario A Requirements have been fulfilled.

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Section one: Marketing in the EU according to the four scenarios


Country	Details
<p>Belgium</p> 	<p>If the FSMA receives a complete file and all the Scenario A Requirements are met, the FSMA will inform the non-EEA AIFM that it can start marketing the non-EEA AIF units in Belgium. To this date, the FSMA has not made a standard notification or registration form available. There is also no detailed information on possible fees, but based on experience the FSMA does not usually charge a filing fee. It remains unclear whether or not the FSMA will charge an annual fee.</p> <p>In case the particulars filed during the notification substantially change, the AIFM shall inform the FSMA thereof in writing, at least one month before implementing any planned change or immediately after an unplanned change has occurred.</p>
<p>The Czech Republic</p> 	<p>A non-EEA AIFM is able to market a non-EEA AIF in the Czech Republic only upon the registration of the non-EEA AIF in the registry of the Czech National Bank. The application for registration in the fund registry maintained by the Czech National Bank may be filed only electronically and no fee is payable in connection with the registration. The application form is available on the website of the Czech National Bank. A number of documents evidencing that all conditions required by the AICIF are met have to be attached to the application. The list of these documents is set out in a Decree issued by the Czech National Bank.</p> <p>The non-EEA AIFM must fulfill, with respect to the marketed fund, the general obligations for AIFMs (please see Question 14) and other requirements (e.g. preparation of annual reports and information obligations).</p>
<p>Denmark</p> 	<p>Managers who seek to market in Denmark in reliance on Article 42 must obtain an authorization from the Danish FSA using an application form made available here.</p> <p>The rules do not differ between non-EEA AIFMs which are above or below the thresholds in Article 3(2).</p> <p>Marketing may only begin when the manager is notified hereof by the Danish FSA.</p> <p>There will be no public register.</p> <p>There is an annual fee of DKK 2,000 per fund and an annual fee of DKK 2,000 per compartment that the manager markets in Denmark (the amounts are subject to annual regulation in the Danish Finance Act).</p>

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Section one: Marketing in the EU according to the four scenarios

Country	Details
<p>Estonia</p> 	<p>Yes, in order for a non-EEA AIFM to lawfully market a non-EEA AIF in Estonia under Article 42 of the Directive, it must obtain the relevant permission from the EFSA. For the purposes of obtaining such a permission, the following documents and information must be submitted to the EFSA:</p> <ul style="list-style-type: none"> (a) notice of offer; (b) scheme of operations of the AIFM, containing the list of all AIFs to be marketed in Estonia, and information on the country of origin of each such fund; (c) the rules or the articles of association of the AIFs to be marketed in Estonia; (d) information on the depository of the AIFs; (e) overview of the organisation of the offering of the AIFs in Estonia, including information on how the public offering of AIFs is excluded; (f) information and documents evidencing the compliance with the requirements imposed on AIFMs managing AIFs which acquire control of non-listed companies and issuers (Articles 26-29 of the Directive), if applicable; (g) information and documents evidencing that a cooperation arrangement for the purpose of systemic risk oversight has been entered into between the EFSA and the local financial supervision authority of the AIFM; (h) information and documents evidencing that the country of origin of the AIFM is engaged in international cooperation in the field of money laundering and terrorism prevention. <p>Upon the receipt of the above documents and information by the EFSA, a notification on the granting of such permission or the denial thereof will be sent by the EFSA to the AIFM within 30 days. Prior to the receipt of a positive notification, no marketing activity (please refer to Question 2) is allowed.</p>


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Section one:

Marketing in the EU according to the four scenarios



Country	Details
<p>Finland</p> 	<p>An AIFM seeking to market in Finland shall notify the competent authority before starting to market. For such a notification, the AIFM shall provide a confirmation:</p> <ul style="list-style-type: none">(a) concerning compliance with obligations relating to (a) reporting to the FIN-FSA (including on leverage), (b) financial statements and auditing, (c) marketing (including compliance with good securities market practice and prohibition to give false or misleading information, certain disclosure obligations and “know your client” obligations), and (d) with respect to AIFs acquiring control in non-listed companies and issuers, obligations relating to such AIFs (which are based on Articles 26-30);(b) that appropriate cooperation arrangements for the purpose of systemic risk oversight, in line with international standards, are in place between the FIN-FSA, the competent authorities of the home member state of the AIFM and the competent authorities of the third country where the AIFs are established;(c) that the country where the AIFM or the AIF is established is not a non-cooperative country in terms of money laundering and terrorist financing;(d) that there is an agreement between Finland and the third country corresponding to the OECD Model Agreement by which effective change of information in respect of tax matters is secured. <p>The fee charged by the FIN-FSA for such a notification is EUR 2,600. So far, no registration form relating to Article 42 has been published by the FIN-FSA. The FIN-FSA maintains a public register of AIFMs whose notification has been approved.</p>

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Section one: Marketing in the EU according to the four scenarios







Country	Details
<p>France</p> 	<p>The non-EU AIFM must follow the authorisation procedure with the French competent authority (AMF). It is thus required to send a complete file compliant with the AMF position n° 2014-03, to the French authority.</p> <p>The file to request authorisation for marketing should justify compliance with the requirements described in Question 1 and should be signed by a person authorised to represent the non-EU AIFM.</p> <p>The non-EU AIFM should designate at least one local correspondent and pay a fee (EUR 2,000 per year). The file should also include the name of the local correspondent and the proof of the payment of the fee, as well as a duly completed copy of Appendix 3 of the AMF position n° 2014-03 and all documents justifying compliance with the requirements described in Question 1.</p> <p>The French authority will send a confirmation/acknowledgement of receipt by e-mail and should give its authorisation within 2 months. If necessary, the French authority may require further information to complete the application, which may further extend the delay.</p> <p>The marketing of the AIF on the French territory can only begin after the notification of the decision by the French authority on the marketing authorisation. This notification is sent to the non-EU AIFM by e-mail.</p> <p>Without a positive decision from the French authority, the marketing of the AIF is not permitted.</p> <p>For further information:</p> <p>http://www.amf-france.org/Formulaires-et-declarations/Commercialisation/Commercialisation-des-FIA.html</p>
<p>Germany</p> 	<p>The AIFM would need to be registered with BaFin. The AIFM must submit to BaFin general information on the AIF (among others LPA, PPM, annual report), certain AIFM-related information and statements (e.g. information on the AIFM's board) as well as information on the depositary (e.g. depositary agreement). Currently no form for the registration process exists. The registration process is expected to take up to four months for a feeder fund and two months for a fund which is not a feeder. BaFin will charge EUR 6,582.</p> <p>While awaiting registration, pre-marketing could be conducted. This could include, inter alia, investor presentations or the distribution of term sheets.</p>

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Section one: Marketing in the EU according to the four scenarios



Country	Details
Hungary 	<p>Based on informal oral information from the Hungarian National Bank, a full license from the Hungarian National Bank is required for a non-EEA AIFM to market AIFs in Hungary. This means that the non-EEA AIFM shall establish an affiliate in Hungary, which entity shall obtain the license from the Hungarian National Bank.</p> <p>The minimum requirements with respect to documents to be submitted with the Hungarian National Bank in order to receive the license are the following:</p> <ul style="list-style-type: none"> (a) Constitutional document of the Hungarian subsidiary, evidencing the seat of the entity in Hungary, the scope of its activities as well as its operational rules; (b) Evidencing the availability of the statutory capital requirement of EUR 125,000; (c) Presentation of the remuneration policies; (d) Documents evidencing the compliance with requirements related to organization, managers etc.; (e) Information as regards the investment strategy of the AIFs to be managed. <p>The entities supervised by the Hungarian National Bank are listed on the homepage of the Hungarian National Bank.</p> <p>A guide on the licensing is available in Hungarian here: http://felugyelet.mnb.hu/data/cms2420580/Kbftv__tevekenysegi_engedelyezesi_utmutato.pdf</p>
Ireland 	<p>Notification must be made to the Central Bank in a prescribed form available on its website at www.centralbank.ie. Please see the details in the response to Question 1 above. There is currently no fee charged for the notification nor is there a public register of AIFMs exercising Article 42 rights.</p>
Italy 	<p>The documentation and procedure required in order to obtain the authorisation is not yet defined by the Italian competent authority.</p> <p>It seems possible to assume that the Italian competent authority charges a “supervisory fee” on non-EEA AIFMs marketing non-EEA AIFs in Italy, as provided for Italian AIFMs.</p>
Latvia 	<p>Not applicable.</p>
Lithuania 	<p>Not applicable.</p>
Luxembourg 	<p>A simple notification procedure is in place. The marketing may start as from the filing of the notification. The information form can be downloaded from the CSSF website: http://www.cssf.lu/fileadmin/files/AIFM/Marketing_AIF_Art_45.doc</p>

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Section one: Marketing in the EU according to the four scenarios




Country	Details
<p>The Netherlands</p> 	<p>The AIFM should file a notification for the Dutch private placement regime (pursuant to section 1:13b sub 1 of the AFS which implements Article 42 of the AIFMD). Please note that the following conditions should be met:</p> <ul style="list-style-type: none"> (a) the offer should be restricted to qualified investors and an appropriate selling legend should be used; (b) the country where the Manager is located is not listed on the FATF list of non-cooperative countries; (c) an agreement between the AFM and the home state supervisor of the Manager providing for the exchange of information must be in place; and (d) a notification is made to the AFM, prior to the commencement of the offering, by filling out the notification form of the AFM (please see the following hyperlink for the notification form: http://www.digitaal.loket.afm.nl/nl-NL/Diensten/aifm-beleggingsinstellingen/melding/Pages/notificatie-niet-eu-beheerder.aspx?tab=1). <p>Please note that the notification form should be accompanied by an attestation from the supervisor of the AIFM confirming that the AIFM is a 'covered entity' under the cooperation agreement between the AFM and the competent supervisor and under effective supervision.</p> <p>After e-mailing the executed notification form including the attestation to the AFM (non.eu.notifications.aifmd@afm.nl) the Manager may commence its activities in respect of the AIF mentioned in the notification form in the Netherlands. Currently, no charges to the AFM are due. Please note that the notification is not registered in a public register.</p> <p>The above private placement regime is without prejudice to the applicability of the transparency requirements set out in Article 22 (information to be disclosed in the AIF's annual report), Article 23 (information to be disclosed to the AIF's investors), Article 24 (information to be disclosed to the competent supervisory authorities) and Articles 26 up to and including 30 of the AIFMD and implemented in the AFS (obligations for managers managing leveraged AIFs and AIFs which acquire control of non-listed companies and issuers, notification and disclosure of the acquisition of major holdings and control of non-listed companies, annual report of AIFs exercising control of non-listed companies).</p>
<p>Romania</p> 	<p>Under the current regime, please see answer to Question 1.</p> <p>As far as it concerns the Draft Transposition Norm, Article 46 transposing Article 42 of the AIFMD does not expressly establish the procedure to follow in order to be able to perform distribution under scenario A.</p> <p>However, given that the existing national legislation (prior to any measure of implementation of the AIFMD) creates an obligation of registration and the accomplishment of other conditions, as contemplated in the answer to Question 1 above, the possibility of establishment of such additional obligations under the Transposition Norm cannot be excluded.</p>

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Section one: Marketing in the EU according to the four scenarios


Country	Details
<p>Slovakia</p> 	<p>Such a firm has to notify the National Bank of Slovakia of its intention to distribute non-EU AIFs in the Slovak Republic prior to distribution. The following shall be submitted to the National Bank of Slovakia:</p> <ul style="list-style-type: none"> • identification data of the non-EU AIF; • statutes and founding documents of the non-EU AIF; • identification data of the depositary of the non-EU AIF; • description of the non-EU AIF; • seat of the non-EU AIF; • information about measures and steps taken in order to prevent distribution to retail investors; • other additional information required by the Slovak law; • documents demonstrating the fulfillment of the requirements as stated in the answer to Question 1. <p>The registration fee amounts to EUR 1,700.</p> <p>The National Bank of Slovakia has a statutory period of 20 working days to decide on the application.</p>
<p>Spain</p> 	<p>Yes, as described in the answer to Question 1.</p>
<p>Sweden</p> 	<p>A non-EEA AIFM managing a non-EEA based AIF (irrespective of size) must obtain an authorisation from the SFSA in order to market the AIF. There will likely be a public register. The fee payable for the license is approximately SEK 16,000. No forms will be available.</p> <p>An application for a licence to market an AIF must contain a description of how the AIFM intends to comply with the transparency and disclosure requirements, a business plan including information on the AIF intended to be marketed and where it is established, the AIF's rules, articles of association or similar document, information on where any master fund is established, an information brochure, the latest annual report and, where relevant, information on the measures which have been taken in order to prevent marketing to retail investors.</p> <p>If the AIFM relies on the transitional provisions it may continue to market AIFs in Sweden until the application has been finally decided.</p>

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Section one: Marketing in the EU according to the four scenarios

Country	Details
UK 	<p>The rules differ as between non-EEA AIFMs which are above or below the thresholds in Article 3(2) of the Directive but, in both cases, the manager must notify the FCA before marketing. There is no public register. Further details on notification requirements are contained in chapter 10 of the FCA's Investment Funds sourcebook ("FUND"), and in particular in FUND 10.5 which is available here.</p> <p>Notification forms for this purpose are available here, under the "Forms" heading. The fee for each notification is currently GBP 250 per AIF for an above-threshold non-EEA AIFM and GBP 125 per AIF for a sub-threshold non-EEA AIFM. Periodic fees are also payable on an annual basis - these are currently GBP 500 per AIF for an above-threshold non-EEA AIFM and GBP 350 per AIF for a sub-threshold non-EEA AIFM.</p>










9. What restrictions are there on pre-marketing⁶, taking into account considerations similar to those raised in Questions 3 to 8 above?

Country	Details
Austria 	No distinction is made between 'marketing' and 'pre-marketing' under the rules.
Belgium 	There is no distinction between marketing and pre-marketing in the answer to Question 2.
The Czech Republic 	Not applicable. See Question 2 above.
Denmark 	As mentioned under Question 2, preliminary meetings with potential investors are accepted, provided that (i) such meetings take place prior to the formation of the AIF and before a private placement memorandum, prospectus or similar document has been made available, and (ii) the potential investors will not be able to commit to investments in the AIF during such meetings.
Estonia 	Not applicable.

⁶ This assumes that the answer to Question 2 distinguished between 'marketing' (as defined) and pre-marketing.

Section one:

Marketing in the EU according to the four scenarios




Country	Details
Finland 	<p>The act implementing the Directive does not concern 'pre-marketing' specifically. However, promotion actions taken by the AIFM are always subject to compliance with good securities market practice and not giving any false or misleading information. When the threshold of 'marketing' is exceeded and when a binding commitment is made, the AIFM must be able to demonstrate that it has complied with the marketing rules (including disclosure of material and sufficient information).</p>
France 	<p>The concept of pre-marketing is not recognised by French law.</p>
Germany 	<p>Currently, the law does not foresee any regulation on pre-marketing by the AIFM itself (although this may change).</p>
Hungary 	<p>Once having the full licence granted by the Hungarian National Bank no additional restrictions on 'pre-marketing' apply. In addition to 'marketing', the Collective Investments Act also defines 'investment advice' which means the provision of personal recommendations to a client in respect of one or more transactions relating to financial instruments, not including publicly available information, facts, circumstances, studies, reports, analyses and advertisements, and the prior information investment firms are required to provide to their clients and any subsequent changes in that information. Such activity also falls within the scope of activities an AIFM is authorized to carry out.</p>
Ireland 	<p>Not applicable. See response to Question 2.</p>
Italy 	<p>Under the above-mentioned definition (see answer to Question 2) the rules do not distinguish between the two terms "marketing" and "pre-marketing" and the consequent different regulation.</p>
Latvia 	<p>Not applicable.</p>
Lithuania 	<p>Not applicable.</p>
Luxembourg 	<p>See answer to Question 2 above. While it is generally admitted that certain activities may be conducted and which do not amount to marketing, there is no regulatory guidance available in this respect.</p>

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2

3

Section one: Marketing in the EU according to the four scenarios


Country	Details
The Netherlands 	<p>There are no restrictions on pre-marketing, except for the restriction in relation to cold-calling.</p>
Romania 	<p>Not applicable.</p>
Slovakia 	<p>Firstly, non-EU managers should make sure that none of their marketing activities constitute a public offer. Failure to do this could trigger the application of additional requirements.</p> <p>According to Slovak law, the expression private placement means an announcement, an offer or a recommendation addressed to investors specified in advance, which is not carried out in any of the forms below:</p> <ul style="list-style-type: none"> • press, radio and television; • circulars, booklets or other written materials and durable records, if intended for the public or if intended for recipients not specified in advance; • Internet and other electronic communication or information systems, accessible to the public, or • unsolicited personal contact of non-professional investors (e.g. cold calling). <p>Pursuant to the Slovak Act No. 566/2001 Coll. on Securities and Investment Services, as amended (the "Securities Act") which implemented Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004, on markets in financial instruments law (MIFID), the expression 'professional clients' means clients who possess the expertise, experience and knowledge to make their own investment decisions and to properly assess the risks that they incur. The following persons are to be regarded as professional clients:</p> <ul style="list-style-type: none"> • stock brokerage firms, foreign stock brokerage firms, financial institutions, commodity and commodity derivatives dealers, specific financial institutions, and entities authorised to operate in the financial market by a competent authority or whose activity is separately regulated by generally binding legal regulations; • large undertakings meeting certain quantitative conditions; • state, regional or municipal authorities, state or regional authorities of other countries, the Debt and Liquidity Management Agency of the Slovak Republic, public authorities of other countries that are in charge of or intervene in public debt management, the National Bank of Slovakia, other central banks, the International Monetary Fund, the European Central Bank, the European Investment Bank and other similar international organisations; • legal persons not mentioned above whose main activity is to invest in financial instruments, including entities that carry out the securitisation of credits and loans or other financing transactions; or • entities which may at their request be treated as professional clients under certain conditions.

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Section one: Marketing in the EU according to the four scenarios




Country	Details
<p>Slovakia</p> 	<p>High net worth individuals may be considered as professional clients only upon their request to the non-EU manager to be treated as such, and only if the following conditions are fulfilled:</p> <ul style="list-style-type: none"> • the non-EU manager has assessed the high net worth individual's expertise, experience and knowledge and has issued a written statement that these give reasonable assurance, in light of the nature of the envisaged transactions or investment or ancillary services, that the high net worth individual is capable of making his/her own investment decisions and understanding the risks involved; • the high net worth individual has stated in writing to the non-EU manager that he/she wishes to be treated as a professional client, in regard to one or several investment services, ancillary services or transactions, or to one or several types of financial instrument or transaction; • the non-EU manager has given the client a clear written warning of the protections and investor compensation rights he/she may lose; • the high net worth individual has stated in writing, in a separate document from the contract, that he/she is aware of the consequences of losing such rights. <p>Moreover, a high net worth individual may be considered as a professional client only if at least two of the following conditions are fulfilled:</p> <ul style="list-style-type: none"> • over the previous four quarters, the high net worth individual has carried out transactions in financial instruments of a significant size on the relevant market in financial instruments at an average frequency of at least ten per quarter; a transaction in financial instruments of a significant size meaning a transaction the volume of which exceeds EUR 6,000, and the relevant market meaning the regulated market, multilateral trading facility or unorganised market, where financial instruments are accepted for trading, in relation to which investment services are or are to be provided to the individual; • the size of his/her portfolio covering financial instruments and financial deposits exceeds EUR 500,000; • the high net worth individual carries out or has carried out, for at least one year, in relation to his/her employment, profession or duties, an activity in the financial market area in a position which requires knowledge of transactions or investment services provided or which are to be provided for such person. <p>It should be distinguished whether marketing takes place towards professional clients or not. In case of marketing to professional clients, it is subject to the restrictions mentioned below.</p>

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Section one: Marketing in the EU according to the four scenarios


Country	Details
<p>Slovakia</p> 	<p>In the Slovak Republic, cold calls are allowed provided that such active solicitation is performed in relation to institutional investors (legal entities – it is not the same term as professional clients according to the Securities Act), subject to the following limitations:</p> <ul style="list-style-type: none"> • it cannot be disseminated by an automatic telephone call system, fax or electronic mail without previous consent of the recipient of the advertisement, and • it cannot be addressed to a recipient who has a priori refused such advertising. <p>Even if a high net worth individual is classified as a professional investor, non-EU managers cannot contact the high net worth individual by cold calls unless they have been granted prior approval for this by the high net worth individual. Please note that cold calls to retail investors are always considered as public placement, irrespective of the fact that such solicitation may be conducted solely via private placement channels.</p> <p>Slovak law does not specifically address unsolicited written correspondence and materials and therefore it is not subject to any restrictions, if sent physically. However, if such correspondence and materials are sent via electronic means, the same regime applies as in connection with cold calls mentioned above. In addition, it is prohibited to send an electronic mail message which does not disclose the sender’s identity and address to which the recipient may send a request for such communication to cease.</p> <p>If non-EU managers are targeted by unsolicited requests, they can provide the requesters with any of the written marketing documents. Such request is not considered as an offer by non-EU managers.</p> <p>Participation in any industry events within the Slovak Republic, if connected with the promotion of non-EU AIFs is likely to be viewed as a form of public offering. This is mainly due to the reason that the visitors of such conferences are most likely not specified in advance and therefore non-EU managers, when promoting non-EU AIFs, target an unspecified circle of potential investors.</p> <p>Non-EU managers can freely meet with potential investors either in the Slovak Republic or abroad provided that the invitation for an arrangement of such meetings does not constitute public offering in the Slovak Republic.</p>
<p>Spain</p> 	<p>No distinction is made between ‘marketing’ and ‘pre-marketing’ under the law.</p>
<p>Sweden</p> 	<p>As stated above, the AIFMA expresses the view that marketing is not at hand before an AIF is established, i.e. normally before the ‘first closing’ of the AIF. Investor contacts and similar actions prior to this point are therefore not considered as marketing.</p>

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Section one: Marketing in the EU according to the four scenarios

Country	Details
UK 	Invitations or inducements to engage in investment activity falling short of 'marketing' as described in the answer to Question 2 will be subject to the financial promotion regime mentioned in Question 7.

10. Whether marketing (as defined) is banned or restricted by Article 42 or otherwise, what interpretation is given in the respective jurisdictions to the concept of 'reverse solicitation', 'reverse enquiry' or marketing at the initiative of the investor, within the meaning of Recital 70?







Country	Details
Austria 	<p>The AIFMG does not provide for a special regime regarding passive marketing. However, given the definition of marketing (see Question 2), it can be concluded that the concept of reverse solicitation is fulfilled if the investment is demonstrably made at the sole initiative of the investor.</p>
Belgium 	<p>The AIFM Act does not expressly refer to "reverse or passive solicitation". Based upon the definition of "marketing", this activity should be possible. The FSMA has not issued any guidance on this topic but it is anticipated that the FSMA will take a very restrictive approach on this issue and probably will reluctantly (which means most probably "never") accept "reverse or passive solicitation".</p> <p>Please note that this indication was not an official position taken by the FSMA and it is possible this approach may change. Furthermore, the Belgian courts will not necessarily follow the same interpretation as the FSMA. Nevertheless, at this stage it is recommended to take the safest option and not rely on "reverse or passive solicitation".</p> <p>Besides the FSMA's informal position, reverse solicitation will be an uncertain way to avoid AIFMD compliance. Firstly, the AIFM must document that this activity commences upon the investor's initiative. Secondly, there are no clear rules on whether or not certain actions constitute reverse solicitation. For example, must an investor contact an AIFM with the request to subscribe to a specific fund for the activity to qualify as "reverse solicitation"? Or is it sufficient that an investor requests the AIFM provide him/her with an "interesting" investment opportunity and in response the AIFM offers a particular fund to the client.</p> <p>If reliance is made upon "reverse solicitation", then it must be genuine (i.e. where the client actually took the initiative and was not "encouraged" to do so) and should not be used to circumvent AIFMD compliance.</p>
The Czech Republic 	<p>Investing at the initiative of the investor is not considered to be marketing under the AICIF. However, the law does not describe what it means and no interpretation is currently available.</p>

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Section one: Marketing in the EU according to the four scenarios






Country	Details
Denmark 	<p>Under the Danish rules implementing the Directive “marketing” does not include placement made at the initiative of the investor. The Danish FSA has not provided any guidance on how it is demonstrated that a placement was made at the initiative of the investor.</p>
Estonia 	<p>The laws of Estonia do not expressly define or regulate “reverse solicitation” (within the meaning of Recital 70 of the Directive) or clearly exclude this from the current definition of “marketing” in the Investment Funds Act. However, considering that the Estonian legislator acknowledges “marketing” as an activity conducted at the initiative of the AIFM itself, investments into non-EEA AIFs (or other foreign AIFs and other investment schemes) at the initiative of the investors themselves should not be regarded as marketing activity by the AIFMs.</p>
Finland 	<p>The governmental bill expressly states that Finnish investors may still contact the foreign AIFM to express their interest to invest in a specific target and this shall not be considered as offering AIF interests in Finland (“reverse solicitation”). The few references in the governmental bill to “reverse solicitation” suggest that this includes situations where “an investor on its own initiative contacts an AIFM” and where “an investor takes the initiative to choose investment targets”. According to the same, the Finnish AIFM law “would not affect existing business relations between Finnish institutional investors and non-EEA AIFMs”. Nevertheless the concept is partly unclear.</p> <p>(It can be added that, generally, marketing restrictions are not triggered in “reverse solicitation” situations, but certain obligations (namely, obligation to comply with good securities markets practice, prohibition to give false or misleading information and the requirement to disclose material and sufficient information to the investors) apply also in these situations.)</p>
France 	<p>“Reverse solicitation” is defined in the Marketing Guide of the AMF as:</p> <p><i>the purchase, sale or subscription of units or shares of an AIF in response to a request of an investor, not following a solicitation, concerning an AIF specifically identified by the investor, and to the extent that he is authorised to do so</i></p> <p>[see also Question 2]</p> <p>This definition is mentioned in the Guide established by the French authority.</p>
Germany 	<p>With regard to professional and semi-professional investors, it will not be considered marketing if the investor (or a third party agent of the investor) approaches the AIF at its sole initiative. The exact scope of the “reverse solicitation” concept is still unclear.</p>
Hungary 	<p>Currently no statutory interpretation of the term ‘reverse solicitation’ exists. We understand that for example the FCA has made clarification on recent solicitation establishing that it needs to be more substantive in a way that the solicitation needs to name the particular fund and then the fund manager may be allowed to provide information with regards to that fund. It may not be excluded that in the course of the forthcoming legislation as set out in our answer to Question 1 such rules will be adopted / introduced.</p>

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Section one: Marketing in the EU according to the four scenarios

Country	Details
Ireland 	There is no Irish regulatory interpretation of these concepts.
Italy 	Consob has not yet issued any guidance on the interpretation and the use of reverse solicitation.
Latvia 	Since the AIFM law does not expressly state that Latvian investors may not contact a foreign AIFM, it can be concluded that “passive” marketing by foreign AIFMs is allowed in Latvia, i.e. Latvian investors may contact a foreign AIFM to express their interest to invest in a specific target and this shall not be considered as offering AIF interests in Latvia.
Lithuania 	<p>Since the Law on Management Companies of Investment Undertakings for Professional Investors of the Republic of Lithuania does not expressly state that investors may not contact foreign AIFMs, it can be concluded that “passive” marketing by foreign AIFMs is allowed in the Republic of Lithuania.</p> <p>Definitions of “reverse solicitation” and “reverse enquiry” are not provided in the Law.</p> <p>It should be noted that the Central Bank of the Republic of Lithuania has not yet approved corresponding legal enactments which may provide a more detailed description of marketing, as well as definitions of “reverse solicitation” and “reverse enquiry”.</p>
Luxembourg 	These concepts are currently not addressed by the supervisory authority. No formal guidance on the issue is expected from the CSSF.
The Netherlands 	<p>No definition of reverse solicitation is given in the AFS.</p> <p>However, although the AFS itself does not address the topic of reverse solicitation, the explanatory notes to the AFS confirm (in relation to offerings to professional investors) that no ‘offering’ is deemed to be made where an investment is made at the initiative of an investor.</p> <p>Reverse solicitation may only be relied upon, if no prior marketing activities in respect of the AIF concerned have taken place in the Netherlands.</p> <p>It is uncertain if the reverse solicitation ‘exemption’ equally applies in relation to the marketing of AIFs to retail investors.</p>
Romania 	The term “reverse solicitation” (by which we understand the situation where the investor approaches the AIFM) is not defined as such, neither by the Draft Transposition Norm nor by the current legal regime, consisting of Article 176 Regulation 15/2004, Article 10 Decision 9/2010 (for those two articles, please see the comments under Question 1) and Norm 13/2013. So, it can be construed that if the client is the one approaching the AIFM, this should not fall within the scope of the prohibition listed under the answer to Question 2. However, we are not aware of an official interpretation of the term “reverse solicitation”.





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2

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Section one:

Marketing in the EU according to the four scenarios

Country	Details
Slovakia 	<p>Please see the answer to Question 9.</p>
Spain 	<p>There is no reference in the legislation.</p>
Sweden 	<p>With reference to Recital 70 of the Directive, the preparatory work of the AIFMA states that reverse solicitation is not considered marketing.</p> <p>While there are no clear rules as to what would be considered as reverse solicitation, the preparatory works to the AIFMA exemplify a few situations that typically would not constitute marketing, e.g. if an investor on its own initiative contacts the AIFM to subscribe for units (e.g. on the company's website, provided that the website is not specifically directed to Swedish investors), or if an investor contacts an investment firm to execute or transmit an order of units or shares of an AIF which are not part of any offer from the investment firm. In order for the activities to be deemed taken at the investor's own initiative, neither the AIFM nor any other party (e.g. an investment firm) may initiate any contacts with the Swedish investor.</p>
UK 	<p>As a matter of UK implementation, marketing at the initiative of the investor is not 'marketing' for the purposes of the Directive (but it is likely to involve a financial promotion (see Question 7)).</p> <p>The FCA has given guidance in PERG 8.37.11 (available here) that a confirmation from the investor that the offering or placement of interests in an AIF was made at its initiative, should normally be sufficient to demonstrate that this is the case, provided this is obtained before the offer or placement takes place. However, managers should not be able to rely upon such confirmation if this has been obtained to circumvent the requirements of the Directive.</p>

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Section one:

Marketing in the EU according to the four scenarios

SCENARIO B: MARKETING NON-EEA AIFS MANAGED BY AN EEA AIFM UNDER ARTICLE 36 (NO PASSPORT)

Further assumptions for the purpose of Scenario B only

Licensing






The AIFM is a fully authorised AIFM in its home member state.

Who markets?

The legal person engaging in marketing is the Alternative Investment Fund Manager of the AIF.

There is no placement agent or other intermediary involved.

11. Is it possible to market a fund in the circumstances described above in your jurisdiction and/or to investors established in your jurisdiction?





Country	Details
Austria 	There is a special regime set out in § 38 AIFMG (notification requirement by the AIFM; marketing only possible after notification by the Financial Market Authority; this may take up to two months).
Belgium 	Yes, subject to notification to and approval by the FSMA, marketing by an EU AIFM of non-EEA AIFs managed by that EU AIFM in Belgium will be possible under the Private Placement Regime.
The Czech Republic 	Yes.
Denmark 	Yes, it is possible to market a fund in the circumstances described, subject to certain conditions.
Estonia 	Yes, it is possible to market non-EEA AIFs managed by EU AIFMs in Estonia.

1

2

3

Section one: Marketing in the EU according to the four scenarios


Country	Details
Finland 	<p>Yes, it is possible, and subject to the conditions laid down in the act and other regulations implementing the Directive.</p>
France 	<p>Yes, it is possible for an EU AIFM to market a non-EU AIF in France.</p> <p>The conditions are similar to the procedure applicable for a non-EU AIFM to market a non-EU AIF without a passport.</p>
Germany 	<p>Yes, the AIFM and its management of the AIF must comply with the AIFMD national implementing/transposition rules of the home member state of the AIFM.</p> <p>The depository requirements, however, are similar to the depository requirements explained under Question 7.</p>
Hungary 	<p>It is possible subject to the following restrictions and the fulfillment of the following requirements as set out under the Collective Investments Act:</p> <ul style="list-style-type: none"> • marketing is possible to professional investors* only; • a depository shall be engaged (within the meaning of Article 21 of the Directive); • the AIFM qualifies as such within the scope of the Collective Investments Act (in line with the Directive); • the local regulator of the non-EEA AIF and the Hungarian National Bank have an appropriate cooperation agreement that enables exchange of information and risk oversight between the two authorities; • the country of residence of the non-EEA AIF is not listed as a non-cooperative country with the FATF; • the Hungarian National Bank enters into a cooperation agreement with the local regulator of the non-EEA AIF with respect to Commission Delegated Regulation (EU) No 231/2013 supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to exemptions, general operating conditions, depositaries, leverage, transparency and supervision; and • the AIFM reports its depository to the Hungarian National Bank.

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Section one: Marketing in the EU according to the four scenarios








Country	Details
<p>Hungary</p> 	<p>* As defined in Sections 48 and 49 of Act CXXXVIII of 2007 on Investment Firms and Commodity Dealers, and on the Regulations Governing their Activities (subsection (1) Section 48), the following shall be considered professional clients: a) investment firms; b) commodity dealers; c) credit institutions; d) financial institutions; e) insurance companies; f) investment funds and investment fund managers, collective investment trusts; g) venture capital funds and venture capital fund managers; h) private pension funds and voluntary mutual insurance funds; i) bodies providing clearing or settlement services; j) central depositories; k) institutions for occupational retirement provision; l) exchange markets; m) central counterparties; n) all other companies which are recognized as such by the country in which they are established; o) the preferential companies described in Subsection (2); p) the preferential bodies described in Subsection (3); and q) all other persons and bodies principally engaged in investment service activities, including special purpose entities.</p> <p>subsection (2) The preferential companies mentioned in Paragraph o) of Subsection (1) shall cover all companies which meet at least two of the following criteria, relying on the last audited accounting report, and calculated according to the official MNB exchange rate in effect on the balance sheet date: a) the balance sheet total is at least twenty million euros; b) the annual net turnover is at least forty million euros; c) they have at least two million euros in own funds.</p> <p>subsection (3) In the application of Paragraph p) of Subsection (1), 'preferential body' shall mean: a) the central government of any EEA Member State; b) the regional governments and local authorities of any EEA Member State; c) ÁKK Zrt. and similar public bodies of other EEA Member States charged with the management of public debt; d) the MNB, and the central bank of any EEA Member State and the European Central Bank; e) the World Bank; f) the International Monetary Fund; g) the European Investment Bank; and h) other bodies active in international finance that were created by virtue of international agreement or intergovernmental agreement.</p> <p>subsection (4) An investment firm shall afford to professional clients, at their request or - if they were classified as professional clients upon the investment firm's initiative - with their express agreement the same conditions that apply to retail clients in connection with their investment service activities and ancillary services.</p> <p>subsection (5) The agreement entered into by virtue of Subsection (4) shall be fixed in writing and it shall contain: a) an indication that the client is treated as a professional client, and that the conditions that apply to retail clients are applied at his request; b) an indication of the financial instruments or transactions to which the conditions of retail clients apply.</p>

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Section one: Marketing in the EU according to the four scenarios






Country	Details
Hungary 	<p>Section 49 The investment firm may reclassify a retail client, at his request, and treat him as a professional client, if this client is able to satisfy at least two of the following criteria: a) the client has carried out transactions, worth at least forty thousand euros each or four hundred thousand euros in total for the year, or its equivalent in another currency as translated by the official MNB exchange rate in effect on the day of the transaction, at an average frequency of, at least, ten per quarter over the preceding year; b) the size of the client's financial instrument portfolio, defined as including cash deposits and financial instruments exceeds five hundred thousand euros or its equivalent in another currency as translated by the official MNB exchange rate in effect on the day preceding the day of submission of the request; c) the client works or has worked in the financial sector under contract of employment or any other form of employment relationship for at least one year within a preceding period of five years.</p>
Ireland 	<p>Yes.</p>
Italy 	<p>Yes, it is. Under the Transposition Decree, the marketing in Italy, in respect of professional investors, of the units or shares of non-EU AIFs managed by an EU AIFM, authorized in a Member State different from Italy, is preceded by a notification to Consob by the authority of the Member State of origin of each AIF subject of marketing.</p>
Latvia 	<p>Latvia has decided not to exercise the discretion provided in Article 36 of the Directive. Therefore, marketing of non-EEA AIFs without the passport notification's procedure is not allowed in Latvia.</p>
Lithuania 	<p>Yes, it is possible for an EU AIFM, established in an EU Member State, to market units or shares of a third country AIF in Lithuania.</p>
Luxembourg 	<p>Yes. Regarding Scenario B, EEA AIFMs are allowed to market non-EEA AIFs within the meaning of Article 37 of the 2013 AIFM Law (which transposes Article 36 of the AIFMD) to professional investors in Luxembourg without a passport. The relevant procedure is available on the website of the CSSF.</p>
The Netherlands 	<p>Yes. An authorised EEA AIFM cannot currently obtain a passport to market a non-EEA AIF; however, an authorised EEA AIFM can market a non-EEA AIF providing compliance with the requirements as set out in Question 12.</p>

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Section one: Marketing in the EU according to the four scenarios

Country	Details
Romania 	<p>Please note that the answers to the following questions are based on the Draft Transposition Norm (as opposed to the current applicable regime).</p> <p>Article 36 of the AIFMD is implemented under Article 38 of the Draft Transposition Norm, with the difference that the provisions of Article 38 of the Draft Transposition Norm apply only to Romanian AIFMs.</p> <p>However, according to Article 37 of the Draft Transposition Norm, EEA AIFMs (except the Romanian ones, which are governed by Article 38) can market non-EEA AIFs which they manage, to professional investors in Romania, following a notification procedure between the relevant authority from the member state of origin of the AIFM and the Romanian FSA.</p>
Slovakia 	<p>Since the EU passport has not been made available yet, an EEA AIFM can market non-EEA AIFs in Slovakia and/or to investors in Slovakia subject to Slovak private placement.</p>
Spain 	<p>Yes. It is possible to market a non-EEA AIF managed by an EEA AIFM under Article 36 in Spain, subject to certain requirements and restrictions described in the Spanish Law.</p>
Sweden 	<p>Marketing of non-EEA AIFs to professional investors, semi-professional investors and retail investors in Sweden by an EEA AIFM duly licensed in its home member state will require an authorisation from the Swedish Financial Supervisory Authority (SFSA).</p>
UK 	<p>Yes.</p>

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Section one: Marketing in the EU according to the four scenarios

12. If yes, is the AIFM required to obtain a local licence or authorisation or to observe other formalities?

Please briefly describe the process for obtaining such licence or authorisation (including any fees payable to a regulator) or the formalities required.




Country	Details
Austria 	<p>It is difficult to provide a brief overview of the requirements. The fund has to provide details regarding depositary, fund strategy, payment of fees and certificate the compliance with the requirements of the AIFMG.</p> <p>The certificate of compliance must be issued by the competent supervision authorities of the home State of the non-EEA AIF, which is a major obstacle in practice.</p> <p>The fees are EUR 2,200 for the notification (in case of umbrella funds EUR 440 for each additional AIF; and an annual fee of EUR 1,200 increased by EUR 400 for each additional AIF).</p>
Belgium 	<p>An EU AIFM must notify its intent to market the units of a non-EEA AIF in Belgium to the FSMA and may only start marketing in Belgium upon receiving the FSMA's approval.</p> <p>Under the Belgian equivalent of Article 36 AIFMD, EU fund managers must at least meet the following requirements (the "Scenario B Requirements") to market in Belgium the AIFs that they manage:</p> <ol style="list-style-type: none"> an efficient information exchange agreement must exist between (a) the FSMA and (b) the competent supervisory authority of the AIF's home country; the non-EEA home country of the AIF must not be on the Financial Action Task Force's "black list"; the AIFM has obtained an AIFMD licence in its home country and complies with all provisions of the AIFMD (except for Article 21 AIFMD); and the AIFM has ensured that one or more entities are appointed to carry out the duties referred to in Article 21(7), (8) and (9) AIFMD and the AIFM must not perform such functions. <p>The EU AIFM must notify the FSMA of each non-EEA AIF it intends to market in Belgium. Such notification must contain:</p> <ol style="list-style-type: none"> a notification letter that contains a scheme of operations and names the AIF involved and where it is established; the AIF's articles of association (or similar documentation, e.g. limited partnership agreement); a description of the AIF and any other information also provided to the members; information on the place of residence of the master AIF if the AIF is a feeder; all information listed in Article 23(1) AIFMD; the identity of the entities responsible for carrying out the duties referred to in Article 21(7), (8) and (9) AIFMD; and evidence that the Scenario B Requirements have been fulfilled.

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Section one: Marketing in the EU according to the four scenarios



Country	Details
Belgium 	<p>If the FSMA receives a complete file and all the Scenario B Requirements are met, the FSMA will inform the EU AIFM that it can start marketing the AIF units in Belgium. To this date, the FSMA has not made a standard notification or registration form available. There is also no detailed information on possible fees.</p> <p>In case the particulars filed during the notification substantially change, the AIFM shall inform the FSMA in writing of those changes at least one month before implementing any planned change or immediately after an unplanned change has occurred.</p>
The Czech Republic 	<p>The AIF must be registered with the Czech National Bank.</p> <p>In case the AIFM is already licensed in its home state and all other (rather formal) requirements are met, the registration shall be completed within 20 business days. The registration may be made by electronic means of communication only and no fee is payable in connection with the registration. The register is accessible on the webpage of the Czech National Bank.</p> <p>The Czech National Bank will register a non-EEA AIF provided that:</p> <ul style="list-style-type: none"> (a) appropriate cooperation arrangements are in place between the competent authorities of the member state of the EEA AIFM and the competent authorities of the country of the non-EEA AIF; and (b) the non-EEA AIF's home country is not listed as a Non-Cooperative Country and Territory by the Financial Action Task Force.
Denmark 	<p>EEA managers seeking to market in Denmark under Article 36 must obtain an authorisation from the Danish FSA using the application form made available here.</p> <p>Marketing may only begin when the manager is notified hereof by the Danish FSA.</p> <p>There is an annual fee of DKK 2,000 per fund and an annual fee of DKK 2,000 per compartment that the manager markets in Denmark (the amounts are subject to annual regulation in the Danish Finance Act).</p>

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Section one: Marketing in the EU according to the four scenarios



Country	Details
<p>Estonia</p> 	<p>No, an EU AIFM seeking to market non-EEA AIFs in Estonia is not required to obtain a local licence; however, such an AIFM must obtain a similar permission described under Question 8 to conduct marketing activities in Estonia. In addition to the information and documents referred to under Question 8 above, the EU AIFM must submit the following documents and information to the EFSA:</p> <ul style="list-style-type: none"> (a) description of the information to be disclosed to the investors; (b) information and documents evidencing that the AIFs to be marketed do not constitute feeder AIFs; (c) documents and information evidencing that the AIFM is in compliance with all requirements imposed on AIFMs (save for those imposed on depositories); (d) documents and information evidencing that the AIFM ensures that the tasks of a depository are conducted by a person other than the AIFM itself, and the contacts of such person. <p>Upon the receipt of the above documents and information by the EFSA, a notification on the granting of such permission or the denial thereof will be sent by the EFSA to the AIFM within 30 days. Prior to the receipt of a positive notification, no marketing activity (please refer to Question 2 above) is allowed.</p>
<p>Finland</p> 	<p>A prior notification, which shall be approved by the FIN-FSA before commencing marketing, is required. For such a notification, the AIFM shall provide a confirmation:</p> <ul style="list-style-type: none"> (a) concerning compliance with marketing related obligations (including compliance with good securities market practice and prohibition to give false or misleading information, certain disclosure obligations and “know your client” obligations); (b) that there are appropriate (according to international standards) cooperation arrangements (i) between the FIN-FSA and the supervisory authority of the home state of the AIF and (ii) between the competent authorities of the home states of the AIFM and the AIF, to supervise systemic risk and secure exchange of information; (c) that the country where the AIF is established is not a non-cooperative country in terms of money laundering and terrorist financing; (d) that there is an agreement between Finland and the third country fully corresponding to the OECD Model Agreement by which the effective exchange of information in respect of tax matters is secured; (e) concerning the entity being responsible for the obligations of depositories (must be other than the AIFM). <p>The fee charged by the FIN-FSA is EUR 2,600.</p>

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3

Section one: Marketing in the EU according to the four scenarios

Country	Details
<p>France</p> 	<p>The authorisation procedure is the same as the authorisation procedure for the marketing of a non-EU AIF by a non-EU AIFM. There is only one additional condition: the manager should be duly authorised as an AIFM in the EU Member State where it is located.</p> <p>The EU AIFM should go through an authorisation procedure with the French Authority.</p> <p>It should send a complete file compliant with the AMF position n° 2014-03, to the French authority. The file should justify the compliance with the requirements described in Question 1, and must be signed by a person authorised to represent the EU AIFM.</p> <p>The EU AIFM should designate at least one local correspondent and pay a fee (EUR 2,000 per year). The file should also include the name of the local correspondent and the proof of the payment of fees, as well as a duly completed copy of Appendix 3 of the AMF position n° 2014-03 and all documents justifying compliance with the requirements described in the answer to Question 1.</p> <p>The French authority will send a confirmation/acknowledgement of receipt by e-mail and should give its authorisation within 2 months. If necessary, the French authority may ask for additional information which may further extend the delay.</p> <p>The marketing of the AIF on the French territory can only begin after the notification of the decision by the French authority on the marketing authorisation. This notification is sent to the EU AIFM by e-mail.</p> <p>Without a positive decision from the French authority, the marketing of the AIF is not permitted.</p> <p>For further information:</p> <p>http://www.amf-france.org/Formulaires-et-declarations/Commercialisation/Commercialisation-des-FIA.html</p>
<p>Germany</p> 	<p>The AIFM must notify BaFin of its intention to market. There is no form for such a notification filing.</p> <p>The notification filing must contain various documents (e.g. information on the AIFM, the depositary, a confirmation letter in which the AIFM undertakes to comply with various reporting obligations towards BaFin, proof of payment).</p> <p>A fee of EUR 3,291 must be paid to BaFin. Additionally, there is an annual fee of EUR 772.</p> <p>BaFin has 30 business days for the processing of the notification (in case it is a feeder AIF whose master AIF is managed by an EU AIFM, BaFin has two months, or five months respectively, if the master AIF is managed by a non-EU AIFM).</p>





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2

3

Section one:

Marketing in the EU according to the four scenarios



Country	Details
Hungary 	<p>According to the Hungarian National Bank, the applicable statutory provisions of the Collective Investments Act should be interpreted as follows:</p> <p>The AIFM shall through the supervisory authority of its own member state notify the Hungarian National Bank. The Hungarian National Bank requires the following data and information:</p> <ul style="list-style-type: none">• name, seat, registration number of the AIFM;• place of its publishing;• date of establishment, commencement of its activities, scope of its activities;• registered capital;• persons having a qualifying interest in the AIFM, executive officers;• name and seat of the intermediary entity engaged by it;• its license, operational plan and list of the AIFs it intends to manage. <p>Based on informal, oral information from the Hungarian National Bank, it seems that no fee is payable in connection with the registration.</p>
Ireland 	<p>Notification must be given to the Central Bank in a prescribed form before marketing to professional investors in Ireland. Such notification must include the name of the AIFM and the AIF and the identity of the home Member State of the AIFM and the jurisdiction of domicile of the AIF. Marketing can commence once the Central Bank has informed the AIFM that it may do so. There is currently no fee charged for the notification.</p>
Italy 	<p>The documentation required in order to obtain the authorisation is not yet defined by the Italian competent authority.</p>
Latvia 	<p>Not applicable.</p>

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3

Section one: Marketing in the EU according to the four scenarios


Country	Details
<p>Lithuania</p> 	<p>The AIFM is required to obtain a permission of the local supervisory authority (Central Bank of the Republic of Lithuania) to market units or shares of a third country AIF. The requirements are:</p> <ol style="list-style-type: none"> 1) The AIFM complies with the requirements of the Law on Management Companies of Investment Undertakings for Professional Investors (except requirements for transference of assets to depositories); 2) The supervisory authority of the Republic of Lithuania and the supervisory authority of AIF have concluded an agreement on cooperation and exchange of information; 3) The country of the AIF is not included in the FATF list of high-risk and non-cooperative jurisdictions; 4) No other legal restrictions exist for a supervisory authority of the Republic of Lithuania to supervise an AIF in a third country (It should be noted that the Law does not provide a more detailed explanation of this condition, and also the Central Bank of the Republic of Lithuania has not yet approved instructions of supervision that would be applied in Scenario B. Therefore it is difficult to foresee how this condition could be implemented in practice.); 5) The marketing of units or shares of the third country AIF does not and (or) will not pose a threat to the interests of investors. <p>The AIFM does not have to pay any fees for issuing permission.</p>
<p>Luxembourg</p> 	<p>The CSSF has put in place a specific notification procedure and has issued an information form containing the information relating to the requirements of Article 36 of the AIFMD (Article 37 of the 2013 AIFM Law). The notification documents are available on the CSSF website at the following link: http://www.cssf.lu/surveillance/vgi/gfia-aifm/formulaires/.</p> <p>EEA AIFMs shall inform the CSSF prior to any marketing activity on the basis of Article 37 of the 2013 AIFM Law. When informing the CSSF, EEA AIFMs shall also indicate the date from which they will stop marketing activities in Luxembourg under this provision.</p> <p>EEA AIFMs shall inform the CSSF of the identity of the entity(ies) appointed to carry out the “Depo Lite Services” referred to in Articles 21(7), (8) and (9) of the AIFMD.</p> <p>Fees will range from EUR 2,650 for a stand-alone AIF to EUR 5,000 for a multi-compartment AIF. The details of the fees levied in this regard are laid down in the Grand Ducal Regulation of 28 October 2013.</p> <p>http://www.cssf.lu/fileadmin/files/Lois_reglements/Legislation/RG_NAT/GDR_281013_CSSF_fees.pdf</p>

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3

Section one: Marketing in the EU according to the four scenarios


Country	Details
<p>The Netherlands</p> 	<p>Article 36 AIFMD, as implemented in the AFS, sets out certain core conditions, which will always need to be satisfied before marketing without a passport is permitted:</p> <ul style="list-style-type: none"> (a) compliance with AIFMD; (b) an appropriate cooperation agreement being in place between the home Member State of the AIFM and the non-EEA country where the AIF is established; and (c) the non-EEA country where the AIF is established is not listed as a non-cooperative country for the purposes of FATF. <p>In addition, the AFS provides for the following specific requirements:</p> <ul style="list-style-type: none"> (a) the provisions that relate to AIFMs apply in a similar way to authorised EEA AIFMs of a non-EEA AIF (including the depository requirement); and (b) units in the non-EEA AIF should only be offered to qualified investors. <p>It is anticipated that the text of the AFS in relation to the conditions that an EEA AIFM must satisfy to market a non-EEA AIF in the Netherlands without a passport will be amended by the Dutch Amendment Act of the AFS 2015. It is provided that the AIFM should notify the AFM and provide the AFM with general documentation and information regarding the AIFM and the AIF. The AIFM should also provide the AFM with an attestation from the supervisor of the home Member State of the AIFM confirming that the AIFM is an authorised EEA AIFM under the AIFMD.</p> <p>Please note that currently the AFM acts in anticipation to this amendment.</p>

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3

Section one: Marketing in the EU according to the four scenarios



Country	Details
<p>Romania</p> 	<p>EEA AIFM - non-EEA AIF</p> <p>The notification procedure set by Article 37 of the Draft Transposition Norm, as mentioned under Question 11, must include, <i>inter alia</i>, the following documents and information:</p> <ul style="list-style-type: none"> • a notification letter containing the activity programme identifying the AIF in relation to which the AIFM intends to distribute and information regarding the place where the AIF is established; • the rules or the articles of incorporation of the AIF; • identification information of the depositary of the AIF; • a description of the AIF or any information on the AIF made available to the investors; • information regarding the location of the “master” AIF if the AIF to be distributed is a “feeder” fund; • any additional information in relation to, <i>inter alia</i>, the investment strategy and objectives of the AIF, a description of the procedure of amendment of the investment strategy and policy, a description of the main legal consequences of the contractual relationship established for the purpose of the investment; • indication of the member state (member states) where the AIFM intends to market the AIF to professional investors; • information in relation to the measures implemented for the distribution of the AIF and, if applicable, information in relation to the measures implemented to avoid distribution of the AIF towards retail investors. <p>The relevant authority of the member state of origin of the AIFM shall transfer, alongside with the above-listed information, an affidavit stating that the AIFM is authorised to manage AIFs based on a certain investment strategy.</p> <p>Romanian AIFM - non-EEA AIF</p> <p>The procedure for Romanian AIFMs distributing non-EEA AIFs is different, as mentioned under Question 11.</p>

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3

Section one: Marketing in the EU according to the four scenarios


Country	Details
<p>Romania</p> 	<p>According to Article 38 of the Draft Transposition Norm, Romanian AIFMs may market non-EEA AIFs exclusively to Romanian professional investors if the following conditions are met:</p> <ul style="list-style-type: none"> (a) the AIFM must observe all the provisions of the Draft Transposition Norm, except for the provisions regarding the depositary of the AIFs. However, the AIFM must ensure that one or more entities are appointed to perform the main tasks of a depositary if the AIFM does not perform such tasks and must inform the surveillance authority in relation to the identity of the entities appointed in this regard; (b) appropriate cooperation arrangements for the purpose of systemic risk oversight and in line with international standards are in place between the Romanian FSA and the surveillance authorities of the third country where the non-EEA AIF is established in order to ensure an efficient exchange of information that allows the Romanian FSA to carry out its duties in accordance with the Draft Transposition Norm; (c) the third country where the non-EEA AIF is established is not listed as a non-cooperative country and territory by FATF (GAFI). <p>Please note that in its second paragraph, Article 38 of the Draft Transposition Norm sets that the Romanian FSA shall issue secondary regulations for the application of the conditions listed above.</p> <p>The Draft Transposition Norm does not establish any fee applicable in relation to such procedure.</p>
<p>Slovakia</p> 	<p>An EEA AIFM is entitled to market (a) non-EEA AIF(s) in the Slovak Republic only if the following conditions are fulfilled:</p> <ul style="list-style-type: none"> (a) There is a cooperation agreement in place between the National Bank of Slovakia and the supervisory authority of the country of the non-EEA AIF(s), with the aim of ensuring the effective exchange of information, that enables the National Bank of Slovakia to perform supervision in accordance with the Slovak law. (b) The country of the non-EEA AIF is not on the list of non-cooperative jurisdictions and territories as prepared by the FATF. (c) When managing non-EEA AIFs, the EEA AIFM is subject to obligations required by its home country's local law. <p>Prior to marketing non-EEA AIFs, the EEA AIFM shall notify the National Bank of Slovakia of its intention to market non-EEA AIFs in the Slovak Republic. The notification shall be accompanied by a package of information about the non-EEA AIFs as specified in detail by the Collective Investments Act and documents demonstrating the compliance of management of the non-EEA AIFs with the requirements stipulated by the local law of the EEA AIFM.</p> <p>According to the document of the National Bank of Slovakia which lays down charges for licences and authorisations granted by the National Bank of Slovakia, there should be no charge with respect to Scenario B.</p>

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Section one: Marketing in the EU according to the four scenarios


Country	Details
<p>Spain</p> 	<p>In order to market non-EEA AIFs managed by an EEA AIFM to professional investors under Article 36 in Spain, the entity must obtain accreditation by the CNMV of the AIF's compliance with the following points:</p> <ol style="list-style-type: none"> 1. That adequate arrangements exist for cooperation between the competent authorities of the home Member State of the AIFM and the supervisory authorities of the third country in which the non-EEA AIF is established, in order to at least ensure an efficient exchange of information to allow the competent authorities to carry out their duties in accordance with Directive 2011/61/EU of the European Parliament and of the Council of June 8, 2011. 2. That the country in which the non-EEA AIF is established is not on the list of non-cooperative countries and territories established by the Financial Action Task Force on Anti-Money Laundering and Terrorist Financing. <p>Once CNMV's accreditation of the points above has been obtained, the AIFM of the non-EEA AIF must provide and record to the CNMV the following information in a language that is customary in the sphere of finance:</p> <ol style="list-style-type: none"> 1. Identification of the non-EEA AIF that the AIFM intends to commercialize, and the place where they are established, 2. Mechanisms and methods of marketing of shares or units in Spain, and when appropriate, the classes or series of shares or units, 3. Management regulation of the non-EEA AIF or documents of incorporation of the non-EEA AIF, 4. The prospectus of the non-EEA AIF or equivalent document and the latest annual report, 5. Identification of the depositary of the non-EEA AIF, 6. Description of the non-EEA AIF, or any other information on it, available to the investors, 7. Information regarding the place where the main investment entity is located if the non-EEA AIF to be marketed is a subordinate entity, 8. When applicable, information regarding any measures taken to prevent the marketing of the non-EEA AIF to retail investors, 9. Documents that certify the subjection of the non-EEA AIF and the stocks, shares or equity securities or assets to the legal regime applicable to it. <p>In addition, the AIFM must provide a supporting certificate that must be requested from its competent authorities, confirming that the AIFM is authorized by Directive 2011/61/EU of the European Parliament and of the Council of June 8, 2011, to manage non-EEA AIFs with particular investment strategies.</p> <p>For these AIFs to market their shares or units in Spain, they will need to be expressly authorized for such purpose by the CNMV and it shall be registered in the records of the CNMV.</p>

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Section one: Marketing in the EU according to the four scenarios



Country	Details
<p>Sweden</p> 	<p>In order to obtain authorisation for marketing to professional investors, the conditions corresponding to the provisions in Article 36 must be satisfied. In brief, these conditions include that:</p> <ul style="list-style-type: none"> (a) it can be expected that the AIFM will comply with all the applicable rules under the Directive; (b) appropriate cooperation arrangements for the purpose of systemic risk oversight are in place between the SFSA and the supervisory authority in the country where the AIF is established; and (c) the country in which the AIF is established has taken adequate measures to prevent money laundering and terrorist financing. <p>The application shall contain:</p> <ul style="list-style-type: none"> (a) a certificate, issued by the home member state authority, evidencing that the AIFM is licensed to manage AIFs in its home member state; (b) a brief business plan including information on the AIF intended to be marketed and where it is established; (c) the AIF's rules, articles of association or similar documents; (d) information on the identity of the AIF's depository (or the entity that has been appointed to carry out the depository duties); (e) information on where any master fund is established (if it is a matter of marketing a feeder AIF to an AIF); (f) the information set out in Article 23 of the Directive, i.e. the information that the AIFM must furnish to investors prior to their investments in the AIF; and (g) information on the measures which have been taken in order to prevent marketing to non-professional investors (an AIFM with an authorisation to market AIFs to professional investors only must ensure that no marketing activities are directed to non-professional investors, e.g. by including a disclaimer in marketing materials). <p>A fee of SEK 16,000 (approximately EUR 1,700) shall be paid to the SFSA when submitting the application.</p>

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Section one: Marketing in the EU according to the four scenarios

Country	Details
<p>Sweden</p> 	<p>An EEA AIFM may also, after obtaining an authorisation from the SFSA, market certain closed-ended funds to semi-professional investors (i.e. investors investing not less than EUR 100,000 and who have confirmed that they are aware of the risks associated with the investment). In order to obtain such authorisation, in brief, the following conditions must be satisfied:</p> <ul style="list-style-type: none"> (a) appropriate cooperation arrangements for the purpose of systemic risk oversight are in place between the SFSA and the supervisory authority in the country where the AIF is established, and (b) the country in which the AIF is established has taken adequate measures to prevent money laundering and terrorist financing. <p>The funds must meet the following conditions:</p> <ul style="list-style-type: none"> (a) there is no right of redemption for at least five years from the initial investment, and (b) the AIF (under its investment policy) generally invests in issuers or non-listed companies, in each case in order to acquire control according to provisions corresponding to Articles 26-30 of the AIFMD. <p>The application fee for an authorisation to market to semi-professional investors is SEK 16,000 (approximately EUR 1,700). The application for such authorisation shall, in addition to the information in the application described above, also contain information on the investors' right to redemption of fund units, the fund's investment policy and the latest annual report.</p> <p>Further, an EEA AIFM may also subject to an authorisation by the SFSA and provided that the relevant funds meet certain criteria (which here are excluded), market non-EEA AIFs to retail investors in Sweden.</p>
<p>UK</p> 	<p>A full-scope EEA AIFM may market in the UK in these circumstances provided it notifies the FCA in advance. The relevant notification form is available here: http://www.fca.org.uk/firms/markets/international-markets/aifmd/nppr, under the "Forms" heading. The relevant form is entitled, "Article 36 form".</p> <p>The provisions of Article 36 apply, so that a full-scope EEA AIFM need not comply with the requirements of Article 21, provided that the full-scope EEA AIFM ensures that one or more persons are appointed to perform the depositary functions specified in Articles 21(7) to (9) and notifies the FCA of the identify of such persons.</p>





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Section one: Marketing in the EU according to the four scenarios

13. Are there any restrictions on the type or number of investors to whom the fund may be marketed on this basis?

Country	Details
Austria 	<p>Under § 38 AIFMD only marketing to professional investors is permitted. If the additional requirements stated in § 49 AIFMG are met, certain types of AIF may be marketed to retail clients and qualified retail clients.</p>
Belgium 	<p>As long as no public offering is being conducted, there are no restrictions on the type or number of investors to whom the fund may be marketed on this basis.</p>
The Czech Republic 	<p>Special funds</p> <p>If the Czech National Bank recognises a non-EEA AIF as being equivalent to a special fund (as defined in the AICIF), the EEA AIFM is able to market such fund to the public (i.e. non-professional investors).</p> <p>The Czech National Bank decides on whether a non-EEA AIF is equivalent to a special fund within 20 business days of its receipt of the respective application. The application may be filed only electronically. All facts and documents evidencing that all conditions required by the AICIF are fulfilled have to be attached to the application.</p> <p>Funds of qualified investors</p> <p>If the respective non-EEA AIF is equivalent to a fund of qualified investors (as defined in the AICIF), the EEA AIFM is able to market such fund only to professional investors (the so-called qualified investors).</p> <p>If the respective non-EEA fund is equivalent to a fund of qualified investors (as defined in the AICIF), the EEA AIFM is able to market such fund publicly provided that the offer clearly states that only professional investors (the so-called qualified investors) are eligible to make the investment.</p>
Denmark 	<p>The authorisation mentioned under Question 12 only allows marketing to professional investors in Denmark. However, an additional authorisation to market to retail investors may be obtained. The applicable application form is available here. Marketing to retail investors may only begin when the manager is notified hereof by the Danish FSA.</p>






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Section one:

Marketing in the EU according to the four scenarios

Country	Details
<p>Estonia</p> 	<p>Yes, an EU AIFM is allowed to market non-EEA AIFs on this basis provided that the marketing (offering) of AIFs is not considered public. For the sake of clarity, the marketing of AIFs is not considered public in the following cases:</p> <ul style="list-style-type: none"> (a) the units/shares of the AIF are offered to professional investors only; (b) the units/shares of the AIF are offered to less than 150 persons per each EEA state who do not qualify as professional investors; (c) an offer of units/shares of an AIF where the minimum investment per each investor is at least EUR 100,000; (d) an offer of units/shares of an AIF where the nominal or book value of each unit/share is at least EUR 100,000; or (e) an offer of units/shares within a one-year period with a total value of less than EUR 100,000 collectively for all EEA states. <p>The following persons are regarded as professional investors under Estonian law:</p> <ul style="list-style-type: none"> (a) credit institutions, investment firms and other financial institutions subject to financial supervision; (b) the Republic of Estonia, a foreign state, local or regional government of Estonia and of a foreign state; (c) international institutions and organisations; (d) financial institutions whose only business activity is investment in securities, a market trader in commodities and commodity derivatives; (e) large enterprises (as contemplated by Annex II of MiFID).
<p>Finland</p> 	<p>Non-EEA AIFs may be marketed by fully authorised EEA AIFMs to professional investors only (within the meaning of MiFID). The FIN-FSA may however grant the right to market a non-EEA AIF also to non-professional investors.</p>
<p>France</p> 	<p>No, there is no restriction. However, this procedure is relevant only for professional clients. There is another authorisation procedure for non-professional clients.</p>
<p>Germany</p> 	<p>There is no restriction regarding the number of investors. Marketing towards semi-professional investors triggers more extensive formal and substantive requirements (see Question 7).</p>
<p>Hungary</p> 	<p>As mentioned under Question 11 marketing is possible to professional investors. There are no restrictions on the number of investors.</p>






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3

Section one:

Marketing in the EU according to the four scenarios



Country	Details
Ireland 	<p>AIFs may only be marketed in Ireland pursuant to Article 36 to MiFID professional investors. AIFs proposed to be marketed in Ireland to retail investors must be authorised by a supervisory authority set up in order to ensure the protection of investors and which, in the opinion of the Central Bank, provides an equivalent level of investor protection to that provided under Irish laws, regulations and conditions governing retail AIFs authorised by the Central Bank. A formal, very detailed application must be made to the Central Bank and marketing may not take place unless and until the AIF has received a letter of approval from the Central Bank. In practice, such an AIF would have to be one which is equivalent in all material respects to an Irish retail regulated AIF.</p>
Italy 	<p>No, there are not. The marketing in Italy of units or shares of AIFs is not reserved to Italian professional investors. The Italian authority allows the marketing to retail investors too.</p>
Latvia 	<p>Not applicable.</p>
Lithuania 	<p>Marketing is allowed only to professional investors. No other restrictions exist.</p>
Luxembourg 	<p>Marketing under Article 37 of the 2013 AIFM Law can only be made to professional investors. There are no restrictions as to the number of investors as per Article 37.</p>
The Netherlands 	<p>The fund may only be marketed to qualified investors (<i>gekwalificeerde beleggers</i>) as defined in the AFS.</p>
Romania 	<p>According to paragraph (4) of Article 37 of the Draft Transposition Norm, AIFs can only be distributed under this procedure towards professional investors. No particular reference is made in relation to a maximum number of investors.</p> <p>However, AIFMs (Romanian, EEA and non-EEA) can also distribute AIFs towards retail investors, subject to the adoption by the FSA of additional, subsequent norms (Article 47 DTN).</p>
Slovakia 	<p>Such funds can be marketed only to professional investors and via private placement; otherwise the EEA AIFM will be subject to some more regulation.</p>

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Section one: Marketing in the EU according to the four scenarios


Country	Details
<p>Spain</p> 	<p>In general, an AIF may be marketed in Spain to:</p> <ol style="list-style-type: none"> 1. <i>investors considered professional investors</i> as defined in paragraph 3 of Article 78 bis of Law 24-1988, of 28 July, 2. <i>other investors</i> who do not meet the “professional investor” criteria as defined in paragraph 3 of Article 78 bis of Law 24-1988, of 28 July, only if: <ol style="list-style-type: none"> (a) the other investors commit to invest at least EUR 100,000; and (b) the other investors state in writing that they are aware of the risks involved in said commitment in a document other than the contract for the investment commitment. 3. investors who do not meet the requirements of 1 or 2 above, if: <ol style="list-style-type: none"> (a) they are administrators, directors or employees of the AIFM managing the AIF, or (b) they invest in AIFs listed on a stock market, or (c) investors who are justified, from experience in investing, managing or advising AIFs similar to the AIF in which they intend to invest. <p>Please note that a marketing activity is deemed to be made on Spanish territory or “in Spain” <i>if it is addressed to investors resident in Spain.</i></p>
<p>Sweden</p> 	<p>An EEA AIFM which is duly licensed in its home member state and which has obtained an authorisation referred to in Question 12 to market its fund to a certain type of investors is permitted to market its fund to this type of investors.</p> <p>There are no restrictions on the number of investors to whom the EEA AIFM may market its funds. However, the AIFM may choose to limit the number of investors marketed to in order to avoid falling under the Prospectus Directive's requirements, if applicable.</p>

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Section one: Marketing in the EU according to the four scenarios

Country	Details
<p>UK</p> 	<p>There are no restrictions on the number of investors to whom the fund may be marketed under Article 36. In this context, the fund can only be marketed to professional investors (the UK uses the MiFID definition of professional client).</p> <p>Notwithstanding this, it is possible for the fund to be marketed to retail investors in the UK in accordance with the UK financial promotions regime.</p> <p>All firms are subject to section 21 of the Financial Services and Markets Act (FSMA). This prohibits a firm from making a financial promotion to UK investors in the course of its business. This restriction does not apply to firms which are “authorised persons”, such as a full-scope UK AIFM. However, this does not take a full-scope UK AIFM outside the scope of the UK financial promotions regime. There is a further restriction under section 238 FSMA. This restricts an authorised person from promoting units in an unregulated collective investment scheme in the UK (such as an AIF). Therefore, in order for a full-scope UK AIFM to promote its fund to a retail investor, it must either:</p> <ol style="list-style-type: none"> 1. rely on an exemption set out in the Financial Services and Markets Act 2000 (Promotion of Collective Investment Schemes) (Exemptions) Order 2001, for example, the investor is a certified high net worth individual; or 2. promote the fund in accordance with the FCA’s Conduct of Business Sourcebook COBS 4.12, for example, by using a prescribed process to re-categorising investors from retail status to professional status (the UK definition of professional client). <p>A firm which is not an FCA authorised person, may only promote an AIF to retail investors:</p> <ol style="list-style-type: none"> 1. where certain limited exemptions apply under the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 but these must be treated with great caution; or 2. where the content of a written promotion is approved by an FCA authorised firm as being suitable for retail investors by reference to detailed FCA rules.

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Section one:

Marketing in the EU according to the four scenarios

14. Whether or not a licence or authorisation is required, please briefly describe the key continuing obligations of the AIFM (including any obligation to make reports or to pay fees) if markets on this basis in your jurisdiction.

Country	Details
Austria 	<p>EEA AIFMs have to meet all requirements of the AIFMG, except for the rules on depositaries (although EEA AIFMs have to nominate one or more entities to perform certain depositary functions).</p> <p>The Financial Market Authority also has to be informed of any material change of the notified information.</p> <p>An annual fee is due (see Question 12).</p>
Belgium 	<p>In case the particulars filed during the notification substantially change, the AIFM must inform the FSMA in writing of those changes at least one month before implementing any planned change, or immediately after an unplanned change has occurred.</p> <p>No detailed information is available on possible fees.</p>
The Czech Republic 	<p>Under the AICIF, the AIFM must comply with a number of obligations towards the fund, the Czech National Bank and investors residing in the Czech Republic. The most important are as follows:</p> <p>(a) The obligation to act with due care, in a fair and qualified manner, and in the best interests of the investors, and to comply with other related obligations stipulated by the AICIF (e.g. the obligation to adopt measures to prevent any market manipulation and to ensure the protection of inside information).</p> <p>(b) Disclosure obligations towards the investors, such as:</p> <ol style="list-style-type: none">1. Making the statute of the fund and any change to it available to the investors (or making it public and providing any investor with a copy of it upon request if the respective fund is considered to be equivalent to a special fund);2. Compiling the Annual Report of the fund, making it available to investors (or making it public if the respective fund is considered to be equivalent to a special fund) and providing any investor with a copy of it upon request; and3. The obligation to inform investors that the fund managed by the AIFM exceeded 50 per cent of all voting rights in a non-listed company which fulfils certain criteria (e.g. the company has more than 250 employees or the turnover of the company is at least EUR 50,000,000 per year) and to provide investors with certain information relating to the condition and business activities of such company.

Section one: Marketing in the EU according to the four scenarios

Country	Details
The Czech Republic 	<p>(c) Disclosure obligations towards the Czech National Bank:</p> <ol style="list-style-type: none"> 1. Providing the Czech National Bank with the AIFM's Annual Report, half-year report and Consolidated Annual Report and the fund's Annual Report and half-year report (if such documents are compiled); 2. Providing the Czech National Bank with the fund's statute and informing the Czech National Bank of any change to the statute; 3. Informing the Czech National Bank of the most significant markets on which the AIFM deals on the account of the fund; and 4. Informing the Czech National Bank of the most significant investment instruments with which the AIFM deals on the account of the fund. <p>Please note that certain obligations listed above may be performed by the administrator if an administrator is appointed.</p> <p>Further, an EEA AIFM has to ensure that the function of a depository of the fund will be performed by another entity since it is incompatible with the function of the fund's manager.</p>
Denmark 	<p>Under the said rules, the EEA manager is required to:</p> <ol style="list-style-type: none"> (a) appoint one or more entities to carry out the depository functions described in Article 21(7)-(9) (equivalent to Article 36(1)(a) 2nd-4th sentences); (b) make public any information and/or documents that the non-EEA fund (or the competent authority) is required to publish in its home country; and (c) pay an annual fee of DKK 2,000 per fund and an annual fee of DKK 2,000 per compartment that the manager markets in Denmark (the amounts are subject to annual regulation in the Danish Finance Act).
Estonia 	<p>The AIFM must comply with all requirements (including continuing reporting, disclosure etc.) imposed on AIFMs pursuant to the Directive. In the event the AIFM violates any of the requirements, the EFSA is entitled to suspend the permission granted to such AIFM.</p>
Finland 	<p>Currently there is no full clarity. The law could be interpreted to require, also in these circumstances, compliance with the provisions relating to continuous disclosure obligations to investors and certain know-your-client requirements (partly referring to Finnish laws on the subject).</p>



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Section one:

Marketing in the EU according to the four scenarios

Country	Details
France 	<p>The conditions for marketing of a non-French AIF to non-professional clients are more stringent than for marketing to professional clients. The applicable conditions are found under Article 421-13 of the <i>Règlement Général</i> of the AMF, which subjects the marketing to non-professional clients in France to prior authorisation by the French regulator, and the fulfilment of two additional conditions:</p> <ol style="list-style-type: none">1. an agreement for information exchange and mutual assistance must be in place between the French Authority and the national authority of the AIF (see Question 6);2. the AIF must comply with the provisions of the mutual assistance agreement in place between the French authority and the national authority of the AIF, which defines the particular requirements. To our knowledge, there are no mutual assistance agreements signed yet between the French Authority and other national authorities. <p>The terms of this authorisation are described in Question 12.</p> <p>A manager authorised in France is notably subject to the following key continuing obligations, pursuant to <i>Instruction AMF n° 2008-03</i>:</p> <ol style="list-style-type: none">(a) Informing the French Authority of any changes to its initial authorisation or to its programme of activity (<i>programme d'activité</i>);(b) Providing audited accounts of the portfolio management company at the latest 6 months after the end of each fiscal year;(c) Providing annual statistics on the fund's activity, at the latest 4 months and a half after the end of the period of activity;(d) Providing a report on internal control;(e) Complying with the general reporting obligations towards the AMF, via the Regulator online platform (GECO).
Germany 	<p>An annual fee of EUR 772 applies (see Question 12). Also, there are ongoing reporting obligations towards BaFin, e.g. in the form of annual reports or in case of substantial changes to information disclosed in the notification.</p>








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Section one:

Marketing in the EU according to the four scenarios


Country	Details
Hungary 	A licensed AIFM authorized by and established in another Member State may carry out in Hungary its activities licensed in such other Member State.
Ireland 	The Central Bank may impose on the AIFM conditions or requirements in addition to those set out in Article 36 where it considers it necessary for the proper and orderly regulation and supervision of AIFMs. Currently there are no such additional conditions or requirements.
Italy 	As both the Banca d'Italia and Consob regulations are not yet approved, it is impossible to answer exactly.
Latvia 	Not applicable.
Lithuania 	The Central Bank of the Republic of Lithuania has not yet approved instructions of supervision that would be applied in Scenario B.
Luxembourg 	Please refer to the answer to Question 12.
The Netherlands 	Currently, the AFS is applicable to such AIFMs. However, as per 1 January 2015, the Dutch Amendment Act of the AFS 2015 provides that the AFS does not apply to such AIFMs and therefore no continuing obligations apply.

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Section one: Marketing in the EU according to the four scenarios






Country	Details
<p data-bbox="225 300 335 327">Romania</p> 	<p data-bbox="453 300 1359 510">The Draft Transposition Norm provides for several obligations for AIFMs (e.g. to provide information to the Romanian FSA in order for the FSA to monitor compliance with the law, to act in the interest of the AIF and of the shareholders); however, it does not establish specific continuing obligations for Scenario B “Marketing non-EEA AIFs managed by an EEA AIFM under Article 36”.</p> <p data-bbox="453 533 1359 631">More specifically, according to the Draft Transposition Norm there are several obligations to be complied with by AIFMs, irrespective of the nationality of the fund they are marketing. For example:</p> <ul style="list-style-type: none"> <li data-bbox="453 654 1359 721">(a) an obligation to inform the Romanian FSA, in order for such to monitor the observance of the conditions set forth by the Draft Transposition Norm; <li data-bbox="453 743 1359 810">(b) to act honestly, fairly, and with due skill, care and diligence in conducting their activities; <li data-bbox="453 833 1359 855">(c) to act in the interest of the AIF and of the shareholders; <li data-bbox="453 878 1359 945">(d) to keep and efficiently use resources and procedures necessary for the proper performance of their activities; <li data-bbox="453 967 1359 1178">(e) to take all the reasonable measures in order to avoid conflicts of interest and, if the conflicts of interest cannot be avoided, to take all the reasonable measures in order to identify, manage, monitor and, as the case may be, to disclose the conflicts of interest in order to avoid adversely affecting the interest of the AIF and its investors and also in order to guarantee that the AIFs it manages are treated equally; <li data-bbox="453 1200 1359 1299">(f) the obligation to comply with all regulations applicable to their activities so as to promote the interests of the AIFs or the investors of the AIFs it manages and the integrity of the market; <li data-bbox="453 1321 1359 1344">(g) the obligation to treat all the investors of AIFs equally; <li data-bbox="453 1366 1359 1464">(h) to notify the Romanian FSA in relation to any substantial change in the information provided on the occasion of the first notification of the Romania FSA. <p data-bbox="453 1487 1359 1554">The Draft Transposition Norm does not set forth the obligation of payment of certain fees.</p> <p data-bbox="453 1576 1359 1787">However, please note that such obligation is set by the Intermediary Norm (Norm 13/2013) issued by the Romanian FSA, currently in force. According to Article 3 paragraph (4) letter b) of the Intermediary Norm, the Romanian FSA charges an annual tariff for the supervision of the distribution activities of AIFs registered in other EEA member states to professional investors from Romania, as follows:</p>

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Section one: Marketing in the EU according to the four scenarios

Country	Details
Romania 	<p>(a) 10,000 RON, in case of distribution of shares of a single AIF;</p> <p>(b) for the distribution of shares of multiple AIFs or the AIFs - umbrella funds type:</p> <ol style="list-style-type: none"> 8,000 RON per fund / sub-fund - for the distribution of a number between 2 and 10 AIFs or sub-funds of the same AIF; 6,000 RON for each fund / sub-fund - for the distribution of a number between 11 and 20 AIFs or sub-funds of the same AIF; 5,000 RON for each fund / sub-fund - for the distribution of a number between 21 and 40 AIFs or sub-funds of the same AIF; 4,000 RON for each fund / sub-fund - for the distribution of more than 40 AIFs or sub-funds of the same AIF.
Slovakia 	<p>The EEA AIFM shall manage non-EEA AIFs pursuant to its home country's local law.</p>
Spain 	<p>In addition to the above, the non-EEA AIFs and their AIFMs must facilitate and make available to the shareholders and unitholders resident in Spain:</p> <ol style="list-style-type: none"> the payments, the acquisition by the non-EEA AIFs of their shares or the redemption of their units, the information that they are required to provide to the shareholders and unitholders resident in Spain, and in general, the exercise of their rights.
Sweden 	<p>The AIFM has to report to the SFSA in accordance with the requirements set out in Article 24.1-24.5 and, if applicable, Articles 26-30 of the Directive.</p> <p>EEA AIFMs marketing in Sweden under a marketing authorisation are not required to pay any recurring fees to the SFSA.</p>
UK 	<p>A full scope EEA AIFM which markets in the UK pursuant to Article 36 is required to pay an initial fee and annual fee per fund for each fund identified in the Article 36 form.</p>

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SCENARIO C: MARKETING BY SUB-THRESHOLD AIFMS

15. Is there a difference in your jurisdiction between the rules for non-EEA AIFs managed by non-EEA AIFMs and those applicable to sub-threshold AIFMs⁷?





If yes, please explain how they are different and describe the rules, according to and based on the questions below.

If no, please go to Question 16.

Country	Details
Austria 	Sub-threshold AIFMs need to be registered with the FMA and may only start their activities after registration. Details for such funds are set out in § 1 (5) AIFMG.
Belgium 	Yes, in Belgium a difference exists between the rules for non-EEA AIFs managed by non-EEA AIFMs and those applicable to sub-threshold AIFMs.
The Czech Republic 	No, there is no difference.
Denmark 	Yes.
Estonia 	<p>The regulation currently in force in Estonia provides for a separate registration procedure as regards investment fund managers managing portfolios falling below the thresholds set out in Article 3(2) of the AIFMD. However, this procedure only applies with respect to entities established in Estonia and in the context of conduct of cross-border operations (including marketing activities) thereby or by such foreign investment fund managers, no differentiation currently exists.</p> <p>The draft legislation referred to under Question 1, however, does stipulate a special regulation with respect to the public offering (i.e. offering of investment fund shares or units in the volume or to a number of investors described under Question 13) by sub-threshold AIFMs pursuant to which such AIFMs are required to register the offering of shares/units with the EFSA. No regulation is established with regard to non-public offerings due to the lack of public interest.</p>

⁷ A sub-threshold AIFM should be considered as an AIFM which falls within Article 3(2) and is subject to domestic registration or authorisation only in its home Member State.

Section one: Marketing in the EU according to the four scenarios

Country	Details
Finland 	<p>Yes.</p>
France 	<p>No, there is no difference.</p> <p>The French regime uses as a starting point the location of the AIF (EU / non-EU).</p> <ul style="list-style-type: none"> For non-EU AIFs, whether the AIFM under the threshold is an EU or a non-EU AIFM, there is no passport and the same rules apply. <p>This means that in the case of non-EU AIFs, a sub-threshold AIFM (authorised or registered in an EEA Member State, other than France) who wishes to market in France is subject to the same rules and procedures as a non-EEA AIFM who wishes to market non-EEA AIFs in France.</p> <ul style="list-style-type: none"> In relation to EU AIFs, there is a difference between sub-threshold EU AIFMs and sub-threshold non-EU AIFMs. The non-EU AIFM can apply for authorisation whereas the EU AIFM has no choice but to rely on the passport, even if it is sub-threshold. <p>For example if a German manager with less than EUR 500 million of AuM (EU AIFs) does not decide to opt in, it cannot market its AIFs to French investors. (cf. Section 3.3 of the Guide DOC 2014-04)</p>
Germany 	<p>There is no difference between the rules for non-EEA AIFs managed by non-EEA AIFMs and those applicable to sub-threshold AIFMs. Simplified marketing rules are only available to sub-threshold EEA AIFMs.</p>
Hungary 	<p>No. Please see the answer to Question 1.</p> <p>At the time of publication of this document there are no statutory provisions in force in Hungary that would expressly set out rules for non-EEA AIFs managed by non-EEA AIFMs. Thus, no such difference as set out in the question above exists.</p>






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3

Section one:

Marketing in the EU according to the four scenarios




Country	Details
Ireland 	<p>There is no provision in the Irish AIFMD Regulations which allows sub-threshold AIFMs registered in the EU to market to professional investors in Ireland.</p> <p>Non-EEA AIFMs (regardless of the level of the AIFM's AIF assets under management) may market AIFs into Ireland to professional investors pursuant to Regulation 43.</p>
Italy 	<p>The Transposition Decree states that Italy shall maintain, wherever possible, the stricter national rules and by way of example indicates the intention of keeping the restriction on sub-threshold AIFs.</p> <p>Under the Transposition Decree it will no longer be possible to market interests in a fund for no-licence managers in any EEA State (among which there are the sub-threshold AIFMs), because section n. 42.5 of the FCA has been removed (see answer Question 1).</p> <p>Therefore it seems possible to assume that also EEA sub-threshold managers are not able to market in Italy.</p>
Latvia 	Yes.
Lithuania 	Yes.
Luxembourg 	Regarding the marketing without a passport to professional investors under Article 42 of the AIFMD (Article 45 of the 2013 AIFM Law), no distinction is made between non-EEA sub-threshold AIFMs and non-EEA above-threshold AIFMs.

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Section one: Marketing in the EU according to the four scenarios

Country	Details										
<p>The Netherlands</p> 	<p>Yes. The 'sub-threshold AIFM regime' is only available for Dutch AIFMs which either directly or indirectly, through a company with which the AIFM is linked by common management or control, or by a substantive direct or indirect holding, have assets under management:</p> <ul style="list-style-type: none"> (a) below EUR 100 million, including any assets acquired through the use of leverage; or (b) below EUR 500 million where the relevant portfolio of AIFs are unleveraged and have no redemption rights exercisable during a period of 5 years following the day of initial investment in each AIF. <p>In addition:</p> <ul style="list-style-type: none"> (c) the interests in the AIFs may only be offered, sold, transferred or delivered, directly or indirectly, (a) to professional investors, or (b), if not solely to professional investors: to fewer than 150 persons, and / or for an equivalent value of at least EUR 100,000 per investor, and / or for a nominal value of at least EUR 100,000; with (d) certain ongoing requirements apply. <p>The difference between Article 42 AIFMD and the sub-threshold AIFM regime is as follows:</p> <table border="1" data-bbox="464 1048 1356 1585"> <thead> <tr> <th data-bbox="464 1048 914 1128">Non-EEA AIFs managed by non-EEA AIFMs</th> <th data-bbox="914 1048 1356 1128">Sub-threshold AIFMs</th> </tr> </thead> <tbody> <tr> <td data-bbox="464 1128 914 1171">Notification to AFM</td> <td data-bbox="914 1128 1356 1171">Registration to AFM</td> </tr> <tr> <td data-bbox="464 1171 914 1357">Offering to qualified investors</td> <td data-bbox="914 1171 1356 1357">Offering to professional investors, or fewer than 150 persons and/ or equivalent value of at least EUR 100,000 per investor (as described above)</td> </tr> <tr> <td data-bbox="464 1357 914 1438">No thresholds related to assets under management</td> <td data-bbox="914 1357 1356 1438">Thresholds related to assets under management (as described above)</td> </tr> <tr> <td data-bbox="464 1438 914 1585">Requirements set out in Article 42 AIFMD</td> <td data-bbox="914 1438 1356 1585">Ongoing obligations, such as certain periodic filings to the Dutch Central Bank (DCB) and Article 5:68 AFS (as described in Question 15d below)</td> </tr> </tbody> </table> <p>Please note that a Dutch sub-threshold AIFM may obtain a passport under the European EuVECA and EuSEF regimes and therefore market its AIFs in other Member States.</p>	Non-EEA AIFs managed by non-EEA AIFMs	Sub-threshold AIFMs	Notification to AFM	Registration to AFM	Offering to qualified investors	Offering to professional investors, or fewer than 150 persons and/ or equivalent value of at least EUR 100,000 per investor (as described above)	No thresholds related to assets under management	Thresholds related to assets under management (as described above)	Requirements set out in Article 42 AIFMD	Ongoing obligations, such as certain periodic filings to the Dutch Central Bank (DCB) and Article 5:68 AFS (as described in Question 15d below)
Non-EEA AIFs managed by non-EEA AIFMs	Sub-threshold AIFMs										
Notification to AFM	Registration to AFM										
Offering to qualified investors	Offering to professional investors, or fewer than 150 persons and/ or equivalent value of at least EUR 100,000 per investor (as described above)										
No thresholds related to assets under management	Thresholds related to assets under management (as described above)										
Requirements set out in Article 42 AIFMD	Ongoing obligations, such as certain periodic filings to the Dutch Central Bank (DCB) and Article 5:68 AFS (as described in Question 15d below)										
<p>Romania</p> 	<p>Article 3(2) of the AIFMD is transposed in the Draft Transposition Norm under Article 2(2) but only concerning Romanian AIFMs.</p> <p>As a result, the Draft Transposition Norm sets a different procedure only for Romanian sub-threshold AIFMs.</p>										
<p>Slovakia</p> 	<p>Yes.</p>										

Section one: Marketing in the EU according to the four scenarios

Country	Details
<p>Spain</p> 	<p>There are no express regulations regarding sub-threshold AIFMs.</p>
<p>Sweden</p> 	<p>A non-EEA AIFM needs an authorisation from the SFSA in order to market its funds to Swedish <i>professional investors</i>. The AIFM needs to comply with the requirements set out in Article 42 of the Directive.</p> <p>In brief, these conditions include that:</p> <ul style="list-style-type: none"> (a) it can be expected that the AIFM will comply with applicable rules corresponding to Articles 22-24 and 26-30 under the Directive; (b) appropriate cooperation arrangements for the purpose of systemic risk oversight are in place between the SFSA and the authority supervising the AIFM; and (c) the country in which the AIFM or the AIF is established has taken adequate measures to prevent money laundering and terrorist financing. <p>A non-EEA AIFM can also obtain an authorisation from the SFSA for marketing closed-ended funds of the same type as described under Question 12 to <i>semi-professional investors</i>, if the conditions described above are satisfied.</p> <p>Further, non-EEA AIFMs may market certain funds to <i>retail investors</i>, subject to an authorisation from the SFSA (the further requirements for such authorisation are here excluded).</p>
<p>UK</p> 	<p>Yes, there is a difference between a non-EEA AIFM marketing pursuant to Article 42 and a sub-threshold EEA AIFM marketing in the UK.</p> <ul style="list-style-type: none"> (a) A sub-threshold non-EEA AIFM can market (EEA or non-EEA) funds which it manages into the UK provided it notifies the FCA in advance. The relevant notification form is available here: <ul style="list-style-type: none"> http://www.fca.org.uk/firms/markets/international-markets/aifmd/nppr, under the "Forms" heading. The relevant form is entitled, "Small Third Country form". <p>The sub-threshold non-EEA AIFM is required to pay an initial fee and annual fee per fund for each fund identified in the Small Third Country form.</p> (b) A sub-threshold EEA AIFM can market (EEA or non-EEA) funds which it manages in the UK. It is only subject to the pre-existing financial promotion restriction (see Question 7 but note the rider in response to Question 7 concerning further steps to arrange investors' commitments which, if taken in the UK, may be licensable).




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Section one: Marketing in the EU according to the four scenarios

15a. Can an AIFM which falls within Article 3(2) and is subject to domestic registration or authorisation only in its home Member State market a fund in your jurisdiction and/or to investors established in your jurisdiction?

Country	Details
Austria 	<p>No, only AIFMs with a domicile (<i>Wohnsitz</i>) or corporate seat (<i>Sitz</i>) in Austria may register as sub-threshold funds in Austria.</p> <p>Sub-threshold AIFMs may market in Austria only if they opt in under the AIFMD. In our view, rules on reverse solicitation apply (see Question 10).</p> <p>Additionally, sub-threshold funds may market in Austria under the EuVECA and EuSEF Regulations, if the respective requirements are met.</p>
Belgium 	<p>Yes, a sub-threshold EEA AIFM can market an EU AIF in Belgium subject to notifying the FSMA. For further details, please see the answer to Question 15b.</p> <p>The AIFM Act is unclear concerning the marketing by sub-threshold EEA AIFMs of non-EU AIFs under the Private Placement Regime. Article 501 of the Belgian AIFM Act provides that sub-threshold EEA AIFMs marketing (EU or non-EU) AIFs in Belgium can benefit from a 6-month transitional relief period after the entry into force of the AIFM Act (which expired on 27 December 2014) (the “Sub-Threshold Transition Period”). Before the expiration of the Sub-Threshold Transition Period, sub-threshold managers can market in Belgium without notifying or registering with the FSMA.</p> <p>However, concerning sub-threshold EEA AIFMs marketing non-EU AIFs in Belgium, Article 493 of the AIFM Act additionally provides that these rules shall only enter into force when the Third Country Passport Regime has been introduced. Under the Private Placement Regime (procedures as explained in the answers to Question 8 (marketing by non-EEA AIFMs of non-EEA AIFs) and Question 12 (marketing by EU AIFMs of non-EEA AIFs)), no distinction is made between sub-threshold AIFMs and normal AIFMs marketing non-EEA AIFs in Belgium.</p> <p>A literal, combined reading of both provisions indicates that only sub-threshold EEA AIFMs marketing units of EU AIFs in Belgium can benefit from the Sub-Threshold Transition Period. Consequently, prior to the entry into force of the Third Country Passport Regime, EEA AIFMs marketing units of non-EU AIFs in Belgium must comply with the procedure as set out in our answer to Question 12.</p>
The Czech Republic 	<p>Marketing</p> <p>Public marketing is permitted only after registration of the fund with the Czech National Bank.</p> <p>Private Placement</p> <p>The private placement of AIFs managed by sub-threshold AIFMs whose registered seat is in a Member State is permitted without restrictions.</p>






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Section one:

Marketing in the EU according to the four scenarios









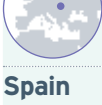


Country	Details
Denmark 	<p>No. When the Danish rules implementing the Directive were amended in April 2014, the Danish FSA was authorized to set out rules regarding marketing in Denmark by sub-threshold EEA AIFMs. However, such regime has not yet been adopted and is not expected to be adopted by the Danish FSA until 2015. It has been a subject for debate whether marketing by sub-threshold managers is allowed in the interim period, however, the Danish FSA takes the position that marketing in Denmark is currently prohibited.</p>
Estonia 	<p>As described under Question 15, the regulation currently in force in Estonia does not provide sufficient clarity on how cross-border operations (including marketing activities) conducted by sub-threshold AIFMs should be treated. However, considering that the new draft legislation referred to under Question 15 reflects that public interest towards regulating non-public offering activities of shares or units by sub-threshold AIFMs is to be considered of little importance by the Estonian legislator, it can be presupposed that such operations by sub-threshold AIFMs remain subject to the laws of the country of origin of such AIFM only.</p> <p>However, please note that as this assumption relies on the explanatory documentation of a law not yet publicly concerted, adopted or in force and does not constitute an official statement adopted or issued by the EFSA, the treatment of sub-threshold AIFMs and their operations in Estonia remains somewhat uncertain.</p>
Finland 	<p>Yes, it is possible, and subject to the conditions laid down in the act and other regulations implementing the Directive. It seems that a sub-threshold EEA AIFM may only market EEA AIFs in Finland.</p>
France 	<p>Sub-threshold managers must apply for prior authorisation in order to be allowed to market non-EU AIFs to French investors (cf. Article 421-13-1 <i>Règlement Général</i> of AMF).</p>
Germany 	<p>Yes, sub-threshold EEA AIFMs may market any AIF to professional and semi-professional investors in Germany, subject to certain conditions (see Question 15b).</p>
Hungary 	<p>Based on the Collective Investments Act with the exception of the provision on remuneration, certain provisions on risk management and liquidity management, the provisions of the Collective Investments Act shall also apply if the AIFM either directly or indirectly, through a company with which the AIFM is linked by common management or control, or by a substantive direct or indirect holding, manages portfolios of AIFs whose assets under management in total do not exceed a threshold of EUR 100 million (including any assets acquired through the use of leverage), or in total do not exceed a threshold of EUR 500 million when the portfolios of AIFs consist of AIFs that are unleveraged and have no redemption rights exercisable during a period of five years following the date of initial investment in each AIF.</p> <p>Thus, the rules set out in Question 11 apply to this scenario.</p>

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Section one: Marketing in the EU according to the four scenarios

Country	Details
Ireland 	No. See response to Question 15.
Italy 	Not applicable. See Question 15.
Latvia 	Yes.
Lithuania 	Yes.
Luxembourg 	Yes.
The Netherlands 	No, the 'sub-threshold AIFM regime' is only available for Dutch AIFMs. In order to market in the Netherlands, a non-Dutch sub-threshold AIFM should obtain a license in its home Member State and "passport" the license in the Netherlands.
Romania 	<p>The threshold set in Article 3(2) of the AIFMD is transposed in the Draft Transposition Norm only in relation to Romanian AIFMs, as mentioned earlier.</p> <p>Therefore, in the case described under Question 15a, i.e. for non-Romanian EEA sub-threshold AIFMs subject to domestic registration/authorisation in their home Member State, the general rules related to marketing of EEA/non-EEA AIFs by EEA AIFMs will be applicable.</p>
Slovakia 	Yes.
Spain 	Sub-threshold managers wishing to market a fund in Spain must apply for prior authorisation.
Sweden 	Yes, an EEA sub-threshold AIFM which is subject to domestic registration or authorisation in its home member state may obtain a marketing authorisation from the SFSA to market closed-ended EEA and non-EEA funds of the same type described under Question 12 to <i>professional and semi-professional investors</i> . However, in order to obtain authorisation for marketing non-EEA funds, the conditions described under Question 12 (as to marketing to semi-professional investors) must be satisfied.
UK 	Yes, a sub-threshold EEA AIFM and a sub-threshold non-EEA AIFM can market funds managed by it in the UK on the basis described in response to Question 15.

Section one: Marketing in the EU according to the four scenarios

15b. If yes, is the AIFM required to obtain a local licence or registration or to observe other formalities?

Please briefly describe the process for obtaining such licence or registration (including any fees payable to a regulator) or the formalities required.





Country	Details
Austria 	Not applicable.
Belgium 	<p>Sub-threshold EEA AIFMs marketing units of EU AIFs</p> <p>After the Sub-Threshold Transition Period has expired, a sub-threshold EEA AIFM can only market units of an EU AIF in Belgium subject to notifying the FSMA.</p> <p>Such notification must contain:</p> <ul style="list-style-type: none"> (a) a notification letter that contains a scheme of operations and names the AIF involved and where it is established; (b) the AIF's articles of association (or similar documentation, e.g. limited partnership agreement); and (c) a description of the AIF and any other information also provided to the members. <p>Further, the AIFM must keep the file with the FSMA up-to-date at all times.</p> <p>Please note that this notification procedure is less cumbersome than the procedure for marketing by non-EEA AIFMs of non-EEA AIFs in Belgium as explained in the answer to Question 8.</p> <p>Another important difference is that sub-threshold EEA AIFMs can start marketing EU AIFs' units upon notification (i.e. the sub-threshold EU AIFM does not have to wait for the FSMA's approval before starting the marketing).</p> <p>On a practical level, we would advise that the sub-threshold EEA AIFM also files documentation proving that it fulfils the requirements of Article 3(2) AIFMD and, consequently, qualifies as a sub-threshold AIFM. For example, Belgian sub-threshold AIFMs must notify the FSMA and must be registered on a list. A similar obligation might exist in other EEA jurisdictions for sub-threshold AIFMs. Such registration could serve as the required proof.</p> <p>Sub-threshold EEA AIFMs marketing units of non-EU AIFs</p> <p>As set out in our answer to Question 15a, prior to the entry into force of the Third Country Passport Regime, sub-threshold EEA AIFMs marketing units of non-EU AIFs in Belgium must comply with the procedure as set out in the answer to Question 12. The Third Country Passport Regime is not discussed here.</p>
The Czech Republic 	<p>For a private placement, no licence or registration is required.</p> <p>For public marketing, registration with the Czech National Bank is required. For more details, see Question 12.</p>

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Section one: Marketing in the EU according to the four scenarios

Country	Details
Denmark 	Not applicable.
Estonia 	<p>As described under Question 15, a special regulation has been laid down for the purposes of public offering of units or shares by foreign sub-threshold AIFMs (i.e. EEA AIFMs as well as non-EEA AIFMs) in the draft legislation proposed by the Estonian Ministry of Finance in June 2014.</p> <p>Pursuant to the regulation set forth therein, a foreign sub-threshold AIFM shall enter into a contract with an Estonian credit institution, investment firm, insurance company or other entity subject to financial supervision in order to organise the sale and purchase of the shares or units. For the sake of clarity, this requirement does not apply in case the sub-threshold AIFM aiming to offer AIFs in Estonia has established a local branch organising such sale and purchase of shares or units.</p> <p>Further, the public offering of AIFs must be registered with the EFSA. For the registration, a written application together with a number of documents (including, amongst others, the registration certificate issued by the financial supervision authority of the country of origin of the respective AIFM, the activities license of the AIFM, the prospectus of the offering, financial statements of the AIFM etc.) must be delivered to the EFSA.</p> <p>Upon the registration of the offering, certain reporting and disclosure requirements will apply to the AIFM aiming to market AIFs in Estonia, but the EFSA may also decide to apply reporting and disclosure obligations equivalent to those applied to AIFMs established in Estonia, to such sub-threshold AIFMs.</p>
Finland 	<p>No licence or registration is needed, but the FIN-FSA shall be notified beforehand.</p> <p>For such a notification, the AIFM shall provide a confirmation concerning compliance with obligations relating to:</p> <ul style="list-style-type: none"> (a) marketing (including compliance with good securities market practice and prohibition to give false or misleading information, certain disclosure obligations and “know your client” obligations); (b) reporting to the FIN-FSA; (c) financial statement and auditing; and (d) with respect to AIFs acquiring control in non-listed companies and issuers, obligations relating to such AIFs (which are based on Articles 26-30). <p>The fee charged by the FIN-FSA is EUR 1,600.</p>
France 	Sub-threshold managers must apply for prior authorisation in order to be allowed to market non-EU AIFs to French investors (cf. Article 421-13-1 <i>Règlement Général</i> of AMF).





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3

Section one:

Marketing in the EU according to the four scenarios


Country	Details
<p>Germany</p> 	<p>Sub-threshold EEA AIFMs marketing AIFs to professional and/or semi-professional investors in Germany will need to submit a notification letter to the German regulator (BaFin) containing:</p> <ul style="list-style-type: none"> (a) confirmation by the home member state supervisory authority that the manager is registered as a sub-threshold AIFM; (b) a confirmation letter by the manager in which it undertakes to inform BaFin of any material amendments to the information provided in its registration and to evidence such amendments; (c) a confirmation letter by the manager in which it undertakes to provide BaFin on request with information on its business activity and submit documentation; and (d) payment of the notification fee (EUR 3,291). <p>There are no prescribed forms for the notification but instructing German counsel to prepare the notification is recommended.</p>
<p>Hungary</p> 	<p>Please see the answer to Question 11. The same rules apply. The Collective Investments Act does not distinguish between AIFMs and sub-threshold AIFMs in relation to licensing and registration requirements.</p>
<p>Ireland</p> 	<p>Not applicable.</p>
<p>Italy</p> 	<p>Not applicable.</p>

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Section one: Marketing in the EU according to the four scenarios




Country	Details
<p>Latvia</p> 	<p>Yes. The Latvian Financial and Capital Market Commission (FCMC) has to adopt a decision to allow the respective EEA AIFM to market an EEA AIF in Latvia provided that the operating rules do not provide for the use of leverage and the redemption of investment units (shares) exercisable during a period of 5 years following the date of the first investment in the AIF. The AIFM should submit to the FCMC:</p> <ol style="list-style-type: none"> 1. an application for authorisation to market the EEA AIF managed by it to professional investors in Latvia; 2. a confirmation issued by the supervisory authorities of the home Member States of the EEA AIFM and EEA AIF that the AIFM and the AIF have been registered with the supervisory authorities of the Member States in accordance with the procedure stated in the regulatory enactments of the Member States and are subject to the supervision requirements applicable in the respective Member States; 3. a confirmation of the supervisory authorities of the home Member States of the EEA AIFM and the EEA AIF addressed to the FCMC supporting that the supervisory authorities will cooperate with the FCMC in respect of the supervision of the EEA AIF and the EEA AIFM and information exchange matters; 4. information on the contact person responsible for the marketing of the EEA AIF in Latvia and authorised to represent the interests of the EEA AIF and the EEA AIFM before state agencies, investors and third parties in Latvia; 5. the contract on the marketing of the EEA AIF; and 6. the following documents: <ol style="list-style-type: none"> (a) programme of activity setting out the information on the EEA AIF which the EEA AIFM wishes to market; (b) information about the place of incorporation of the EEA AIF; (c) documents of incorporation of the EEA AIF; (d) operating rules of the EEA AIF; (e) information about the depositary of the EEA AIF; (f) information on the place where the master fund is established if the fund is a feeder fund; (g) the most recent annual report and consolidated annual report if such are drawn up, information on the most recent calculated net asset value of the EEA AIF or the most recent calculated value or market price of the investment unit (share); (h) the procedure under which the marketing of the EEA AIF only to professional investors will be ensured. <p>Furthermore, the EEA AIFM does not have to pay any fees to the FCMC for the review of the above-mentioned documents.</p>

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Section one: Marketing in the EU according to the four scenarios




Country	Details
Lithuania 	<p>AIFMs which fall within Article 3(2) of the Directive are required to register with the supervisory authority of the Republic of Lithuania. In order to register with the supervisory authority, such AIFMs have an obligation to provide information about themselves and controlled AIFs and their investment strategies.</p> <p>The Central Bank of the Republic of Lithuania has not yet approved detailed instructions for registration.</p>
Luxembourg 	<p>Sub-threshold EEA AIFMs</p> <p>For sub-threshold EEA AIFMs the Luxembourg private placement rules continue to apply (foreseeably until 2018).</p> <p><i>It should be noted that the existing private placement rules are applied differently for closed and open-ended funds. To the extent that private equity funds are typically closed, the private placement rules are those which do not run afoul of the Prospectus Directive rules. The only grey area at this stage pertains to the eligible investors. While the placement of a Luxembourg regulated AIF will allow you to broaden the investor base in Luxembourg (i.e. to well-informed investors e.g. similar to the German semi-professional investor concept), non-regulated EU AIFs and presumably also regulated EU AIFs should only be marketed to professional investors. Hence domestic AIFs would be treated better than non-Luxembourg AIFs. It will take a while before this issue is resolved. The CSSF is currently busy updating its Q&A and working on further guidance including on asset stripping.</i></p> <p>Sub-threshold non-EEA AIFMs</p> <p>Sub-threshold non-EEA AIFMs are permitted to market their AIFs in Luxembourg as long as they first notify the CSSF (the Article 45 of the 2013 AIFM Law notification) and the AIFs are either Luxembourg, EEA or non-EEA regulated AIFs (in the case of non-EEA regulated AIFs there must be a co-operation agreement between the CSSF and the supervisory authority concerned). Marketing can commence upon notification.</p> <p>The sub-threshold non-EEA AIFM must notify the CSSF of the AIFs it is marketing in Luxembourg. Fees will range from EUR 2,650 for a stand-alone AIF to EUR 5,000 for a multi-compartment AIF. The Article 45 of the 2013 AIFM Law notification form is available on the CSSF website at:</p> <p>http://www.cssf.lu/surveillance/vgi/gfia-aifm/formulaires/</p>
The Netherlands 	<p>Not applicable.</p>

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Section one: Marketing in the EU according to the four scenarios


Country	Details
<p>Romania</p> 	<p>EEA AIFM - EEA AIF</p> <p>The notification for an EEA AIFM to market an EEA AIF to professional investors in Romania is the same (or needs to include the same information) as the notification for an EEA AIFM who wants to market a non-EEA AIF to professional investors in Romania.</p> <p>In other words, an EEA AIFM can market an EEA AIF to professional investors in Romania if the competent authority of the home Member State of the AIFM notifies the Romanian FSA.</p> <p>Such notification shall include the elements mentioned under Question 12 and shall also be accompanied by the affidavit stating that the AIFM is authorised to manage AIFs based on a certain investment strategy.</p> <p>EEA AIFM - non-EEA AIF</p> <p>For marketing non-EEA AIFs managed by an EEA AIFM, according to Article 37 of the Draft Transposition Norm, a notification form from the competent authority of the home Member State of the AIFM is required. For more information, please see the answer to Question 12 (non-EEA AIFs managed by an EU AIFM).</p>
<p>Slovakia</p> 	<p>Such managers do not need AIFM authorisation with respect to managing collective investment undertakings with legal capacity which are not regarded as UCITS funds. With respect to other funds (other than UCITS), registration as AIFM is needed.</p> <p>AIFM authorisation can be granted by the National Bank of Slovakia if several conditions stipulated by the Slovak Collective Investments Act are met. The National Bank of Slovakia decides within 3 months after the application was submitted whether AIFM authorisation will be granted. The National Bank of Slovakia charges EUR 1,700 for such registration.</p>
<p>Spain</p> 	<p>See response to Question 15a.</p>

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Section one: Marketing in the EU according to the four scenarios


Country	Details
<p>Sweden</p> 	<p>As mentioned under Question 15, non-EEA AIFMs need to obtain a marketing authorisation from the SFSA in order to market their funds to Swedish <i>professional, semi-professional</i> and <i>retail investors</i> (the below summary excludes the procedures for an application for a marketing authorisation to retail investors).</p> <p>The application for a non-EEA AIFM that wishes to market its funds to Swedish <i>professional investors</i> shall contain the following information:</p> <ul style="list-style-type: none"> (a) a description of how the AIFM intends to comply with the transparency and disclosure requirements (Articles 22-24 and 26-30 of the AIFMD); (b) brief business plan for the intended marketing in Sweden including information on the AIF intended to be marketed and where it is established; (c) the AIF's rules, articles of association or similar documents; (d) information on where any master fund is established (if it is a matter of marketing a feeder AIF to an AIF) (e) an information brochure (the information requirements set out in Article 23 of the AIFMD, i.e. information that the AIFM must furnish to investors prior to their investments in the AIF, must be provided in an "information brochure"); (f) the latest annual report; and (g) information on the measures which have been taken in order to prevent marketing to non-professional investors. <p>The fee for the application is SEK 16,000 (approximately EUR 1,700).</p> <p>The application for a non-EEA AIFM that wishes to market its funds to Swedish <i>semi-professional investors</i> shall, in addition to the information in sections (a)-(f) in the application described above, contain information on the measures which have been taken in order to prevent marketing to retail investors, information on the investors' right to redemption of fund units and the fund's investment policy.</p> <p>The fee for the application is SEK 16,000 (approximately EUR 1,700).</p>

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Section one: Marketing in the EU according to the four scenarios

Country	Details
Sweden	<p>As mentioned under Question 15a, EEA AIFMs managing sub-threshold funds may subject to a marketing authorisation from the SFSA market their funds to <i>professional and semi-professional investors</i> (provided that the funds meet certain criteria, described under Question 12).</p> <p>The application shall contain the following:</p> <ul style="list-style-type: none"> (a) a certificate, issued by the home member state authority, evidencing that the AIFM is licensed to manage AIFs in its home member state, or that the AIFM is registered there; (b) brief business plan for the intended marketing in Sweden including information on the AIF intended to be marketed and where it is established; (c) the AIF's rules, articles of association or similar documents; (d) information on where any master fund is established (if it is a matter of marketing a feeder AIF to an AIF) (e) information on the measures which have been taken in order to prevent marketing to retail investors (an AIFM with an authorisation to market AIFs to professional investors or semi-professional investors must ensure that no marketing activities are directed to retail investors, e.g. by including a disclaimer in marketing materials); (f) information on the investors' right to redemption of fund units; and (g) the fund's investment policy. <p>The fee for the application is SEK 16,000 (approximately EUR 1,700).</p>
UK 	<p>Yes.</p> <p>A sub-threshold non-EEA AIFM must notify the FCA of its intention to market funds managed by it using the Small Third Country form (see response to Question 15).</p> <p>A sub-threshold EEA AIFM can market its funds in the UK subject to the pre-existing financial promotions regime (see response to Question 15).</p> <p>Note the rider in response to Question 7 concerning further steps to arrange investors' commitments which, if taken in the UK, may be licensable.</p>

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Section one:

Marketing in the EU according to the four scenarios

15c. If yes, are there any restrictions on the type or number of investors to whom the fund may be marketed on this basis?









Country	Details
Austria 	In general, sub-threshold AIFMs may not market to retail clients or qualified retail clients.
Belgium 	As long as no public offering is being conducted, there are no restrictions on the type or number of investors to whom the fund may be marketed on this basis.
The Czech Republic 	Please see Question 15a.
Denmark 	Not applicable.
Estonia 	The criteria for the consideration of whether an offering of shares or units constitutes a public offering or a non-public offering are described under Question 13.
Finland 	EEA AIFs may be marketed by sub-threshold AIFMs to professional investors only (within the meaning of MiFID). (It is not entirely clear whether the FIN-FSA could grant an exemption also to a sub-threshold AIFM.)
France 	No restriction is applicable, subject to the additional conditions applicable for marketing to retail investors.
Germany 	There is no restriction regarding the number of investors. Regarding the type of investors marketing may only be directed towards professional and semi-professional investors.
Hungary 	As mentioned under Question 11 marketing is possible to professional investors. There are no restrictions on the number of investors.
Ireland 	Not applicable.
Italy 	Not applicable.

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Section one: Marketing in the EU according to the four scenarios


Country	Details
Latvia 	The marketing of EEA AIFs by EEA AIFMs is allowed only to professional investors.
Lithuania 	Marketing is allowed only to professional investors. No other restrictions exist.
Luxembourg 	The fund can only be marketed to professional investors and in accordance with Luxembourg private placement rules.
The Netherlands 	Not applicable.
Romania 	<p>According to paragraph (3) of Article 32 of the Draft Transposition Norm, the distribution of an EEA AIF by an EEA AIFM under this procedure can be made only towards professional investors. No reference is made in relation to a maximum number of investors.</p> <p>In relation to the distribution of non-EEA AIFs managed by an EEA AIFM, please see the answer to Question 13.</p> <p>Distribution of AIFs towards retail investors can be made by AIFMs (Romanian, EEA, non-EEA), subject to the adoption by the FSA of additional, subsequent norms (Art 47 DTN).</p>
Slovakia 	Slovak AIFMs can decide to market the funds to professional and retail investors and via private or public placement. As a general rule, public placement and marketing to professional investors is subject to some more regulation.
Spain 	Not applicable.
Sweden 	<p>As described under Question 15, non-EEA AIFMs may market funds to professional, semi-professional and retail investors, provided that an authorisation is obtained and that the funds meet certain criteria (as to marketing to semi-professional and retail investors).</p> <p>EEA AIFMs managing sub-threshold funds may only market closed-ended funds described under Question 12 to professional and semi-professional investors. Such AIFMs cannot obtain an authorisation to market to retail investors.</p> <p>There are no restrictions with respect to the number of investors; however, depending on the circumstances, prospectus requirements may be triggered and thus limit the number of investors.</p>

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Section one: Marketing in the EU according to the four scenarios

Country	Details
UK 	<p>It is prudent to confine marketing to fewer than 150 prospective UK investors. Otherwise, advice should be taken on the possible implications of UK restrictions on the making of public offers for transferable securities.</p> <p>Under the UK financial promotions regime, in summary, a sub-threshold EEA AIFM may only lawfully make an invitation or inducement to engage in an investment activity by addressing it specifically to a person who falls within an exempt category (see response to Question 7).</p>

15d. Whether or not a licence or registration is required, please briefly describe the key continuing obligations of the AIFM (including any obligation to make reports or to pay fees) if it markets on this basis in your jurisdiction.

Country	Details
Austria 	Not applicable.
Belgium 	<p>The sub-threshold EEA AIFM marketing an EU AIF in Belgium, must keep the file with the FSMA up-to-date at all times (with no one-month waiting period required).</p> <p>Concerning the key continuing obligations of a sub-threshold EEA AIFM marketing a non-EU AIF in Belgium, please see the answer to Question 14.</p> <p>There is no detailed information available on possible fees.</p>
The Czech Republic 	Please see Question 14.
Denmark 	Not applicable. Please see Question 15a.
Estonia 	<p>Upon the public offering of shares or units by foreign sub-threshold AIFMs in Estonia and the registration thereof with the EFSA, several continuing obligations mainly relating to reporting and disclosure of information to the local investors shall apply to the AIFM pursuant to the special regulation proposed in the draft legislation described under Question 15b.</p> <p>These include the disclosure of the fund terms or the articles of association thereof, the financial statements and other documents in a manner accepted by the EFSA, as well as filing of reports and financial statements and any other additional information to the EFSA as requested thereby.</p>

Section one: Marketing in the EU according to the four scenarios





Country	Details
Finland 	<p>Reporting to the FIN-FSA shall be done on a yearly basis and include the following:</p> <ul style="list-style-type: none"> (a) the main instruments in which it trades; (b) the most significant investment targets; and (c) the most significant risk concentrations. <p>Financial statements shall be prepared, audited and made available annually.</p> <p>With respect to AIFs acquiring control in non-listed companies and issuers, obligations relating to such AIFs (which are based on Articles 26-30) apply.</p> <p>In addition, compliance with provisions relating to continuous disclosure to investors, know-your-client requirements etc. apply.</p>
France 	See previous questions.
Germany 	There are no on-going obligations other than the AIFM's obligation to inform BaFin of any material changes of circumstances relevant in connection with the notification. Also, the AIFM must inform BaFin about its course of business should BaFin demand this.
Hungary 	Please see the answer to Question 14. The same rules apply. If the AIFM does not hold a license from a Member State, it has to apply for a Hungarian license.
Ireland 	Not applicable.
Italy 	Not applicable.
Latvia 	<p>The EEA AIFM has to pay an annual fee of EUR 1,209 to the FCMC for the supervision of the marketing of the investment units (shares) of each EEA AIF managed by it.</p> <p>The AIFM law does not provide specific regulation on the reporting to the FCMC of the EEA AIFM which falls within the Directive's Article 3(2) and is subject to domestic registration. Thus, it is presumable that the EEA AIFM is obliged to report to the supervisory authority of its home country in accordance with the respective legal regulations of the EEA AIFM's home country.</p>

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Section one: Marketing in the EU according to the four scenarios

Country	Details
<p>Lithuania</p> 	<p>AIFMs which fall within Article 3(2) of the Directive and have registered with the Central Bank of the Republic of Lithuania (as described in Question 15b) have an obligation:</p> <ol style="list-style-type: none"> (1) to regularly provide information to the supervisory authority (every 6 months) about marketed units or shares, main positions and risk profiles of controlled AIFs; (2) in case there are significant changes or a request from the supervisory authority is received, AIFMs must provide the above-mentioned information within 5 working days; (3) in case the assets of controlled AIFs exceed the limits set in the Law, AIFMs have an obligation to notify the supervisory authority and to submit an application for a licence of an AIFM.
<p>Luxembourg</p> 	<p>The sub-threshold AIFM must notify the CSSF if it discontinues marketing. Furthermore, a non-EEA sub-threshold AIFM must respect the dispositions of Article 45 of the 2013 AIFM Law in relation to its reporting and investor disclosure obligations pursuant to Articles 22-24 and Articles 26-30 of the AIFMD. Finally, it must confirm that it will comply with Section XIII of the ESMA Guidelines on Remuneration Policies (guidelines on disclosure).</p>
<p>The Netherlands</p> 	<p>There are ongoing obligations for Dutch AIFMs to benefit from the small managers exemption, such as certain periodic filings to the DCB. The AIFM should periodically report to the DCB information regarding the AIFs it manages.</p> <p>The AIFM should also:</p> <ol style="list-style-type: none"> (a) adopt internal regulations with regard to the handling of inside information, and private transactions in financial instruments by directors and staff members; (b) manage conflicts of interest relating to transactions in financial instruments; and (c) have adequate control mechanisms to ensure compliance with the rules as laid down in the AFS regarding the honest and ethical business conduct in respect of operating in markets in financial instruments. <p>The charges of the AFM in connection with the submission of the registration form are EUR 1,500. No ongoing charges are due.</p>
<p>Romania</p> 	<p>The Draft Transposition Norm does not foresee a specific regime for non-Romanian EEA sub-threshold AIFMs. As a result, such sub-threshold AIFMs are subject to the general rules applicable to AIFMs and will need to fulfill the same obligations as the other AIFMs.</p> <p>The Draft Transposition Norm provides for several obligations for AIFMs (e.g. to provide information to the Romanian FSA in order for the FSA to monitor compliance with the law, to act in the interest of the AIF and of the shareholders); however, it does not establish specific continuing key obligations for the AIFM. For more information, please see Question 14.</p>





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Section one:

Marketing in the EU according to the four scenarios

Country	Details
Slovakia 	The Slovak AIFM is subject to general reporting requirements under Slovak law including making available an annual report for each fund marketed in Slovakia, reports in relation to the percentage of the fund's assets which are subject to special arrangements, etc.
Spain 	In addition to the above, the non-EEA AIFs and their AIFMs must facilitate and make available to the shareholders and unitholders resident in Spain: <ol style="list-style-type: none">1. the payments,2. the acquisition by the non-EEA AIFs of their shares or the redemption of their units,3. the information that they are required to provide to the shareholders and unitholders resident in Spain, and4. in general, the exercise of their rights.
Sweden 	Both non-EEA AIFMs and EEA AIFMs marketing sub-threshold funds need to comply with the provisions described under Question 14, i.e. certain reporting obligations. Non-EEA AIFMs marketing to retail investors under a marketing authorisation are required to pay an annual fee of SEK 3,000 (approximately EUR 325) per fund to the SFSA.
UK 	A sub-threshold non-EEA AIFM which markets in the UK is required to pay an initial fee and annual fee per fund for each fund identified in the Small Third Country form.

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Section one: Marketing in the EU according to the four scenarios

16. Do the AIFMD implementing rules in your jurisdiction provide for a different regime for non-EEA sub-threshold AIFMs?

If yes, please explain how the rules are different (for example, would non-EEA sub-threshold AIFMs be exempt from certain provisions?).

Country	Details
Austria 	<p>The AIFMG does not provide an extra set of rules for non-EEA sub-threshold AIFMs. If these AIFMs opt in under the AIFMD, they may market in Austria under the same conditions as other non-EEA AIFMs.</p>
Belgium 	<p>Yes, Belgian law provides a different regime for non-EEA sub-threshold AIFMs.</p> <ul style="list-style-type: none"> • The Sub-Threshold Transition Regime does not apply to the marketing by non-EEA AIFMs of AIFs in Belgium. • Under the Private Placement Regime (procedures as explained in the answer to Question 8 (marketing by non-EEA AIFMs of non-EEA AIFs) and Question 12 (marketing by EU AIFMs of non-EEA AIFs)), no distinction is made between sub-threshold non-EEA AIFMs and normal non-EEA AIFMs marketing AIFs in Belgium. <p>Consequently, prior to the entry into force of the Third Country Passport Regime, sub-threshold non-EEA AIFMs marketing units of AIFs in Belgium must comply with the procedure applying to normal non-EEA AIFMs (as set out in the answer to Question 8). The Third Country Passport Regime is not discussed here.</p>
The Czech Republic 	<p>Yes, the AICIF contains special provisions for each combination of the marketing of (i) EEA/non-EEA (ii) sub/above-threshold AIFMs managing (iii) EEA/non-EEA AIFs.</p> <p>Once registered with the Czech National Bank, a non-EEA AIF managed by a sub-threshold non-EEA AIFM may be marketed to anyone; nevertheless, only qualified investors may subscribe the interest. The AIFM must publish this restriction when marketing. Furthermore, Czech special funds cannot be managed by sub-threshold AIFMs.</p>
Denmark 	<p>No. This means that a non-EEA sub-threshold AIFM can only market in Denmark subject to the same rules and conditions as other (above-threshold) non-EEA AIFMs.</p>
Estonia 	<p>No differentiation between non-EEA sub-threshold AIFMs and EEA sub-threshold AIFMs is made under Estonian law, including in the draft legislation referred to under Question 15b.</p> <p>The special regulation contemplated by the new draft legislation for the public offering of shares or units by sub-threshold AIFMs is to apply equivalently to EEA and non-EEA sub-threshold AIFMs.</p>







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Section one:

Marketing in the EU according to the four scenarios






Country	Details
Finland 	<p>No. The Finnish law does not recognize any “non-EEA sub-threshold” AIFMs. Therefore, all non-EEA AIFMs are subject to the same rules (i.e. Scenario A in this report).</p>
France 	<p>No, there is no different regime for non-EEA sub-threshold AIFMs. This means that non-EEA sub-threshold AIFMs are subject to the same rules and procedures as other, above-threshold non-EEA AIFMs and would need to comply with the same requirements as outlined in Question 1.</p>
Germany 	<p>Non-EEA sub-threshold AIFMs have to comply with the provisions applicable for non-EEA AIFMs (see Question 7). They may not market AIFs under the special regime for sub-threshold EEA AIFMs.</p>
Hungary 	<p>Similarly to non-EEA AIFMs, non-EEA sub-threshold AIFMs may market through the licenced Hungarian subsidiary of such a non-EEA sub-threshold AIFM. Please see Question 1.</p> <p>Hungary treats all non-EEA AIFMs in the same way, regardless of whether they are above or below the threshold. This means that a non-EEA sub-threshold AIFM can only market in Hungary subject to the same rules and conditions as other (above-threshold) non-EEA AIFMs.</p> <p>As mentioned above, the Collective Investments Act currently does not expressly set out rules applying to non-EEA AIFMs.</p>
Ireland 	<p>No. Non-EEA AIFMs (regardless of the AIFM’s level of assets under management) may market AIFs into Ireland to professional investors pursuant to Regulation 43.</p>
Italy 	<p>As Article 42.5 of the FCA has been removed, it seems possible to assume that, for the time being, non-EEA sub-threshold AIFMs cannot market in Italy.</p>

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Section one: Marketing in the EU according to the four scenarios

Country	Details
Latvia 	<p>Yes. In accordance with the AIFM Law, if a non-EEA AIFM intends to market an EEA AIF in Latvia, it must obtain the authorisation (i.e. the license) for the performance of the activities from the supervisory authority of the Member State of reference.</p> <p>Furthermore, if a non-EEA AIFM authorised in Latvia wishes to market the investment units (shares) of a non-EEA AIF managed by it in Latvia, it must submit a notification to the FCMC along with the following documents:</p> <ol style="list-style-type: none"> programme of activity setting out the information on the AIF which the non-EEA AIFM wishes to market; information about the place of incorporation of the AIF; documents of incorporation of the AIF; operating rules of the AIF; information about the depositary of the AIF; information on the place where the master fund is established if the fund is a feeder fund; the most recent annual report and consolidated annual report if such are drawn up, information on the most recent calculated net asset value of the AIF or the most recent calculated value or market price of the investment unit (share); the procedure under which the marketing of the AIF only to professional investors will be ensured.
Lithuania 	<p>No, the Law on Management Companies of Investment Undertakings for Professional Investors of the Republic of Lithuania does not establish a different regime for non-EEA sub-threshold AIFMs, EEA sub-threshold AIFMs and Lithuanian sub-threshold AIFMs. Therefore, all sub-threshold AIFMs operate under the same rules (answers to Questions 15b-15d).</p>
Luxembourg 	<p>No (please see the answer to Question 15). This means that a non-EEA sub-threshold AIFM can only market in Luxembourg subject to the same rules and conditions as other (above-threshold) non-EEA AIFMs.</p>
The Netherlands 	<p>Yes, non-EEA sub-threshold AIFMs should file for the Dutch private placement regime (the implementation of Article 42 AIFMD) and comply with the conditions thereof (as set out in the answer to Question 8).</p>
Romania 	<p>No, the AIFMD implementing rules don't provide for a different regime for non-EEA sub-threshold AIFMs.</p> <p>This means that under the Draft Transposition Norm, non-EEA sub-threshold AIFMs will be subject to the regime applicable to non-EEA AIFMs marketing EEA AIFs or non-EEA AIFs, as the case may be.</p>





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Section one:

Marketing in the EU according to the four scenarios

Country	Details
Slovakia 	Slovak law does not recognize non-EEA sub-threshold AIFMs. This means that a non-EEA sub-threshold AIFM can only market in Slovakia subject to the same rules and conditions as other (above-threshold) non-EEA AIFMs, i.e. all non-EEA AIFMs are treated the same, regardless of whether they are above or below the threshold.
Spain 	There are no express regulations regarding sub-threshold AIFMs. There is no different regime for non-EEA sub-threshold AIFMs. This means that non-EEA sub-threshold AIFMs are subject to the same rules and procedures as other, above-threshold non-EEA AIFMs and would need to comply with the same requirements (as described in previous questions).
Sweden 	No, the rules described under Question 15, 15b, 15c and 15d apply to non-EEA AIFMs regardless of the size of the funds managed by such AIFMs.
UK 	See response to Question 15.

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Section two:

Marketing in the EU on a country-by-country basis

2

In this section

Marketing in the EU on a country-by-country basis	110-250
1. Austria	111
2. Belgium	116
3. The Czech Republic	125
4. Denmark	132
5. Estonia	137
6. Finland	145
7. France	154
8. Germany	162
9. Hungary	168
10. Ireland	176
11. Italy	180
12. Latvia	185
13. Lithuania	190
14. Luxembourg	195
15. The Netherlands	201
16. Romania	208
17. Slovakia	217
18. Spain	225
19. Sweden	232
20. Switzerland	242
21. The United Kingdom	243

Marketing in the EU on a country-by-country basis

1. Austria



Note:

In areas where the AIFMD does not provide full harmonization, i.e. inter alia national country-by-country placement regimes and rules for sub-threshold AIFMs, the Austrian Alternative Investment Fund Manager Gesetz (AIFMG) still requires further clarification by the Austrian authorities.

Given that the requirements to comply with the AIFMG depend on the specifics of the fund structure and the activities conducted by the AIFM and the AIF, it is highly recommended that legal advice is sought prior to engaging in any marketing activity in Austria.

SCENARIO A: MARKETING NON-EEA AIFS MANAGED BY NON-EEA AIFMS UNDER ARTICLE 42 (NO PASSPORT)

Further assumptions for the purpose of Scenario A only

Licensing

No person concerned has any form of licence in the target market, or any EEA licence which entitles it to a passport.

Who markets?

The legal person engaging in marketing is the Alternative Investment Fund Manager (AIFM) of the AIF. There is no placement agent or other intermediary involved.

1. Is it possible in some manner to market a fund in the circumstances described above, in Austria and/or to investors established in Austria since 22 July 2013?

Yes, such funds can be marketed if § 47 of the Alternative Investment Fund Manager Gesetz (Austrian Federal Gazette I No. 135/2013 ("AIFMG")) is complied with (notification requirement by the AIFM; marketing only possible after notification by the Financial Market Authority; this may take up to four months).

2. In Austria, has there been any local elaboration on what constitutes 'marketing' within the meaning of Article 4(1)(x)? If not, what is the better interpretation of that term? For example, are distinctions made between concepts such as 'making the fund available for investment', 'offering', 'placing', circulating documents marked "draft", 'pre-marketing', 'soft marketing' or 'reverse solicitation'?

Questions 3 to 8 below relate to 'marketing' as that term is understood in Austria. Question 9 relates to pre-marketing, if relevant. Question 10 relates to reverse solicitation.

The definition of 'marketing' in sec. 2 (1) Nr. 24 of the Austrian Alternative Investment Funds-Manager Act corresponds with the AIFMD definition. Further to that and according to the Austrian Financial Market Authority, marketing is to be interpreted in line with what constitutes a "public offer" pursuant to sec. 1 (1) lit, 1 Capital Markets Act. However, for purposes of the AIFMG, this also includes private placements.

In order to constitute an offer, any marketing activity must provide sufficient information on the terms of the offer and the fund units and/or shares to be offered so as to enable an investor to decide to purchase or subscribe to the fund units and/or shares.

Marketing would therefore include soft marketing, pre-marketing and other forms if sufficiently detailed information is provided.

Section two: Marketing in the EU on a country-by-country basis

3. When was the Directive transposed into national law in Austria?

The directive has been transposed into national law through the Alternative Investment Fund Manager Gesetz (Austrian Federal Gazette I No. 135/2013 ("AIFMG")).

4. Under the domestic implementing measures of Austria, is the Directive relevant to marketing to investors established in Austria (within the meaning of Article 4(1)(j)) but who are not physically located in Austria at the time the marketing takes place⁸?

Such persons would be covered if they have their domicile (*Wohnsitz*) or corporate seat (*Sitz*) in the EEA.

5. Once the Directive is in effect in Austria, in relation to 'marketing' (as that term is understood in Austria) can a non-EEA manager of a non-EEA fund rely on a transitional (or 'grandfathering') provision, for example a transitional provision implementing Article 61(1) to delay compliance with the requirements of Article 42? If it can, what conditions must be met? If the conditions are met, what limits are there on marketing (for example is it possible only to market a fund which was being actively marketed before 22 July 2013 or also other funds managed by the same manager)?

The wording of the AIFMG suggests that a non-EEA manager active prior to 22 July 2013 may continue to market all funds, provided that they take all necessary measures to comply with the AIFMG and file an application for approval (*Antrag auf Zulassung*) by 21 July 2014.

6. Is there any list published of the cooperation arrangements which have been entered into (i.e. signed by both parties and dated) between the competent authorities of Austria and those of non-EEA jurisdictions for the purposes of Article 42(1)(b)? What is expected to happen in future?

Yes. The list of cooperation arrangements is published in sec. VIII of the FAQs *zur Anwendung des Alternative Investmentfonds Manager-Gesetzes* published by the Austrian Financial Market Authority:

<http://www.fma.gv.at/de/unternehmen/investmentfonds-kag/informationen-fuer-verwalter-alternativer-investmentfonds.html>

⁸ Article 2(1)(c) may be interpreted as restricting the territorial scope of the Directive in relation to Article 42 firms.

Section two: Marketing in the EU on a country-by-country basis

7. After the expiry of any transitional provision, is there to be any gold-plating of the requirements of Article 42? In other words, will there be additional domestic restrictions on or conditions for marketing fund interests? Or is it necessary only to consider local implementation of Article 42? There might be restrictions on the type or number of investors who may be approached, or other conditions. For example, in the UK, it will continue to be necessary to comply with the pre-existing financial promotion regime, which (in theory) further restricts the category of 'per se professional client'. In Germany, it will be a requirement that the non-EEA fund has a depositary performing functions specified under Article 21.

Yes, there is a detailed regime set out in § 47 AIFMG. It is difficult to give a brief outline of the requirements.

The fund has to have a permanent representative in Austria and provide details regarding depositary, fund strategy, payment of fees and certificate the compliance with the requirements of the AIFMG.

The certificate of compliance must be issued by the competent supervision authorities of the home State of the non-EEA AIFM and non-EEA AIF, which is a major obstacle in practice.

If the additional requirements stated in § 49 AIFMG are met, certain types of AIF may be marketed to retail clients and qualified retail clients.

8. Must a firm seeking to market in Austria in reliance on Article 42 notify, or register with, the competent authority in Austria? What kind of information is required, will there be a public register, what fee will be charged etc.? Is there an online notification or registration form? What can be done while awaiting registration (if relevant)?

Yes, the required information is set out in § 47 AIFMG and Appendix 3 of the AIFMG. The notification can be submitted in English or German.

There is a public register and the fees are EUR 4,500 for the notification (in case of umbrella funds EUR 1,000 for each additional AIF; and an annual fee of EUR 2,500 increased by EUR 600 for each additional AIF).

9. What restrictions are there on pre-marketing⁹, taking into account considerations similar to those raised in Questions 3 to 8 above?

No distinction is made between 'marketing' and 'pre-marketing' under the rules.

10. Whether marketing (as defined) is banned or restricted by Article 42 or otherwise, what interpretation is given in Austria to the concept of 'reverse solicitation', 'reverse enquiry' or marketing at the initiative of the investor, within the meaning of Recital 70?

The AIFMG does not provide for a special regime regarding passive marketing. However, given the definition of marketing (see Question 2), it can be concluded that the concept of reverse solicitation is fulfilled if the investment is demonstrably made at the sole initiative of the investor.

⁹ This assumes that the answer to Question 2 distinguished between 'marketing' (as defined) and pre-marketing.

Section two:

Marketing in the EU on a country-by-country basis

SCENARIO B: MARKETING NON-EEA AIFS MANAGED BY AN EEA AIFM UNDER ARTICLE 36 (NO PASSPORT)

Further assumptions for the purpose of Scenario B only

Licensing

The AIFM is a fully authorised AIFM in its home member state.

Who markets?

The legal person engaging in marketing is the Alternative Investment Fund Manager of the AIF.

There is no placement agent or other intermediary involved.

11. Is it possible to market a fund in the circumstances described above in Austria and/or to investors established in Austria?

There is a special regime set out in § 38 AIFMG (notification requirement by the AIFM; marketing only possible after notification by the Financial Market Authority; this may take up to two months).

12. If yes, is the AIFM required to obtain a local licence or authorisation or to observe other formalities?

Please briefly describe the process for obtaining such licence or authorisation (including any fees payable to a regulator) or the formalities required.

It is difficult to provide a brief overview of the requirements. The fund has to provide details regarding depositary, fund strategy, payment of fees and certificate the compliance with the requirements of the AIFMG.

The certificate of compliance must be issued by the competent supervision authorities of the home State of the non-EEA AIF, which is a major obstacle in practice.

The fees are EUR 2,200 for the notification (in case of umbrella funds EUR 440 for each additional AIF; and an annual fee of EUR 1,200 increased by EUR 400 for each additional AIF).

13. Are there any restrictions on the type or number of investors to whom the fund may be marketed on this basis?

Under § 38 AIFMG only marketing to professional investors is permitted. If the additional requirements stated in § 49 AIFMG are met, certain types of AIF may be marketed to retail clients and qualified retail clients.

14. Whether or not a licence or authorisation is required, please briefly describe the key continuing obligations of the AIFM (including any obligation to make reports or to pay fees) if it markets on this basis in Austria.

EEA AIFMs have to meet all requirements of the AIFMG, except for the rules on depositaries (although EEA AIFMs have to nominate one or more entities to perform certain depositary functions).

The Financial Market Authority also has to be informed of any material change of the notified information.

An annual fee is due (see Question 12).

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Section two: Marketing in the EU on a country-by-country basis

SCENARIO C: MARKETING BY SUB-THRESHOLD AIFMS

15. Is there a difference in Austria between the rules for non-EEA AIFs managed by non-EEA AIFMs and those applicable to sub-threshold AIFMs¹⁰?

If yes, please explain how they are different and describe the rules, according to and based on the questions below.

If no, please go to Question 16.

Sub-threshold AIFMs need to be registered with the FMA and may only start their activities after registration. Details for such funds are set out in § 1 (5) AIFMG.

15a. Can an AIFM which falls within Article 3(2) and is subject to domestic registration or authorisation only in its home Member State market a fund in Austria and/or to investors established in Austria?

No, only AIFMs with a domicile (*Wohnsitz*) or corporate seat (*Sitz*) in Austria may register as sub-threshold funds in Austria.

Sub-threshold AIFMs may market in Austria only if they opt in under the AIFMD. In our view, rules on reverse solicitation apply (see Question 10).

Additionally, sub-threshold funds may market in Austria under the EuVECA and EuSEF Regulations, if the respective requirements are met.

15b. If yes, is the AIFM required to obtain a local licence or registration or to observe other formalities?

Please briefly describe the process for obtaining such licence or registration (including any fees payable to a regulator) or the formalities required.

Not applicable.

15c. Please briefly describe any restrictions on the type or number of investors to whom the fund may be marketed on this basis.

In general, sub-threshold AIFMs may not market to retail clients or qualified retail clients.

15d. Whether or not a licence or authorisation is required, please briefly describe the key continuing obligations of the AIFM (including any obligation to make reports or to pay fees) if it markets on this basis in Austria?

Not applicable.

16. Do the AIFMD implementing rules in Austria provide for a different regime for non-EEA sub-threshold AIFMs?

If yes, please explain how the rules are different (for example, would non-EEA sub-threshold AIFMs be exempt from certain provisions?)

The AIFMG does not provide an extra set of rules for non-EEA sub-threshold AIFMs. If these AIFMs opt in under the AIFMD, they may market in Austria under the same conditions as other non-EEA AIFMs.

¹⁰ A sub-threshold AIFM should be considered as an AIFM which falls within Article 3(2) and is subject to domestic registration or authorisation only in its home Member State.

Section two: Marketing in the EU on a country-by-country basis

2. Belgium



SCENARIO A: MARKETING NON-EEA AIFS MANAGED BY NON-EEA AIFMS UNDER ARTICLE 42 (NO PASSPORT)

Further assumptions for the purpose of Scenario A only

Licensing

No person concerned has any form of licence in the target market, or any EEA licence which entitles it to a passport.

Who markets?

The legal person engaging in marketing is the Alternative Investment Fund Manager (AIFM) of the AIF. There is no placement agent or other intermediary involved.

1. Is it possible in some manner to market a fund in the circumstances described above, in Belgium and/or to investors established in Belgium since 22 July 2013?

Yes, subject to notification to and approval by the competent Belgian regulatory authority, the Financial Services and Markets Authority (the "FSMA"), marketing by non-EEA AIFMs of non-EEA AIFs in Belgium is possible. Please refer to (our answer to) Question 8 for further details.

A distinction must be made between:

- the marketing by non-EEA AIFMs under the AIFMD and the EU Member States' respective private placement regimes (as provided for in Article 42 AIFMD), which apply until the termination of the private placement regimes set out in Article 68 AIFMD (the "Private Placement Regime"); and
- the marketing by non-EEA AIFMs with an AIFMD passport, as may be introduced in accordance with Article 67 AIFMD (the "Third Country Passport Regime").

In this paper we will only discuss the Private Placement Regime and not the Third Country Passport Regime.

2. In Belgium, has there been any local elaboration on what constitutes 'marketing' within the meaning of Article 4(1)(x)? If not, what is the better interpretation of that term? For example, are distinctions made between concepts such as 'making the fund available for investment', 'offering', 'placing', circulating documents marked "draft", 'pre-marketing', 'soft marketing' or 'reverse solicitation'?

Questions 3 to 8 below relate to 'marketing' as that term is understood in Belgium. Question 9 relates to pre-marketing, if relevant. Question 10 relates to reverse solicitation.

The definition of "marketing" in the Belgian AIFM Act (as defined in our response to Question 3) is nearly the same as under the AIFMD, namely:

"a direct or indirect offering or placement upon the initiative of or on behalf of the AIFM of units in the AIF concerned to or with investors domiciled or with a registered office in the European Economic Area."

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Section two: Marketing in the EU on a country-by-country basis

Given the AIFMD's fairly recent implementation into Belgian law, it is difficult to predict the interpretation of the term "marketing" in Belgium. Furthermore, the FSMA has not issued any guidelines on the concept of "marketing". It seems that the FSMA will be strict on this topic and will require funds and their managers to take the most prudent route.

It is preferable to focus on the "offering of units" element of the definition, but again no guidance has been issued in this respect. The FSMA may apply the Belgian rules on "public offering" by analogy under which an offering takes place when sufficient information is provided on terms enabling an investor to purchase or subscribe to the units.

It could also be that, concerning the interpretation of "offering of units", the FSMA and a Belgian judge would follow the same interpretation as the UK Financial Conduct Authority's. The Financial Conduct Authority stated that "offering" means "making a unit or share of an AIF available for purchase by a potential investor".

3. When was the Directive transposed into national law in Belgium?

The AIFMD was implemented in Belgium through the Act of 19 April 2014 on alternative institutions for collective investment and their managers ("*Wet betreffende de alternatieve instellingen voor collectieve belegging en hun beheerders*") ("*Loi relative aux organismes de placement collectif alternatifs et à leur gestionnaires*") (the "AIFM Act"). The AIFM Act was published in the Belgian State Gazette on 17 June 2014. The majority of the AIFM Act's provisions, including the provisions implementing Article 42 AIFMD, entered into force 10 days after that publication date, i.e. 27 June 2014.

Since 27 June 2014, non-EEA AIFMs can only market non-EEA AIFs in Belgium after the FSMA has approved such a non-EEA AIFM's request to market in Belgium. Please refer to our answer to Question 8 for further details.

4. Under the domestic implementing measures of Belgium, is the Directive relevant to marketing to investors established in Belgium (within the meaning of Article 4(1)(j)) but who are not physically located in Belgium at the time the marketing takes place¹¹?

As set out in our answer to Question 3, in Belgium, the definition of marketing refers to investors domiciled or with a registered office in the European Economic Area. Article 6 of the AIFM Act provides that the AIFM Act applies, among other things, to marketing AIFs in Belgium.

Currently, no further information is available in Belgium on how the definition of marketing relates to Article 6 of the AIFM Act regarding this question. Given this uncertainty, caution is recommended, resulting in marketing to investors not physically located in Belgium who have their domicile or registered office in Belgium requiring compliance with the Belgian AIFM Act.

¹¹ Article 2(1)(c) may be interpreted as restricting the territorial scope of the Directive in relation to Article 42 firms.

Section two: Marketing in the EU on a country-by-country basis

- 5. Once the Directive is in effect in Belgium, in relation to 'marketing' (as that term is understood in Belgium) can a non-EEA manager of a non-EEA fund rely on a transitional (or 'grandfathering') provision, for example a transitional provision implementing Article 61(1) to delay compliance with the requirements of Article 42? If it can, what conditions must be met? If the conditions are met, what limits are there on marketing (for example is it possible only to market a fund which was being actively marketed before 22 July 2013 or also other funds managed by the same manager)?**

No transitional relief exists regarding the marketing by non-EEA AIFMs of units of non-EEA AIFs in Belgium.

- 6. Is there any list published of the cooperation arrangements which have been entered into (i.e. signed by both parties and dated) between the competent authorities of Belgium and those of non-EEA jurisdictions for the purposes of Article 42(1)(b)? What is expected to happen in future?**

Yes, the FSMA has published a list with the cooperation agreements it entered into with the competent authorities of non-EEA jurisdictions. That list is available via the following link:

http://www.fsma.be/~media/Files/fsmafiles/mou/list/liste_eng.ashx

- 7. After the expiry of any transitional provision, is there to be any gold-plating of the requirements of Article 42? In other words, will there be additional domestic restrictions on or conditions for marketing fund interests? Or is it necessary only to consider local implementation of Article 42? There might be restrictions on the type or number of investors who may be approached, or other conditions. For example, in the UK, it will continue to be necessary to comply with the pre-existing financial promotion regime, which (in theory) further restricts the category of 'per se professional client'. In Germany, it will be a requirement that the non-EEA fund has a depositary performing functions specified under Article 21.**

Belgium has not "gold-plated" the requirements of Article 42 AIFMD. Consequently, no additional restrictions apply except if the particulars filed during the notification substantially change, then the AIFM must inform the FSMA thereof in writing at least one month before implementing a planned change or immediately after an unplanned change has occurred.

For an overview of Belgium's implementation of Article 42 AIFMD, please refer to our answer to Question 8.

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Section two: Marketing in the EU on a country-by-country basis

8. Must a firm seeking to market in Belgium in reliance on Article 42 notify, or register with, the competent authority in Belgium? What kind of information is required, will there be a public register, what fee will be charged etc.? Is there an online notification or registration form? What can be done while awaiting registration (if relevant)?

Under the Private Placement Regime, the non-EEA AIFM must notify its intent to market the units of a non-EEA AIF in Belgium to the FSMA and may only start marketing in Belgium after receiving the FSMA's approval.

Following the Belgian equivalent of Article 42 AIFMD, non-EEA AIFMs must at least meet the following requirements (the "Scenario A Requirements") to market in Belgium the AIFs they manage:

- (a) an efficient information exchange agreement must exist between (a) the FSMA, (b) the competent supervisory authority of the home country of the AIFM and (c) the competent supervisory authority of the home country of the AIF;
- (b) the non-EEA home country of the AIF and/or the AIFM, must not be on the Financial Action Task Force's "black list";
- (c) the AIFM must comply with the following obligations: (a) transparency requirements (the Belgian equivalent of Articles 22-24 AIFMD) and (b) the rules applicable to AIFMs managing AIFs that acquire control of non-listed companies and issuers (the Belgian equivalent of Articles 26-30 AIFMD); and
- (d) upon the FSMA's request, the AIFM must provide it with a detailed overview of all the AIFs it manages on a quarterly basis.

A non-EEA AIFM must notify the FSMA of each non-EEA AIF it intends to market in Belgium. Such notification must contain:

- (a) a notification letter that contains a scheme of operations and names the AIF involved and where it is established;
- (b) the AIF's articles of association (or similar documentation, e.g. limited partnership agreement);
- (c) a description of the AIF and any other information also provided to the members;
- (d) information on the place of residence of the master AIF if the AIF involved is a feeder;
- (e) all information listed in Article 23(1) AIFMD; and
- (f) evidence that the Scenario A Requirements have been fulfilled.

If the FSMA receives a complete file and all the Scenario A Requirements are met, the FSMA will inform the non-EEA AIFM that it can start marketing the non-EEA AIF units in Belgium. To this date, the FSMA has not made a standard notification or registration form available. There is also no detailed information on possible fees, but based on experience the FSMA does not usually charge a filing fee. It remains unclear whether or not the FSMA will charge an annual fee.

In case the particulars filed during the notification substantially change, the AIFM shall inform the FSMA thereof in writing, at least one month before implementing any planned change or immediately after an unplanned change has occurred.

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Section two: Marketing in the EU on a country-by-country basis

9. What restrictions are there on pre-marketing¹², taking into account considerations similar to those raised in Questions 3 to 8 above?

There is no distinction between marketing and pre-marketing in the answer to Question 2.

10. Whether marketing (as defined) is banned or restricted by Article 42 or otherwise, what interpretation is given in Belgium to the concept of 'reverse solicitation', 'reverse enquiry' or marketing at the initiative of the investor, within the meaning of Recital 70?

The AIFM Act does not expressly refer to "reverse or passive solicitation". Based upon the definition of "marketing", this activity should be possible. The FSMA has not issued any guidance on this topic but it is anticipated that the FSMA will take a very restrictive approach on this issue and probably will reluctantly (which means most probably "never") accept "reverse or passive solicitation".

Please note that this indication was not an official position taken by the FSMA and it is possible this approach may change. Furthermore, the Belgian courts will not necessarily follow the same interpretation as the FSMA. Nevertheless, at this stage it is recommended to take the safest option and not rely on "reverse or passive solicitation".

Besides the FSMA's informal position, reverse solicitation will be an uncertain way to avoid AIFMD compliance. Firstly, the AIFM must document that this activity commences upon the investor's initiative. Secondly, there are no clear rules on whether or not certain actions constitute reverse solicitation. For example, must an investor contact an AIFM with the request to subscribe to a specific fund for the activity to qualify as "reverse solicitation"? Or is it sufficient that an investor requests the AIFM provide him/her with an "interesting" investment opportunity and in response the AIFM offers a particular fund to the client.

If reliance is made upon "reverse solicitation", then it must be genuine (i.e. where the client actually took the initiative and was not "encouraged" to do so) and should not be used to circumvent AIFMD compliance.

SCENARIO B: MARKETING NON-EEA AIFs MANAGED BY AN EEA AIFM UNDER ARTICLE 36 (NO PASSPORT)

Further assumptions for the purpose of Scenario B only

Licensing

The AIFM is a fully authorised AIFM in its home member state.

Who markets?

The legal person engaging in marketing is the Alternative Investment Fund Manager of the AIF. There is no placement agent or other intermediary involved.

11. Is it possible to market a fund in the circumstances described above in Belgium and/or to investors established in Belgium?

Yes, subject to notification to and approval by the FSMA, marketing by an EU AIFM of non-EEA AIFs managed by that EU AIFM in Belgium will be possible under the Private Placement Regime.

¹² This assumes that the answer to Question 2 distinguished between 'marketing' (as defined) and pre-marketing.

Section two: Marketing in the EU on a country-by-country basis

12. If yes, is the AIFM required to obtain a local licence or authorisation or to observe other formalities?

Please briefly describe the process for obtaining such licence or authorisation (including any fees payable to a regulator) or the formalities required.

An EU AIFM must notify its intent to market the units of a non-EEA AIF in Belgium to the FSMA and may only start marketing in Belgium upon receiving the FSMA's approval.

Under the Belgian equivalent of Article 36 AIFMD, EU fund managers must at least meet the following requirements (the "Scenario B Requirements") to market in Belgium the AIFs that they manage:

- (a) an efficient information exchange agreement must exist between (a) the FSMA and (b) the competent supervisory authority of the AIF's home country;
- (b) the non-EEA home country of the AIF must not be on the Financial Action Task Force's "black list";
- (c) the AIFM has obtained an AIFMD licence in its home country and complies with all provisions of the AIFMD (except for Article 21 AIFMD); and
- (d) the AIFM has ensured that one or more entities are appointed to carry out the duties referred to in Article 21(7), (8) and (9) AIFMD and the AIFM must not perform such functions.

The EU AIFM must notify the FSMA of each non-EEA AIF it intends to market in Belgium. Such notification must contain:

- (a) a notification letter that contains a scheme of operations and names the AIF involved and where it is established;
- (b) the AIF's articles of association (or similar documentation, e.g. limited partnership agreement);
- (c) a description of the AIF and any other information also provided to the members;
- (d) information on the place of residence of the master AIF if the AIF is a feeder;
- (e) all information listed in Article 23(1) AIFMD;
- (f) the identity of the entities responsible for carrying out the duties referred to in Article 21(7), (8) and (9) AIFMD; and
- (g) evidence that the Scenario B Requirements have been fulfilled.

If the FSMA receives a complete file and all the Scenario B Requirements are met, the FSMA will inform the EU AIFM that it can start marketing the AIF units in Belgium. To this date, the FSMA has not made a standard notification or registration form available. There is also no detailed information on possible fees.

In case the particulars filed during the notification substantially change, the AIFM shall inform the FSMA in writing of those changes at least one month before implementing any planned change or immediately after an unplanned change has occurred.

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Section two: Marketing in the EU on a country-by-country basis

13. Are there any restrictions on the type or number of investors to whom the fund may be marketed on this basis?

As long as no public offering is being conducted, there are no restrictions on the type or number of investors to whom the fund may be marketed on this basis.

14. Whether or not a licence or authorisation is required, please briefly describe the key continuing obligations of the AIFM (including any obligation to make reports or to pay fees) if it markets on this basis in Belgium.

In case the particulars filed during the notification substantially change, the AIFM must inform the FSMA in writing of those changes at least one month before implementing any planned change, or immediately after an unplanned change has occurred.

No detailed information is available on possible fees.

SCENARIO C: MARKETING BY SUB-THRESHOLD AIFMS

15. Is there a difference in Belgium between the rules for non-EEA AIFs managed by non-EEA AIFMs and those applicable to sub-threshold AIFMs¹³?

If yes, please explain how they are different and describe the rules, according to and based on the questions below.

If no, please go to Question 16.

Yes, in Belgium a difference exists between the rules for non-EEA AIFs managed by non-EEA AIFMs and those applicable to sub-threshold AIFMs.

15a. Can an AIFM which falls within Article 3 (2) and is subject to domestic registration or authorisation only in its home Member State market a fund in Belgium and/or to investors established in Belgium?

Yes, a sub-threshold EEA AIFM can market an EU AIF in Belgium subject to notifying the FSMA. For further details, please see the answer to Question 15b.

The AIFM Act is unclear concerning the marketing by sub-threshold EEA AIFMs of non-EU AIFs under the Private Placement Regime. Article 501 of the Belgian AIFM Act provides that sub-threshold EEA AIFMs marketing (EU or non-EU) AIFs in Belgium can benefit from a 6-month transitional relief period after the entry into force of the AIFM Act (which expired on 27 December 2014) (the "Sub-Threshold Transition Period"). Before the expiration of the Sub-Threshold Transition Period, sub-threshold managers can market in Belgium without notifying or registering with the FSMA.

However, concerning sub-threshold EEA AIFMs marketing non-EU AIFs in Belgium, Article 493 of the AIFM Act additionally provides that these rules shall only enter into force when the Third Country Passport Regime has been introduced. Under the Private Placement Regime (procedures as explained in the answers to Question 8 (marketing by non-EEA AIFMs of non-EEA AIFs) and Question 12 (marketing by EU AIFMs of non-EEA AIFs)), no distinction is made between sub-threshold AIFMs and normal AIFMs marketing non-EEA AIFs in Belgium.

A literal, combined reading of both provisions indicates that only sub-threshold EEA AIFMs marketing units of EU AIFs in Belgium can benefit from the Sub-Threshold Transition Period. Consequently, prior to the entry into force of the Third Country Passport Regime, EEA AIFMs marketing units of non-EU AIFs in Belgium must comply with the procedure as set out in our answer to Question 12.

¹³ A sub-threshold AIFM should be considered as an AIFM which falls within Article 3(2) and is subject to domestic registration or authorisation only in its home Member State.

Section two: Marketing in the EU on a country-by-country basis

15b. If yes, is the AIFM required to obtain a local licence or registration or to observe other formalities?

Please briefly describe the process for obtaining such licence or registration (including any fees payable to a regulator) or the formalities required.

Sub-threshold EEA AIFMs marketing units of EU AIFs

After the Sub-Threshold Transition Period has expired, a sub-threshold EEA AIFM can only market units of an EU AIF in Belgium subject to notifying the FSMA.

Such notification must contain:

- (a) a notification letter that contains a scheme of operations and names the AIF involved and where it is established;
- (b) the AIF's articles of association (or similar documentation, e.g. limited partnership agreement); and
- (c) a description of the AIF and any other information also provided to the members.

Further, the AIFM must keep the file with the FSMA up-to-date at all times.

Please note that this notification procedure is less cumbersome than the procedure for marketing by non-EEA AIFMs of non-EEA AIFs in Belgium as explained in the answer to Question 8.

Another important difference is that sub-threshold EEA AIFMs can start marketing EU AIFs' units upon notification (i.e. the sub-threshold EU AIFM does not have to wait for the FSMA's approval before starting the marketing).

On a practical level, we would advise that the sub-threshold EEA AIFM also files documentation proving that it fulfils the requirements of Article 3(2) AIFMD and, consequently, qualifies as a sub-threshold AIFM. For example, Belgian sub-threshold AIFMs must notify the FSMA and must be registered on a list. A similar obligation might exist in other EEA jurisdictions for sub-threshold AIFMs. Such registration could serve as the required proof.

Sub-threshold EEA AIFMs marketing units of non-EU AIFs

As set out in our answer to Question 15a, prior to the entry into force of the Third Country Passport Regime, sub-threshold EEA AIFMs marketing units of non-EU AIFs in Belgium must comply with the procedure as set out in the answer to Question 12. The Third Country Passport Regime is not discussed here.

15c. Please briefly describe any restrictions on the type or number of investors to whom the fund may be marketed on this basis.

As long as no public offering is being conducted, there are no restrictions on the type or number of investors to whom the fund may be marketed on this basis.

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Section two: Marketing in the EU on a country-by-country basis

15d. Whether or not a licence or authorisation is required, please briefly describe the key continuing obligations of the AIFM (including any obligation to make reports or to pay fees) if it markets on this basis in Belgium?

The sub-threshold EEA AIFM marketing an EU AIF in Belgium, must keep the file with the FSMA up-to-date at all times (with no one-month waiting period required).

Concerning the key continuing obligations of a sub-threshold EEA AIFM marketing a non-EU AIF in Belgium, please see the answer to Question 14.

There is no detailed information available on possible fees.

**16. Do the AIFMD implementing rules in Belgium provide for a different regime for non-EEA sub-threshold AIFMs?
If yes, please explain how the rules are different (for example, would non-EEA sub-threshold AIFMs be exempt from certain provisions?)**

Yes, Belgian law provides a different regime for non-EEA sub-threshold AIFMs.

- The Sub-Threshold Transition Regime does not apply to the marketing by non-EEA AIFMs of AIFs in Belgium.
- Under the Private Placement Regime (procedures as explained in the answer to Question 8 (marketing by non-EEA AIFMs of non-EEA AIFs) and Question 12 (marketing by EU AIFMs of non-EEA AIFs)), no distinction is made between sub-threshold non-EEA AIFMs and normal non-EEA AIFMs marketing AIFs in Belgium.

Consequently, prior to the entry into force of the Third Country Passport Regime, sub-threshold non-EEA AIFMs marketing units of AIFs in Belgium must comply with the procedure applying to normal non-EEA AIFMs (as set out in the answer to Question 8). The Third Country Passport Regime is not discussed here.

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3. The Czech Republic



SCENARIO A: MARKETING NON-EEA AIFS MANAGED BY NON-EEA AIFMS UNDER ARTICLE 42 (NO PASSPORT)

Further assumptions for the purpose of Scenario A only

Licensing

No person concerned has any form of licence in the target market, or any EEA licence which entitles it to a passport.

Who markets?

The legal person engaging in marketing is the Alternative Investment Fund Manager (AIFM) of the AIF. There is no placement agent or other intermediary involved.

1. Is it possible in some manner to market a fund in the circumstances described above, in the Czech Republic and/or to investors established in the Czech Republic since 22 July 2013?

The Czech Republic implemented the AIFMD via Act no. 240/2013 Coll., on Investment Companies and Investment Funds (the "AICIF") which became effective on 19 August 2013. The AICIF was amended with effect as of 1 January 2015.

EEA and non-EEA funds may be offered only after prior registration in the registry held by the Czech National Bank. Marketing also requires the fulfillment of certain conditions (existing memoranda of cooperation between regulators, no FATF blacklist, etc.).

Private placement is allowed under the AICIF, provided that the shares or units are allowed to be marketed "publicly" (e.g. the fund is registered with the Czech National Bank) or are marketed to less than 20 investors. There is no requirement of a prior registration of non-EEA funds managed by sub-threshold non-EEA AIFMs in case of private placement (i.e. registration will be required only for above-threshold fund managers).

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Section two: Marketing in the EU on a country-by-country basis

- 2. In the Czech Republic, has there been any local elaboration on what constitutes 'marketing' within the meaning of Article 4(1)(x)? If not, what is the better interpretation of that term? For example, are distinctions made between concepts such as 'making the fund available for investment', 'offering', 'placing', circulating documents marked "draft", 'pre-marketing', 'soft marketing' or 'reverse solicitation'?**

Questions 3 to 8 below relate to 'marketing' as that term is understood in the Czech Republic. Question 9 relates to pre-marketing, if relevant. Question 10 relates to reverse solicitation.

The Czech Ministry of Finance has published several short guidelines in which it states that marketing includes, among others, private placement as well as public offering.

Under the AICIF, "marketing" is defined as the marketing of (i) units (or similar securities) or shares issued by an investment fund or (ii) other possibilities to become an investor (e.g. a stakeholder, beneficiary, founder, shareholder, silent shareholder or person increasing the assets of a trust). The AICIF does not provide any further guidance as to the interpretation of the term "marketing" except for the statement that investing at the initiative of the investor is not considered to be marketing. Further, it does not distinguish between "pre-marketing" and "marketing".

The Czech Securities Commission (now replaced by the Czech National Bank) issued guidance on the meaning of public marketing under the Act on Collective Investment (replaced by the AICIF) in the past. Under this guidance 'public marketing' is any active provision or availability of information (irrespective of its form) to the public which is sufficient for a potential investor to decide on the investment. We are of the view that this rule may also apply to marketing under the AICIF (i.e. without the 'public' element) but this remains to be confirmed.

- 3. When was the Directive transposed into national law in the Czech Republic?**

The Czech Republic implemented the AIFMD via Act no. 240/2013 Coll., on Investment Companies and Investment Funds (the "AICIF") which became effective on 19 August 2013. The AICIF was amended with effect as of 1 January 2015.

- 4. Under the domestic implementing measures of the Czech Republic, is the Directive relevant to marketing to investors established in the Czech Republic (within the meaning of Article 4(1)(j)) but who are not physically located in the Czech Republic at the time the marketing takes place¹⁴?**

No. Although the AICIF recognises marketing both in the Czech Republic and outside the Czech Republic, it does not specifically recognise marketing to a Czech entity physically located abroad.

- 5. Once the Directive is in effect in the Czech Republic, in relation to 'marketing' (as that term is understood in the Czech Republic) can a non-EEA manager of a non-EEA fund rely on a transitional (or 'grandfathering') provision, for example a transitional provision implementing Article 61(1) to delay compliance with the requirements of Article 42? If it can, what conditions must be met? If the conditions are met, what limits are there on marketing (for example is it possible only to market a fund which was being actively marketed before 22 July 2013 or also other funds managed by the same manager)?**

The deadline for AIFMs being fully compliant with the AICIF was 22 July 2014.

¹⁴ Article 2(1)(c) may be interpreted as restricting the territorial scope of the Directive in relation to Article 42 firms.

Section two: Marketing in the EU on a country-by-country basis

6. Is there any list published of the cooperation arrangements which have been entered into (i.e. signed by both parties and dated) between the competent authorities of the Czech Republic and those of non-EEA jurisdictions for the purposes of Article 42(1)(b)? What is expected to happen in future?

As at 18 February 2015, the Czech Republic had concluded 38 cooperation agreements with 29 countries.

The up-to-date list of cooperation agreements can be found on the webpage of the Czech Ministry of Finance and the Czech National Bank although it is in Czech language only.

We understand that additional cooperation agreements will be negotiated and concluded in the future but no details are available.

Moreover, we understand that further cooperation agreements may be negotiated but no details are available.

7. After the expiry of any transitional provision, is there to be any gold-plating of the requirements of Article 42? In other words, will there be additional domestic restrictions on or conditions for marketing fund interests? Or is it necessary only to consider local implementation of Article 42? There might be restrictions on the type or number of investors who may be approached, or other conditions. For example, in the UK, it will continue to be necessary to comply with the pre-existing financial promotion regime, which (in theory) further restricts the category of 'per se professional client'. In Germany, it will be a requirement that the non-EEA fund has a depositary performing functions specified under Article 21.

The AICIF does not provide for any additional marketing requirements ("gold plating") as permitted under paragraph 2 of Article 42.

8. Must a firm seeking to market in the Czech Republic in reliance on Article 42 notify, or register with, the competent authority in the Czech Republic? What kind of information is required, will there be a public register, what fee will be charged etc.? Is there an online notification or registration form? What can be done while awaiting registration (if relevant)?

A non-EEA AIFM is able to market a non-EEA AIF in the Czech Republic only upon the registration of the non-EEA AIF in the registry of the Czech National Bank. The application for registration in the fund registry maintained by the Czech National Bank may be filed only electronically and no fee is payable in connection with the registration. The application form is available on the website of the Czech National Bank. A number of documents evidencing that all conditions required by the AICIF are met have to be attached to the application. The list of these documents is set out in a Decree issued by the Czech National Bank.

The non-EEA AIFM must fulfill, with respect to the marketed fund, the general obligations for AIFMs (please see Question 14) and other requirements (e.g. preparation of annual reports and information obligations).

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Section two: Marketing in the EU on a country-by-country basis

9. What restrictions are there on pre-marketing¹⁵, taking into account considerations similar to those raised in Questions 3 to 8 above?

Not applicable. See Question 2 above.

10. Whether marketing (as defined) is banned or restricted by Article 42 or otherwise, what interpretation is given in the Czech Republic to the concept of 'reverse solicitation', 'reverse enquiry' or marketing at the initiative of the investor, within the meaning of Recital 70?

Investing at the initiative of the investor is not considered to be marketing under the AICIF. However, the law does not describe what it means and no interpretation is currently available.

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¹⁵ This assumes that the answer to Question 2 distinguished between 'marketing' (as defined) and pre-marketing.

Section two:

Marketing in the EU on a country-by-country basis

SCENARIO B: MARKETING NON-EEA AIFS MANAGED BY AN EEA AIFM UNDER ARTICLE 36 (NO PASSPORT)

Further assumptions for the purpose of Scenario B only

Licensing

The AIFM is a fully authorised AIFM in its home member state.

Who markets?

The legal person engaging in marketing is the Alternative Investment Fund Manager of the AIF.

There is no placement agent or other intermediary involved.

11. Is it possible to market a fund in the circumstances described above in the Czech Republic and/or to investors established in the Czech Republic?

Yes.

12. If yes, is the AIFM required to obtain a local licence or authorisation or to observe other formalities?

Please briefly describe the process for obtaining such licence or authorisation (including any fees payable to a regulator) or the formalities required.

The AIF must be registered with the Czech National Bank.

In case the AIFM is already licensed in its home state and all other (rather formal) requirements are met, the registration shall be completed within 20 business days. The registration may be made by electronic means of communication only and no fee is payable in connection with the registration. The register is accessible on the webpage of the Czech National Bank.

The Czech National Bank will register a non-EEA AIF provided that:

- (a) appropriate cooperation arrangements are in place between the competent authorities of the member state of the EEA AIFM and the competent authorities of the country of the non-EEA AIF; and
- (b) the non-EEA AIF's home country is not listed as a Non-Cooperative Country and Territory by the Financial Action Task Force.

13. Are there any restrictions on the type or number of investors to whom the fund may be marketed on this basis?

Special funds

If the Czech National Bank recognises a non-EEA AIF as being equivalent to a special fund (as defined in the AICIF), the EEA AIFM is able to market such fund to the public (i.e. non-professional investors).

The Czech National Bank decides on whether a non-EEA AIF is equivalent to a special fund within 20 business days of its receipt of the respective application. The application may be filed only electronically. All facts and documents evidencing that all conditions required by the AICIF are fulfilled have to be attached to the application.

Funds of qualified investors

If the respective non-EEA AIF is equivalent to a fund of qualified investors (as defined in the AICIF), the EEA AIFM is able to market such fund only to professional investors (the so-called qualified investors).

If the respective non-EEA fund is equivalent to a fund of qualified investors (as defined in the AICIF), the EEA AIFM is able to market such fund publicly provided that the offer clearly states that only professional investors (the so-called qualified investors) are eligible to make the investment.

Section two: Marketing in the EU on a country-by-country basis

14. Whether or not a licence or authorisation is required, please briefly describe the key continuing obligations of the AIFM (including any obligation to make reports or to pay fees) if it markets on this basis in the Czech Republic.

Under the AICIF, the AIFM must comply with a number of obligations towards the fund, the Czech National Bank and investors residing in the Czech Republic. The most important are as follows:

- (a) The obligation to act with due care, in a fair and qualified manner, and in the best interests of the investors, and to comply with other related obligations stipulated by the AICIF (e.g. the obligation to adopt measures to prevent any market manipulation and to ensure the protection of inside information).
- (b) Disclosure obligations towards the investors, such as:
 1. Making the statute of the fund and any change to it available to the investors (or making it public and providing any investor with a copy of it upon request if the respective fund is considered to be equivalent to a special fund);
 2. Compiling the Annual Report of the fund, making it available to investors (or making it public if the respective fund is considered to be equivalent to a special fund) and providing any investor with a copy of it upon request; and
 3. The obligation to inform investors that the fund managed by the AIFM exceeded 50 per cent of all voting rights in a non-listed company which fulfils certain criteria (e.g. the company has more than 250 employees or the turnover of the company is at least EUR 50,000,000 per year) and to provide investors with certain information relating to the condition and business activities of such company.
- (c) Disclosure obligations towards the Czech National Bank:
 1. Providing the Czech National Bank with the AIFM's Annual Report, half-year report and Consolidated Annual Report and the fund's Annual Report and half-year report (if such documents are compiled);
 2. Providing the Czech National Bank with the fund's statute and informing the Czech National Bank of any change to the statute;
 3. Informing the Czech National Bank of the most significant markets on which the AIFM deals on the account of the fund; and
 4. Informing the Czech National Bank of the most significant investment instruments with which the AIFM deals on the account of the fund.

Please note that certain obligations listed above may be performed by the administrator if an administrator is appointed.

Further, an EEA AIFM has to ensure that the function of a depository of the fund will be performed by another entity since it is incompatible with the function of the fund's manager.

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Section two:

Marketing in the EU on a country-by-country basis

SCENARIO C: MARKETING BY SUB-THRESHOLD AIFMS

15. Is there a difference in the Czech Republic between the rules for non-EEA AIFs managed by non-EEA AIFMs and those applicable to sub-threshold AIFMs¹⁶?

If yes, please explain how they are different and describe the rules, according to and based on the questions below.

If no, please go to Question 16.

No, there is no difference.

15a. Can an AIFM which falls within Article 3 (2) and is subject to domestic registration or authorisation only in its home Member State market a fund in the Czech Republic and/or to investors established in the Czech Republic?

Marketing

Public marketing is permitted only after registration of the fund with the Czech National Bank.

Private Placement

The private placement of AIFs managed by sub-threshold AIFMs whose registered seat is in a Member State is permitted without restrictions.

15b. If yes, is the AIFM required to obtain a local licence or registration or to observe other formalities?

Please briefly describe the process for obtaining such licence or registration (including any fees payable to a regulator) or the formalities required.

For a private placement, no licence or registration is required.

For public marketing, registration with the Czech National Bank is required. For more details, see Question 12.

15c. Please briefly describe any restrictions on the type or number of investors to whom the fund may be marketed on this basis.

Please see Question 15a.

15d. Whether or not a licence or authorisation is required, please briefly describe the key continuing obligations of the AIFM (including any obligation to make reports or to pay fees) if it markets on this basis in the Czech Republic?

Please see Question 14.

16. Do the AIFMD implementing rules in the Czech Republic provide for a different regime for non-EEA sub-threshold AIFMs?

If yes, please explain how the rules are different (for example, would non-EEA sub-threshold AIFMs be exempt from certain provisions?)

Yes, the AICIF contains special provisions for each combination of the marketing of (i) EEA/non-EEA (ii) sub/above-threshold AIFMs managing (iii) EEA/non-EEA AIFs.

Once registered with the Czech National Bank, a non-EEA AIF managed by a sub-threshold non-EEA AIFM may be marketed to anyone; nevertheless, only qualified investors may subscribe the interest. The AIFM must publish this restriction when marketing. Furthermore, Czech special funds cannot be managed by sub-threshold AIFMs.

¹⁶ A sub-threshold AIFM should be considered as an AIFM which falls within Article 3(2) and is subject to domestic registration or authorisation only in its home Member State.

4. Denmark



SCENARIO A: MARKETING NON-EEA AIFS MANAGED BY NON-EEA AIFMS UNDER ARTICLE 42 (NO PASSPORT)

Further assumptions for the purpose of Scenario A only

Licensing

No person concerned has any form of licence in the target market, or any EEA licence which entitles it to a passport.

Who markets?

The legal person engaging in marketing is the Alternative Investment Fund Manager (AIFM) of the AIF. There is no placement agent or other intermediary involved.

1. Is it possible in some manner to market a fund in the circumstances described above, in Denmark and/or to investors established in Denmark since 22 July 2013?

Yes, it is possible to market a fund in the circumstances described, subject to certain conditions.

2. In Denmark, has there been any local elaboration on what constitutes 'marketing' within the meaning of Article 4(1)(x)? If not, what is the better interpretation of that term? For example, are distinctions made between concepts such as 'making the fund available for investment', 'offering', 'placing', circulating documents marked "draft", 'pre-marketing', 'soft marketing' or 'reverse solicitation'?

Questions 3 to 8 below relate to 'marketing' as that term is understood in Denmark. Question 9 relates to pre-marketing, if relevant. Question 10 relates to reverse solicitation.

No. The definition of "marketing" included in the Danish rules implementing the Directive is basically identical to the definition included in the Directive. However, the Danish FSA has provided some guidance as to what constitutes "marketing":

- Marketing efforts will be considered "marketing" even if the AIF will only be established if sufficient commitments are made, and
- Marketing efforts towards a single investor will be considered "marketing". On the other hand, preliminary meetings with potential investors, which take place prior to the formation of the AIF and before a private placement memorandum, prospectus or similar document has been made available, will not be considered "marketing", provided that the potential investors are not able to commit to investments in the AIF at such meetings.

3. When was the Directive transposed into national law in Denmark?

The Directive was implemented by national rules effective since 22 July 2013.

4. Under the domestic implementing measures of Denmark, is the Directive relevant to marketing to investors established in Denmark (within the meaning of Article 4(1)(j)) but who are not physically located in Denmark at the time the marketing takes place¹⁷?

No. The Danish rules implementing the Directive restrict marketing to "investors in Denmark".

¹⁷ Article 2(1)(c) may be interpreted as restricting the territorial scope of the Directive in relation to Article 42 firms.

Section two:

Marketing in the EU on a country-by-country basis

- 5. Once the Directive is in effect in Denmark, in relation to 'marketing' (as that term is understood in Denmark) can a non-EEA manager of a non-EEA fund rely on a transitional (or 'grandfathering') provision, for example a transitional provision implementing Article 61(1) to delay compliance with the requirements of Article 42? If it can, what conditions must be met? If the conditions are met, what limits are there on marketing (for example is it possible only to market a fund which was being actively marketed before 22 July 2013 or also other funds managed by the same manager)?**

Yes. Despite the fact that the Danish rules implementing the Directive do not specifically extend the transitional provisions to non-EEA managers, the Danish FSA has informally confirmed that the transitional provision that allows managers that perform activities covered by the law before 22 July 2013 to delay compliance with the law until 22 July 2014 also applies to a non-EEA manager of a non-EEA fund.

- 6. Is there any list published of the cooperation arrangements which have been entered into (i.e. signed by both parties and dated) between the competent authorities of Denmark and those of non-EEA jurisdictions for the purposes of Article 2(1)(b)? What is expected to happen in future?**

The Danish FSA has entered into cooperation arrangements with the competent authorities of a large number of non-EEA jurisdictions. The list is available [here](#).

- 7. After the expiry of any transitional provision, is there to be any gold-plating of the requirements of Article 42? In other words, will there be additional domestic restrictions on or conditions for marketing fund interests? Or is it necessary only to consider local implementation of Article 42? There might be restrictions on the type or number of investors who may be approached, or other conditions. For example, in the UK, it will continue to be necessary to comply with the pre-existing financial promotion regime, which (in theory) further restricts the category of 'per se professional client'. In Germany, it will be a requirement that the non-EEA fund has a depositary performing functions specified under Article 21.**

Yes. The rules implementing the Directive empower the Danish FSA to set out stricter rules regarding the marketing of non-EEA funds managed by non-EEA managers. Under the said rules, the non-EEA manager is required to appoint one or more entities to carry out the depositary functions described in Article 21(7)-(9) (equivalent to Article 36(1)(a) 2nd-4th sentences) and the non-EEA manager must ensure publication in Denmark of information and documents that the non-EEA fund (or the competent authority) is required to publish in its home country.

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Section two: Marketing in the EU on a country-by-country basis

- 8. Must a firm seeking to market in Denmark in reliance on Article 42 notify, or register with, the competent authority in Denmark? What kind of information is required, will there be a public register, what fee will be charged etc.? Is there an online notification or registration form? What can be done while awaiting registration (if relevant)?**

Managers who seek to market in Denmark in reliance on Article 42 must obtain an authorization from the Danish FSA using an application form made available [here](#).

The rules do not differ between non-EEA AIFMs which are above or below the thresholds in Article 3(2).

Marketing may only begin when the manager is notified hereof by the Danish FSA.

There will be no public register.

There is an annual fee of DKK 2,000 per fund and an annual fee of DKK 2,000 per compartment that the manager markets in Denmark (the amounts are subject to annual regulation in the Danish Finance Act).

- 9. What restrictions are there on pre-marketing¹⁸, taking into account considerations similar to those raised in Questions 3 to 8 above?**

As mentioned under Question 2, preliminary meetings with potential investors are accepted, provided that (i) such meetings take place prior to the formation of the AIF and before a private placement memorandum, prospectus or similar document has been made available, and (ii) the potential investors will not be able to commit to investments in the AIF during such meetings.

- 10. Whether marketing (as defined) is banned or restricted by Article 42 or otherwise, what interpretation is given in Denmark to the concept of 'reverse solicitation', 'reverse enquiry' or marketing at the initiative of the investor, within the meaning of Recital 70?**

Under the Danish rules implementing the Directive "marketing" does not include placement made at the initiative of the investor. The Danish FSA has not provided any guidance on how it is demonstrated that a placement was made at the initiative of the investor.

¹⁸ This assumes that the answer to Question 2 distinguished between 'marketing' (as defined) and pre-marketing.

Section two:

Marketing in the EU on a country-by-country basis

SCENARIO B: MARKETING NON-EEA AIFS MANAGED BY AN EEA AIFM UNDER ARTICLE 36 (NO PASSPORT)

Further assumptions for the purpose of Scenario B only

Licensing

The AIFM is a fully authorised AIFM in its home member state.

Who markets?

The legal person engaging in marketing is the Alternative Investment Fund Manager of the AIF.

There is no placement agent or other intermediary involved.

11. Is it possible to market a fund in the circumstances described above in Denmark and/or to investors established in Denmark?

Yes, it is possible to market a fund in the circumstances described, subject to certain conditions.

12. If yes, is the AIFM required to obtain a local licence or authorisation or to observe other formalities?

Please briefly describe the process for obtaining such licence or authorisation (including any fees payable to a regulator) or the formalities required.

EEA managers seeking to market in Denmark under Article 36 must obtain an authorisation from the Danish FSA using the application form made available [here](#).

Marketing may only begin when the manager is notified hereof by the Danish FSA.

There is an annual fee of DKK 2,000 per fund and an annual fee of DKK 2,000 per compartment that the manager markets in Denmark (the amounts are subject to annual regulation in the Danish Finance Act).

13. Are there any restrictions on the type or number of investors to whom the fund may be marketed on this basis?

The authorisation mentioned under Question 12 only allows marketing to professional investors in Denmark. However, an additional authorisation to market to retail investors may be obtained. The applicable application form is available [here](#). Marketing to retail investors may only begin when the manager is notified hereof by the Danish FSA.

14. Whether or not a licence or authorisation is required, please briefly describe the key continuing obligations of the AIFM (including any obligation to make reports or to pay fees) if it markets on this basis in Denmark.

Under the said rules, the EEA manager is required to:

- (a) appoint one or more entities to carry out the depositary functions described in Article 21(7)-(9) (equivalent to Article 36(1)(a) 2nd-4th sentences);
- (b) make public any information and/or documents that the non-EEA fund (or the competent authority) is required to publish in its home country; and
- (c) pay an annual fee of DKK 2,000 per fund and an annual fee of DKK 2,000 per compartment that the manager markets in Denmark (the amounts are subject to annual regulation in the Danish Finance Act).

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Section two: Marketing in the EU on a country-by-country basis

SCENARIO C: MARKETING BY SUB-THRESHOLD AIFMS

15. Is there a difference in Denmark between the rules for non-EEA AIFs managed by non-EEA AIFMs and those applicable to sub-threshold AIFMs¹⁹?

If yes, please explain how they are different and describe the rules, according to and based on the questions below.

If no, please go to Question 16.

Yes.

15a. Can an AIFM which falls within Article 3 (2) and is subject to domestic registration or authorisation only in its home Member State market a fund in Denmark and/or to investors established in Denmark?

No. When the Danish rules implementing the Directive were amended in April 2014, the Danish FSA was authorized to set out rules regarding marketing in Denmark by sub-threshold EEA AIFMs. However, such regime has not yet been adopted and is not expected to be adopted by the Danish FSA until 2015. It has been a subject for debate whether marketing by sub-threshold managers is allowed in the interim period, however, the Danish FSA takes the position that marketing in Denmark is currently prohibited.

**15b. If yes, is the AIFM required to obtain a local licence or registration or to observe other formalities?
Please briefly describe the process for obtaining such licence or registration (including any fees payable to a regulator) or the formalities required.**

Not applicable.

15c. Please briefly describe any restrictions on the type or number of investors to whom the fund may be marketed on this basis.

Not applicable.

15d. Whether or not a licence or authorisation is required, please briefly describe the key continuing obligations of the AIFM (including any obligation to make reports or to pay fees) if it markets on this basis in Denmark?

Not applicable. Please see Question 15a.

16. Do the AIFMD implementing rules in Denmark provide for a different regime for non-EEA sub-threshold AIFMs?

If yes, please explain how the rules are different (for example, would non-EEA sub-threshold AIFMs be exempt from certain provisions?)

No. This means that a non-EEA sub-threshold AIFM can only market in Denmark subject to the same rules and conditions as other (above-threshold) non-EEA AIFMs.

¹⁹ A sub-threshold AIFM should be considered as an AIFM which falls within Article 3(2) and is subject to domestic registration or authorisation only in its home Member State.

Section two: Marketing in the EU on a country-by-country basis

5. Estonia



SCENARIO A: MARKETING NON-EEA AIFS MANAGED BY NON-EEA AIFMS UNDER ARTICLE 42 (NO PASSPORT)

Further assumptions for the purpose of Scenario A only

Licensing

No person concerned has any form of licence in the target market, or any EEA licence which entitles it to a passport.

Who markets?

The legal person engaging in marketing is the Alternative Investment Fund Manager (AIFM) of the AIF. There is no placement agent or other intermediary involved.

1. Is it possible in some manner to market a fund in the circumstances described above, in Estonia and/or to investors established in Estonia since 22 July 2013?

Yes, it is possible to market non-EEA AIFs managed by non-EEA AIFMs in Estonia. Although Estonia did not exercise the discretion provided in Article 42 of the Directive upon the initial transposition of the Directive on 22 July 2013, the provision was incorporated into Estonian law in May 2014. Regulation of AIFMs' operations is laid down in the Estonian Investment Funds Act but also, to a great degree, in a respective regulation adopted by the Estonian Minister of Finance on 30 May 2014.

However, a draft legislation concentrating all provisions related to investment funds and their managers, including AIFMs, was proposed by the Estonian Ministry of Finance in June 2014²⁰.

2. In Estonia, has there been any local elaboration on what constitutes 'marketing' within the meaning of Article 4(1)(x)? If not, what is the better interpretation of that term? For example, are distinctions made between concepts such as 'making the fund available for investment', 'offering', 'placing', circulating documents marked "draft", 'pre-marketing', 'soft marketing' or 'reverse solicitation'?

Questions 3 to 8 below relate to 'marketing' as that term is understood in Estonia. Question 9 relates to pre-marketing, if relevant. Question 10 relates to reverse solicitation.

Estonian law does not include a specific denotation of "marketing" for the purposes of AIFMs and/or AIFs. In the Investment Funds Act, "marketing" is defined as the "organisation of the purchase and sale of units of an investment fund". Therefore, the current specification of "marketing" is relatively broad and does not allow for a distinction between the activities described above. However, the draft legislation referred to under Question 1 reflects that the definition of "marketing" included in Article (4)(1)(x) of the Directive, although not expressly transposed into the Investment Funds Act, is considered when assessing the activities of AIFMs. Therefore, in light of the activities of AIFMs, "marketing" should be understood as contemplated by the Directive i.e. "direct or indirect offering or placement at the initiative of the AIFM or on behalf of the AIFM of units or shares of an AIF managed by that AIFM to or with investors domiciled or with a registered office in Estonia".

²⁰ It should be noted that as the documents serving as the basis of this country report (i.e. the draft legislation and its explanatory memoranda) have not yet been officially approved or adopted, the statements included herein remain somewhat uncertain and the entry into force of the principles expressed herein cannot be fully assured.

However, as such draft documents should still reflect the general legal direction into which the Estonian legislator desires to move, it can be assumed that this report, based on such draft documents, adequately reflects the principles to be applied in Estonia in the near future.

Section two: Marketing in the EU on a country-by-country basis

3. When was the Directive transposed into national law in Estonia?

The Directive has been fully transposed into Estonian law; however, several provisions transposed will enter into force in July 2015. Transposition provisions Article 42 of the Directive have already been effected, wherefore in order for a non-EEA AIFM to market non-EEA-AIFs in Estonia, the respective regulation must be complied with.

4. Under the domestic implementing measures of Estonia, is the Directive relevant to marketing to investors established in Estonia (within the meaning of Article 4(1)(j)) but who are not physically located in Estonia at the time the marketing takes place²¹?

The provisions of the Estonian law only refer to marketing “in Estonia” (without defining this in more detail).

5. Once the Directive is in effect in Finland, in relation to ‘marketing’ (as that term is understood in Finland) can a non-EEA manager of a non-EEA fund rely on a transitional (or ‘grandfathering’) provision, for example a transitional provision implementing Article 61(1) to delay compliance with the requirements of Article 42? If it can, what conditions must be met? If the conditions are met, what limits are there on marketing (for example is it possible only to market a fund which was being actively marketed before 22 July 2013 or also other funds managed by the same manager)?

The transition period for non-EEA AIFMs marketing non-EEA AIFs in Estonia expired on 22 July 2014. Non-EEA AIFMs aiming to market non-EEA AIFs under Article 42 of the Directive in Estonia must comply with the national provisions.

6. Is there any list published of the cooperation arrangements which have been entered into (i.e. signed by both parties and dated) between the competent authorities of Estonia and those of non-EEA jurisdictions for the purposes of Article 2(1)(b)? What is expected to happen in future?

Yes, there is a list of cooperation arrangements entered into between the Estonian Financial Supervision Authority (the “EFSA”) and the respective authorities of non-EEA states under the Directive available on the official website of the EFSA: <http://www.fi.ee/index.php?id=11947> (the site is available in Estonian only). In light of the development of the Estonian investment funds market, it is likely that the EFSA will continue to engage in such arrangements.

²¹ Article 2(1)(c) may be interpreted as restricting the territorial scope of the Directive in relation to Article 42 firms.

Section two: Marketing in the EU on a country-by-country basis

7. After the expiry of any transitional provision, is there to be any gold-plating of the requirements of Article 42? In other words, will there be additional domestic restrictions on or conditions for marketing fund interests? Or is it necessary only to consider local implementation of Article 42? There might be restrictions on the type or number of investors who may be approached, or other conditions. For example, in the UK, it will continue to be necessary to comply with the pre-existing financial promotion regime, which (in theory) further restricts the category of 'per se professional client'. In Germany, it will be a requirement that the non-EEA fund has a depository performing functions specified under Article 21.

Yes, in order for a non-EEA AIFM to lawfully market a non-EEA AIF in Estonia under Article 42 of the Directive, it must obtain the relevant permission from the EFSA:

- (a) a cooperation arrangement has been concluded between the EFSA and the non-EEA country;
- (b) prudential requirements equivalent to those imposed upon EEA entities are applied towards the depository and effective supervision over the fulfillment of such requirements is in place;
- (c) sufficient means for combating money laundering and terrorism have been established in the country of origin of the depository, or such country is engaged in international cooperation in the field of money laundering and terrorism prevention;
- (d) an agreement complying with the standards contemplated by Article 26 of the OECD Model Tax Convention on Income and on Capital, including a multilateral tax agreement ensuring effective communication on tax matters, has been concluded between Estonia and the country of origin of the depository.

Please note that in the event the person acting as the depository of the non-EEA AIF does not comply with the criteria set out above, certain other requirements, such as an obligation to notify the investors of the AIF of potential restrictions arising from the law of the non-EEA state, are applied.

As to restrictions regarding the number of investors, please see the answer to Question 13.

8. Must a firm seeking to market in Estonia in reliance on Article 42 notify, or register with, the competent authority in Estonia? What kind of information is required, will there be a public register, what fee will be charged etc.? Is there an online notification or registration form? What can be done while awaiting registration (if relevant)?

Yes, in order for a non-EEA AIFM to lawfully market a non-EEA AIF in Estonia under Article 42 of the Directive, it must obtain the relevant permission from the EFSA.

- (a) notice of offer;
- (b) scheme of operations of the AIFM, containing the list of all AIFs to be marketed in Estonia, and information on the country of origin of each such fund;
- (c) the rules or the articles of association of the AIFs to be marketed in Estonia;
- (d) information on the depository of the AIFs;
- (e) overview of the organisation of the offering of the AIFs in Estonia, including information on how the public offering of AIFs is excluded;

Section two: Marketing in the EU on a country-by-country basis

- (f) information and documents evidencing the compliance with the requirements imposed on AIFMs managing AIFs which acquire control of non-listed companies and issuers (Articles 26-29 of the Directive), if applicable;
- (g) information and documents evidencing that a cooperation arrangement for the purpose of systemic risk oversight has been entered into between the EFSA and the local financial supervision authority of the AIFM;
- (h) information and documents evidencing that the country of origin of the AIFM is engaged in international cooperation in the field of money laundering and terrorism prevention.

Upon the receipt of the above documents and information by the EFSA, a notification on the granting of such permission or the denial thereof will be sent by the EFSA to the AIFM within 30 days. Prior to the receipt of a positive notification, no marketing activity (please refer to Question 2) is allowed.

9. What restrictions are there on pre-marketing²², taking into account considerations similar to those raised in Questions 3 to 8 above?

Not applicable.

10. Whether marketing (as defined) is banned or restricted by Article 42 or otherwise, what interpretation is given in Estonia to the concept of 'reverse solicitation', 'reverse enquiry' or marketing at the initiative of the investor, within the meaning of Recital 70?

The laws of Estonia do not expressly define or regulate "reverse solicitation" (within the meaning of Recital 70 of the Directive) or clearly exclude this from the current definition of "marketing" in the Investment Funds Act. However, considering that the Estonian legislator acknowledges "marketing" as an activity conducted at the initiative of the AIFM itself, investments into non-EEA AIFs (or other foreign AIFs and other investment schemes) at the initiative of the investors themselves should not be regarded as marketing activity by the AIFMs.

²² This assumes that the answer to Question 2 distinguished between 'marketing' (as defined) and pre-marketing.

Section two:

Marketing in the EU on a country-by-country basis

SCENARIO B: MARKETING NON-EEA AIFS MANAGED BY AN EEA AIFM UNDER ARTICLE 36 (NO PASSPORT)

Further assumptions for the purpose of Scenario B only

Licensing

The AIFM is a fully authorised AIFM in its home member state.

Who markets?

The legal person engaging in marketing is the Alternative Investment Fund Manager of the AIF.

There is no placement agent or other intermediary involved.

11. Is it possible to market a fund in the circumstances described above in Estonia and/or to investors established in Estonia?

Yes, it is possible to market non-EEA AIFs managed by EU AIFMs in Estonia.

12. If yes, is the AIFM required to obtain a local licence or authorisation or to observe other formalities?

Please briefly describe the process for obtaining such licence or authorisation (including any fees payable to a regulator) or the formalities required.

No, an EU AIFM seeking to market non-EEA AIFs in Estonia is not required to obtain a local licence; however, such an AIFM must obtain a similar permission described under Question 8 to conduct marketing activities in Estonia. In addition to the information and documents referred to under Question 8 above, the EU AIFM must submit the following documents and information to the EFSA:

- (a) description of the information to be disclosed to the investors;
- (b) information and documents evidencing that the AIFs to be marketed do not constitute feeder AIFs;
- (c) documents and information evidencing that the AIFM is in compliance with all requirements imposed on AIFMs (save for those imposed on depositories);
- (d) documents and information evidencing that the AIFM ensures that the tasks of a depository are conducted by a person other than the AIFM itself, and the contacts of such person.

Upon the receipt of the above documents and information by the EFSA, a notification on the granting of such permission or the denial thereof will be sent by the EFSA to the AIFM within 30 days. Prior to the receipt of a positive notification, no marketing activity (please refer to Question 2 above) is allowed.

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Section two: Marketing in the EU on a country-by-country basis

13. Are there any restrictions on the type or number of investors to whom the fund may be marketed on this basis?

Yes, an EU AIFM is allowed to market non-EEA AIFs on this basis provided that the marketing (offering) of AIFs is not considered public. For the sake of clarity, the marketing of AIFs is not considered public in the following cases:

- (a) the units/shares of the AIF are offered to professional investors only;
- (b) the units/shares of the AIF are offered to less than 150 persons per each EEA state who do not qualify as professional investors;
- (c) an offer of units/shares of an AIF where the minimum investment per each investor is at least EUR 100,000;
- (d) an offer of units/shares of an AIF where the nominal or book value of each unit/share is at least EUR 100,000; or
- (e) an offer of units/shares within a one-year period with a total value of less than EUR 100,000 collectively for all EEA states.

The following persons are regarded as professional investors under Estonian law:

- (a) credit institutions, investment firms and other financial institutions subject to financial supervision;
- (b) the Republic of Estonia, a foreign state, local or regional government of Estonia and of a foreign state;
- (c) international institutions and organisations;
- (d) financial institutions whose only business activity is investment in securities, a market trader in commodities and commodity derivatives;
- (e) large enterprises (as contemplated by Annex II of MiFID).

14. Whether or not a licence or authorisation is required, please briefly describe the key continuing obligations of the AIFM (including any obligation to make reports or to pay fees) if it markets on this basis in Estonia.

The AIFM must comply with all requirements (including continuing reporting, disclosure etc.) imposed on AIFMs pursuant to the Directive. In the event the AIFM violates any of the requirements, the EFSA is entitled to suspend the permission granted to such AIFM.

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Section two: Marketing in the EU on a country-by-country basis

SCENARIO C: MARKETING BY SUB-THRESHOLD AIFMS

15. Is there a difference in Estonia between the rules for non-EEA AIFs managed by non-EEA AIFMs and those applicable to sub-threshold AIFMs²³?

If yes, please explain how they are different and describe the rules, according to and based on the questions below.

If no, please go to Question 16.

The regulation currently in force in Estonia provides for a separate registration procedure as regards investment fund managers managing portfolios falling below the thresholds set out in Article 3(2) of the AIFMD. However, this procedure only applies with respect to entities established in Estonia and in the context of conduct of cross-border operations (including marketing activities) thereby or by such foreign investment fund managers, no differentiation currently exists.

The draft legislation referred to under Question 1, however, does stipulate a special regulation with respect to the public offering (i.e. offering of investment fund shares or units in the volume or to a number of investors described under Question 13) by sub-threshold AIFMs pursuant to which such AIFMs are required to register the offering of shares/units with the EFSA. No regulation is established with regard to non-public offerings due to the lack of public interest.

15a. Can an AIFM which falls within Article 3 (2) and is subject to domestic registration or authorisation only in its home Member State market a fund in Estonia and/or to investors established in Estonia?

As described under Question 15, the regulation currently in force in Estonia does not provide sufficient clarity on how cross-border operations (including marketing activities) conducted by sub-threshold AIFMs should be treated. However, considering that the new draft legislation referred to under Question 15 reflects that public interest towards regulating non-public offering activities of shares or units by sub-threshold AIFMs is to be considered of little importance by the Estonian legislator, it can be presupposed that such operations by sub-threshold AIFMs remain subject to the laws of the country of origin of such AIFM only.

However, please note that as this assumption relies on the explanatory documentation of a law not yet publicly concerted, adopted or in force and does not constitute an official statement adopted or issued by the EFSA, the treatment of sub-threshold AIFMs and their operations in Estonia remains somewhat uncertain.

²³ A sub-threshold AIFM should be considered as an AIFM which falls within Article 3(2) and is subject to domestic registration or authorisation only in its home Member State.

Section two: Marketing in the EU on a country-by-country basis

15b. If yes, is the AIFM required to obtain a local licence or registration or to observe other formalities?

Please briefly describe the process for obtaining such licence or registration (including any fees payable to a regulator) or the formalities required.

As described under Question 15, a special regulation has been laid down for the purposes of public offering of units or shares by foreign sub-threshold AIFMs (i.e. EEA AIFMs as well as non-EEA AIFMs) in the draft legislation proposed by the Estonian Ministry of Finance in June 2014.

Pursuant to the regulation set forth therein, a foreign sub-threshold AIFM shall enter into a contract with an Estonian credit institution, investment firm, insurance company or other entity subject to financial supervision in order to organise the sale and purchase of the shares or units. For the sake of clarity, this requirement does not apply in case the sub-threshold AIFM aiming to offer AIFs in Estonia has established a local branch organising such sale and purchase of shares or units.

Further, the public offering of AIFs must be registered with the EFSA. For the registration, a written application together with a number of documents (including, amongst others, the registration certificate issued by the financial supervision authority of the country of origin of the respective AIFM, the activities license of the AIFM, the prospectus of the offering, financial statements of the AIFM etc.) must be delivered to the EFSA.

Upon the registration of the offering, certain reporting and disclosure requirements will apply to the AIFM aiming to market AIFs in Estonia, but the EFSA may also decide to apply reporting and disclosure obligations equivalent to those applied to AIFMs established in Estonia, to such sub-threshold AIFMs.

15c. Please briefly describe any restrictions on the type or number of investors to whom the fund may be marketed on this basis.

The criteria for the consideration of whether an offering of shares or units constitutes a public offering or a non-public offering are described under Question 13.

15d. Whether or not a licence or authorisation is required, please briefly describe the key continuing obligations of the AIFM (including any obligation to make reports or to pay fees) if it markets on this basis in Estonia?

Upon the public offering of shares or units by foreign sub-threshold AIFMs in Estonia and the registration thereof with the EFSA, several continuing obligations mainly relating to reporting and disclosure of information to the local investors shall apply to the AIFM pursuant to the special regulation proposed in the draft legislation described under Question 15b.

These include the disclosure of the fund terms or the articles of association thereof, the financial statements and other documents in a manner accepted by the EFSA, as well as filing of reports and financial statements and any other additional information to the EFSA as requested thereby.

16. Do the AIFMD implementing rules in Estonia provide for a different regime for non-EEA sub-threshold AIFMs?

If yes, please explain how the rules are different (for example, would non-EEA sub-threshold AIFMs be exempt from certain provisions?)

No differentiation between non-EEA sub-threshold AIFMs and EEA sub-threshold AIFMs is made under Estonian law, including in the draft legislation referred to under Question 15b.

The special regulation contemplated by the new draft legislation for the public offering of shares or units by sub-threshold AIFMs is to apply equivalently to EEA and non-EEA sub-threshold AIFMs.

Section two: Marketing in the EU on a country-by-country basis

6. Finland



SCENARIO A: MARKETING NON-EEA AIFS MANAGED BY NON-EEA AIFMS UNDER ARTICLE 42 (NO PASSPORT)

Further assumptions for the purpose of Scenario A only

Licensing

No person concerned has any form of licence in the target market, or any EEA licence which entitles it to a passport.

Who markets?

The legal person engaging in marketing is the Alternative Investment Fund Manager (AIFM) of the AIF. There is no placement agent or other intermediary involved.

1. Is it possible in some manner to market a fund in the circumstances described above, in Finland and/or to investors established in Finland since 22 July 2013?

Yes, subject to the conditions laid down in the act and other regulations implementing the Directive (see Questions 7 and 8).

2. In Finland, has there been any local elaboration on what constitutes 'marketing' within the meaning of Article 4(1)(x)? If not, what is the better interpretation of that term? For example, are distinctions made between concepts such as 'making the fund available for investment', 'offering', 'placing', circulating documents marked "draft", 'pre-marketing', 'soft marketing' or 'reverse solicitation'?

Questions 3 to 8 below relate to 'marketing' as that term is understood in Finland. Question 9 relates to pre-marketing, if relevant. Question 10 relates to reverse solicitation.

Yes, the act implementing the Directive defines 'marketing' as 'direct or indirect offering or allotting of units in the AIF to investors and carried out on the initiative of the AIFM (or on its behalf)'. The governmental bill (which is significant in respect of interpreting the act) further elaborates the concept of 'marketing'. For an activity to be qualified as 'marketing' it shall always include the offering of units, the purpose of which is to conclude a binding contract/commitment. Therefore, 'soft circling', 'road shows' or 'reverse solicitation' are not considered as marketing.

Further, the government bill implies that the AIF shall be duly formed before the offering of its interests may take place (and trigger the obligations under the act). In other words, if the AIF is not yet formed, providing related agreements would not be considered as marketing.

On the other hand, the governmental bill states that providing offering documents concerning an existing AIF would be considered as negotiating of fund terms and thereby 'marketing'.

Where a fund has already been formed and for example a placement memorandum (but not subscription documentation etc.) is circulated, it is not entirely clear whether this constitutes "marketing".

Section two: Marketing in the EU on a country-by-country basis

3. When was the Directive transposed into national law in Finland?

The Directive has been transposed by an act, which became effective on 15 March 2014.

4. Under the domestic implementing measures of Finland, is the Directive relevant to marketing to investors established in Finland (within the meaning of Article 4(1)(j)) but who are not physically located in Finland at the time the marketing takes place²⁴?

The Finnish law refers only to marketing “in Finland” (without defining this in more detail).

5. Once the Directive is in effect in Finland, in relation to ‘marketing’ (as that term is understood in Finland) can a non-EEA manager of a non-EEA fund rely on a transitional (or ‘grandfathering’) provision, for example a transitional provision implementing Article 61(1) to delay compliance with the requirements of Article 42? If it can, what conditions must be met? If the conditions are met, what limits are there on marketing (for example is it possible only to market a fund which was being actively marketed before 22 July 2013 or also other funds managed by the same manager)?

Yes, a non-EEA manager of a non-EEA fund was entitled to rely on certain transitional provisions. Provided that the marketing of an AIF to professional investors had been commenced before the act coming into effect, the AIFM was entitled to continue marketing that AIF to professional investors until 22 July 2014 subject to a notification to the competent authority by 15 April 2014. To benefit from the transitional provisions, the actions taken by the AIFM shall have been qualified as ‘marketing’ (see answer to Question 2).

6. Is there any list published of the cooperation arrangements which have been entered into (i.e. signed by both parties and dated) between the competent authorities of Finland and those of non-EEA jurisdictions for the purposes of Article 2(1)(b)? What is expected to happen in future?

The Finnish Financial Supervisory Authority (“FIN-FSA”), which is the competent authority, has agreed upon cooperation arrangements with certain third country authorities. The FIN-FSA maintains a list of authorities with whom it has arranged cooperation (the current list includes 29 authorities in 24 countries: http://www.finanssivalvonta.fi/fi/Saantely/Saantelyhankkeet/AIFMD/Pages/AIFM_yhteistyosopimukset.aspx).

²⁴ Article 2(1)(c) may be interpreted as restricting the territorial scope of the Directive in relation to Article 42 firms.

Section two: Marketing in the EU on a country-by-country basis

7. After the expiry of any transitional provision, is there to be any gold-plating of the requirements of Article 42? In other words, will there be additional domestic restrictions on or conditions for marketing fund interests? Or is it necessary only to consider local implementation of Article 42? There might be restrictions on the type or number of investors who may be approached, or other conditions. For example, in the UK, it will continue to be necessary to comply with the pre-existing financial promotion regime, which (in theory) further restricts the category of 'per se professional client'. In Germany, it will be a requirement that the non-EEA fund has a depositary performing functions specified under Article 21.

Compared to Article 42 AIFMD, the Finnish law includes the following requirements, which can be considered as gold-plating:

- (a) the obligation to comply with good securities markets practice (also in 'reverse solicitation' situations);
- (b) prohibition to give false or misleading information (also in 'reverse solicitation' situations);
- (c) the obligation to provide material and sufficient information to investors is also applicable in 'reverse solicitation' situations (this can be waived by a professional investor in writing);
- (d) it is not fully clear whether a domestic lower-level decree (defining the information, which shall be provided to the investors in order to fulfil the provision of "material and sufficient information") is to be applied in these cases; on the other hand, the content of the decree seems to correspond with the content in Article 23(1) (which according to Article 42 shall be applied);
- (e) the same applies to a domestic lower-level decree regulating the financial statements and auditing relating aspects - technically the law does not include the lower-level regulations in the scope of applicable provisions in Article 42 situations, so it is not fully clear whether those are meant to be complied with or not;
- (f) requirement that corresponds with Article 40.2(c) (an agreement fully corresponding to the requirements in Article 26 of the OECD Model Tax Convention on Income and on Capital and ensuring effective exchange of information in tax matters shall exist);
- (g) the AIF may invest funds received from the investors only in accordance with the information given to the investors concerning investment of the funds (this should be self-evident);
- (h) obligation to comply with the Finnish anti-money laundering legislation (it can be noted that the Finnish anti-money laundering act is based on the EU Directive);
- (i) marketing may be commenced only after obtaining approval from the FIN-FSA to the notification made by the AIFM;
- (j) the FIN-FSA charges EUR 2,600 for Article 42-related notification;
- (k) when reporting to the FIN-FSA, the law requires i.a. regular reporting of "other factors relevant in light of the systemic risk" and "other information and documents necessary for monitoring purposes" (not clear what this means in practice);

Section two: Marketing in the EU on a country-by-country basis

- (l) the requirement to regularly report information to the FIN-FSA on the leverage of AIFs managed seems to apply to all AIFs (not only when substantial leverage is used);
- (m) the FIN-FSA has been empowered to appoint an auditor for the AIF in certain situations (e.g. if there is no Finnish qualified auditor for the AIF). The law further states that an AIFM marketing a third-country AIF within the EEA may decide to audit the AIF in accordance with international auditing standards in force in that third country, in which case the requirement for a Finnish qualified auditor and the powers of the FIN-FSA to appoint an auditor are not applicable - however, it is not fully clear whether this exception can be applied to third-country AIFMs.

Non-EEA AIFs may be marketed only to professional investors (unless the FIN-FSA grants an exemption permitting marketing also to non-professional investors).

8. Must a firm seeking to market in Finland in reliance on Article 42 notify, or register with, the competent authority in Finland? What kind of information is required, will there be a public register, what fee will be charged etc.? Is there an online notification or registration form? What can be done while awaiting registration (if relevant)?

An AIFM seeking to market in Finland shall notify the competent authority before starting to market. For such a notification, the AIFM shall provide a confirmation:

- (a) concerning compliance with obligations relating to (a) reporting to the FIN-FSA (including on leverage), (b) financial statements and auditing, (c) marketing (including compliance with good securities market practice and prohibition to give false or misleading information, certain disclosure obligations and “know your client” obligations), and (d) with respect to AIFs acquiring control in non-listed companies and issuers, obligations relating to such AIFs (which are based on Articles 26-30);
- (b) that appropriate cooperation arrangements for the purpose of systemic risk oversight, in line with international standards, are in place between the FIN-FSA, the competent authorities of the home member state of the AIFM and the competent authorities of the third country where the AIFs are established;
- (c) that the country where the AIFM or the AIF is established is not a non-cooperative country in terms of money laundering and terrorist financing;
- (d) that there is an agreement between Finland and the third country corresponding to the OECD Model Agreement by which effective change of information in respect of tax matters is secured.

The fee charged by the FIN-FSA for such a notification is EUR 2,600. So far, no registration form relating to Article 42 has been published by the FIN-FSA. The FIN-FSA maintains a public register of AIFMs whose notification has been approved.

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Section two:

Marketing in the EU on a country-by-country basis

9. What restrictions are there on pre-marketing²⁵, taking into account considerations similar to those raised in Questions 3 to 8 above?

The act implementing the Directive does not concern 'pre-marketing' specifically. However, promotion actions taken by the AIFM are always subject to compliance with good securities market practice and not giving any false or misleading information. When the threshold of 'marketing' is exceeded and when a binding commitment is made, the AIFM must be able to demonstrate that it has complied with the marketing rules (including disclosure of material and sufficient information).

10. Whether marketing (as defined) is banned or restricted by Article 42 or otherwise, what interpretation is given in Finland to the concept of 'reverse solicitation', 'reverse enquiry' or marketing at the initiative of the investor, within the meaning of Recital 70?

The governmental bill expressly states that Finnish investors may still contact the foreign AIFM to express their interest to invest in a specific target and this shall not be considered as offering AIF interests in Finland ("reverse solicitation"). The few references in the governmental bill to "reverse solicitation" suggest that this includes situations where "an investor on its own initiative contacts an AIFM" and where "an investor takes the initiative to choose investment targets". According to the same, the Finnish AIFM law "would not affect existing business relations between Finnish institutional investors and non-EEA AIFMs". Nevertheless the concept is partly unclear.

(It can be added that, generally, marketing restrictions are not triggered in "reverse solicitation" situations, but certain obligations (namely, obligation to comply with good securities markets practice, prohibition to give false or misleading information and the requirement to disclose material and sufficient information to the investors) apply also in these situations.)

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²⁵ This assumes that the answer to Question 2 distinguished between 'marketing' (as defined) and pre-marketing.

Section two:

Marketing in the EU on a country-by-country basis

SCENARIO B: MARKETING NON-EEA AIFS MANAGED BY AN EEA AIFM UNDER ARTICLE 36 (NO PASSPORT)

Further assumptions for the purpose of Scenario B only

Licensing

The AIFM is a fully authorised AIFM in its home member state.

Who markets?

The legal person engaging in marketing is the Alternative Investment Fund Manager of the AIF.

There is no placement agent or other intermediary involved.

11. Is it possible to market a fund in the circumstances described above in Finland and/or to investors established in Finland?

Yes, it is possible, and subject to the conditions laid down in the act and other regulations implementing the Directive.

12. If yes, is the AIFM required to obtain a local licence or authorisation or to observe other formalities?

Please briefly describe the process for obtaining such licence or authorisation (including any fees payable to a regulator) or the formalities required.

A prior notification, which shall be approved by the FIN-FSA before commencing marketing, is required. For such a notification, the AIFM shall provide a confirmation:

- (a) concerning compliance with marketing related obligations (including compliance with good securities market practice and prohibition to give false or misleading information, certain disclosure obligations and “know your client” obligations);
- (b) that there are appropriate (according to international standards) cooperation arrangements
 - (i) between the FIN-FSA and the supervisory authority of the home state of the AIF and
 - (ii) between the competent authorities of the home states of the AIFM and the AIF, to supervise systemic risk and secure exchange of information;
- (c) that the country where the AIF is established is not a non-cooperative country in terms of money laundering and terrorist financing;
- (d) that there is an agreement between Finland and the third country fully corresponding to the OECD Model Agreement by which the effective exchange of information in respect of tax matters is secured;
- (e) concerning the entity being responsible for the obligations of depositaries (must be other than the AIFM).

The fee charged by the FIN-FSA is EUR 2,600.

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Section two:

Marketing in the EU on a country-by-country basis

13. Are there any restrictions on the type or number of investors to whom the fund may be marketed on this basis?

Non-EEA AIFs may be marketed by fully authorised EEA AIFMs to professional investors only (within the meaning of MiFID). The FIN-FSA may however grant the right to market a non-EEA AIF also to non-professional investors.

14. Whether or not a licence or authorisation is required, please briefly describe the key continuing obligations of the AIFM (including any obligation to make reports or to pay fees) if it markets on this basis in Finland.

Currently there is no full clarity. The law could be interpreted to require, also in these circumstances, compliance with the provisions relating to continuous disclosure obligations to investors and certain know-your-client requirements (partly referring to Finnish laws on the subject).

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Section two: Marketing in the EU on a country-by-country basis

SCENARIO C: MARKETING BY SUB-THRESHOLD AIFMS

15. Is there a difference in Finland between the rules for non-EEA AIFs managed by non-EEA AIFMs and those applicable to sub-threshold AIFMs²⁶?

If yes, please explain how they are different and describe the rules, according to and based on the questions below.

If no, please go to Question 16.

Yes.

15a. Can an AIFM which falls within Article 3 (2) and is subject to domestic registration or authorisation only in its home Member State market a fund in Finland and/or to investors established in Finland?

Yes, it is possible, and subject to the conditions laid down in the act and other regulations implementing the Directive. It seems that a sub-threshold EEA AIFM may only market EEA AIFs in Finland.

**15b. If yes, is the AIFM required to obtain a local licence or registration or to observe other formalities?
Please briefly describe the process for obtaining such licence or registration (including any fees payable to a regulator) or the formalities required.**

No licence or registration is needed, but the FIN-FSA shall be notified beforehand.

For such a notification, the AIFM shall provide a confirmation concerning compliance with obligations relating to:

- (a) marketing (including compliance with good securities market practice and prohibition to give false or misleading information, certain disclosure obligations and “know your client” obligations);
- (b) reporting to the FIN-FSA;
- (c) financial statement and auditing; and
- (d) with respect to AIFs acquiring control in non-listed companies and issuers, obligations relating to such AIFs (which are based on Articles 26-30).

The fee charged by the FIN-FSA is EUR 1,600.

15c. Please briefly describe any restrictions on the type or number of investors to whom the fund may be marketed on this basis.

EEA AIFs may be marketed by sub-threshold AIFMs to professional investors only (within the meaning of MiFID). (It is not entirely clear whether the FIN-FSA could grant an exemption also to a sub-threshold AIFM.)

²⁶ A sub-threshold AIFM should be considered as an AIFM which falls within Article 3(2) and is subject to domestic registration or authorisation only in its home Member State.

Section two: Marketing in the EU on a country-by-country basis

15d. Whether or not a licence or authorisation is required, please briefly describe the key continuing obligations of the AIFM (including any obligation to make reports or to pay fees) if it markets on this basis in Finland?

Reporting to the FIN-FSA shall be done on a yearly basis and include the following:

- (a) the main instruments in which it trades;
- (b) the most significant investment targets; and
- (c) the most significant risk concentrations.

Financial statements shall be prepared, audited and made available annually.

With respect to AIFs acquiring control in non-listed companies and issuers, obligations relating to such AIFs (which are based on Articles 26-30) apply.

In addition, compliance with provisions relating to continuous disclosure to investors, know-your-client requirements etc. apply.

**16. Do the AIFMD implementing rules in Finland provide for a different regime for non-EEA sub-threshold AIFMs?
If yes, please explain how the rules are different (for example, would non-EEA sub-threshold AIFMs be exempt from certain provisions?)**

No. The Finnish law does not recognize any “non-EEA sub-threshold” AIFMs. Therefore, all non-EEA AIFMs are subject to the same rules (i.e. Scenario A in this report).

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7. France



SCENARIO A: MARKETING NON-EEA AIFS MANAGED BY NON-EEA AIFMS UNDER ARTICLE 42 (NO PASSPORT)

Further assumptions for the purpose of Scenario A only

Licensing

No person concerned has any form of licence in the target market, or any EEA licence which entitles it to a passport.

Who markets?

The legal person engaging in marketing is the Alternative Investment Fund Manager (AIFM) of the AIF. There is no placement agent or other intermediary involved.

1. Is it possible in some manner to market a fund in the circumstances described above, in France and/or to investors established in France since 22 July 2013?

The private placement regime was abolished from 22 July 2013. The only way for an EU AIFM to market an EU AIF to professional clients in France is through obtaining the marketing passport.

Given the removal of the private placement regime, the regime for the marketing of AIFs by non-EU AIFMs without a passport is now found under Article L. 214-24-1 (I) and Article D. 214-32 of the French *Code Monétaire et Financier* (CMF).

- Article L. 214-24-1 (I) of the CMF requires AIFMs to notify the French competent authority, *Autorité des Marchés Financiers* (AMF), before marketing any AIF in France.
- Article D. 214-32 of the CMF sets out the requirements for the marketing in France of units or shares of an AIF established in a third country managed by a management company (*société de gestion*) established in an EU Member State or a portfolio management company (*société de gestion de portefeuille*), as well as the marketing in France of units or shares of an AIF established in an EU Member State or a third country managed by a manager (*gestionnaire*) established in a third country without a passport. More specifically, it requires compliance with the following conditions:
 1. the manager (whether a *société de gestion de portefeuille*, a *société de gestion* established in an EU Member State or a *gestionnaire* established in a third country) needs to comply with the legislative provisions and regulations applicable to management companies (*sociétés de gestion*) under the AIFMD, Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011, with the exception of those articles pertaining to custodians (Articles L. 214-24-4 to 214-24-11). It must however ensure that the tasks listed under Article L. 214-24-8 (cash flow monitoring, custody of assets and the verification of the compliance of certain operations with the laws and regulations applicable to the AIF, as well as with its articles of association and prospectus) are performed by one or several entities designated by the portfolio management company, the management company or the manager established in a third country who is not legally entitled to undertake these himself. The AIFM needs to inform the French authority (AMF) of the identity of this or these entities charged with these tasks;

Section two: Marketing in the EU on a country-by-country basis

2. the existence of appropriate cooperation arrangements for the monitoring of systemic risk and consistent with international standards, between the French authority AMF and the relevant EU competent authority(ies) of the AIF or the competent authorities of the third country(ies) where the AIF or its manager (*gestionnaire*) is established, in order to ensure an exchange of information allowing the AMF to carry out its tasks provided by law;
3. (in those cases where the AIF or its manager (*gestionnaire*) is established in a third country) that third country is not listed as a Non-Cooperative Country and Territory by the FATF.

Details of the required notification are available in the Instruction AMF n° 2014-03 (Section III, Appendix 3).

Regarding the terminology used, the expression “portfolio management company” refers to the manager authorised in France, the expression “management company” refers to the manager authorised in another EU Member State and the term “manager” refers to a manager established in a third country.

2. In France, has there been any local elaboration on what constitutes ‘marketing’ within the meaning of Article 4(1)(x)? If not, what is the better interpretation of that term? For example, are distinctions made between concepts such as ‘making the fund available for investment’, ‘offering’, ‘placing’, circulating documents marked “draft”, ‘pre-marketing’, ‘soft marketing’ or ‘reverse solicitation’?

Questions 3 to 8 below relate to ‘marketing’ as that term is understood in France. Question 9 relates to pre-marketing, if relevant. Question 10 relates to reverse solicitation.

The AMF Guidelines (Position AMF n° 2014-04) concerning the marketing of AIFs (and UCITS), define marketing as:

“the presentation on the French territory of a financial instrument through different means (advertising, direct marketing, placement, advice, etc.) with a view to encouraging an investor domiciled or having its registered office in France to subscribe to it or to buy it”.

The concept of pre-marketing does not exist as such under French Law.

The AMF position provides that the following activities do not constitute an act of marketing in France:

1. the purchase, sale or subscription of units or shares of an AIF in response to a request from an investor (not following a solicitation). This is only relevant for AIFs that were specifically identified by the investor, and to the extent that he is authorized to do so;
2. the purchase, sale or subscription of units or shares of an AIF taking place in the context of a portfolio management agreement for a third party, provided that such financial instruments are allowed/authorised in the management of the portfolio of the investor;
3. the purchase, sale or subscription of units or shares of an AIF in the context of the financial management of an AIF provided that such financial instruments are allowed to be included in the assets of the AIF.

Section two: Marketing in the EU on a country-by-country basis

3. When was the Directive transposed into national law in France?

The AIFMD has been transposed into French Law by an ordinance and a decree published respectively on 27 and 30 July 2013 and amending the French *Code Monétaire et Financier* (CMF).

The French authority has also amended its general regulations to implement the provisions of the AIFMD in December 2013 and February 2014.

4. Under the domestic implementing measures of France, is the Directive relevant to marketing to investors established in France (within the meaning of Article 4(1)(j)) but who are not physically located in France at the time the marketing takes place²⁷?

The French marketing rules apply exclusively to acts of marketing on the French territory.

5. Once the Directive is in effect in France, in relation to 'marketing' (as that term is understood in France) can a non-EEA manager of a non-EEA fund rely on a transitional (or 'grandfathering') provision, for example a transitional provision implementing Article 61(1) to delay compliance with the requirements of Article 42? If it can, what conditions must be met? If the conditions are met, what limits are there on marketing (for example is it possible only to market a fund which was being actively marketed before 22 July 2013 or also other funds managed by the same manager)?

The French transposition text does not include a grandfathering clause for the implementation and application of Article 42 requirements; AMF Position DOC 2014-04 explicitly indicates that there are no transitional rules applicable in such a case.

In practice, this means that non-EU AIFMs who wish to market AIFs in France need to comply with the regime for marketing without a passport (provided for under Article D. 214-32 of the CMF) as of the date of applicability of the new regime (i.e. 22 July 2013).

6. Is there any list published of the cooperation arrangements which have been entered into (i.e. signed by both parties and dated) between the competent authorities of France and those of non-EEA jurisdictions for the purposes of Article 42(1)(b)? What is expected to happen in future?

So far, France has signed 29 bilateral cooperation arrangements with non-European regulators of alternative investment fund managers. The list of agreements is published on AMF's website:

<http://www.amf-france.org/technique/multimedia?docId=27bd86a7-1eb3-4e8b-a3fc-f316038c0a9e>

For more information, please also see:

<http://www.amf-france.org/Acteurs-et-produits/Societes-de-gestion/Passage-AIFM.html>

²⁷ Article 2(1)(c) may be interpreted as restricting the territorial scope of the Directive in relation to Article 42 firms.

Section two: Marketing in the EU on a country-by-country basis

7. After the expiry of any transitional provision, is there to be any gold-plating of the requirements of Article 42? In other words, will there be additional domestic restrictions on or conditions for marketing fund interests? Or is it necessary only to consider local implementation of Article 42? There might be restrictions on the type or number of investors who may be approached, or other conditions. For example, in the UK, it will continue to be necessary to comply with the pre-existing financial promotion regime, which (in theory) further restricts the category of 'per se professional client'. In Germany, it will be a requirement that the non-EEA fund has a depositary performing functions specified under Article 21.

As explained above (see answer to Question 1), the French requirements provide that a non-EU AIFM should respect the following three conditions:

1. the non-EU AIFM must comply with the French provisions regarding AIFMD transposition applied to managers within the scope of the AIFM Directive:
 - to appoint one or several entities to fulfil the three duties of the depositary (custody, cash monitoring and compliance duties)
 - to comply with any other obligations imposed under the AIFMD for the management of AIFs
2. a cooperation arrangement for the purpose of systemic risk oversight and in line with international standards must be in place between the French authority and the competent supervisory authority of the country where the AIF and/or the AIFM is established (see Question 6);
3. the country where the non-EU AIF or the non-EU AIFM is located, is not listed as a Non-Cooperative Country and Territory by the FATF.

8. Must a firm seeking to market in France in reliance on Article 42 notify, or register with, the competent authority in France? What kind of information is required, will there be a public register, what fee will be charged etc.? Is there an online notification or registration form? What can be done while awaiting registration (if relevant)?

The non-EU AIFM must follow the authorisation procedure with the French competent authority (AMF). It is thus required to send a complete file compliant with the AMF position n° 2014-03, to the French authority.

The file to request authorisation for marketing should justify compliance with the requirements described in Question 1 and should be signed by a person authorised to represent the non-EU AIFM.

The non-EU AIFM should designate at least one local correspondent and pay a fee (EUR 2,000 per year). The file should also include the name of the local correspondent and the proof of the payment of the fee, as well as a duly completed copy of Appendix 3 of the AMF position n° 2014-03 and all documents justifying compliance with the requirements described in Question 1.

The French authority will send a confirmation/acknowledgement of receipt by e-mail and should give its authorisation within 2 months. If necessary, the French authority may require further information to complete the application, which may further extend the delay.

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Section two: Marketing in the EU on a country-by-country basis

The marketing of the AIF on the French territory can only begin after the notification of the decision by the French authority on the marketing authorisation. This notification is sent to the non-EU AIFM by e-mail.

Without a positive decision from the French authority, the marketing of the AIF is not permitted.

For further information:

<http://www.amf-france.org/Formulaires-et-declarations/Commercialisation/Commercialisation-des-FIA.html>

9. What restrictions are there on pre-marketing²⁸, taking into account considerations similar to those raised in Questions 3 to 8 above?

The concept of pre-marketing is not recognised by French law.

10. Whether marketing (as defined) is banned or restricted by Article 42 or otherwise, what interpretation is given in France to the concept of 'reverse solicitation', 'reverse enquiry' or marketing at the initiative of the investor, within the meaning of Recital 70?

"Reserve solicitation" is defined in the Marketing Guide of the AMF as:

the purchase, sale or subscription of units or shares of an AIF in response to a request of an investor, not following a solicitation, concerning an AIF specifically identified by the investor, and to the extent that he is authorised to do so

[see also Question 2]

This definition is mentioned in the Guide established by the French authority.

SCENARIO B: MARKETING NON-EEA AIFs MANAGED BY AN EEA AIFM UNDER ARTICLE 36 (NO PASSPORT)

Further assumptions for the purpose of Scenario B only

Licensing

The AIFM is a fully authorised AIFM in its home member state.

Who markets?

The legal person engaging in marketing is the Alternative Investment Fund Manager of the AIF.

There is no placement agent or other intermediary involved.

11. Is it possible to market a fund in the circumstances described above in France and/or to investors established in France?

Yes, it is possible for an EU AIFM to market a non-EU AIF in France.

The conditions are similar to the procedure applicable for a non-EU AIFM to market a non-EU AIF without a passport.

²⁸ This assumes that the answer to Question 2 distinguished between 'marketing' (as defined) and pre-marketing.

Section two: Marketing in the EU on a country-by-country basis

12. If yes, is the AIFM required to obtain a local licence or authorisation or to observe other formalities?

Please briefly describe the process for obtaining such licence or authorisation (including any fees payable to a regulator) or the formalities required.

The authorisation procedure is the same as the authorisation procedure for the marketing of a non-EU AIF by a non-EU AIFM. There is only one additional condition: the manager should be duly authorised as an AIFM in the EU Member State where it is located.

The EU AIFM should go through an authorisation procedure with the French Authority.

It should send a complete file compliant with the AMF position n° 2014-03, to the French authority. The file should justify the compliance with the requirements described in Question 1, and must be signed by a person authorised to represent the EU AIFM.

The EU AIFM should designate at least one local correspondent and pay a fee (EUR 2,000 per year). The file should also include the name of the local correspondent and the proof of the payment of fees, as well as a duly completed copy of Appendix 3 of the AMF position n° 2014-03 and all documents justifying compliance with the requirements described in the answer to Question 1.

The French authority will send a confirmation/acknowledgement of receipt by e-mail and should give its authorisation within 2 months. If necessary, the French authority may ask for additional information which may further extend the delay.

The marketing of the AIF on the French territory can only begin after the notification of the decision by the French authority on the marketing authorisation. This notification is sent to the EU AIFM by e-mail.

Without a positive decision from the French authority, the marketing of the AIF is not permitted.

For further information:

<http://www.amf-france.org/Formulaires-et-declarations/Commercialisation/Commercialisation-des-FIA.html>

13. Are there any restrictions on the type or number of investors to whom the fund may be marketed on this basis?

No, there is no restriction. However, this procedure is relevant only for professional clients. There is another authorisation procedure for non-professional clients.

14. Whether or not a licence or authorisation is required, please briefly describe the key continuing obligations of the AIFM (including any obligation to make reports or to pay fees) if it markets on this basis in France.

The conditions for marketing a non-French AIF to non-professional clients are more stringent than for marketing to professional clients. The applicable conditions are found under Article 421-13 of the *Règlement Général* of the AMF, which subjects the marketing to non-professional clients in France to prior authorisation by the French regulator, and the fulfilment of two additional conditions:

1. an agreement for information exchange and mutual assistance must be in place between the French Authority and the national authority of the AIF (see Question 6);

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Section two: Marketing in the EU on a country-by-country basis

2. the AIF must comply with the provisions of the mutual assistance agreement in place between the French authority and the national authority of the AIF, which defines the particular requirements. To our knowledge, there are no mutual assistance agreements signed yet between the French Authority and other national authorities.

The terms of this authorisation are described in Question 12.

A manager authorised in France is notably subject to the following key continuing obligations, pursuant to *Instruction AMF n° 2008-03*:

- (a) Informing the French Authority of any changes to its initial authorisation or to its programme of activity (*programme d'activité*);
- (b) Providing audited accounts of the portfolio management company at the latest 6 months after the end of each fiscal year;
- (c) Providing annual statistics on the fund's activity, at the latest 4 months and a half after the end of the period of activity;
- (d) Providing a report on internal control;
- (e) Complying with the general reporting obligations towards the AMF, via the Regulator online platform (GECO).

SCENARIO C: MARKETING BY SUB-THRESHOLD AIFMS

- 15. Is there a difference in France between the rules for non-EEA AIFs managed by non-EEA AIFMs and those applicable to sub-threshold AIFMs²⁹?**

If yes, please explain how they are different and describe the rules, according to and based on the questions below.

If no, please go to Question 16.

No, there is no difference.

The French regime uses as a starting point the location of the AIF (EU / non-EU).

- For non-EU AIFs, whether the AIFM under the threshold is an EU or a non-EU AIFM, there is no passport and the same rules apply.

This means that in the case of non-EU AIFs, a sub-threshold AIFM (authorised or registered in an EEA Member State, other than France) who wishes to market in France is subject to the same rules and procedures as a non-EEA AIFM who wishes to market non-EEA AIFs in France.

- In relation to EU AIFs, there is a difference between sub-threshold EU AIFMs and sub-threshold non-EU AIFMs. The non-EU AIFM can apply for authorisation whereas the EU AIFM has no choice but to rely on the passport, even if it is sub-threshold.

For example if a German manager with less than EUR 500 million of AuM (EU AIFs) does not decide to opt in, it cannot market its AIFs to French investors. (cf. Section 3.3 of the Guide DOC 2014-04)

²⁹ A sub-threshold AIFM should be considered as an AIFM which falls within Article 3(2) and is subject to domestic registration or authorisation only in its home Member State.

Section two: Marketing in the EU on a country-by-country basis

15a. Can an AIFM which falls within Article 3 (2) and is subject to domestic registration or authorisation only in its home Member State market a fund in France and/or to investors established in France?

Sub-threshold managers must apply for prior authorisation in order to be allowed to market non-EU AIFs to French investors (cf. Article 421-13-1 *Règlement Général* of AMF).

**15b. If yes, is the AIFM required to obtain a local licence or registration or to observe other formalities?
Please briefly describe the process for obtaining such licence or registration (including any fees payable to a regulator) or the formalities required.**

Sub-threshold managers must apply for prior authorisation in order to be allowed to market non-EU AIFs to French investors (cf. Article 421-13-1 *Règlement Général* of AMF).

15c. Please briefly describe any restrictions on the type or number of investors to whom the fund may be marketed on this basis.

No restriction is applicable, subject to the additional conditions applicable for marketing to retail investors.

15d. Whether or not a licence or authorisation is required, please briefly describe the key continuing obligations of the AIFM (including any obligation to make reports or to pay fees) if it markets on this basis in France?

See previous questions.

16. Do the AIFMD implementing rules in France provide for a different regime for non-EEA sub-threshold AIFMs?

If yes, please explain how the rules are different (for example, would non-EEA sub-threshold AIFMs be exempt from certain provisions?)

No, there is no different regime for non-EEA sub-threshold AIFMs. This means that non-EEA sub-threshold AIFMs are subject to the same rules and procedures as other, above-threshold non-EEA AIFMs and would need to comply with the same requirements as outlined in Question 1.

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Section two: Marketing in the EU on a country-by-country basis

8. Germany



SCENARIO A: MARKETING NON-EEA AIFS MANAGED BY NON-EEA AIFMS UNDER ARTICLE 42 (NO PASSPORT)

Further assumptions for the purpose of Scenario A only

Licensing

No person concerned has any form of licence in the target market, or any EEA licence which entitles it to a passport.

Who markets?

The legal person engaging in marketing is the Alternative Investment Fund Manager (AIFM) of the AIF. There is no placement agent or other intermediary involved.

1. Is it possible in some manner to market a fund in the circumstances described above, in Germany and/or to investors established in Germany since 22 July 2013?

Yes, subject to certain conditions.

2. In Germany, has there been any local elaboration on what constitutes 'marketing' within the meaning of Article 4(1)(x)? If not, what is the better interpretation of that term? For example, are distinctions made between concepts such as 'making the fund available for investment', 'offering', 'placing', circulating documents marked "draft", 'pre-marketing', 'soft marketing' or 'reverse solicitation'?

Questions 3 to 8 below relate to 'marketing' as that term is understood in Germany. Question 9 relates to pre-marketing, if relevant. Question 10 relates to reverse solicitation.

There is no clear guidance available from the German regulator as to the exact scope of marketing. However, the German regulator made some comments on the scope of pre-marketing which would currently not trigger license requirements. Pre-marketing should not cross the line to marketing of the Fund as long as the Fund is not yet established, does not yet have a name and only incomplete draft fund documents are distributed in Germany. The draft status should be clear. In addition, it should be communicated to the prospective investor that a subscription is currently not possible and no offers for a subscription are currently sought, and that the documents are still subject to change.

3. When was the Directive transposed into national law in Germany?

The Directive was implemented into German law on 22 July 2013.

4. Under the domestic implementing measures of Germany, is the Directive relevant to marketing to investors established in Germany (within the meaning of Article 4(1)(j)) but who are not physically located in Germany at the time the marketing takes place³⁰?

There is no clear guidance from BaFin on the territorial scope of the marketing regime. The territorial scope depends on the individual circumstances of the case. As a general rule, the investor must be physically present in Germany at the time the activity takes place. In particular, firms should not create an artificial scenario to circumvent the marketing requirements.

³⁰ Article 2(1)(c) may be interpreted as restricting the territorial scope of the Directive in relation to Article 42 firms.

Section two: Marketing in the EU on a country-by-country basis

- 5. Once the Directive is in effect in Germany, in relation to 'marketing' (as that term is understood in Germany) can a non-EEA manager of a non-EEA fund rely on a transitional (or 'grandfathering') provision, for example a transitional provision implementing Article 61(1) to delay compliance with the requirements of Article 42? If it can, what conditions must be met? If the conditions are met, what limits are there on marketing (for example is it possible only to market a fund which was being actively marketed before 22 July 2013 or also other funds managed by the same manager)?**

Yes, a non-EEA AIFM may rely on grandfathering provisions, so long as marketing of the relevant AIF in Germany began pre 22 July 2013. Marketing for this purpose means to have distributed at least a private placement memorandum in its almost final form to a prospective German investor. The grandfathering regime applies only to the particular AIF that has been marketed in Germany prior to 22 July 2013.

In respect of a non-EEA AIFM's fund that falls within the grandfathering regime, it is expected that there will be no on-going AIFMD disclosure obligations in respect of such fund provided that it has admitted all its German investors by 21 July 2014.

- 6. Is there any list published of the cooperation arrangements which have been entered into (i.e. signed by both parties and dated) between the competent authorities of Germany and those of non-EEA jurisdictions for the purposes of Article 42(1)(b)? What is expected to happen in future?**

As at 18 February 2015, BaFin has concluded Memorandums of Understandings with the following supervisory authorities:

- Australia (ASIC)
- Bermuda (BMA)
- Cayman Islands (CIMA)
- Guernsey (GFSC)
- Hong Kong (SFC)
- Hong Kong (HKMA)
- India (SEBI)
- Japan (JFSA)
- Japan (METI)
- Japan (MAFF)
- Jersey (JFSC)
- Canada (AMF)
- Canada (OSC)
- Canada (ASC)
- Canada (BCSC)
- Canada (OSFI)
- Switzerland (FINMA)
- Singapore (MAS)
- USA (SEC)
- USA (CFTC)
- USA (FED/CC)

The published information leaflet by BaFin can be found [here](#).

Please note that BaFin does not automatically follow the cooperation agreements ESMA has negotiated. Rather, BaFin reserves the right to conduct a due diligence with each non-EEA jurisdiction separately.

Section two: Marketing in the EU on a country-by-country basis

- 7. After the expiry of any transitional provision, is there to be any gold-plating of the requirements of Article 42? In other words, will there be additional domestic restrictions on or conditions for marketing fund interests? Or is it necessary only to consider local implementation of Article 42? There might be restrictions on the type or number of investors who may be approached, or other conditions. For example, in the UK, it will continue to be necessary to comply with the pre-existing financial promotion regime, which (in theory) further restricts the category of 'per se professional client'. In Germany, it will be a requirement that the non-EEA fund has a depositary performing functions specified under Article 21.**

In addition to compliance with the Article 42 requirements, Germany requires an entity or person to perform certain depositary functions for the AIF.

The depositary requirements imported into the German private placement regime are based on the requirements of Article 36(1)(a) AIFMD for marketing by EEA AIFMs without a passport. Germany therefore requires one or more entities to be appointed to carry out the following depositary functions:

- monitoring of fund cash flows;
- safe-keeping of custody assets / verification and record keeping of other assets;
- certain general oversight functions (e.g. including oversight of subscriptions and redemptions, valuation, compliance by the fund with local laws and fund terms).

The German regulator has recently imposed an additional requirement (not foreseen under the German laws) that the AIFM must be registered with the regulatory authority of their home country, with which BaFin has entered into the Memorandum of Understanding or entered in another register to which the regulatory authority has access.

In addition, the AIF can only be marketed to professional and/or semi-professional investors. If the AIF is marketed to semi-professional investors, the AIF and the AIFM must fully comply with the AIFMD.

Professional investors constitute "professional clients" as defined in MiFID. Semi-professional investors may comprise, amongst others:

- Directors and certain employees of the AIFM who would be subject to the remuneration rules of the AIFMD (i.e. senior management, risk takers, control functions and any employee receiving total remuneration that takes them into the same remuneration bracket as senior management and risk takers) and invest in the AIF managed by the AIFM as well as board members of an externally managed AIF if they invest in the externally managed AIF;
- Investors that have a minimum commitment to the AIF of EUR 10,000,000;
- Investors that have a minimum commitment to the AIF of EUR 200,000 who confirm they are sufficiently qualified (i.e. have sufficient investment knowledge and experience to appreciate the risks) to invest in the AIF and are assessed by the AIFM (through a questionnaire) as being so.

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Section two:

Marketing in the EU on a country-by-country basis

- 8. Must a firm seeking to market in Germany in reliance on Article 42 notify, or register with, the competent authority in Germany? What kind of information is required, will there be a public register, what fee will be charged etc.? Is there an online notification or registration form? What can be done while awaiting registration (if relevant)?**

The AIFM would need to be registered with BaFin. The AIFM must submit to BaFin general information on the AIF (among others LPA, PPM, annual report), certain AIFM-related information and statements (e.g. information on the AIFM's board) as well as information on the depositary (e.g. depositary agreement). Currently no form for the registration process exists. The registration process is expected to take up to four months for a feeder fund and two months for a fund which is not a feeder. BaFin will charge EUR 6,582.

While awaiting registration, pre-marketing could be conducted. This could include, inter alia, investor presentations or the distribution of term sheets.

- 9. What restrictions are there on pre-marketing³¹, taking into account considerations similar to those raised in Questions 3 to 8 above?**

Currently, the law does not foresee any regulation on pre-marketing by the AIFM itself (although this may change).

- 10. Whether marketing (as defined) is banned or restricted by Article 42 or otherwise, what interpretation is given in Germany to the concept of 'reverse solicitation', 'reverse enquiry' or marketing at the initiative of the investor, within the meaning of Recital 70?**

With regard to professional and semi-professional investors, it will not be considered marketing if the investor (or a third party agent of the investor) approaches the AIF at its sole initiative. The exact scope of the "reverse solicitation" concept is still unclear.

SCENARIO B: MARKETING NON-EEA AIFS MANAGED BY AN EEA AIFM UNDER ARTICLE 36 (NO PASSPORT)

Further assumptions for the purpose of Scenario B only

Licensing

The AIFM is a fully authorised AIFM in its home member state.

Who markets?

The legal person engaging in marketing is the Alternative Investment Fund Manager of the AIF. There is no placement agent or other intermediary involved.

- 11. Is it possible to market a fund in the circumstances described above in Germany and/or to investors established in Germany?**

Yes, the AIFM and its management of the AIF must comply with the AIFMD national implementing/transposition rules of the home member state of the AIFM.

The depositary requirements, however, are similar to the depositary requirements explained under Question 7.

³¹ This assumes that the answer to Question 2 distinguished between 'marketing' (as defined) and pre-marketing.

Section two: Marketing in the EU on a country-by-country basis

12. If yes, is the AIFM required to obtain a local licence or authorisation or to observe other formalities?

Please briefly describe the process for obtaining such licence or authorisation (including any fees payable to a regulator) or the formalities required.

The AIFM must notify BaFin of its intention to market. There is no form for such a notification filing.

The notification filing must contain various documents (e.g. information on the AIFM, the depositary, a confirmation letter in which the AIFM undertakes to comply with various reporting obligations towards BaFin, proof of payment).

A fee of EUR 3,291 must be paid to BaFin. Additionally, there is an annual fee of EUR 772.

BaFin has 30 business days for the processing of the notification (in case it is a feeder AIF whose master AIF is managed by an EU AIFM, BaFin has two months, or five months respectively, if the master AIF is managed by a non-EU AIFM).

13. Are there any restrictions on the type or number of investors to whom the fund may be marketed on this basis?

There is no restriction regarding the number of investors. Marketing towards semi-professional investors triggers more extensive formal and substantive requirements (see Question 7).

14. Whether or not a licence or authorisation is required, please briefly describe the key continuing obligations of the AIFM (including any obligation to make reports or to pay fees) if it markets on this basis in Germany.

An annual fee of EUR 772 applies (see Question 12). Also, there are ongoing reporting obligations towards BaFin, e.g. in the form of annual reports or in case of substantial changes to information disclosed in the notification.

SCENARIO C: MARKETING BY SUB-THRESHOLD AIFMS

15. Is there a difference in Germany between the rules for non-EEA AIFs managed by non-EEA AIFMs and those applicable to sub-threshold AIFMs³²?

If yes, please explain how they are different and describe the rules, according to and based on the questions below.

If no, please go to Question 16.

There is no difference between the rules for non-EEA AIFs managed by non-EEA AIFMs and those applicable to sub-threshold AIFMs. Simplified marketing rules are only available to sub-threshold EEA AIFMs.

15a. Can an AIFM which falls within Article 3 (2) and is subject to domestic registration or authorisation only in its home Member State market a fund in Germany and/or to investors established in Germany?

Yes, sub-threshold EEA AIFMs may market any AIF to professional and semi-professional investors in Germany, subject to certain conditions (see Question 15b).

³² A sub-threshold AIFM should be considered as an AIFM which falls within Article 3(2) and is subject to domestic registration or authorisation only in its home Member State.

Section two: Marketing in the EU on a country-by-country basis

15b. If yes, is the AIFM required to obtain a local licence or registration or to observe other formalities?

Please briefly describe the process for obtaining such licence or registration (including any fees payable to a regulator) or the formalities required.

Sub-threshold EEA AIFMs marketing AIFs to professional and/or semi-professional investors in Germany will need to submit a notification letter to the German regulator (BaFin) containing:

- (a) confirmation by the home member state supervisory authority that the manager is registered as a sub-threshold AIFM;
- (b) a confirmation letter by the manager in which it undertakes to inform BaFin of any material amendments to the information provided in its registration and to evidence such amendments;
- (c) a confirmation letter by the manager in which it undertakes to provide BaFin on request with information on its business activity and submit documentation; and
- (d) payment of the notification fee (EUR 3,291).

There are no prescribed forms for the notification but instructing German counsel to prepare the notification is recommended.

15c. Please briefly describe any restrictions on the type or number of investors to whom the fund may be marketed on this basis.

There is no restriction regarding the number of investors.

Regarding the type of investors marketing may only be directed towards professional and semi-professional investors.

15d. Whether or not a licence or authorisation is required, please briefly describe the key continuing obligations of the AIFM (including any obligation to make reports or to pay fees) if it markets on this basis in Germany?

There are no on-going obligations other than the AIFM's obligation to inform BaFin of any material changes of circumstances relevant in connection with the notification. Also, the AIFM must inform BaFin about its course of business should BaFin demand this.

16. Do the AIFMD implementing rules in Germany provide for a different regime for non-EEA sub-threshold AIFMs?

If yes, please explain how the rules are different (for example, would non-EEA sub-threshold AIFMs be exempt from certain provisions?)

Non-EEA sub-threshold AIFMs have to comply with the provisions applicable for non-EEA AIFMs (see Question 7). They may not market AIFs under the special regime for sub-threshold EEA AIFMs.

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9. Hungary



SCENARIO A: MARKETING NON-EEA AIFS MANAGED BY NON-EEA AIFMS UNDER ARTICLE 42 (NO PASSPORT)

Further assumptions for the purpose of Scenario A only

Licensing

No person concerned has any form of licence in the target market, or any EEA licence which entitles it to a passport.

Who markets?

The legal person engaging in marketing is the Alternative Investment Fund Manager (AIFM) of the AIF. There is no placement agent or other intermediary involved.

1. Is it possible in some manner to market a fund in the circumstances described above, in Hungary and/or to investors established in Hungary since 22 July 2013?

At the time of publication of this document there are no statutory provisions in force in Hungary that would expressly deal with a scenario similar to the above.

Though the purpose of Act XVI of 2014 on Collective Investment Firms and Managers and Amendments to Financial Laws ("Collective Investments Act"), is the implementation of Directive 2011/61/EU of the European Parliament and of the Council (the "Directive"), rules applying to non-EEA AIFMs marketing non-EEA AIFs have not yet been adopted and elaborated in Hungarian law; the respective Part V of the Collective Investments Act on the marketing of non-EEA AIFs as well as the operation and licensing of non-EEA AIFMs³³ shall enter into force on the 15th day after the adoption of the delegated act by the Commission based on paragraph 6 of Article 67 of the Directive.

Based on information received from the Hungarian National Bank in March 2015, marketing non-EEA AIFs in the above scenario would be possible through the licenced Hungarian subsidiary of such a non-EEA AIFM. The interpretation of the Hungarian rules as to whether the provisions of Act CXX of 2001 on Capital Markets (the "Capital Markets Act") on public offering and private placement of securities would apply to this scenario has not been supported by the Hungarian National Bank. Even if such rules were to apply, the involvement of an investment service provider to organize and execute the marketing procedure of the public offering is a statutory requirement in Hungary.

2. In Hungary, has there been any local elaboration on what constitutes 'marketing' within the meaning of Article 4(1)(x)? If not, what is the better interpretation of that term? For example, are distinctions made between concepts such as 'making the fund available for investment', 'offering', 'placing', circulating documents marked "draft", 'pre-marketing', 'soft marketing' or 'reverse solicitation'?

Questions 3 to 8 below relate to 'marketing' as that term is understood in Hungary. Question 9 relates to pre-marketing, if relevant. Question 10 relates to reverse solicitation.

The Collective Investments Act fully implements the term 'marketing' as used in the Directive, with the following meaning:

marketing means a direct or indirect offering or placement at the initiative of the AIFM or on behalf of the AIFM of units or shares of an AIF it manages to or with investors domiciled or with registered office in the European Union

³³ Title of the respective Part V (currently in draft form): Provisions applicable to AIFMs and AIFs in relation to third countries

Section two: Marketing in the EU on a country-by-country basis

3. When was the Directive transposed into national law in Hungary?

The Collective Investments Act serving for the implementation of the Directive (amongst other related EU regulation) is already in force. Please see the answer to Question 1. Notwithstanding the above, the implementation / elaboration of the rules on the marketing of non-EEA AIFs as well as the operation and licensing of non-EEA AIFMs has not been completed; such rules exist in draft form only.

Based on oral information and informal advice received from the Hungarian National Bank in March 2015, the best way to proceed in the scenario as described above would therefore be to proceed as if the domestic law was unchanged.

4. Under the domestic implementing measures of Hungary, is the Directive relevant to marketing to investors established in Hungary (within the meaning of Article 4(1)(j)) but who are not physically located in Hungary at the time the marketing takes place³⁴?

The Collective Investments Act does not distinguish such criteria. It sets out, however, that an AIFM with a seat in Hungary shall ensure that the prospectus of the AIF it manages meets the requirements set out in Annexes 3 and 5 of the Collective Investments Act, by 31 December 2014 at the latest.

5. Once the Directive is in effect in Hungary, in relation to 'marketing' (as that term is understood in Hungary) can a non-EEA manager of a non-EEA fund rely on a transitional (or 'grandfathering') provision, for example a transitional provision implementing Article 61(1) to delay compliance with the requirements of Article 42? If it can, what conditions must be met? If the conditions are met, what limits are there on marketing (for example is it possible only to market a fund which was being actively marketed before 22 July 2013 or also other funds managed by the same manager)?

The Collective Investments Act does not include a transitional provision that would be applicable to the scenario set out above.

According to the transitional provisions under the Collective Investments Act, companies that until 15 March 2014 operated under *Act CXCV of 2011 on Investment Fund Management Companies and Collective Investment Trusts* as investment funds or as venture capital fund management companies under *Act CXX of 2001 on the Capital Market* and that now qualify as AIFMs under the Collective Investments Act, were able to carry out their licensed activities until 22 July 2014 provided that they submitted an application for authorization in line with the Collective Investments Act by 22 July 2014.

Also as long as their respective prospectuses are valid, the restrictions of the Collective Investments Act with respect to marketing of EEA AIFs in Hungary and another Member State may not apply in case of public placements.

6. Is there any list published of the cooperation arrangements which have been entered into (i.e. signed by both parties and dated) between the competent authorities of Hungary and those of non-EEA jurisdictions for the purposes of Article 42(1)(b)? What is expected to happen in future?

The published list of cooperation arrangements between the competent authorities mentioned above is accessible through this hyperlink:

http://felugyelet.mnb.hu/topmenu/penzugyi_felugyelet/egyuttmukodesi_megallapodasok

³⁴ Article 2(1)(c) may be interpreted as restricting the territorial scope of the Directive in relation to Article 42 firms.

Section two: Marketing in the EU on a country-by-country basis

7. After the expiry of any transitional provision, is there to be any gold-plating of the requirements of Article 42? In other words, will there be additional domestic restrictions on or conditions for marketing fund interests? Or is it necessary only to consider local implementation of Article 42? There might be restrictions on the type or number of investors who may be approached, or other conditions. For example, in the UK, it will continue to be necessary to comply with the pre-existing financial promotion regime, which (in theory) further restricts the category of 'per se professional client'. In Germany, it will be a requirement that the non-EEA fund has a depositary performing functions specified under Article 21.

At the time of publication of this document there are no statutory provisions in force in Hungary that would expressly deal with a scenario similar to the above. Therefore it cannot be excluded that once available the currently missing Part V of the Collective Investments Act will establish such restrictions.

Informal contacts with the Hungarian Ministry of National Economy have indicated that based on paragraph 2 of Article 43 of the Directive a Member State may inform the Commission of additional requirements it imposes for the marketing of AIFs to retail investors by 22 July 2014. A proposal of such requirements is currently not available. Please note that it cannot be excluded that such new rules would contain additional domestic restrictions as well. The draft wording of the currently missing Part V contains the requirement of a nomination of a Member State of Reference (MSR) for non-EEA AIFMs.

8. Must a firm seeking to market in Hungary in reliance on Article 42 notify, or register with, the competent authority in Hungary? What kind of information is required, will there be a public register, what fee will be charged etc.? Is there an online notification or registration form? What can be done while awaiting registration (if relevant)?

Based on informal oral information from the Hungarian National Bank, a full license from the Hungarian National Bank is required for a non-EEA AIFM to market AIFs in Hungary. This means that the non-EEA AIFM shall establish an affiliate in Hungary, which entity shall obtain the license from the Hungarian National Bank.

The minimum requirements with respect to documents to be submitted with the Hungarian National Bank in order to receive the license are the following:

- (a) Constitutional document of the Hungarian subsidiary, evidencing the seat of the entity in Hungary, the scope of its activities as well as its operational rules;
- (b) Evidencing the availability of the statutory capital requirement of EUR 125,000;
- (c) Presentation of the remuneration policies;
- (d) Documents evidencing the compliance with requirements related to organization, managers etc.;
- (e) Information as regards the investment strategy of the AIFs to be managed.

The entities supervised by the Hungarian National Bank are listed on the homepage of the Hungarian National Bank.

A guide on the licensing is available in Hungarian [here](#).

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Section two:

Marketing in the EU on a country-by-country basis

9. What restrictions are there on pre-marketing³⁵, taking into account considerations similar to those raised in Questions 3 to 8 above?

Once having the full licence granted by the Hungarian National Bank no additional restrictions on 'pre-marketing' apply. In addition to 'marketing', the Collective Investments Act also defines 'investment advice' which means the provision of personal recommendations to a client in respect of one or more transactions relating to financial instruments, not including publicly available information, facts, circumstances, studies, reports, analyses and advertisements, and the prior information investment firms are required to provide to their clients and any subsequent changes in that information. Such activity also falls within the scope of activities an AIFM is authorized to carry out.

10. Whether marketing (as defined) is banned or restricted by Article 42 or otherwise, what interpretation is given in Hungary to the concept of 'reverse solicitation', 'reverse enquiry' or marketing at the initiative of the investor, within the meaning of Recital 70?

Currently no statutory interpretation of the term 'reverse solicitation' exists. We understand that for example the FCA has made clarification on recent solicitation establishing that it needs to be more substantive in a way that the solicitation needs to name the particular fund and then the fund manager may be allowed to provide information with regards to that fund. It may not be excluded that in the course of the forthcoming legislation as set out in our answer to Question 1 such rules will be adopted / introduced.

SCENARIO B: MARKETING NON-EEA AIFS MANAGED BY AN EEA AIFM UNDER ARTICLE 36 (NO PASSPORT)

Further assumptions for the purpose of Scenario B only

Licensing

The AIFM is a fully authorised AIFM in its home member state.

Who markets?

The legal person engaging in marketing is the Alternative Investment Fund Manager of the AIF. There is no placement agent or other intermediary involved.

11. Is it possible to market a fund in the circumstances described above in Hungary and/or to investors established in Hungary?

It is possible subject to the following restrictions and the fulfillment of the following requirements as set out under the Collective Investments Act:

- Marketing is possible to professional investors* only;
- A depository shall be engaged (within the meaning of Article 21 of the Directive);
- The AIFM qualifies as such within the scope of the Collective Investments Act (in line with the Directive);
- The local regulator of the non-EEA AIF and the Hungarian National Bank have an appropriate cooperation agreement that enables exchange of information and risk oversight between the two authorities;
- The country of residence of the non-EEA AIF is not listed as a non-cooperative country with the FATF;

³⁵ This assumes that the answer to Question 2 distinguished between 'marketing' (as defined) and pre-marketing.

Section two: Marketing in the EU on a country-by-country basis

- The Hungarian National Bank enters into a cooperation agreement with the local regulator of the non-EEA AIF with respect to Commission Delegated Regulation (EU) No 231/2013 supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to exemptions, general operating conditions, depositaries, leverage, transparency and supervision; and
 - The AIFM reports its depositary to the Hungarian National Bank.
- * As defined in Sections 48 and 49 of Act CXXXVIII of 2007 on Investment Firms and Commodity Dealers, and on the Regulations Governing their Activities (subsection (1) Section 48), the following shall be considered professional clients: a) investment firms; b) commodity dealers; c) credit institutions; d) financial institutions; e) insurance companies; f) investment funds and investment fund managers, collective investment trusts; g) venture capital funds and venture capital fund managers; h) private pension funds and voluntary mutual insurance funds; i) bodies providing clearing or settlement services; j) central depositories; k) institutions for occupational retirement provision; l) exchange markets; m) central counterparties; n) all other companies which are recognized as such by the country in which they are established; o) the preferential companies described in Subsection (2); p) the preferential bodies described in Subsection (3); and q) all other persons and bodies principally engaged in investment service activities, including special purpose entities.
- subsection (2) The preferential companies mentioned in Paragraph o) of Subsection (1) shall cover all companies which meet at least two of the following criteria, relying on the last audited accounting report, and calculated according to the official MNB exchange rate in effect on the balance sheet date: a) the balance sheet total is at least twenty million euros; b) the annual net turnover is at least forty million euros; c) they have at least two million euros in own funds.
- subsection (3) In the application of Paragraph p) of Subsection (1), 'preferential body' shall mean: a) the central government of any EEA Member State; b) the regional governments and local authorities of any EEA Member State; c) ÁKK Zrt. and similar public bodies of other EEA Member States charged with the management of public debt; d) the MNB, and the central bank of any EEA Member State and the European Central Bank; e) the World Bank; f) the International Monetary Fund; g) the European Investment Bank; and h) other bodies active in international finance that were created by virtue of international agreement or intergovernmental agreement.
- subsection (4) An investment firm shall afford to professional clients, at their request or - if they were classified as professional clients upon the investment firm's initiative - with their express agreement the same conditions that apply to retail clients in connection with their investment service activities and ancillary services.
- subsection (5) The agreement entered into by virtue of Subsection (4) shall be fixed in writing and it shall contain: a) an indication that the client is treated as a professional client, and that the conditions that apply to retail clients are applied at his request; b) an indication of the financial instruments or transactions to which the conditions of retail clients apply.

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Section two: Marketing in the EU on a country-by-country basis

Section 49 The investment firm may recategorize a retail client, at his request, and treat him as a professional client, if this client is able to satisfy at least two of the following criteria: a) the client has carried out transactions, worth at least forty thousand euros each or four hundred thousand euros in total for the year, or its equivalent in another currency as translated by the official MNB exchange rate in effect on the day of the transaction, at an average frequency of, at least, ten per quarter over the preceding year; b) the size of the client's financial instrument portfolio, defined as including cash deposits and financial instruments exceeds five hundred thousand euros or its equivalent in another currency as translated by the official MNB exchange rate in effect on the day preceding the day of submission of the request; c) the client works or has worked in the financial sector under contract of employment or any other form of employment relationship for at least one year within a preceding period of five years.

12. If yes, is the AIFM required to obtain a local licence or authorisation or to observe other formalities?

Please briefly describe the process for obtaining such licence or authorisation (including any fees payable to a regulator) or the formalities required.

According to the Hungarian National Bank, the applicable statutory provisions of the Collective Investments Act should be interpreted as follows:

The AIFM shall through the supervisory authority of its own member state notify the Hungarian National Bank. The Hungarian National Bank requires the following data and information:

- name, seat, registration number of the AIFM;
- place of its publishing;
- date of establishment, commencement of its activities, scope of its activities;
- registered capital;
- persons having a qualifying interest in the AIFM, executive officers;
- name and seat of the intermediary entity engaged by it;
- its license, operational plan and list of the AIFs it intends to manage.

Based on informal, oral information from the Hungarian National Bank, it seems that no fee is payable in connection with the registration.

13. Are there any restrictions on the type or number of investors to whom the fund may be marketed on this basis?

As mentioned under Question 11 marketing is possible to professional investors. There are no restrictions on the number of investors.

14. Whether or not a licence or authorisation is required, please briefly describe the key continuing obligations of the AIFM (including any obligation to make reports or to pay fees) if it markets on this basis in Hungary.

A licensed AIFM authorized by and established in another Member State may carry out in Hungary its activities licensed in such other Member State.

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Section two: Marketing in the EU on a country-by-country basis

SCENARIO C: MARKETING BY SUB-THRESHOLD AIFMS

15. Is there a difference in Hungary between the rules for non-EEA AIFs managed by non-EEA AIFMs and those applicable to sub-threshold AIFMs³⁶?

If yes, please explain how they are different and describe the rules, according to and based on the questions below.

If no, please go to Question 16.

No. Please see the answer to Question 1.

At the time of publication of this document there are no statutory provisions in force in Hungary that would expressly set out rules for non-EEA AIFs managed by non-EEA AIFMs. Thus, no such difference as set out in the question above exists.

15a. Can an AIFM which falls within Article 3 (2) and is subject to domestic registration or authorisation only in its home Member State market a fund in Hungary and/or to investors established in Hungary?

Based on the Collective Investments Act with the exception of the provision on remuneration, certain provisions on risk management and liquidity management, the provisions of the Collective Investments Act shall also apply if the AIFM either directly or indirectly, through a company with which the AIFM is linked by common management or control, or by a substantive direct or indirect holding, manages portfolios of AIFs whose assets under management in total do not exceed a threshold of EUR 100 million (including any assets acquired through the use of leverage), or in total do not exceed a threshold of EUR 500 million when the portfolios of AIFs consist of AIFs that are unleveraged and have no redemption rights exercisable during a period of five years following the date of initial investment in each AIF.

Thus, the rules set out in Question 11 apply to this scenario.

15b. If yes, is the AIFM required to obtain a local licence or registration or to observe other formalities?

Please briefly describe the process for obtaining such licence or registration (including any fees payable to a regulator) or the formalities required.

Please see the answer to Question 11. The same rules apply. The Collective Investments Act does not distinguish between AIFMs and sub-threshold AIFMs in relation to licensing and registration requirements.

15c. Please briefly describe any restrictions on the type or number of investors to whom the fund may be marketed on this basis.

As mentioned under Question 11 marketing is possible to professional investors. There are no restrictions on the number of investors.

15d. Whether or not a licence or authorisation is required, please briefly describe the key continuing obligations of the AIFM (including any obligation to make reports or to pay fees) if it markets on this basis in Hungary?

Please see the answer to Question 14. The same rules apply. If the AIFM does not hold a license from a Member State, it has to apply for a Hungarian license.

³⁶ A sub-threshold AIFM should be considered as an AIFM which falls within Article 3(2) and is subject to domestic registration or authorisation only in its home Member State.

Section two: Marketing in the EU on a country-by-country basis

16. Do the AIFMD implementing rules in Hungary provide for a different regime for non-EEA sub-threshold AIFMs?

If yes, please explain how the rules are different (for example, would non-EEA sub-threshold AIFMs be exempt from certain provisions?)

Similarly to non-EEA AIFMs, non-EEA sub-threshold AIFMs may market through the licenced Hungarian subsidiary of such a non-EEA sub-threshold AIFM. Please see Question 1.

Hungary treats all non-EEA AIFMs in the same way, regardless of whether they are above or below the threshold. This means that a non-EEA sub-threshold AIFM can only market in Hungary subject to the same rules and conditions as other (above-threshold) non-EEA AIFMs.

As mentioned above, the Collective Investments Act currently does not expressly set out rules applying to non-EEA AIFMs.

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Section two: Marketing in the EU on a country-by-country basis

10. Ireland



SCENARIO A: MARKETING NON-EEA AIFS MANAGED BY NON-EEA AIFMS UNDER ARTICLE 42 (NO PASSPORT)

Further assumptions for the purpose of Scenario A only

Licensing

No person concerned has any form of licence in the target market, or any EEA licence which entitles it to a passport.

Who markets?

The legal person engaging in marketing is the Alternative Investment Fund Manager (AIFM) of the AIF. There is no placement agent or other intermediary involved.

1. Is it possible in some manner to market a fund in the circumstances described above, in Ireland and/or to investors established in Ireland since 22 July 2013?

Under Regulation 43 of the Irish AIFMD Regulations (referred to in the response to Question 3 below), marketing of both EEA and non-EEA (pre and post 22 January 2013) AIFs to professional investors in Ireland is permitted.

Written notification must be given to the Central Bank of Ireland (the “Central Bank”) in a prescribed form before marketing to professional investors in Ireland. Such a notification must include the name and identity of the jurisdiction of domicile of both the AIFM and the AIF. Marketing may commence once the Central Bank has informed the AIFM that it may do so.

For AIFMs which were marketing in Ireland before 22 July 2013, compliance with the Irish AIFMD Regulations is required on a ‘best efforts’ basis and this notification must have been supplied before 22 July 2014, at the latest.

Regulation 43 also provides that where the Central Bank considers it necessary for the proper and orderly regulation and supervision of AIFMs, it may impose on the AIFM conditions or requirements in addition to those set out in Article 42.

2. In Ireland, has there been any local elaboration on what constitutes ‘marketing’ within the meaning of Article 4(1)(x)? If not, what is the better interpretation of that term? For example, are distinctions made between concepts such as ‘making the fund available for investment’, ‘offering’, ‘placing’, circulating documents marked “draft”, ‘pre-marketing’, ‘soft-marketing’ or ‘reverse solicitation’?

Questions 3 to 8 below relate to ‘marketing’ as that term is understood in Ireland. Question 9 relates to pre-marketing, if relevant. Question 10 relates to reverse solicitation.

The Irish AIFMD Regulations adopt the AIFMD Article 4.1(x) definition of ‘marketing’. There is currently no regulatory guidance in Ireland on the topic of marketing or any distinction between the concepts referred to in Question 2 above.

3. When was the Directive transposed into national law in Ireland?

The AIFMD was transposed into Irish law in July 2013 pursuant to the European Union (Alternative Investment Fund Managers) Regulations 2013 (S.I. No. 257 of 2013) as amended (the “Irish AIFMD Regulations”).

Section two: Marketing in the EU on a country-by-country basis

- 4. Under the domestic implementing measures of Ireland, is the Directive relevant to marketing to investors established in Ireland (within the meaning of Article 4(1)(j)) but who are not physically located in Ireland at the time the marketing takes place³⁷?**

The Irish AIFMD Regulation transposing Article 42 of the AIFMD relates to marketing to professional investors in Ireland and the definition of 'marketing' refers to the domicile or registered office of the investor.

- 5. Once the Directive is in effect in Ireland, in relation to 'marketing' (as that term is understood in Ireland) can a non-EEA manager of a non-EEA fund rely on a transitional (or 'grandfathering') provision, for example a transitional provision implementing Article 61(1) to delay compliance with the requirements of Article 42? If it can, what conditions must be met? If the conditions are met, what limits are there on marketing (for example is it possible only to market a fund which was being actively marketed before 22 July 2013 or also other funds managed by the same manager)?**

See response to Question 1.

- 6. Is there any list published of the cooperation arrangements which have been entered into (i.e. signed by both parties and dated) between the competent authorities of Ireland and those of non-EEA jurisdictions for the purposes of Article 42(1)(b)? What is expected to happen in future?**

As at 18 February 2015, the Central Bank had signed cooperation agreements with 43 of the 45 national securities regulators who had negotiated MoUs with ESMA. As at that date, only Turkey and the Maldives were outstanding.

- 7. After the expiry of any transitional provision, is there to be any gold-plating of the requirements of Article 42? In other words, will there be additional domestic restrictions on or conditions for marketing fund interests? Or is it necessary only to consider local implementation of Article 42? There might be restrictions on the type or number of investors who may be approached, or other conditions. For example, in the UK, it will continue to be necessary to comply with the pre-existing financial promotion regime, which (in theory) further restricts the category of 'per se professional client'. In Germany, it will be a requirement that the non-EEA fund has a depositary performing functions specified under Article 21.**

Regulation 43 of the Irish AIFMD Regulations effectively mirrors the requirements of Article 42 save that there is also a notification requirement (see response to Question 1).

- 8. Must a firm seeking to market in Ireland in reliance on Article 42 notify, or register with, the competent authority in Ireland? What kind of information will be required, will there be a public register, what fee will be charged etc.? Is there an online notification or registration form? What can be done while awaiting registration (if relevant)?**

Notification must be made to the Central Bank in a prescribed form available on its website at www.centralbank.ie. Please see the details in the response to Question 1 above. There is currently no fee charged for the notification nor is there a public register of AIFMs exercising Article 42 rights.

³⁷ Article 2(1)(c) may be interpreted as restricting the territorial scope of the Directive in relation to Article 42 firms.

Section two: Marketing in the EU on a country-by-country basis

9. What restrictions are there on pre-marketing³⁸, taking into account considerations similar to those raised in Questions 3 to 8 above?

Not applicable. See response to Question 2.

10. Whether marketing (as defined) is banned or restricted by Article 42 or otherwise, what interpretation is given in Ireland to the concept of 'reverse solicitation', 'reverse enquiry' or marketing at the initiative of the investor, within the meaning of Recital 70?

There is no Irish regulatory interpretation of these concepts.

SCENARIO B: MARKETING NON-EEA AIFS MANAGED BY AN EEA AIFM UNDER ARTICLE 36 (NO PASSPORT)

Further assumptions for the purpose of Scenario B only

Licensing

The AIFM is a fully authorised AIFM in its home member state.

Who markets?

The legal person engaging in marketing is the Alternative Investment Fund Manager of the AIF. There is no placement agent or other intermediary involved.

11. Is it possible to market a fund in the circumstances described above in Ireland and/or to investors established in Ireland?

Yes.

12. If yes, is the AIFM required to obtain a local licence or authorisation or to observe other formalities?

Please briefly describe the process for obtaining such licence or authorisation (including any fees payable to a regulator) or the formalities required.

Notification must be given to the Central Bank in a prescribed form before marketing to professional investors in Ireland. Such notification must include the name of the AIFM and the AIF and the identity of the home Member State of the AIFM and the jurisdiction of domicile of the AIF. Marketing can commence once the Central Bank has informed the AIFM that it may do so. There is currently no fee charged for the notification.

13. Are there any restrictions on the type or number of investors to whom the fund may be marketed on this basis?

AIFs may only be marketed in Ireland pursuant to Article 36 to MiFID professional investors. AIFs proposed to be marketed in Ireland to retail investors must be authorised by a supervisory authority set up in order to ensure the protection of investors and which, in the opinion of the Central Bank, provides an equivalent level of investor protection to that provided under Irish laws, regulations and conditions governing retail AIFs authorised by the Central Bank. A formal, very detailed application must be made to the Central Bank and marketing may not take place unless and until the AIF has received a letter of approval from the Central Bank. In practice, such an AIF would have to be one which is equivalent in all material respects to an Irish retail regulated AIF.

³⁸ This assumes that the answer to Question 2 distinguished between 'marketing' (as defined) and pre-marketing.

Section two: Marketing in the EU on a country-by-country basis

- 14. Whether or not a licence or authorisation is required, please briefly describe the key continuing obligations of the AIFM (including any obligation to make reports or to pay fees) if it markets on this basis in Ireland.**

The Central Bank may impose on the AIFM conditions or requirements in addition to those set out in Article 36 where it considers it necessary for the proper and orderly regulation and supervision of AIFMs. Currently there are no such additional conditions or requirements.

SCENARIO C: MARKETING BY SUB-THRESHOLD AIFMS

- 15. Is there a difference in Ireland between the rules for non-EEA AIFs managed by non-EEA AIFMs and those applicable to sub-threshold AIFMs³⁹?
If yes, please explain how they are different and describe the rules, according to and based on the questions below.
If no, please go to Question 16.**

There is no provision in the Irish AIFMD Regulations which allows sub-threshold AIFMs registered in the EU to market to professional investors in Ireland.

Non-EEA AIFMs (regardless of the level of the AIFM's AIF assets under management) may market AIFs into Ireland to professional investors pursuant to Regulation 43.

- 15a. Can an AIFM which falls within Article 3(2) and is subject to domestic registration or authorisation only in its home Member State market a fund in Ireland and/or to investors established in Ireland?**

No. See response to Question 15.

- 15b. If yes, is the AIFM required to obtain a local licence or registration or to observe other formalities?
Please briefly describe the process for obtaining such licence or registration (including any fees payable to a regulator) or the formalities required.**

Not applicable.

- 15c. Please briefly describe any restrictions on the type or number of investors to whom the fund may be marketed on this basis.**

Not applicable.

- 15d. Whether or not a licence or authorisation is required, please briefly describe the key continuing obligations of the AIFM (including any obligation to make reports or to pay fees) if it markets on this basis in Ireland?**

Not applicable.

- 16. Do the AIFMD implementing rules in Ireland provide for a different regime for non-EEA sub-threshold AIFMs?
If yes, please explain how the rules are different (for example, would non-EEA sub-threshold AIFMs be exempt from certain provisions?)**

No. Non-EEA AIFMs (regardless of the AIFM's level of assets under management) may market AIFs into Ireland to professional investors pursuant to Regulation 43.

³⁹ A sub-threshold AIFM should be considered as an AIFM which falls within Article 3(2) and is subject to domestic registration or authorisation only in its home Member State.

Section two: Marketing in the EU on a country-by-country basis

11. Italy



SCENARIO A: MARKETING NON-EEA AIFS MANAGED BY NON-EEA AIFMS UNDER ARTICLE 42 (NO PASSPORT)

Further assumptions for the purpose of Scenario A only

Licensing

No person concerned has any form of licence in the target market, or any EEA licence which entitles it to a passport.

Who markets?

The legal person engaging in marketing is the Alternative Investment Fund Manager (AIFM) of the AIF. There is no placement agent or other intermediary involved.

1. Is it possible in some manner to market a fund in the circumstances described above, in Italy and/or to investors established in Italy since 22 July 2013?

Under the Transposition Decree (Legislative Decree No. 44 of 4 March 2014, which amended the Italian Financial Consolidated Act of 1998 ("FCA")), starting from the date on which the European passport for non-EU AIFMs comes into force (2015):

- (a) non-EU AIFMs shall be authorised in Italy by the Banca d'Italia, if Italy is the "EU Member State of reference" pursuant to the AIFMD. A regulation to be issued by the Banca d'Italia will set the conditions and procedure for such authorisation and the conditions which the non-EU AIFMs authorised in Italy should comply with in order to operate in other EU Member States;
- (b) non-EU AIFMs authorised in another EU Member State pursuant to the AIFMD may market EU AIFs and non-EU AIFs to professional investors in Italy pursuant to a notification made to Consob by the Home Member State regulator in the same way as for the Article 32 Notification.

In light of these provisions, some tentative conclusions can be drawn:

- (a) once the passport for non-EU AIFMs comes into force, it would be the sole avenue for non-EU AIFMs to access the Italian market (i.e. there would be no dual marketing system after 2015);
- (b) until the entry into force of the passport for non-EU AIFMs, no national private placement regime for non-EEA AIFMs marketing non-EEA AIFs in Italy is provided.

In other words, marketing non-EEA AIFs managed by non-EEA AIFMs will not be allowed in Italy until the third country passport enters into force (therefore Article 42.5 of the Italian FCA has been removed).

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Section two: Marketing in the EU on a country-by-country basis

- 2. In Italy, has there been any local elaboration on what constitutes 'marketing' within the meaning of Article 4(1)(x)? If not, what is the better interpretation of that term? For example, are distinctions made between concepts such as 'making the fund available for investment', 'offering', 'placing', circulating documents marked "draft", 'pre-marketing', 'soft marketing' or 'reverse solicitation'?**

Questions 3 to 8 below relate to 'marketing' as that term is understood in Italy. Question 9 relates to pre-marketing, if relevant. Question 10 relates to reverse solicitation.

Under Title II, Chapter 3 of Section 2 of the Banca d'Italia draft Regulation on collective investment, a general definition of "marketing" is introduced, as given below:

Constitutes any marketing offer, invitation to offer or promotional message, addressed to investors in whichever form by the initiative of the manager or on behalf of him, both directly and indirectly, to subscribe or purchase share of fund.

- 3. When was the Directive transposed into national law in Italy?**

The AIFMD implementation process started at the primary legislation level with the entry into force of Legislative Decree No. 44 of March 2014, which amended the Italian FCA. The text entered into force on 9 April 2014.

The Banca d'Italia and Consob were then delegated the power to issue the appropriate implementing legislations.

On 31 December 2014 the Italian Government issued Law Decree No. 192/2014 (published in the Official Gazette No. 302 of 31 December 2014 and entered into force on the same date) containing new terms for the implementation of the laws. The deadline for the implementation of the implementing decrees provided by Legislative Decree No. 44/2014 has been postponed from 31 December 2014 to 30 April 2015.

On 21 January 2015 the implementing decrees of Legislative Decree No. 58/1998 (the Italian Consolidated Law on Finance) as modified by Legislative Decree No. 44/2014 issued by the Bank of Italy and Consob were published on their respective web sites for purely informative purposes. These provisions will be published in the Official Gazette for their entry into force. At the same time, the implementing decree of the Economy and Finance Department and the new regulation for the collective management of the investment issued by the Bank of Italy on 19 January 2015 will be published. The publication of the Official Gazette is expected in the next few weeks.

- 4. Under the domestic implementing measures of Italy, is the Directive relevant to marketing to investors established in Italy (within the meaning of Article 4(1)(j)) but who are not physically located in Italy at the time the marketing takes place⁴⁰?**

No, it is not. The implementing measures seem to restrict marketing to investors in Italy.

- 5. Once the Directive is in effect in Italy, in relation to 'marketing' (as that term is understood in Italy) can a non-EEA manager of a non-EEA fund rely on a transitional (or 'grandfathering') provision, for example a transitional provision implementing Article 61(1) to delay compliance with the requirements of Article 42? If it can, what conditions must be met? If the conditions are met, what limits are there on marketing (for example is it possible only to market a fund which was being actively marketed before 22 July 2013 or also other funds managed by the same manager)?**

The Transposition Decree does not foresee any transition period for non-EEA AIFMs wishing to market non-EEA AIFs (see answer to Question 1).

⁴⁰ Article 2(1)(c) may be interpreted as restricting the territorial scope of the Directive in relation to Article 42 firms.

Section two: Marketing in the EU on a country-by-country basis

- 6. Is there any list published of the cooperation arrangements which have been entered into (i.e. signed by both parties and dated) between the competent authorities of Italy and those of non-EEA jurisdictions for the purposes of Article 42(1)(b)? What is expected to happen in future?**

As at 18 February 2015, Consob had concluded MoUs with 24 Authorities of non-EEA jurisdictions. The list is available here:

<http://www.esma.europa.eu/content/AIFMD-MoUs-signed-EU-authorities-updated>

- 7. After the expiry of any transitional provision, is there to be any gold-plating of the requirements of Article 42? In other words, will there be additional domestic restrictions on or conditions for marketing fund interests? Or is it necessary only to consider local implementation of Article 42? There might be restrictions on the type or number of investors who may be approached, or other conditions. For example, in the UK, it will continue to be necessary to comply with the pre-existing financial promotion regime, which (in theory) further restricts the category of 'per se professional client'. In Germany, it will be a requirement that the non-EEA fund has a depositary performing functions specified under Article 21.**

As the Third Country regime is not yet finally defined at the moment, it is not possible to answer.

- 8. Must a firm seeking to market in Italy in reliance on Article 42 notify, or register with, the competent authority in Italy? What kind of information will be required, will there be a public register, what fee will be charged etc.? Is there an online notification or registration form? What can be done while awaiting registration (if relevant)?**

The documentation and procedure required in order to obtain the authorisation is not yet defined by the Italian competent authority.

It seems possible to assume that the Italian competent authority charges a "supervisory fee" on non-EEA AIFMs marketing non-EEA AIFs in Italy, as provided for Italian AIFMs.

- 9. What restrictions are there on pre-marketing⁴¹, taking into account considerations similar to those raised in Questions 3 to 8 above?**

Under the above-mentioned definition (see answer to Question 2) the rules do not distinguish between the two terms "marketing" and "pre-marketing" and the consequent different regulation.

- 10. Whether marketing (as defined) is banned or restricted by Article 42 or otherwise, what interpretation is given in Italy to the concept of 'reverse solicitation', 'reverse enquiry' or marketing at the initiative of the investor, within the meaning of Recital 70?**

Consob has not yet issued any guidance on the interpretation and the use of reverse solicitation.

⁴¹ This assumes that the answer to Question 2 distinguished between 'marketing' (as defined) and pre-marketing.

Section two:

Marketing in the EU on a country-by-country basis

SCENARIO B: MARKETING NON-EEA AIFS MANAGED BY AN EEA AIFM UNDER ARTICLE 36 (NO PASSPORT)

Further assumptions for the purpose of Scenario B only

Licensing

The AIFM is a fully authorised AIFM in its home member state.

Who markets?

The legal person engaging in marketing is the Alternative Investment Fund Manager of the AIF.

There is no placement agent or other intermediary involved.

11. Is it possible to market a fund in the circumstances described above in Italy and/or to investors established in Italy?

Yes, it is. Under the Transposition Decree, the marketing in Italy, in respect of professional investors, of the units or shares of non-EU AIFs managed by an EU AIFM, authorized in a Member State different from Italy, is preceded by a notification to Consob by the authority of the Member State of origin of each AIF subject of marketing.

12. If yes, is the AIFM required to obtain a local licence or authorisation or to observe other formalities?

Please briefly describe the process for obtaining such licence or authorisation (including any fees payable to a regulator) or the formalities required.

The documentation required in order to obtain the authorisation is not yet defined by the Italian competent authority.

13. Are there any restrictions on the type or number of investors to whom the fund may be marketed on this basis?

No, there are not. The marketing in Italy of units or shares of AIFs is not reserved to Italian professional investors. The Italian authority allows the marketing to retail investors too.

14. Whether or not a licence or authorisation is required, please briefly describe the key continuing obligations of the AIFM (including any obligation to make reports or to pay fees) if it markets on this basis in Italy.

As both the Banca d'Italia and Consob regulations are not yet approved, it is impossible to answer exactly.

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Section two: Marketing in the EU on a country-by-country basis

SCENARIO C: MARKETING BY SUB-THRESHOLD AIFMS

15. Is there a difference in Italy between the rules for non-EEA AIFs managed by non-EEA AIFMs and those applicable to sub-threshold AIFMs⁴²?

If yes, please explain how they are different and describe the rules, according to and based on the questions below.

If no, please go to Question 16.

The Transposition Decree states that Italy shall maintain, wherever possible, the stricter national rules and by way of example indicates the intention of keeping the restriction on sub-threshold AIFs.

Under the Transposition Decree it will no longer be possible to market interests in a fund for no-licence managers in any EEA State (among which there are the sub-threshold AIFMs), because section n. 42.5 of the FCA has been removed (see answer Question 1).

Therefore it seems possible to assume that also EEA sub-threshold managers are not able to market in Italy.

15a. Can an AIFM which falls within Article 3 (2) and is subject to domestic registration or authorisation only in its home Member State market a fund in Italy and/or to investors established in Italy?

Not applicable. See Question 15.

15b. If yes, is the AIFM required to obtain a local licence or registration or to observe other formalities?

Please briefly describe the process for obtaining such licence or registration (including any fees payable to a regulator) or the formalities required.

Not applicable.

15c. Please briefly describe any restrictions on the type or number of investors to whom the fund may be marketed on this basis.

Not applicable.

15d. Whether or not a licence or authorisation is required, please briefly describe the key continuing obligations of the AIFM (including any obligation to make reports or to pay fees) if it markets on this basis in Italy?

Not applicable.

16. Do the AIFMD implementing rules in Italy provide for a different regime for non-EEA sub-threshold AIFMs?

If yes, please explain how the rules are different (for example, would non-EEA sub-threshold AIFMs be exempt from certain provisions?)

As Article 42.5 of the FCA has been removed, it seems possible to assume that, for the time being, non-EEA sub-threshold AIFMs cannot market in Italy.

⁴² A sub-threshold AIFM should be considered as an AIFM which falls within Article 3(2) and is subject to domestic registration or authorisation only in its home Member State.

Section two: Marketing in the EU on a country-by-country basis

12. Latvia



SCENARIO A: MARKETING NON-EEA AIFS MANAGED BY NON-EEA AIFMS UNDER ARTICLE 42 (NO PASSPORT)

Further assumptions for the purpose of Scenario A only

Licensing

No person concerned has any form of licence in the target market, or any EEA licence which entitles it to a passport.

Who markets?

The legal person engaging in marketing is the Alternative Investment Fund Manager (AIFM) of the AIF. There is no placement agent or other intermediary involved.

1. Is it possible in some manner to market a fund in the circumstances described above, in Latvia and/or to investors established in Latvia since 22 July 2013?

Latvia transposed the Directive into a new AIFM law, which came into force on 7 August 2013.

When transposing the Directive Latvia decided not to exercise the discretion provided in Article 42 of the Directive. Therefore, marketing of non-EEA AIFs managed by non-EEA AIFMs is not allowed in Latvia.

2. In Latvia, has there been any local elaboration on what constitutes 'marketing' within the meaning of Article 4(1)(x)? If not, what is the better interpretation of that term? For example, are distinctions made between concepts such as 'making the fund available for investment', 'offering', 'placing', circulating documents marked "draft", 'pre-marketing', 'soft marketing' or 'reverse solicitation'?

According to the AIFM law, marketing is defined as "distribution" which means:

"initial placement or offering of investment units, made by the manager or on behalf of the manager, to the investors domiciled or having a registered office in the member state"

3. When was the Directive transposed into national law in Latvia?

The AIFMD transposition law was voted by the Latvian Parliament on 9 July 2013.

4. Under the domestic implementing measures of Latvia, is the Directive relevant to marketing to investors established in Latvia (within the meaning of Article 4(1)(j)) but who are not physically located in Latvia at the time the marketing takes place⁴³?

Not applicable.

5. Once the Directive is in effect in Latvia, in relation to 'marketing' (as that term is understood in Latvia) can a non-EEA manager of a non-EEA fund rely on a transitional (or 'grandfathering') provision, for example a transitional provision implementing Article 61(1) to delay compliance with the requirements of Article 42? If it can, what conditions must be met? If the conditions are met, what limits are there on marketing (for example is it possible only to market a fund which was being actively marketed before 22 July 2013 or also other funds managed by the same manager)?

Not applicable.

⁴³ Article 2(1)(c) may be interpreted as restricting the territorial scope of the Directive in relation to Article 42 firms.

Section two: Marketing in the EU on a country-by-country basis

- 6. Is there any list published of the cooperation arrangements which have been entered into (i.e. signed by both parties and dated) between the competent authorities of Latvia and those of non-EEA jurisdictions for the purposes of Article 42(1)(b)? What is expected to happen in future?**

The list of countries that the FKTK has concluded cooperation agreements with is available at:

<http://www.esma.europa.eu/content/AIFMD-MoUs-signed-EU-authorities>

- 7. After the expiry of any transitional provision, is there to be any gold-plating of the requirements of Article 42? In other words, will there be additional domestic restrictions on or conditions for marketing fund interests? Or is it necessary only to consider local implementation of Article 42? There might be restrictions on the type or number of investors who may be approached, or other conditions. For example, in the UK, it will continue to be necessary to comply with the pre-existing financial promotion regime, which (in theory) further restricts the category of 'per se professional client'. In Germany, it will be a requirement that the non-EEA fund has a depositary performing functions specified under Article 21.**

Not applicable.

- 8. Must a firm seeking to market in Latvia in reliance on Article 42 notify, or register with, the competent authority in Latvia? What kind of information will be required, will there be a public register, what fee will be charged etc.? Is there an online notification or registration form? What can be done while awaiting registration (if relevant)?**

Not applicable.

- 9. What restrictions are there on pre-marketing⁴⁴, taking into account considerations similar to those raised in Questions 3 to 8 above?**

Not applicable.

- 10. Whether marketing (as defined) is banned or restricted by Article 42 or otherwise, what interpretation is given in Latvia to the concept of 'reverse solicitation', 'reverse enquiry' or marketing at the initiative of the investor, within the meaning of Recital 70?**

Since the AIFM law does not expressly state that Latvian investors may not contact a foreign AIFM, it can be concluded that "passive" marketing by foreign AIFMs is allowed in Latvia, i.e. Latvian investors may contact a foreign AIFM to express their interest to invest in a specific target and this shall not be considered as offering AIF interests in Latvia.

⁴⁴ This assumes that the answer to Question 2 distinguished between 'marketing' (as defined) and pre-marketing.

Section two:

Marketing in the EU on a country-by-country basis

SCENARIO B: MARKETING NON-EEA AIFS MANAGED BY AN EEA AIFM UNDER ARTICLE 36 (NO PASSPORT)

Further assumptions for the purpose of Scenario B only

Licensing

The AIFM is a fully authorised AIFM in its home member state.

Who markets?

The legal person engaging in marketing is the Alternative Investment Fund Manager of the AIF.

There is no placement agent or other intermediary involved.

11. Is it possible to market a fund in the circumstances described above in Latvia and/or to investors established in Latvia?

Latvia has decided not to exercise the discretion provided in Article 36 of the Directive. Therefore, marketing of non-EEA AIFs without the passport notification's procedure is not allowed in Latvia.

12. If yes, is the AIFM required to obtain a local licence or authorisation or to observe other formalities?

Please briefly describe the process for obtaining such licence or authorisation (including any fees payable to a regulator) or the formalities required.

Not applicable.

13. Are there any restrictions on the type or number of investors to whom the fund may be marketed on this basis?

Not applicable.

14. Whether or not a licence or authorisation is required, please briefly describe the key continuing obligations of the AIFM (including any obligation to make reports or to pay fees) if it markets on this basis in Latvia.

Not applicable.

SCENARIO C: MARKETING BY SUB-THRESHOLD AIFMS

15. Is there a difference in Latvia between the rules for non-EEA AIFs managed by non-EEA AIFMs and those applicable to sub-threshold AIFMs⁴⁵?

If yes, please explain how they are different and describe the rules, according to and based on the questions below.

If no, please go to Question 16.

Yes.

15a. Can an AIFM which falls within Article 3 (2) and is subject to domestic registration or authorisation only in its home Member State market a fund in Latvia and/or to investors established in Latvia?

Yes.

⁴⁵ A sub-threshold AIFM should be considered as an AIFM which falls within Article 3(2) and is subject to domestic registration or authorisation only in its home Member State.

Section two: Marketing in the EU on a country-by-country basis

15b. If yes, is the AIFM required to obtain a local licence or registration or to observe other formalities?

Please briefly describe the process for obtaining such licence or registration (including any fees payable to a regulator) or the formalities required.

Yes. The Latvian Financial and Capital Market Commission (FCMC) has to adopt a decision to allow the respective EEA AIFM to market an EEA AIF in Latvia provided that the operating rules do not provide for the use of leverage and the redemption of investment units (shares) exercisable during a period of 5 years following the date of the first investment in the AIF. The AIFM should submit to the FCMC:

1. an application for authorisation to market the EEA AIF managed by it to professional investors in Latvia;
2. a confirmation issued by the supervisory authorities of the home Member States of the EEA AIFM and EEA AIF that the AIFM and the AIF have been registered with the supervisory authorities of the Member States in accordance with the procedure stated in the regulatory enactments of the Member States and are subject to the supervision requirements applicable in the respective Member States;
3. a confirmation of the supervisory authorities of the home Member States of the EEA AIFM and the EEA AIF addressed to the FCMC supporting that the supervisory authorities will cooperate with the FCMC in respect of the supervision of the EEA AIF and the EEA AIFM and information exchange matters;
4. information on the contact person responsible for the marketing of the EEA AIF in Latvia and authorised to represent the interests of the EEA AIF and the EEA AIFM before state agencies, investors and third parties in Latvia;
5. the contract on the marketing of the EEA AIF; and
6. the following documents:
 - (a) programme of activity setting out the information on the EEA AIF which the EEA AIFM wishes to market;
 - (b) information about the place of incorporation of the EEA AIF;
 - (c) documents of incorporation of the EEA AIF;
 - (d) operating rules of the EEA AIF;
 - (e) information about the depositary of the EEA AIF;
 - (f) information on the place where the master fund is established if the fund is a feeder fund;
 - (g) the most recent annual report and consolidated annual report if such are drawn up, information on the most recent calculated net asset value of the EEA AIF or the most recent calculated value or market price of the investment unit (share);
 - (h) the procedure under which the marketing of the EEA AIF only to professional investors will be ensured.

Furthermore, the EEA AIFM does not have to pay any fees to the FCMC for the review of the above mentioned documents.

Section two: Marketing in the EU on a country-by-country basis

15c. Please briefly describe any restrictions on the type or number of investors to whom the fund may be marketed on this basis.

The marketing of EEA AIFs by EEA AIFMs is allowed only to professional investors.

15d. Whether or not a licence or authorisation is required, please briefly describe the key continuing obligations of the AIFM (including any obligation to make reports or to pay fees) if it markets on this basis in Latvia?

The EEA AIFM has to pay an annual fee of EUR 1,209 to the FCMC for the supervision of the marketing of the investment units (shares) of each EEA AIF managed by it.

The AIFM law does not provide specific regulation on the reporting to the FCMC of the EEA AIFM which falls within the Directive's Article 3(2) and is subject to domestic registration. Thus, it is presumable that the EEA AIFM is obliged to report to the supervisory authority of its home country in accordance with the respective legal regulations of the EEA AIFM's home country.

16. Do the AIFMD implementing rules in Latvia provide for a different regime for non-EEA sub-threshold AIFMs?

If yes, please explain how the rules are different (for example, would non-EEA sub-threshold AIFMs be exempt from certain provisions?)

Yes. In accordance with the AIFM Law, if a non-EEA AIFM intends to market an EEA AIF in Latvia, it must obtain the authorisation (i.e. the license) for the performance of the activities from the supervisory authority of the Member State of reference.

Furthermore, if a non-EEA AIFM authorised in Latvia wishes to market the investment units (shares) of a non-EEA AIF managed by it in Latvia, it must submit a notification to the FCMC along with the following documents:

- (a) programme of activity setting out the information on the AIF which the non-EEA AIFM wishes to market;
- (b) information about the place of incorporation of the AIF;
- (c) documents of incorporation of the AIF;
- (d) operating rules of the AIF;
- (e) information about the depositary of the AIF;
- (f) information on the place where the master fund is established if the fund is a feeder fund;
- (g) the most recent annual report and consolidated annual report if such are drawn up, information on the most recent calculated net asset value of the AIF or the most recent calculated value or market price of the investment unit (share);
- (h) the procedure under which the marketing of the AIF only to professional investors will be ensured.

Section two: Marketing in the EU on a country-by-country basis

13. Lithuania



SCENARIO A: MARKETING NON-EEA AIFS MANAGED BY NON-EEA AIFMS UNDER ARTICLE 42 (NO PASSPORT)

Further assumptions for the purpose of Scenario A only

Licensing

No person concerned has any form of licence in the target market, or any EEA licence which entitles it to a passport.

Who markets?

The legal person engaging in marketing is the Alternative Investment Fund Manager (AIFM) of the AIF. There is no placement agent or other intermediary involved.

1. Is it possible in some manner to market a fund in the circumstances described above, in the Lithuania and/or to investors established in the Lithuania since 22 July 2013?

Lithuania has decided not to exercise the discretion provided in Article 42 of the Directive. According to the Law, every Collective Investment Fund Manager established in a third country must have a licence issued by the Republic of Lithuania or other reference Member State in order to engage in marketing in the Republic of Lithuania. Thus, such AIFs may be offered in Lithuania only according to Article 40 of the Directive.

2. In Lithuania, has there been any local elaboration on what constitutes 'marketing' within the meaning of Article 4(1)(x)? If not, what is the better interpretation of that term? For example, are distinctions made between concepts such as 'making the fund available for investment', 'offering', 'placing', circulating documents marked "draft", 'pre-marketing', 'soft marketing' or 'reverse solicitation'?

According to the Law on Management Companies of Investment Undertakings for Professional Investors of the Republic of Lithuania, marketing is defined as "direct or indirect offering of units or shares of a collective investment undertaking controlled by a collective investment management company under the initiative or on behalf of such management company to professional investors domiciled or established in the EU or in the EEA".

Therefore, marketing is considered to be an active conduct of a collective investment management company.

3. When was the Directive transposed into national law in Lithuania? If later than 22 July 2013, as a matter of local law, is the best advice generally to proceed as if the Directive were transposed, or as if the domestic law was unchanged?

The Alternative Investment Fund Managers Directive was implemented in the Republic of Lithuania by adopting the Law on Management Companies of Investment Undertakings for Professional Investors (hereinafter - the "Law"). The Law came into force as of 1 January 2015.

4. Under the domestic implementing measures of Lithuania, is the Directive relevant to marketing to investors established in Lithuania (within the meaning of Article 4(1)(j)) but who are not physically located in Lithuania at the time the marketing takes place⁴⁶?

As explained under Question 2, the Law in general refers to marketing to professional investors domiciled or established in the EU or in the EEA.

⁴⁶ Article 2(1)(c) may be interpreted as restricting the territorial scope of the Directive in relation to Article 42 firms.

Section two: Marketing in the EU on a country-by-country basis

- 5. Once the Directive is in effect in Lithuania, in relation to 'marketing' (as that term is understood in Lithuania) can a non-EEA manager of a non-EEA fund rely on a transitional (or 'grandfathering') provision, for example a transitional provision implementing Article 61(1) to delay compliance with the requirements of Article 42? If it can, what conditions must be met? If the conditions are met, what limits are there on marketing (for example is it possible only to market a fund which was being actively marketed before 22 July 2013 or also other funds managed by the same manager)?**

Not applicable.

- 6. Is there any list published of the cooperation arrangements which have been entered into (i.e. signed by both parties and dated) between the competent authorities of Lithuania and those of non-EEA jurisdictions for the purposes of Article 42(1)(b)? What is expected to happen in future?**

The list of countries that the Central Bank of the Republic of Lithuania has concluded cooperation agreements with is available at:

<http://www.esma.europa.eu/content/AIFMD-MoUs-signed-EU-authorities>

- 7. After the expiry of any transitional provision, is there to be any gold-plating of the requirements of Article 42? In other words, will there be additional domestic restrictions on or conditions for marketing fund interests? Or is it necessary only to consider local implementation of Article 42? There might be restrictions on the type or number of investors who may be approached, or other conditions. For example, in the UK, it will continue to be necessary to comply with the pre-existing financial promotion regime, which (in theory) further restricts the category of 'per se professional client'. In Germany, it will be a requirement that the non-EEA fund has a depositary performing functions specified under Article 21.**

Not applicable.

- 8. Must a firm seeking to market in Lithuania in reliance on Article 42 notify, or register with, the competent authority in Lithuania? What kind of information will be required, will there be a public register, what fee will be charged etc.? Is there an online notification or registration form? What can be done while awaiting registration (if relevant)?**

Not applicable.

- 9. What restrictions are there on pre-marketing⁴⁷, taking into account considerations similar to those raised in Questions 3 to 8 above?**

Not applicable.

- 10. Whether marketing (as defined) is banned or restricted by Article 42 or otherwise, what interpretation is given in Lithuania to the concept of 'reverse solicitation', 'reverse enquiry' or marketing at the initiative of the investor, within the meaning of Recital 70?**

Since the Law on Management Companies of Investment Undertakings for Professional Investors of the Republic of Lithuania does not expressly state that investors may not contact foreign AIFMs, it can be concluded that "passive" marketing by foreign AIFMs is allowed in the Republic of Lithuania.

Definitions of "reverse solicitation" and "reverse enquiry" are not provided in the Law.

It should be noted that the Central Bank of the Republic of Lithuania has not yet approved corresponding legal enactments which may provide a more detailed description of marketing, as well as definitions of "reverse solicitation" and "reverse enquiry".

⁴⁷ This assumes that the answer to Question 2 distinguished between 'marketing' (as defined) and pre-marketing.

Section two:

Marketing in the EU on a country-by-country basis

SCENARIO B: MARKETING NON-EEA AIFS MANAGED BY AN EEA AIFM UNDER ARTICLE 36 (NO PASSPORT)

Further assumptions for the purpose of Scenario B only

Licensing

The AIFM is a fully authorised AIFM in its home member state.

Who markets?

The legal person engaging in marketing is the Alternative Investment Fund Manager of the AIF.

There is no placement agent or other intermediary involved.

11. Is it possible to market a fund in the circumstances described above in Lithuania and/or to investors established in Lithuania?

Yes, it is possible for an EU AIFM, established in an EU Member State, to market units or shares of a third country AIF in Lithuania.

12. If yes, is the AIFM required to obtain a local licence or authorisation or to observe other formalities?

Please briefly describe the process for obtaining such licence or authorisation (including any fees payable to a regulator) or the formalities required.

The AIFM is required to obtain a permission of the local supervisory authority (Central Bank of the Republic of Lithuania) to market units or shares of a third country AIF. The requirements are:

- 1) The AIFM complies with the requirements of the Law on Management Companies of Investment Undertakings for Professional Investors (except requirements for transference of assets to depositories);
- 2) The supervisory authority of the Republic of Lithuania and the supervisory authority of AIF have concluded an agreement on cooperation and exchange of information;
- 3) The country of the AIF is not included in the FATF list of high-risk and non-cooperative jurisdictions;
- 4) No other legal restrictions exist for a supervisory authority of the Republic of Lithuania to supervise an AIF in a third country (It should be noted that the Law does not provide a more detailed explanation of this condition, and also the Central Bank of the Republic of Lithuania has not yet approved instructions of supervision that would be applied in Scenario B. Therefore it is difficult to foresee how this condition could be implemented in practice.);
- 5) The marketing of units or shares of the third country AIF does not and (or) will not pose a threat to the interests of investors.

The AIFM does not have to pay any fees for issuing permission.

13. Are there any restrictions on the type or number of investors to whom the fund may be marketed on this basis?

Marketing is allowed only to professional investors. No other restrictions exist.

14. Whether or not a licence or authorisation is required, please briefly describe the key continuing obligations of the AIFM (including any obligation to make reports or to pay fees) if it markets on this basis in Lithuania.

The Central Bank of the Republic of Lithuania has not yet approved instructions of supervision that would be applied in Scenario B.

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Section two: Marketing in the EU on a country-by-country basis

SCENARIO C: MARKETING BY SUB-THRESHOLD AIFMS

15. Is there a difference in Lithuania between the rules for non-EEA AIFs managed by non-EEA AIFMs and those applicable to sub-threshold AIFMs⁴⁸?

If yes, please explain how they are different and describe the rules, according to and based on the questions below.

If no, please go to Question 16.

Yes.

15a. Can an AIFM which falls within Article 3 (2) and is subject to domestic registration or authorisation only in its home Member State market a fund in Lithuania and/or to investors established in Lithuania?

Yes.

15b. If yes, is the AIFM required to obtain a local licence or registration or to observe other formalities?

Please briefly describe the process for obtaining such licence or registration (including any fees payable to a regulator) or the formalities required.

AIFMs which fall within Article 3(2) of the Directive are required to register with the supervisory authority of the Republic of Lithuania. In order to register with the supervisory authority, such AIFMs have an obligation to provide information about themselves and controlled AIFs and their investment strategies.

The Central Bank of the Republic of Lithuania has not yet approved detailed instructions for registration.

15c. Please briefly describe any restrictions on the type or number of investors to whom the fund may be marketed on this basis.

Marketing is allowed only to professional investors. No other restrictions exist.

15d. Whether or not a licence or authorisation is required, please briefly describe the key continuing obligations of the AIFM (including any obligation to make reports or to pay fees) if it markets on this basis in Lithuania?

AIFMs which fall within Article 3(2) of the Directive and have registered with the Central Bank of the Republic of Lithuania (as described in Question 15b) have an obligation:

- (1) to regularly provide information to the supervisory authority (every 6 months) about marketed units or shares, main positions and risk profiles of controlled AIFs;
- (2) in case there are significant changes or a request from the supervisory authority is received, AIFMs must provide the above-mentioned information within 5 working days;
- (3) in case the assets of controlled AIFs exceed the limits set in the Law, AIFMs have an obligation to notify the supervisory authority and to submit an application for a licence of an AIFM.

⁴⁸ A sub-threshold AIFM should be considered as an AIFM which falls within Article 3(2) and is subject to domestic registration or authorisation only in its home Member State.

Section two:

Marketing in the EU on a country-by-country basis

16. Do the AIFMD implementing rules in Lithuania provide for a different regime for non-EEA sub-threshold AIFMs?

If yes, please explain how the rules are different (for example, would non-EEA sub-threshold AIFMs be exempt from certain provisions?)

No, the Law on Management Companies of Investment Undertakings for Professional Investors of the Republic of Lithuania does not establish a different regime for non-EEA sub-threshold AIFMs, EEA sub-threshold AIFMs and Lithuanian sub-threshold AIFMs. Therefore, all sub-threshold AIFMs operate under the same rules (answers to Questions 15b-15d).

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Section two: Marketing in the EU on a country-by-country basis

14. Luxembourg



SCENARIO A: MARKETING NON-EEA AIFS MANAGED BY NON-EEA AIFMS UNDER ARTICLE 42 (NO PASSPORT)

Further assumptions for the purpose of Scenario A only

Licensing

No person concerned has any form of licence in the target market, or any EEA licence which entitles it to a passport.

Who markets?

The legal person engaging in marketing is the Alternative Investment Fund Manager (AIFM) of the AIF. There is no placement agent or other intermediary involved.

1. Is it possible in some manner to market a fund in the circumstances described above, in Luxembourg and/or to investors established in Luxembourg since 22 July 2013?

Yes, marketing via private placement continues to be permitted. Since 22 July 2014 Article 45 of the 2013 AIFM Law (which reproduces Article 42 of the AIFMD) came into effect and applies.

2. In Luxembourg, has there been any local elaboration on what constitutes 'marketing' within the meaning of Article 4(1)(x)? If not, what is the better interpretation of that term? For example, are distinctions made between concepts such as 'making the fund available for investment', 'offering', 'placing', circulating documents marked "draft", 'pre-marketing', 'soft marketing' or 'reverse solicitation'?

Questions 3 to 8 below relate to 'marketing' as that term is understood in Latvia. Question 9 relates to pre-marketing, if relevant. Question 10 relates to reverse solicitation.

The 2013 AIFM Law has implemented the term as used in the AIFMD, i.e., any "direct or indirect offering or placement at the initiative of the AIFM or on behalf of the AIFM of units or shares of an AIF it manages to or with investors domiciled or with registered office in the European Union".

There is currently no regulatory guidance as to what constitutes pre-marketing, soft marketing or reverse solicitation in Luxembourg.

3. When was the Directive transposed into national law in Luxembourg?

The Directive was transposed into Luxembourg law on 12 July 2013.

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Section two: Marketing in the EU on a country-by-country basis

- 4. Under the domestic implementing measures of Luxembourg, is the Directive relevant to marketing to investors established in Luxembourg (within the meaning of Article 4(1)(j)) but who are not physically located in Luxembourg at the time the marketing takes place⁴⁹?**

The definition of marketing contained in Article 1(9) of the 2013 AIFM Law is the same as the definition of marketing in the AIFMD (i.e. Article 4(1)(x)) and thus refers to investors domiciled or with a registered office in the Union.

The relevant marketing provisions in the 2013 AIFM Law further refer to marketing activities carried out on the territory of the Grand Duchy of Luxembourg.

- 5. Once the Directive is in effect in Luxembourg, in relation to 'marketing' (as that term is understood in Luxembourg) can a non-EEA manager of a non-EEA fund rely on a transitional (or 'grandfathering') provision, for example a transitional provision implementing Article 61(1) to delay compliance with the requirements of Article 42? If it can, what conditions must be met? If the conditions are met, what limits are there on marketing (for example is it possible only to market a fund which was being actively marketed before 22 July 2013 or also other funds managed by the same manager)?**

Yes. Marketing under the existing Luxembourg private placement rules continued until 22 July 2014 and was not affected by the 2013 AIFM Law until then. For further detail, please see answer to Question 1.

- 6. Is there any list published of the cooperation arrangements which have been entered into (i.e. signed by both parties and dated) between the competent authorities of Luxembourg and those of non-EEA jurisdictions for the purposes of Article 42(1)(b)? What is expected to happen in future?**

Yes, the list can be accessed at:

http://www.cssf.lu/fileadmin/files/AIFM/FAQ_AIFMD.pdf

- 7. After the expiry of any transitional provision, is there to be any gold-plating of the requirements of Article 42? In other words, will there be additional domestic restrictions on or conditions for marketing fund interests? Or is it necessary only to consider local implementation of Article 42? There might be restrictions on the type or number of investors who may be approached, or other conditions. For example, in the UK, it will continue to be necessary to comply with the pre-existing financial promotion regime, which (in theory) further restricts the category of 'per se professional client'. In Germany, it will be a requirement that the non-EEA fund has a depositary performing functions specified under Article 21.**

Article 45 of the 2013 AIFM Law mirrors the requirements of Article 42 of the AIFMD. The Luxembourg implementation does not go beyond the AIFMD.

⁴⁹ Article 2(1)(c) may be interpreted as restricting the territorial scope of the Directive in relation to Article 42 firms.

Section two:

Marketing in the EU on a country-by-country basis

- 8. Must a firm seeking to market in Luxembourg in reliance on Article 42 notify, or register with, the competent authority in Luxembourg? What kind of information will be required, will there be a public register, what fee will be charged etc.? Is there an online notification or registration form? What can be done while awaiting registration (if relevant)?**

A simple notification procedure is in place. The marketing may start as from the filing of the notification. The information form can be downloaded from the CSSF website:

http://www.cssf.lu/fileadmin/files/AIFM/Marketing_AIF_Art_45.doc

- 9. What restrictions are there on pre-marketing⁵⁰, taking into account considerations similar to those raised in Questions 3 to 8 above?**

See answer to Question 2 above. While it is generally admitted that certain activities may be conducted and which do not amount to marketing, there is no regulatory guidance available in this respect.

- 10. Whether marketing (as defined) is banned or restricted by Article 42 or otherwise, what interpretation is given in Luxembourg to the concept of 'reverse solicitation', 'reverse enquiry' or marketing at the initiative of the investor, within the meaning of Recital 70?**

These concepts are currently not addressed by the supervisory authority. No formal guidance on the issue is expected from the CSSF.

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⁵⁰ This assumes that the answer to Question 2 distinguished between 'marketing' (as defined) and pre-marketing.

Section two:

Marketing in the EU on a country-by-country basis

SCENARIO B: MARKETING NON-EEA AIFS MANAGED BY AN EEA AIFM UNDER ARTICLE 36 (NO PASSPORT)

Further assumptions for the purpose of Scenario B only

Licensing

The AIFM is a fully authorised AIFM in its home member state.

Who markets?

The legal person engaging in marketing is the Alternative Investment Fund Manager of the AIF.

There is no placement agent or other intermediary involved.

11. Is it possible to market a fund in the circumstances described above in Luxembourg and/or to investors established in Luxembourg?

Yes. Regarding Scenario B, EEA AIFMs are allowed to market non-EEA AIFs within the meaning of Article 37 of the 2013 AIFM Law (which transposes Article 36 of the AIFMD) to professional investors in Luxembourg without a passport. The relevant procedure is available on the website of the CSSF.

12. If yes, is the AIFM required to obtain a local licence or authorisation or to observe other formalities?

Please briefly describe the process for obtaining such licence or authorisation (including any fees payable to a regulator) or the formalities required.

The CSSF has put in place a specific notification procedure and has issued an information form containing the information relating to the requirements of Article 36 of the AIFMD (Article 37 of the 2013 AIFM Law). The notification documents are available on the CSSF website at the following link: <http://www.cssf.lu/surveillance/vgi/gfia-aifm/formulaires/>.

EEA AIFMs shall inform the CSSF prior to any marketing activity on the basis of Article 37 of the 2013 AIFM Law. When informing the CSSF, EEA AIFMs shall also indicate the date from which they will stop marketing activities in Luxembourg under this provision.

EEA AIFMs shall inform the CSSF of the identity of the entity(ies) appointed to carry out the “Depo Lite Services” referred to in Articles 21(7), (8) and (9) of the AIFMD.

Fees will range from EUR 2,650 for a stand-alone AIF to EUR 5,000 for a multi-compartment AIF. The details of the fees levied in this regard are laid down in the Grand Ducal Regulation of 28 October 2013.

http://www.cssf.lu/fileadmin/files/Lois_reglements/Legislation/RG_NAT/GDR_281013_CSSF_fees.pdf

13. Are there any restrictions on the type or number of investors to whom the fund may be marketed on this basis?

Marketing under Article 37 of the 2013 AIFM Law can only be made to professional investors. There are no restrictions as to the number of investors as per Article 37.

14. Whether or not a licence or authorisation is required, please briefly describe the key continuing obligations of the AIFM (including any obligation to make reports or to pay fees) if it markets on this basis in Luxembourg.

Please refer to the answer to Question 12.

Section two: Marketing in the EU on a country-by-country basis

SCENARIO C: MARKETING BY SUB-THRESHOLD AIFMS

15. Is there a difference in Luxembourg between the rules for non-EEA AIFs managed by non-EEA AIFMs and those applicable to sub-threshold AIFMs⁵¹?

If yes, please explain how they are different and describe the rules, according to and based on the questions below.

If no, please go to Question 16.

Regarding the marketing without a passport to professional investors under Article 42 of the AIFMD (Article 45 of the 2013 AIFM Law), no distinction is made between non-EEA sub-threshold AIFMs and non-EEA above-threshold AIFMs.

15a. Can an AIFM which falls within Article 3(2) and is subject to domestic registration or authorisation only in its home Member State market a fund in Luxembourg and/or to investors established in Luxembourg?

Yes.

15b. If yes, is the AIFM required to obtain a local licence or registration or to observe other formalities?

Please briefly describe the process for obtaining such licence or registration (including any fees payable to a regulator) or the formalities required.

Sub-threshold EEA AIFMs

For sub-threshold EEA AIFMs the Luxembourg private placement rules continue to apply (foreseeably until 2018).

It should be noted that the existing private placement rules are applied differently for closed and open-ended funds. To the extent that private equity funds are typically closed, the private placement rules are those which do not run afoul of the Prospectus Directive rules. The only grey area at this stage pertains to the eligible investors. While the placement of a Luxembourg regulated AIF will allow you to broaden the investor base in Luxembourg (i.e. to well-informed investors e.g. similar to the German semi-professional investor concept), non-regulated EU AIFs and presumably also regulated EU AIFs should only be marketed to professional investors. Hence domestic AIFs would be treated better than non-Luxembourg AIFs. It will take a while before this issue is resolved. The CSSF is currently busy updating its Q&A and working on further guidance including on asset stripping.

Sub-threshold non-EEA AIFMs

Sub-threshold non-EEA AIFMs are permitted to market their AIFs in Luxembourg as long as they first notify the CSSF (the Article 45 of the 2013 AIFM Law notification) and the AIFs are either Luxembourg, EEA or non-EEA regulated AIFs (in the case of non-EEA regulated AIFs there must be a co-operation agreement between the CSSF and the supervisory authority concerned). Marketing can commence upon notification.

The sub-threshold non-EEA AIFM must notify the CSSF of the AIFs it is marketing in Luxembourg. Fees will range from EUR 2,650 for a stand-alone AIF to EUR 5,000 for a multi-compartment AIF. The Article 45 of the 2013 AIFM Law notification form is available on the CSSF website at:

<http://www.cssf.lu/surveillance/vgi/gfia-aifm/formulaires/>

⁵¹ A sub-threshold AIFM should be considered as an AIFM which falls within Article 3(2) and is subject to domestic registration or authorisation only in its home Member State.

Section two: Marketing in the EU on a country-by-country basis

15c. Please briefly describe any restrictions on the type or number of investors to whom the fund may be marketed on this basis.

The fund can only be marketed to professional investors and in accordance with Luxembourg private placement rules.

15d. Whether or not a licence or authorisation is required, please briefly describe the key continuing obligations of the AIFM (including any obligation to make reports or to pay fees) if it markets on this basis in Luxembourg?

The sub-threshold AIFM must notify the CSSF if it discontinues marketing.

Furthermore, a non-EEA sub-threshold AIFM must respect the dispositions of Article 45 of the 2013 AIFM Law in relation to its reporting and investor disclosure obligations pursuant to Articles 22-24 and Articles 26-30 of the AIFMD. Finally, it must confirm that it will comply with Section XIII of the ESMA Guidelines on Remuneration Policies (guidelines on disclosure).

16. Do the AIFMD implementing rules in Luxembourg provide for a different regime for non-EEA sub-threshold AIFMs?

If yes, please explain how the rules are different (for example, would non-EEA sub-threshold AIFMs be exempt from certain provisions?)

No (please see the answer to Question 15 above). This means that a non-EEA sub-threshold AIFM can only market in Luxembourg subject to the same rules and conditions as other (above-threshold) non-EEA AIFMs.

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15. The Netherlands



SCENARIO A: MARKETING NON-EEA AIFS MANAGED BY NON-EEA AIFMS UNDER ARTICLE 42 (NO PASSPORT)

Further assumptions for the purpose of Scenario A only

Licensing

No person concerned has any form of licence in the target market, or any EEA licence which entitles it to a passport.

Who markets?

The legal person engaging in marketing is the Alternative Investment Fund Manager (AIFM) of the AIF. There is no placement agent or other intermediary involved.

1. Is it possible in some manner to market a fund in the circumstances described above, in the Netherlands and/or to investors established in the Netherlands since 22 July 2013?

Yes.

2. In the Netherlands, has there been any local elaboration on what constitutes 'marketing' within the meaning of Article 4(1)(x)? If not, what is the better interpretation of that term? For example, are distinctions made between concepts such as 'making the fund available for investment', 'offering', 'placing', circulating documents marked "draft", 'pre-marketing', 'soft marketing' or 'reverse solicitation'?

Questions 3 to 8 below relate to 'marketing' as that term is understood in the Netherlands. Question 9 relates to pre-marketing, if relevant. Question 10 relates to reverse solicitation.

The Dutch Act on Financial Supervision (*Wet op het financieel toezicht*, 'the AFS') does not refer to 'marketing' but rather to 'offering'.

'Offering' is defined in the AFS as 'making directly or indirectly an offer, which is sufficiently specific, to enter into an agreement regarding units in an alternative investment fund (AIF) (...), or directly or indirectly requesting or obtaining monies of a client for the purpose of participating in an AIF (...).'

There is no hard and fast rule on which activities constitute an offering. Calls or meetings with a prospective investor to discuss the AIF may or may not qualify as an offering: this would depend on further facts. Care is advised. The same applies to providing a teaser (term sheet) or flip book outlining the terms of the AIF.

However, where a final form prospectus is being provided to a prospective Dutch investor (including the subscription form), it will in any event constitute an offering.

3. When was the Directive transposed into national law in the Netherlands?

The Directive was transposed into Dutch law and became effective on 22 July 2013.

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Section two: Marketing in the EU on a country-by-country basis

- 4. Under the domestic implementing measures of the Netherlands, is the Directive relevant to marketing to investors established in the Netherlands (within the meaning of Article 4(1)(j)) but who are not physically located in the Netherlands at the time the marketing takes place⁵²?**

Yes, the AFS restricts marketing to investors domiciled, or with a registered office, in the Netherlands, irrespective of where they are at the time the promotional activities are undertaken.

Please note that under the AFS marketing is (also) deemed to take place in the Netherlands where it concerns the cross-border online marketing to investors domiciled, or with a registered office, outside the Netherlands by an AIFM established in the Netherlands, or by its branch office established in the Netherlands.

- 5. Once the Directive is in effect in the Netherlands, in relation to 'marketing' (as that term is understood in the Netherlands) can a non-EEA manager of a non-EEA fund rely on a transitional (or 'grandfathering') provision, for example a transitional provision implementing Article 61(1) to delay compliance with the requirements of Article 42? If it can, what conditions must be met? If the conditions are met, what limits are there on marketing (for example is it possible only to market a fund which was being actively marketed before 22 July 2013 or also other funds managed by the same manager)?**

Question 5 is not relevant anymore since the transitional year was applicable until 23 July 2014.

- 6. Is there any list published of the cooperation arrangements which have been entered into (i.e. signed by both parties and dated) between the competent authorities of the Netherlands and those of non-EEA jurisdictions for the purposes of Article 42(1)(b)? What is expected to happen in future?**

Yes, please see the following hyperlink:

<http://www.esma.europa.eu/content/AIFMD-MoUs-signed-EU-authorities>

- 7. After the expiry of any transitional provision, is there to be any gold-plating of the requirements of Article 42? In other words, will there be additional domestic restrictions on or conditions for marketing fund interests? Or is it necessary only to consider local implementation of Article 42? There might be restrictions on the type or number of investors who may be approached, or other conditions. For example, in the UK, it will continue to be necessary to comply with the pre-existing financial promotion regime, which (in theory) further restricts the category of 'per se professional client'. In Germany, it will be a requirement that the non-EEA fund has a depositary performing functions specified under Article 21.**

There are no additional domestic restrictions or conditions in the Netherlands for marketing such fund interests. Please note that an appropriate selling legend should be included in the private placement memorandum and that the offer should be restricted to qualified investors. In addition, the notification form should be accompanied by an attestation from the supervisor of the AIFM, as set out below.

⁵² Article 2(1)(c) may be interpreted as restricting the territorial scope of the Directive in relation to Article 42 firms.

Section two: Marketing in the EU on a country-by-country basis

8. Must a firm seeking to market in the Netherlands in reliance on Article 42 notify, or register with, the competent authority in the Netherlands? What kind of information will be required, will there be a public register, what fee will be charged etc.? Is there an online notification or registration form? What can be done while awaiting registration (if relevant)?

The AIFM should file a notification for the Dutch private placement regime (pursuant to section 1:13b sub 1 of the AFS which implements Article 42 of the AIFMD). Please note that the following conditions should be met:

- (a) the offer should be restricted to qualified investors and an appropriate selling legend should be used;
- (b) the country where the Manager is located is not listed on the FATF list of non-cooperative countries;
- (c) an agreement between the AFM and the home state supervisor of the Manager providing for the exchange of information must be in place; and
- (d) a notification is made to the AFM, prior to the commencement of the offering, by filling out the notification form of the AFM (please see the following hyperlink for the notification form: <http://www.digitaal.loket.afm.nl/nl-NL/Diensten/aifm-beleggingsinstellingen/melding/Pages/notificatie-niet-eu-beheerder.aspx?tab=1>).
Please note that the notification form should be accompanied by an attestation from the supervisor of the AIFM confirming that the AIFM is a 'covered entity' under the cooperation agreement between the AFM and the competent supervisor and under effective supervision.

After e-mailing the executed notification form including the attestation to the AFM (non.eu.notifications.aifmd@afm.nl) the Manager may commence its activities in respect of the AIF mentioned in the notification form in the Netherlands. Currently, no charges to the AFM are due. Please note that the notification is not registered in a public register.

The above private placement regime is without prejudice to the applicability of the transparency requirements set out in Article 22 (information to be disclosed in the AIF's annual report), Article 23 (information to be disclosed to the AIF's investors), Article 24 (information to be disclosed to the competent supervisory authorities) and Articles 26 up to and including 30 of the AIFMD and implemented in the AFS (obligations for managers managing leveraged AIFs and AIFs which acquire control of non-listed companies and issuers, notification and disclosure of the acquisition of major holdings and control of non-listed companies, annual report of AIFs exercising control of non-listed companies).

9. What restrictions are there on pre-marketing⁵³, taking into account considerations similar to those raised in Questions 3 to 8 above?

There are no restrictions on pre-marketing, except for the restriction in relation to cold-calling.

⁵³ This assumes that the answer to Question 2 distinguished between 'marketing' (as defined) and pre-marketing.

Section two: Marketing in the EU on a country-by-country basis

10. Whether marketing (as defined) is banned or restricted by Article 42 or otherwise, what interpretation is given in the Netherlands to the concept of 'reverse solicitation', 'reverse enquiry' or marketing at the initiative of the investor, within the meaning of Recital 70?

No definition of reverse solicitation is given in the AFS.

However, although the AFS itself does not address the topic of reverse solicitation, the explanatory notes to the AFS confirm (in relation to offerings to professional investors) that no 'offering' is deemed to be made where an investment is made at the initiative of an investor.

Reverse solicitation may only be relied upon, if no prior marketing activities in respect of the AIF concerned have taken place in the Netherlands.

It is uncertain if the reverse solicitation 'exemption' equally applies in relation to the marketing of AIFs to retail investors.

SCENARIO B: MARKETING NON-EEA AIFs MANAGED BY AN EEA AIFM UNDER ARTICLE 36 (NO PASSPORT)

Further assumptions for the purpose of Scenario B only

Licensing

The AIFM is a fully authorised AIFM in its home member state.

Who markets?

The legal person engaging in marketing is the Alternative Investment Fund Manager of the AIF. There is no placement agent or other intermediary involved.

11. Is it possible to market a fund in the circumstances described above in the Netherlands and/or to investors established in the Netherlands?

Yes. An authorised EEA AIFM cannot currently obtain a passport to market a non-EEA AIF; however, an authorised EEA AIFM can market a non-EEA AIF providing compliance with the requirements as set out in Question 12.

12. If yes, is the AIFM required to obtain a local licence or authorisation or to observe other formalities?

Please briefly describe the process for obtaining such licence or authorisation (including any fees payable to a regulator) or the formalities required.

Article 36 AIFMD, as implemented in the AFS, sets out certain core conditions, which will always need to be satisfied before marketing without a passport is permitted:

- (a) compliance with AIFMD;
- (b) an appropriate cooperation agreement being in place between the home Member State of the AIFM and the non-EEA country where the AIF is established; and
- (c) the non-EEA country where the AIF is established is not listed as a non-cooperative country for the purposes of FATF.

Section two: Marketing in the EU on a country-by-country basis

In addition, the AFS provides for the following specific requirements:

- (a) the provisions that relate to AIFMs apply in a similar way to authorised EEA AIFMs of a non-EEA AIF (including the depository requirement); and
- (b) units in the non-EEA AIF should only be offered to qualified investors.

It is anticipated that the text of the AFS in relation to the conditions that an EEA AIFM must satisfy to market a non-EEA AIF in the Netherlands without a passport will be amended by the Dutch Amendment Act of the AFS 2015. It is provided that the AIFM should notify the AFM and provide the AFM with general documentation and information regarding the AIFM and the AIF. The AIFM should also provide the AFM with an attestation from the supervisor of the home Member State of the AIFM confirming that the AIFM is an authorised EEA AIFM under the AIFMD.

Please note that currently the AFM acts in anticipation to this amendment.

13. Are there any restrictions on the type or number of investors to whom the fund may be marketed on this basis?

The fund may only be marketed to qualified investors (*gekwalficeerde beleggers*) as defined in the AFS.

14. Whether or not a licence or authorisation is required, please briefly describe the key continuing obligations of the AIFM (including any obligation to make reports or to pay fees) if it markets on this basis in the Netherlands.

Currently, the AFS is applicable to such AIFMs. However, as per 1 January 2015, the Dutch Amendment Act of the AFS 2015 provides that the AFS does not apply to such AIFMs and therefore no continuing obligations apply.

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Section two: Marketing in the EU on a country-by-country basis

SCENARIO C: MARKETING BY SUB-THRESHOLD AIFMS

15. Is there a difference in the Netherlands between the rules for non-EEA AIFs managed by non-EEA AIFMs and those applicable to sub-threshold AIFMs⁵⁴?

If yes, please explain how they are different and describe the rules, according to and based on the questions below.

If no, please go to Question 16.

Yes. The 'sub-threshold AIFM regime' is only available for Dutch AIFMs which either directly or indirectly, through a company with which the AIFM is linked by common management or control, or by a substantive direct or indirect holding, have assets under management:

- (a) below EUR 100 million, including any assets acquired through the use of leverage; or
- (b) below EUR 500 million where the relevant portfolio of AIFs are unleveraged and have no redemption rights exercisable during a period of 5 years following the day of initial investment in each AIF.

In addition:

- (c) the interests in the AIFs may only be offered, sold, transferred or delivered, directly or indirectly,
 - (a) to professional investors, or (b), if not solely to professional investors: to fewer than 150 persons, and / or for an equivalent value of at least EUR 100,000 per investor, and / or for a nominal value of at least EUR 100,000; and
- (d) certain ongoing requirements apply.

The difference between Article 42 AIFMD and the sub-threshold AIFM regime is as follows:

Non-EEA AIFs managed by non-EEA AIFMs	Sub-threshold AIFMs
Notification to AFM	Registration to AFM
Offering to qualified investors	Offering to professional investors, or fewer than 150 persons and/ or equivalent value of at least EUR 100,000 per investor (as described above)
No thresholds related to assets under management	Thresholds related to assets under management (as described above)
Requirements set out in Article 42 AIFMD	Ongoing obligations, such as certain periodic filings to the Dutch Central Bank (DCB) and Article 5:68 AFS (as described in Question 15d below)

Please note that a Dutch sub-threshold AIFM may obtain a passport under the European EuVECA and EuSEF regimes and therefore market its AIFs in other Member States.

⁵⁴ A sub-threshold AIFM should be considered as an AIFM which falls within Article 3(2) and is subject to domestic registration or authorisation only in its home Member State.

Section two: Marketing in the EU on a country-by-country basis

15a. Can an AIFM which falls within Article 3 (2) and is subject to domestic registration or authorisation only in its home Member State market a fund in the Netherlands and/or to investors established in the Netherlands?

No, the 'sub-threshold AIFM regime' is only available for Dutch AIFMs. In order to market in the Netherlands, a non-Dutch sub-threshold AIFM should obtain a license in its home Member State and "passport" the license in the Netherlands.

**15b. If yes, is the AIFM required to obtain a local licence or registration or to observe other formalities?
Please briefly describe the process for obtaining such licence or registration (including any fees payable to a regulator) or the formalities required.**

Not applicable.

15c. Please briefly describe any restrictions on the type or number of investors to whom the fund may be marketed on this basis.

Not applicable.

15d. Whether or not a licence or authorisation is required, please briefly describe the key continuing obligations of the AIFM (including any obligation to make reports or to pay fees) if it markets on this basis in the Netherlands?

There are ongoing obligations for Dutch AIFMs to benefit from the small managers exemption, such as certain periodic filings to the DCB. The AIFM should periodically report to the DCB information regarding the AIFs it manages.

The AIFM should also:

- (a) adopt internal regulations with regard to the handling of inside information, and private transactions in financial instruments by directors and staff members;
- (b) manage conflicts of interest relating to transactions in financial instruments; and
- (c) have adequate control mechanisms to ensure compliance with the rules as laid down in the AFS regarding the honest and ethical business conduct in respect of operating in markets in financial instruments.

The charges of the AFM in connection with the submission of the registration form are EUR 1,500. No ongoing charges are due.

**16. Do the AIFMD implementing rules in the Netherlands provide for a different regime for non-EEA sub-threshold AIFMs?
If yes, please explain how the rules are different (for example, would non-EEA sub-threshold AIFMs be exempt from certain provisions?)**

Yes, non-EEA sub-threshold AIFMs should file for the Dutch private placement regime (the implementation of Article 42 AIFMD) and comply with the conditions thereof (as set out in the answer to Question 8).

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16. Romania



SCENARIO A: MARKETING NON-EEA AIFS MANAGED BY NON-EEA AIFMS UNDER ARTICLE 42 (NO PASSPORT)

Further assumptions for the purpose of Scenario A only

Licensing

No person concerned has any form of licence in the target market, or any EEA licence which entitles it to a passport.

Who markets?

The legal person engaging in marketing is the Alternative Investment Fund Manager (AIFM) of the AIF. There is no placement agent or other intermediary involved.

1. Is it possible in some manner to market a fund in the circumstances described above, in Romania and/or to investors established in Romania since 22 July 2013?

Based on the principle that Norm 13/2013 shall prospectively apply to EU AIFMs distributing EU AIFs towards professional investors, it may be construed that the distribution of non-EU AIFs by non-EU AIFMs should not fall within the scope of Norm 13/2013. However, it is currently unclear which norm applies to such distribution of funds, i.e. whether this remains governed by Article 176 Regulation 15/2004 (which appears to be currently abrogated) and Article 10 CNVM Decision 9/2010 (which was a norm in application of Article 176 Regulation 15/2004) or not (and if not, what norms apply to them).

According to Article 176 Regulation 15/2004 and Art. 10 CNVM Decision 9/2010, in order to proceed to such marketing in Romania, the funds must be registered with the FSA and are subject to the following conditions:

- the funds must invest exclusively in certain types of asset expressly provided by law;
- the funds must be authorised, regulated and supervised by a competent authority;
- the funds must be subject to a prudential regulation and to an effective supervision equivalent to the provisions of the national regulation;
- their assets must be deposited with a depositary;
- a financial institution, subject to prudential supervision, established in Romania must be assigned as a contact point with the investors;
- the existence of a cooperation agreement with the competent authority from the origin state of the funds;
- the establishment of a branch in Romania.

However, as Article 176 Regulation 15/2004 and Article 10 CNVM Decision 9/2010 have been repealed, it is unclear whether the above-listed criteria continue to apply or not.

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Section two: Marketing in the EU on a country-by-country basis

- 2. In Romania, has there been any local elaboration on what constitutes 'marketing' within the meaning of Article 4(1)(x)? If not, what is the better interpretation of that term? For example, are distinctions made between concepts such as 'making the fund available for investment', 'offering', 'placing', circulating documents marked "draft", 'pre-marketing', 'soft marketing' or 'reverse solicitation'?**

Questions 3 to 8 below relate to 'marketing' as that term is understood in Romania. Question 9 relates to pre-marketing, if relevant. Question 10 relates to reverse solicitation.

1. (As opposed to the Draft Transposition Norm - see 2 below), the current legal framework (i.e. Article 176 Regulation 15/2004, Article 10 Decision 9/2010 - however, please see the comments on these articles under Question 1) does not mention a definition of "marketing". Certain types of marketing methods are prohibited, e.g.:
 - Unsolicited calls (based on Decision 9/2010);
 - Commercial communications through the use of automatic calling and communication systems that do not require human intervention, by fax or by electronic mail or by any other method that uses publicly available electronic communications services, unless the subscriber or user concerned has given their prior express consent to receive such communications. This rule has an exception, i.e. a person or an entity directly obtaining the email address of a client, while selling goods or providing services, may use that address for the purpose of commercial communication relating to the goods which they market, subject to clearly and expressly providing the customers with the possibility to resist through a simple and free method to such use, not only when obtaining the e-mail address, but also with the occasion of each message in case the customer has not initially opposed (Article 12 Law 506/2004);
 - It can be considered that marketing methods based on those prohibited shall be prohibited as well (e.g. flyers, circulating documents marked "draft" or meetings fixed based on unsolicited calls, etc.);
 - Data protection provisions may need to be observed as well (if personal data are used).
2. The definition offered by the Draft Transposition Norm of the term "marketing" overlaps with the definition offered to this concept by the AIFMD. Thus, the Draft Transposition Norm includes direct or indirect offering and placement in "marketing".

3. When was the Directive transposed into national law in Romania?

There is a draft norm for the transposition of the AIFMD which is currently debated by the issuing authorities ("Draft Transposition Norm"). As at 18 February 2015, the Draft Transposition Norm implementing the AIFM Directive is still in a project phase and the law has not yet been adopted. The period of time required to complete this procedure cannot currently be determined.

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Section two: Marketing in the EU on a country-by-country basis

4. Under the domestic implementing measures of Romania, is the Directive relevant to marketing to investors established in Romania (within the meaning of Article 4(1)(j)) but who are not physically located in Romania at the time the marketing takes place⁵⁵?

Article 46 of the Draft Transposition Norm allows non-EU AIFMs to market AIFs to professional investors from Romania, even if they do not have a passport, subject to certain conditions. There is no express definition of “professional investor from Romania”; there is, however, another norm (i.e. the definition of “marketing”) which refers to entities with their headquarters in Romania and individuals domiciled in Romania.

So, it appears there is no distinction depending on the physical location of the investor, the only criterion being that of “identity”. This article of the Transposition Norm appears to contradict Article 42 AIFMD, the latter establishing that marketing may be performed exclusively on the territory of the EU Member State.

5. Once the Directive is in effect in Romania, in relation to ‘marketing’ (as that term is understood in Romania) can a non-EEA manager of a non-EEA fund rely on a transitional (or ‘grandfathering’) provision, for example a transitional provision implementing Article 61(1) to delay compliance with the requirements of Article 42? If it can, what conditions must be met? If the conditions are met, what limits are there on marketing (for example is it possible only to market a fund which was being actively marketed before 22 July 2013 or also other funds managed by the same manager)?

Under Norm 13/2013, there is no such provision regulating transitional situations, given that the distribution of non-EU AIFs towards professional investors is still regulated by the domestic law, prior to any measures of implementation of the AIFMD. However, please see the comments above on Art. 176 Regulation 15/2004 and Art. 10 Decision 9/2010.

The Draft Transposition Norm regulates such transitional situations, implementing Article 61(1) of the AIFMD, but only concerning Romanian AIFMs and AIFs.

6. Is there any list published of the cooperation arrangements which have been entered into (i.e. signed by both parties and dated) between the competent authorities of Romania and those of non-EEA jurisdictions for the purposes of Article 42(1)(b)? What is expected to happen in future?

Yes, please see the following hyperlink:

<http://www.esma.europa.eu/content/AIFMD-MoUs-signed-EU-authorities>

⁵⁵ Article 2(1)(c) may be interpreted as restricting the territorial scope of the Directive in relation to Article 42 firms.

Section two: Marketing in the EU on a country-by-country basis

- 7. After the expiry of any transitional provision, is there to be any gold-plating of the requirements of Article 42? In other words, will there be additional domestic restrictions on or conditions for marketing fund interests? Or is it necessary only to consider local implementation of Article 42? There might be restrictions on the type or number of investors who may be approached, or other conditions. For example, in the UK, it will continue to be necessary to comply with the pre-existing financial promotion regime, which (in theory) further restricts the category of 'per se professional client'. In Germany, it will be a requirement that the non-EEA fund has a depositary performing functions specified under Article 21.**

Article 46 of the Draft Transposition Norm does not establish any conditions additional to those provided by Article 42 of the AIFMD (the only difference being that AIFMD refers to marketing within a specific territory, while the Draft Transposition Norm refers to marketing towards Romanian professional investors (as explained under Question 4)).

- 8. Must a firm seeking to market in Romania in reliance on Article 42 notify, or register with, the competent authority in Romania? What kind of information is required, will there be a public register, what fee will be charged etc.? Is there an online notification or registration form? What can be done while awaiting registration (if relevant)?**

Under the current regime, please see answer to Question 1.

As far as it concerns the Draft Transposition Norm, Article 46 transposing Article 42 of the AIFMD does not expressly establish the procedure to follow in order to be able to perform distribution under scenario A.

However, given that the existing national legislation (prior to any measure of implementation of the AIFMD) creates an obligation of registration and the accomplishment of other conditions, as contemplated in the answer to Question 1 above, the possibility of establishment of such additional obligations under the Transposition Norm cannot be excluded.

- 9. What restrictions are there on pre-marketing⁵⁶, taking into account considerations similar to those raised in Questions 3 to 8 above?**

Not applicable.

- 10. Whether marketing (as defined) is banned or restricted by Article 42 or otherwise, what interpretation is given in Romania to the concept of 'reverse solicitation', 'reverse enquiry' or marketing at the initiative of the investor, within the meaning of Recital 70?**

The term "reverse solicitation" (by which we understand the situation where the investor approaches the AIFM) is not defined as such, neither by the Draft Transposition Norm nor by the current legal regime, consisting of Article 176 Regulation 15/2004, Article 10 Decision 9/2010 (for those two articles, please see the comments under Question 1) and Norm 13/2013. So, it can be construed that if the client is the one approaching the AIFM, this should not fall within the scope of the prohibition listed under the answer to Question 2. However, we are not aware of an official interpretation of the term "reverse solicitation".

⁵⁶ This assumes that the answer to Question 2 distinguished between 'marketing' (as defined) and pre-marketing.

Section two:

Marketing in the EU on a country-by-country basis

SCENARIO B: MARKETING NON-EEA AIFs MANAGED BY AN EEA AIFM UNDER ARTICLE 36 (NO PASSPORT)

Further assumptions for the purpose of Scenario B only

Licensing

The AIFM is a fully authorised AIFM in its home member state.

Who markets?

The legal person engaging in marketing is the Alternative Investment Fund Manager of the AIF.

There is no placement agent or other intermediary involved.

11. Is it possible to market a fund in the circumstances described above in Romania and/or to investors established in Romania?

Please note that the answers to the following questions are based on the Draft Transposition Norm (as opposed to the current applicable regime).

Article 36 of the AIFMD is implemented under Article 38 of the Draft Transposition Norm, with the difference that the provisions of Article 38 of the Draft Transposition Norm apply only to Romanian AIFMs.

However, according to Article 37 of the Draft Transposition Norm, EEA AIFMs (except the Romanian ones, which are governed by Article 38) can market non-EEA AIFs which they manage, to professional investors in Romania, following a notification procedure between the relevant authority from the member state of origin of the AIFM and the Romanian FSA.

12. If yes, is the AIFM required to obtain a local licence or authorisation or to observe other formalities?

Please briefly describe the process for obtaining such licence or authorisation (including any fees payable to a regulator) or the formalities required.

EEA AIFM - non-EEA AIF

The notification procedure set by Article 37 of the Draft Transposition Norm, as mentioned under Question 11, must include, *inter alia*, the following documents and information:

- a notification letter containing the activity programme identifying the AIF in relation to which the AIFM intends to distribute and information regarding the place where the AIF is established;
- the rules or the articles of incorporation of the AIF;
- identification information of the depositary of the AIF;
- a description of the AIF or any information on the AIF made available to the investors;
- information regarding the location of the "master" AIF if the AIF to be distributed is a "feeder" fund;
- any additional information in relation to, *inter alia*, the investment strategy and objectives of the AIF, a description of the procedure of amendment of the investment strategy and policy, a description of the main legal consequences of the contractual relationship established for the purpose of the investment;

Section two: Marketing in the EU on a country-by-country basis

- indication of the member state (member states) where the AIFM intends to market the AIF to professional investors;
- information in relation to the measures implemented for the distribution of the AIF and, if applicable, information in relation to the measures implemented to avoid distribution of the AIF towards retail investors.

The relevant authority of the member state of origin of the AIFM shall transfer, alongside with the above-listed information, an affidavit stating that the AIFM is authorised to manage AIFs based on a certain investment strategy.

Romanian AIFM - non-EEA AIF

The procedure for Romanian AIFMs distributing non-EEA AIFs is different, as mentioned under Question 11.

According to Article 38 of the Draft Transposition Norm, Romanian AIFMs may market non-EEA AIFs exclusively to Romanian professional investors if the following conditions are met:

- (a) the AIFM must observe all the provisions of the Draft Transposition Norm, except for the provisions regarding the depositary of the AIFs. However, the AIFM must ensure that one or more entities are appointed to perform the main tasks of a depositary if the AIFM does not perform such tasks and must inform the surveillance authority in relation to the identity of the entities appointed in this regard;
- (b) appropriate cooperation arrangements for the purpose of systemic risk oversight and in line with international standards are in place between the Romanian FSA and the surveillance authorities of the third country where the non-EEA AIF is established in order to ensure an efficient exchange of information that allows the Romanian FSA to carry out its duties in accordance with the Draft Transposition Norm;
- (c) the third country where the non-EEA AIF is established is not listed as a non-cooperative country and territory by FATF (GAFI).

Please note that in its second paragraph, Article 38 of the Draft Transposition Norm sets that the Romanian FSA shall issue secondary regulations for the application of the conditions listed above.

The Draft Transposition Norm does not establish any fee applicable in relation to such procedure.

13. Are there any restrictions on the type or number of investors to whom the fund may be marketed on this basis?

According to paragraph (4) of Article 37 of the Draft Transposition Norm, AIFs can only be distributed under this procedure towards professional investors. No particular reference is made in relation to a maximum number of investors.

However, AIFMs (Romanian, EEA and non-EEA) can also distribute AIFs towards retail investors, subject to the adoption by the FSA of additional, subsequent norms (Article 47 DTN).

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Section two: Marketing in the EU on a country-by-country basis

14. Whether or not a licence or authorisation is required, please briefly describe the key continuing obligations of the AIFM (including any obligation to make reports or to pay fees) if it markets on this basis in Romania.

The Draft Transposition Norm provides for several obligations for AIFMs (e.g. to provide information to the Romanian FSA in order for the FSA to monitor compliance with the law, to act in the interest of the AIF and of the shareholders); however, it does not establish specific continuing obligations for Scenario B "Marketing non-EEA AIFs managed by an EEA AIFM under Article 36".

More specifically, according to the Draft Transposition Norm there are several obligations to be complied with by AIFMs, irrespective of the nationality of the fund they are marketing. For example:

- (a) an obligation to inform the Romanian FSA, in order for such to monitor the observance of the conditions set forth by the Draft Transposition Norm;
- (b) to act honestly, fairly, and with due skill, care and diligence in conducting their activities;
- (c) to act in the interest of the AIF and of the shareholders;
- (d) to keep and efficiently use resources and procedures necessary for the proper performance of their activities;
- (e) to take all the reasonable measures in order to avoid conflicts of interest and, if the conflicts of interest cannot be avoided, to take all the reasonable measures in order to identify, manage, monitor and, as the case may be, to disclose the conflicts of interest in order to avoid adversely affecting the interest of the AIF and its investors and also in order to guarantee that the AIFs it manages are treated equally;
- (f) the obligation to comply with all regulations applicable to their activities so as to promote the interests of the AIFs or the investors of the AIFs it manages and the integrity of the market;
- (g) the obligation to treat all the investors of AIFs equally;
- (h) to notify the Romanian FSA in relation to any substantial change in the information provided on the occasion of the first notification of the Romania FSA.

The Draft Transposition Norm does not set forth the obligation of payment of certain fees.

However, please note that such obligation is set by the Intermediary Norm (Norm 13/2013) issued by the Romanian FSA, currently in force. According to Article 3 paragraph (4) letter b) of the Intermediary Norm, the Romanian FSA charges an annual tariff for the supervision of the distribution activities of AIFs registered in other EEA member states to professional investors from Romania, as follows:

- (a) 10,000 RON, in case of distribution of shares of a single AIF;
- (b) for the distribution of shares of multiple AIFs or the AIFs - umbrella funds type:
 1. 8,000 RON per fund / sub-fund - for the distribution of a number between 2 and 10 AIFs or sub-funds of the same AIF;
 2. 6,000 RON for each fund / sub-fund - for the distribution of a number between 11 and 20 AIFs or sub-funds of the same AIF;
 3. 5,000 RON for each fund / sub-fund - for the distribution of a number between 21 and 40 AIFs or sub-funds of the same AIF;
 4. 4,000 RON for each fund / sub-fund - for the distribution of more than 40 AIFs or sub-funds of the same AIF.

Section two: Marketing in the EU on a country-by-country basis

SCENARIO C: MARKETING BY SUB-THRESHOLD AIFMS

15. Is there a difference in Romania between the rules for non-EEA AIFs managed by non-EEA AIFMs and those applicable to sub-threshold AIFMs⁵⁷?

If yes, please explain how they are different and describe the rules, according to and based on the questions below.

If no, please go to Question 16.

Article 3(2) of the AIFMD is transposed in the Draft Transposition Norm under Article 2(2) but only concerning Romanian AIFMs.

As a result, the Draft Transposition Norm sets a different procedure only for Romanian sub-threshold AIFMs.

15a. Can an AIFM which falls within Article 3(2) and is subject to domestic registration or authorisation only in its home Member State market a fund in Romania and/or to investors established in Romania?

The threshold set in Article 3(2) of the AIFMD is transposed in the Draft Transposition Norm only in relation to Romanian AIFMs, as mentioned earlier.

Therefore, in the case described under Question 15a, i.e. for non-Romanian EEA sub-threshold AIFMs subject to domestic registration/authorisation in their home Member State, the general rules related to marketing of EEA/non-EEA AIFs by EEA AIFMs will be applicable.

15b. If yes, is the AIFM required to obtain a local licence or registration or to observe other formalities?

Please briefly describe the process for obtaining such licence or registration (including any fees payable to a regulator) or the formalities required.

EEA AIFM - EEA AIF

The notification for an EEA AIFM to market an EEA AIF to professional investors in Romania is the same (or needs to include the same information) as the notification for an EEA AIFM who wants to market a non-EEA AIF to professional investors in Romania.

In other words, an EEA AIFM can market an EEA AIF to professional investors in Romania if the competent authority of the home Member State of the AIFM notifies the Romanian FSA.

Such notification shall include the elements mentioned under Question 12 and shall also be accompanied by the affidavit stating that the AIFM is authorised to manage AIFs based on a certain investment strategy.

EEA AIFM - non-EEA AIF

For marketing non-EEA AIFs managed by an EEA AIFM, according to Article 37 of the Draft Transposition Norm, a notification form from the competent authority of the home Member State of the AIFM is required. For more information, please see the answer to Question 12 (non-EEA AIFs managed by an EU AIFM).

⁵⁷ A sub-threshold AIFM should be considered as an AIFM which falls within Article 3(2) and is subject to domestic registration or authorisation only in its home Member State.

Section two: Marketing in the EU on a country-by-country basis

15c. Please briefly describe any restrictions on the type or number of investors to whom the fund may be marketed on this basis.

According to paragraph (3) of Article 32 of the Draft Transposition Norm, the distribution of an EEA AIF by an EEA AIFM under this procedure can be made only towards professional investors. No reference is made in relation to a maximum number of investors.

In relation to the distribution of non-EEA AIFs managed by an EEA AIFM, please see the answer to Question 13.

Distribution of AIFs towards retail investors can be made by AIFMs (Romanian, EEA, non-EEA), subject to the adoption by the FSA of additional, subsequent norms (Art 47 DTN).

15d. Whether or not a licence or authorisation is required, please briefly describe the key continuing obligations of the AIFM (including any obligation to make reports or to pay fees) if it markets on this basis in Romania?

The Draft Transposition Norm does not foresee a specific regime for non-Romanian EEA sub-threshold AIFMs. As a result, such sub-threshold AIFMs are subject to the general rules applicable to AIFMs and will need to fulfill the same obligations as the other AIFMs.

The Draft Transposition Norm provides for several obligations for AIFMs (e.g. to provide information to the Romanian FSA in order for the FSA to monitor compliance with the law, to act in the interest of the AIF and of the shareholders); however, it does not establish specific continuing key obligations for the AIFM. For more information, please see Question 14.

16. Do the AIFMD implementing rules in Romania provide for a different regime for non-EEA sub-threshold AIFMs?

If yes, please explain how the rules are different (for example, would non-EEA sub-threshold AIFMs be exempt from certain provisions?)

No, the AIFMD implementing rules don't provide for a different regime for non-EEA sub-threshold AIFMs.

This means that under the Draft Transposition Norm, non-EEA sub-threshold AIFMs will be subject to the regime applicable to non-EEA AIFMs marketing non-EEA AIFs, as the case may be.

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17. Slovakia



SCENARIO A: MARKETING NON-EEA AIFS MANAGED BY NON-EEA AIFMS UNDER ARTICLE 42 (NO PASSPORT)

Further assumptions for the purpose of Scenario A only

Licensing

No person concerned has any form of licence in the target market, or any EEA licence which entitles it to a passport.

Who markets?

The legal person engaging in marketing is the Alternative Investment Fund Manager (AIFM) of the AIF. There is no placement agent or other intermediary involved.

1. Is it possible in some manner to market a fund in the circumstances described above, in Slovakia and/or to investors established in Slovakia since 22 July 2013?

Provided that a non-European alternative investment fund is not registered as an AIF in any member state of the European Union and that a non-European alternative investment fund does not have its registered seat or headquarters in any member state of the European Union, it is considered as a non-European Alternative Investment Fund (non-EU AIF) according to the Slovak Act No. 203/2011 Coll. on Collective Investments (the "Collective Investment Act") which implemented Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers (the AIFMD).

Provided that non-EU AIFs are managed by managers which have their registered seat outside of the European Union and which have been granted authorisation by the local regulator in the country of their residency to act as management companies and which have not been granted any licence or any other form of permission in the Slovak Republic (non-EU managers), such managers can market non-EU AIFs in the Slovak Republic only if the following conditions are fulfilled:

- in the course of marketing non-EU AIFs in the Slovak Republic, the non-EU managers should meet various conditions stipulated by the Collective Investment Act, namely:
 - making available an annual report for each non-EU AIF which is marketed in the Slovak Republic;
 - making available to investors certain information before they invest, as well as notifying them of any material changes to that information;
 - regular reporting by the non-EU managers to the National Bank of Slovakia, for example reporting in relation to the percentage of the non-EU AIFs' assets which are subject to special arrangements arising from their illiquid nature and also reporting in relation to the main categories of assets in which the non-EU AIFs invest;
 - where the non-EU AIFs acquire control over an unlisted company, the non-EU managers must make a number of disclosures to that company, its shareholders and also to the National Bank of Slovakia.
- the local regulator in the country of residence of the non-EU managers has signed a cooperation agreement with the National Bank of Slovakia in line with international standards.
- the country of residence of the non-EU managers is not listed as a non-cooperative country by the Financial Action Task Force.

Section two: Marketing in the EU on a country-by-country basis

- 2. In Slovakia, has there been any local elaboration on what constitutes 'marketing' within the meaning of Article 4(1)(x)? If not, what is the better interpretation of that term? For example, are distinctions made between concepts such as 'making the fund available for investment', 'offering', 'placing', circulating documents marked "draft", 'pre-marketing', 'soft marketing' or 'reverse solicitation'?**

Questions 3 to 8 below relate to 'marketing' as that term is understood in Slovakia. Question 9 relates to pre-marketing, if relevant. Question 10 relates to reverse solicitation.

According to the Collective Investment Act, marketing shall be understood as the "direct or indirect offering of units or shares of collective investment undertakings or their placing at the initiative or on behalf of a manager of such collective investment undertaking with investors with their permanent address or registered seat situated in a member state of the European Union".

Apart from the implementation of the word 'marketing', there has not been any other elaboration of this term in the Slovak law.

- 3. When was the Directive transposed into national law in the Slovak Republic?**

The AIFMD was implemented into national law through the Collective Investment Act, effective since 22 July 2013.

- 4. Under the domestic implementing measures of Slovakia, is the Directive relevant to marketing to investors established in Slovakia (within the meaning of Article 4(1)(j)) but who are not physically located in Slovakia at the time the marketing takes place⁵⁸?**

No, marketing of alternative investment funds as such is not affected by the AIFMD in general.

- 5. Once the Directive is in effect in Slovakia, in relation to 'marketing' (as that term is understood in Slovakia) can a non-EEA manager of a non-EEA fund rely on a transitional (or 'grandfathering') provision, for example a transitional provision implementing Article 61(1) to delay compliance with the requirements of Article 42? If it can, what conditions must be met? If the conditions are met, what limits are there on marketing (for example is it possible only to market a fund which was being actively marketed before 22 July 2013 or also other funds managed by the same manager)?**

According to the Collective Investment Act, there is no transitional provision which would be applicable to the case at hand.

A transitional period of one year (counted from 22 July 2013) is applicable for non-EU AIFs managed by non-EU managers only in case they wish to distribute the non-EU AIFs via a public offer.

It seems that Article 61 (1) of the AIFMD has been implemented into the Collective Investment Act incorrectly as it applies only to Slovak AIFs.

Therefore, for the purpose of ensuring that there is conformity with the EU law, interpretation of the transitional provisions of the Collective Investment Act could be in accordance with the AIFMD.

⁵⁸ Article 2(1)(c) may be interpreted as restricting the territorial scope of the Directive in relation to Article 42 firms.

Section two: Marketing in the EU on a country-by-country basis

6. Is there any list published of the cooperation arrangements which have been entered into (i.e. signed by both parties and dated) between the competent authorities of Slovakia and those of non-EEA jurisdictions for the purposes of Article 42(1)(b)? What is expected to happen in future?

Yes. The list can be found here:

<http://www.nbs.sk/en/financial-market-supervision/securities-market-supervision/collective-investment/list-of-memorandums-of-understanding-under-aifmd-directive>

However, the MoUs are not available to the public for review.

7. After the expiry of any transitional provision, is there to be any gold-plating of the requirements of Article 42? In other words, will there be additional domestic restrictions on or conditions for marketing fund interests? Or is it necessary only to consider local implementation of Article 42? There might be restrictions on the type or number of investors who may be approached, or other conditions. For example, in the UK, it will continue to be necessary to comply with the pre-existing financial promotion regime, which (in theory) further restricts the category of 'per se professional client'. In Germany, it will be a requirement that the non-EEA fund has a depositary performing functions specified under Article 21.

Generally, there are no further restrictions if placed only via private placement means.

8. Must a firm seeking to market in Slovakia in reliance on Article 42 notify, or register with, the competent authority in Slovakia? What kind of information is required, will there be a public register, what fee will be charged etc.? Is there an online notification or registration form? What can be done while awaiting registration (if relevant)?

Such a firm has to notify the National Bank of Slovakia of its intention to distribute non-EU AIFs in the Slovak Republic prior to distribution. The following shall be submitted to the National Bank of Slovakia:

- identification data of the non-EU AIF;
- statutes and founding documents of the non-EU AIF;
- identification data of the depositary of the non-EU AIF;
- description of the non-EU AIF;
- seat of the non-EU AIF;
- information about measures and steps taken in order to prevent distribution to retail investors;
- other additional information required by the Slovak law;
- documents demonstrating the fulfillment of the requirements as stated in the answer to Question 1.

The registration fee amounts to EUR 1,700.

The National Bank of Slovakia has a statutory period of 20 working days to decide on the application.

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Section two: Marketing in the EU on a country-by-country basis

9. What restrictions are there on pre-marketing⁵⁹, taking into account considerations similar to those raised in Questions 3 to 8 above?

Firstly, non-EU managers should make sure that none of their marketing activities constitute a public offer. Failure to do this could trigger the application of additional requirements.

According to Slovak law, the expression private placement means an announcement, an offer or a recommendation addressed to investors specified in advance, which is not carried out in any of the forms below:

- press, radio and television;
- circulars, booklets or other written materials and durable records, if intended for the public or if intended for recipients not specified in advance;
- Internet and other electronic communication or information systems, accessible to the public, or
- unsolicited personal contact of non-professional investors (e.g. cold calling).

Pursuant to the Slovak Act No. 566/2001 Coll. on Securities and Investment Services, as amended (the "Securities Act") which implemented Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004, on markets in financial instruments law (MIFID), the expression 'professional clients' means clients who possess the expertise, experience and knowledge to make their own investment decisions and to properly assess the risks that they incur. The following persons are to be regarded as professional clients:

- stock brokerage firms, foreign stock brokerage firms, financial institutions, commodity and commodity derivatives dealers, specific financial institutions, and entities authorised to operate in the financial market by a competent authority or whose activity is separately regulated by generally binding legal regulations;
- large undertakings meeting certain quantitative conditions;
- state, regional or municipal authorities, state or regional authorities of other countries, the Debt and Liquidity Management Agency of the Slovak Republic, public authorities of other countries that are in charge of or intervene in public debt management, the National Bank of Slovakia, other central banks, the International Monetary Fund, the European Central Bank, the European Investment Bank and other similar international organisations;
- legal persons not mentioned above whose main activity is to invest in financial instruments, including entities that carry out the securitisation of credits and loans or other financing transactions; or
- entities which may at their request be treated as professional clients under certain conditions.

⁵⁹ This assumes that the answer to Question 2 distinguished between 'marketing' (as defined) and pre-marketing.

Section two: Marketing in the EU on a country-by-country basis

High net worth individuals may be considered as professional clients only upon their request to the non-EU manager to be treated as such, and only if the following conditions are fulfilled:

- the non-EU manager has assessed the high net worth individual's expertise, experience and knowledge and has issued a written statement that these give reasonable assurance, in light of the nature of the envisaged transactions or investment or ancillary services, that the high net worth individual is capable of making his/her own investment decisions and understanding the risks involved;
- the high net worth individual has stated in writing to the non-EU manager that he/she wishes to be treated as a professional client, in regard to one or several investment services, ancillary services or transactions, or to one or several types of financial instrument or transaction;
- the non-EU manager has given the client a clear written warning of the protections and investor compensation rights he/she may lose;
- the high net worth individual has stated in writing, in a separate document from the contract, that he/she is aware of the consequences of losing such rights.

Moreover, a high net worth individual may be considered as a professional client only if at least two of the following conditions are fulfilled:

- over the previous four quarters, the high net worth individual has carried out transactions in financial instruments of a significant size on the relevant market in financial instruments at an average frequency of at least ten per quarter; a transaction in financial instruments of a significant size meaning a transaction the volume of which exceeds EUR 6,000, and the relevant market meaning the regulated market, multilateral trading facility or unorganised market, where financial instruments are accepted for trading, in relation to which investment services are or are to be provided to the individual;
- the size of his/her portfolio covering financial instruments and financial deposits exceeds EUR 500,000;
- the high net worth individual carries out or has carried out, for at least one year, in relation to his/her employment, profession or duties, an activity in the financial market area in a position which requires knowledge of transactions or investment services provided or which are to be provided for such person.

It should be distinguished whether marketing takes place towards professional clients or not. In case of marketing to professional clients, it is subject to the restrictions mentioned below.

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Section two: Marketing in the EU on a country-by-country basis

In the Slovak Republic, cold calls are allowed provided that such active solicitation is performed in relation to institutional investors (legal entities - it is not the same term as professional clients according to the Securities Act), subject to the following limitations:

- it cannot be disseminated by an automatic telephone call system, fax or electronic mail without previous consent of the recipient of the advertisement, and
- it cannot be addressed to a recipient who has a priori refused such advertising.

Even if a high net worth individual is classified as a professional investor, non-EU managers cannot contact the high net worth individual by cold calls unless they have been granted prior approval for this by the high net worth individual. Please note that cold calls to retail investors are always considered as public placement, irrespective of the fact that such solicitation may be conducted solely via private placement channels.

Slovak law does not specifically address unsolicited written correspondence and materials and therefore it is not subject to any restrictions, if sent physically. However, if such correspondence and materials are sent via electronic means, the same regime applies as in connection with cold calls mentioned above. In addition, it is prohibited to send an electronic mail message which does not disclose the sender's identity and address to which the recipient may send a request for such communication to cease.

If non-EU managers are targeted by unsolicited requests, they can provide the requesters with any of the written marketing documents. Such request is not considered as an offer by non-EU managers.

Participation in any industry events within the Slovak Republic, if connected with the promotion of non-EU AIFs is likely to be viewed as a form of public offering. This is mainly due to the reason that the visitors of such conferences are most likely not specified in advance and therefore non-EU managers, when promoting non-EU AIFs, target an unspecified circle of potential investors.

Non-EU managers can freely meet with potential investors either in the Slovak Republic or abroad provided that the invitation for an arrangement of such meetings does not constitute public offering in the Slovak Republic.

10. Whether marketing (as defined) is banned or restricted by Article 42 or otherwise, what interpretation is given in Slovakia to the concept of 'reverse solicitation', 'reverse enquiry' or marketing at the initiative of the investor, within the meaning of Recital 70?

Please see the answer to Question 9.

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Section two:

Marketing in the EU on a country-by-country basis

SCENARIO B: MARKETING NON-EEA AIFS MANAGED BY AN EEA AIFM UNDER ARTICLE 36 (NO PASSPORT)

Further assumptions for the purpose of Scenario B only

Licensing

The AIFM is a fully authorised AIFM in its home member state.

Who markets?

The legal person engaging in marketing is the Alternative Investment Fund Manager of the AIF.

There is no placement agent or other intermediary involved.

11. Is it possible to market a fund in the circumstances described above in Slovakia and/or to investors established in Slovakia?

Since the EU passport has not been made available yet, an EEA AIFM can market non-EEA AIFs in Slovakia and/or to investors in Slovakia subject to Slovak private placement.

12. If yes, is the AIFM required to obtain a local licence or authorisation or to observe other formalities?

Please briefly describe the process for obtaining such licence or authorisation (including any fees payable to a regulator) or the formalities required.

An EEA AIFM is entitled to market (a) non-EEA AIF(s) in the Slovak Republic only if the following conditions are fulfilled:

- (a) There is a cooperation agreement in place between the National Bank of Slovakia and the supervisory authority of the country of the non-EEA AIF(s), with the aim of ensuring the effective exchange of information, that enables the National Bank of Slovakia to perform supervision in accordance with the Slovak law.
- (b) The country of the non-EEA AIF is not on the list of non-cooperative jurisdictions and territories as prepared by the FATF.
- (c) When managing non-EEA AIFs, the EEA AIFM is subject to obligations required by its home country's local law.

Prior to marketing non-EEA AIFs, the EEA AIFM shall notify the National Bank of Slovakia of its intention to market non-EEA AIFs in the Slovak Republic. The notification shall be accompanied by a package of information about the non-EEA AIFs as specified in detail by the Collective Investments Act and documents demonstrating the compliance of management of the non-EEA AIFs with the requirements stipulated by the local law of the EEA AIFM.

According to the document of the National Bank of Slovakia which lays down charges for licences and authorisations granted by the National Bank of Slovakia, there should be no charge with respect to Scenario B.

13. Are there any restrictions on the type or number of investors to whom the fund may be marketed on this basis?

Such funds can be marketed only to professional investors and via private placement; otherwise the EEA AIFM will be subject to some more regulation.

14. Whether or not a licence or authorisation is required, please briefly describe the key continuing obligations of the AIFM (including any obligation to make reports or to pay fees) if it markets on this basis in Slovakia.

The EEA AIFM shall manage non-EEA AIFs pursuant to its home country's local law.

Section two:

Marketing in the EU on a country-by-country basis

SCENARIO C: MARKETING BY SUB-THRESHOLD AIFMS

15. Is there a difference in Slovakia between the rules for non-EEA AIFs managed by non-EEA AIFMs and those applicable to sub-threshold AIFMs⁶⁰?

If yes, please explain how they are different and describe the rules, according to and based on the questions below.

If no, please go to Question 16.

Yes.

15a. Can an AIFM which falls within Article 3(2) and is subject to domestic registration or authorisation only in its home Member State market a fund in Slovakia and/or to investors established in Slovakia?

Yes.

15b. If yes, is the AIFM required to obtain a local licence or registration or to observe other formalities?

Please briefly describe the process for obtaining such licence or registration (including any fees payable to a regulator) or the formalities required.

Such managers do not need AIFM authorisation with respect to managing collective investment undertakings with legal capacity which are not regarded as UCITS funds. With respect to other funds (other than UCITS), registration as AIFM is needed.

AIFM authorisation can be granted by the National Bank of Slovakia if several conditions stipulated by the Slovak Collective Investments Act are met. The National Bank of Slovakia decides within 3 months after the application was submitted whether AIFM authorisation will be granted. The National Bank of Slovakia charges EUR 1,700 for such registration.

15c. Please briefly describe any restrictions on the type or number of investors to whom the fund may be marketed on this basis.

Slovak AIFMs can decide to market the funds to professional and retail investors and via private or public placement. As a general rule, public placement and marketing to professional investors is subject to some more regulation.

15d. Whether or not a licence or authorisation is required, please briefly describe the key continuing obligations of the AIFM (including any obligation to make reports or to pay fees) if it markets on this basis in Slovakia?

The Slovak AIFM is subject to general reporting requirements under Slovak law including making available an annual report for each fund marketed in Slovakia, reports in relation to the percentage of the fund's assets which are subject to special arrangements, etc.

16. Do the AIFMD implementing rules in Slovakia provide for a different regime for non-EEA sub-threshold AIFMs?

If yes, please explain how the rules are different (for example, would non-EEA sub-threshold AIFMs be exempt from certain provisions?)

Slovak law does not recognize non-EEA sub-threshold AIFMs. This means that a non-EEA sub-threshold AIFM can only market in Slovakia subject to the same rules and conditions as other (above-threshold) non-EEA AIFMs, i.e. all non-EEA AIFMs are treated the same, regardless of whether they are above or below the threshold.

⁶⁰ A sub-threshold AIFM should be considered as an AIFM which falls within Article 3(2) and is subject to domestic registration or authorisation only in its home Member State.

18. Spain



SCENARIO A: MARKETING NON-EEA AIFS MANAGED BY NON-EEA AIFMS UNDER ARTICLE 42 (NO PASSPORT)

Further assumptions for the purpose of Scenario A only

Licensing

No person concerned has any form of licence in the target market, or any EEA licence which entitles it to a passport.

Who markets?

The legal person engaging in marketing is the Alternative Investment Fund Manager (AIFM) of the AIF. There is no placement agent or other intermediary involved.

1. Is it possible in some manner to market a fund in the circumstances described above, in Spain and/or to investors established in Spain since 22 July 2013?

It is not clear whether non-EEA AIFs managed by non-EEA AIFMs without a passport will be regulated under the legislation implementing Directive 2011/61/EU. The implementing law may require evidence of compliance with the following requirements to be provided to the Spanish Securities Market Commission ("CNMV"):

- (a) That Spanish legislation regulates the same category of AIF used by the non-EEA AIFM and that the non-EEA AIF is subject to a specific norm in its home State that protects the interests of unitholders in the same way as Spanish legislation, in this area;
- (b) A favourable report of the home State authority responsible for monitoring and inspecting the non-EEA AIF, with respect to the development of the activities of the non-EEA AIFM;
- (c) That adequate arrangements are in place for cooperation between the competent authorities of the home member state of the non-EEA AIFM and the supervisory authorities of the third country in which the non-EEA AIF is established;
- (d) That the country in which the non-EEA AIFM is established, or if applicable, the non-EEA AIF, is not on the list of non-cooperative countries and territories set by the Financial Action Task Force on Money Laundering.

Furthermore, the following information may have to be provided and registered with the CNMV:

- (a) identification of the non-EEA AIF that the non-EEA AIFM intends to commercialise, and the place where it is established;
- (b) mechanisms and methods of marketing shares or units in Spain, and when appropriate, the classes or series of shares or units;
- (c) management regulation of the non-EEA AIF or documents of incorporation;
- (d) prospectus of the non-EEA AIF or equivalent document and the latest annual report;
- (e) identification of the depositary of the non-EEA AIF;
- (f) description of the non-EEA AIF, or any other information on it, available to the investors;
- (g) information about the place where the main AIF is located if the non-EEA AIF to be marketed is a subordinated entity;

Section two: Marketing in the EU on a country-by-country basis

- (h) when applicable, information on the measures taken to prevent the marketing of the non-EEA AIF to retail investors;
- (i) registration with and delivery to the CNMV of the documents that certify the subjection of the non-EEA AIF and the stocks, shares or equity securities or assets to the applicable legal regime.

For the shares or units of the non-EEA AIF to be marketed in Spain, the non-EEA AIFM must be expressly authorised for such purpose by the CNMV and registered in the CNMV records.

The authorisation of a non-EEA AIFM or a non-EEA AIF may be refused:

- (a) for prudential reasons;
- (b) if Spanish AIFs or their Spanish AIFMs are not given equal treatment in that non-EEA country;
- (c) for not ensuring compliance with the management standards and discipline of the Spanish securities markets;
- (d) if the protection of investors resident in Spain is not sufficiently guaranteed; and
- (e) in case of disturbances in the conditions of competition between the non-EEA AIF and AIFs authorised in Spain.

Once authorised and registered in the CNMV register, the non-EEA AIF and/or the non-EEA AIFM must facilitate the shareholders and unitholders of the non-EEA AIF with the exercise of all their rights generally, and in particular with respect to payments, the acquisition by the non-EEA AIF of their shares, and the dissemination of the information to be supplied to shareholders and unitholders resident in Spain.

2. In Spain, has there been any local elaboration on what constitutes 'marketing' within the meaning of Article 4(1)(x)? If not, what is the better interpretation of that term? For example, are distinctions made between concepts such as 'making the fund available for investment', 'offering', 'placing', circulating documents marked "draft", 'pre-marketing', 'soft marketing' or 'reverse solicitation'?

Questions 3 to 8 below relate to 'marketing' as that term is understood in Spain. Question 9 relates to pre-marketing, if relevant. Question 10 relates to reverse solicitation.

According to Law 22/2014, which has implemented the AIFMD in Spain, the marketing of an AIF shall be understood as the acquisition of clients through an advertising activity on behalf of the AIF or any entity acting on its behalf or on behalf of one of its traders, or customers, for their contribution to the AIF funds, assets or rights.

For this purpose, advertising activity means any form of communication addressed to potential investors in order to promote, directly or through third parties acting on behalf of the AIF or the management company of AIF, the subscription or acquisition of units/shares of the AIF. In any case, there is an advertising activity when the means used to address the public are either telephone calls initiated by the AIF or its management company, home visits, personal letters, e-mail or any electronic means, which are part of a publicity campaign, marketing or promotion.

The campaign will be deemed to be carried out within Spain's national territory if it is addressed to investors resident in Spain. In the case of e-mail or any electronic means, it shall be presumed that the offer is addressed to investors resident in Spain when the AIF or its management company, or any person acting on their behalf online, propose the purchase or subscription of shares or facilitate to the Spanish residents the information needed to assess the features of the issue or offer and adhere to it.

Section two: Marketing in the EU on a country-by-country basis

3. When was the Directive transposed into national law in Spain?

The Directive has been transposed in Spain on 22 November 2014 through Law 22/2014.

4. Under the domestic implementing measures of Spain, is the Directive relevant to marketing to investors established in Spain (within the meaning of Article 4(1)(j)) but who are not physically located in Spain at the time the marketing takes place⁶¹?

The implementing legislation seems to refer only to marketing activities addressed to residents in Spain.

5. Once the Directive is in effect in Spain, in relation to 'marketing' (as that term is understood in Spain) can a non-EEA manager of a non-EEA fund rely on a transitional (or 'grandfathering') provision, for example a transitional provision implementing Article 61(1) to delay compliance with the requirements of Article 42? If it can, what conditions must be met? If the conditions are met, what limits are there on marketing (for example is it possible only to market a fund which was being actively marketed before 22 July 2013 or also other funds managed by the same manager)?

The implementing legislation does not seem to include a grandfathering provision applicable to this scenario.

6. Is there any list published of the cooperation arrangements which have been entered into (i.e. signed by both parties and dated) between the competent authorities of Spain and those of non-EEA jurisdictions for the purposes of Article 42(1)(b)? What is expected to happen in future?

As at 18 February 2015 the CNMV had concluded MoUs with 30 Authorities of non-EEA jurisdictions. The list is available here:

<http://www.esma.europa.eu/content/AIFMD-MoUs-signed-EU-authorities-updated>

7. After the expiry of any transitional provision, is there to be any gold-plating of the requirements of Article 42? In other words, will there be additional domestic restrictions on or conditions for marketing fund interests? Or is it necessary only to consider local implementation of Article 42? There might be restrictions on the type or number of investors who may be approached, or other conditions. For example, in the UK, it will continue to be necessary to comply with the pre-existing financial promotion regime, which (in theory) further restricts the category of 'per se professional client'. In Germany, it will be a requirement that the non-EEA fund has a depositary performing functions specified under Article 21.

It seems that the requirements may be those described in the answer to Question 1.

8. Must a firm seeking to market in Spain in reliance on Article 42 notify, or register with, the competent authority in Spain? What kind of information is required, will there be a public register, what fee will be charged etc.? Is there an online notification or registration form? What can be done while awaiting registration (if relevant)?

Yes, as described in the answer to Question 1.

⁶¹ Article 2(1)(c) may be interpreted as restricting the territorial scope of the Directive in relation to Article 42 firms.

Section two:

Marketing in the EU on a country-by-country basis

9. What restrictions are there on pre-marketing⁶², taking into account considerations similar to those raised in Questions 3 to 8 above?

No distinction is made between 'marketing' and 'pre-marketing' under the Law.

10. Whether marketing (as defined) is banned or restricted by Article 42 or otherwise, what interpretation is given in Spain to the concept of 'reverse solicitation', 'reverse enquiry' or marketing at the initiative of the investor, within the meaning of Recital 70?

There is no reference in the legislation.

SCENARIO B: MARKETING NON-EEA AIFS MANAGED BY AN EEA AIFM UNDER ARTICLE 36 (NO PASSPORT)

Further assumptions for the purpose of Scenario B only

Licensing

The AIFM is a fully authorised AIFM in its home member state.

Who markets?

The legal person engaging in marketing is the Alternative Investment Fund Manager of the AIF.

There is no placement agent or other intermediary involved.

11. Is it possible to market a fund in the circumstances described above in Spain and/or to investors established in Spain?

Yes. It is possible to market a non-EEA AIF managed by an EEA AIFM under Article 36 in Spain, subject to certain requirements and restrictions described in the Spanish Law.

⁶² This assumes that the answer to Question 2 distinguished between 'marketing' (as defined) and pre-marketing.

Section two: Marketing in the EU on a country-by-country basis

12. If yes, is the AIFM required to obtain a local licence or authorisation or to observe other formalities?

Please briefly describe the process for obtaining such licence or authorisation (including any fees payable to a regulator) or the formalities required.

In order to market non-EEA AIFs managed by an EEA AIFM to professional investors under Article 36 in Spain, the entity must obtain accreditation by the CNMV of the AIF's compliance with the following points:

1. That adequate arrangements exist for cooperation between the competent authorities of the home Member State of the AIFM and the supervisory authorities of the third country in which the non-EEA AIF is established, in order to at least ensure an efficient exchange of information to allow the competent authorities to carry out their duties in accordance with Directive 2011/61/EU of the European Parliament and of the Council of June 8, 2011.
2. That the country in which the non-EEA AIF is established is not on the list of non-cooperative countries and territories established by the Financial Action Task Force on Anti-Money Laundering and Terrorist Financing.

Once CNMV's accreditation of the points above has been obtained, the AIFM of the non-EEA AIF must provide and record to the CNMV the following information in a language that is customary in the sphere of finance:

1. Identification of the non-EEA AIF that the AIFM intends to commercialize, and the place where they are established,
2. Mechanisms and methods of marketing of shares or units in Spain, and when appropriate, the classes or series of shares or units,
3. Management regulation of the non-EEA AIF or documents of incorporation of the non-EEA AIF,
4. The prospectus of the non-EEA AIF or equivalent document and the latest annual report,
5. Identification of the depositary of the non-EEA AIF,
6. Description of the non-EEA AIF, or any other information on it, available to the investors,
7. Information regarding the place where the main investment entity is located if the non-EEA AIF to be marketed is a subordinate entity,
8. When applicable, information regarding any measures taken to prevent the marketing of the non-EEA AIF to retail investors,
9. Documents that certify the subjection of the non-EEA AIF and the stocks, shares or equity securities or assets to the legal regime applicable to it.

In addition, the AIFM must provide a supporting certificate that must be requested from its competent authorities, confirming that the AIFM is authorized by Directive 2011/61/EU of the European Parliament and of the Council of June 8, 2011, to manage non-EEA AIFs with particular investment strategies.

For these AIFs to market their shares or units in Spain, they will need to be expressly authorized for such purpose by the CNMV and it shall be registered in the records of the CNMV.

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Section two: Marketing in the EU on a country-by-country basis

13. Are there any restrictions on the type or number of investors to whom the fund may be marketed on this basis?

In general, an AIF may be marketed in Spain to:

1. *investors considered professional investors* as defined in paragraph 3 of Article 78 bis of Law 24-1988, of 28 July,
2. *other investors* who do not meet the “professional investor” criteria as defined in paragraph 3 of Article 78 bis of Law 24-1988, of 28 July, only if:
 - (a) the other investors commit to invest at least EUR 100,000; and
 - (b) the other investors state in writing that they are aware of the risks involved in said commitment in a document other than the contract for the investment commitment.
3. investors who do not meet the requirements of 1 or 2 above, if:
 - (a) they are administrators, directors or employees of the AIFM managing the AIF, or
 - (b) they invest in AIFs listed on a stock market, or
 - (c) investors who are justified, from experience in investing, managing or advising AIFs similar to the AIF in which they intend to invest.

Please note that a marketing activity is deemed to be made on Spanish territory or “in Spain” *if it is addressed to investors resident in Spain.*

14. Whether or not a licence or authorisation is required, please briefly describe the key continuing obligations of the AIFM (including any obligation to make reports or to pay fees) if it markets on this basis in Spain.

In addition to the above, the non-EEA AIFs and their AIFMs must facilitate and make available to the shareholders and unitholders resident in Spain:

1. the payments,
2. the acquisition by the non-EEA AIFs of their shares or the redemption of their units,
3. the information that they are required to provide to the shareholders and unitholders resident in Spain, and
4. in general, the exercise of their rights.

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Section two: Marketing in the EU on a country-by-country basis

SCENARIO C: MARKETING BY SUB-THRESHOLD AIFMS

15. Is there a difference in Spain between the rules for non-EEA AIFs managed by non-EEA AIFMs and those applicable to sub-threshold AIFMs⁶³?

If yes, please explain how they are different and describe the rules, according to and based on the questions below.

If no, please go to Question 16.

There are no express regulations regarding sub-threshold AIFMs.

15a. Can an AIFM which falls within Article 3 (2) and is subject to domestic registration or authorisation only in its home Member State market a fund in Spain and/or to investors established in Spain?

Sub-threshold managers wishing to market a fund in Spain must apply for prior authorisation.

15b. If yes, is the AIFM required to obtain a local licence or registration or to observe other formalities?

Please briefly describe the process for obtaining such licence or registration (including any fees payable to a regulator) or the formalities required.

See response to Question 15a.

15c. Please briefly describe any restrictions on the type or number of investors to whom the fund may be marketed on this basis.

Not applicable.

15d. Whether or not a licence or authorisation is required, please briefly describe the key continuing obligations of the AIFM (including any obligation to make reports or to pay fees) if it markets on this basis in Spain?

In addition to the above, the non-EEA AIFs and their AIFMs must facilitate and make available to the shareholders and unitholders resident in Spain:

1. the payments,
2. the acquisition by the non-EEA AIFs of their shares or the redemption of their units,
3. the information that they are required to provide to the shareholders and unitholders resident in Spain, and
4. in general, the exercise of their rights.

16. Do the AIFMD implementing rules in Spain provide for a different regime for non-EEA sub-threshold AIFMs?

If yes, please explain how the rules are different (for example, would non-EEA sub-threshold AIFMs be exempt from certain provisions?)

There are no express regulations regarding sub-threshold AIFMs. There is no different regime for non-EEA sub-threshold AIFMs. This means that non-EEA sub-threshold AIFMs are subject to the same rules and procedures as other, above-threshold non-EEA AIFMs and would need to comply with the same requirements (as described in previous questions).

⁶³ A sub-threshold AIFM should be considered as an AIFM which falls within Article 3(2) and is subject to domestic registration or authorisation only in its home Member State.

Section two: Marketing in the EU on a country-by-country basis

19. Sweden



SCENARIO A: MARKETING NON-EEA AIFS MANAGED BY NON-EEA AIFMS UNDER ARTICLE 42 (NO PASSPORT)

Further assumptions for the purpose of Scenario A only

Licensing

No person concerned has any form of licence in the target market, or any EEA licence which entitles it to a passport.

Who markets?

The legal person engaging in marketing is the Alternative Investment Fund Manager (AIFM) of the AIF. There is no placement agent or other intermediary involved.

1. Is it possible in some manner to market a fund in the circumstances described above, in Sweden and/or to investors established in Sweden since 22 July 2013?

Yes, it is possible to market a fund in these circumstances. If the AIFM does not qualify for the transitional provisions, marketing AIFs in Sweden will require authorisation.

If the AIFM qualifies for the transitional provisions it may continue to market AIFs subject to the previous legal regime.

2. In Sweden, has there been any local elaboration on what constitutes 'marketing' within the meaning of Article 4(1)(x)? If not, what is the better interpretation of that term? For example, are distinctions made between concepts such as 'making the fund available for investment', 'offering', 'placing', circulating documents marked "draft", 'pre-marketing', 'soft marketing' or 'reverse solicitation'?

Questions 3 to 8 below relate to 'marketing' as that term is understood in Sweden. Question 9 relates to pre-marketing, if relevant. Question 10 relates to reverse solicitation.

The concept of marketing under the Swedish Alternative Investment Fund Managers Act ("AIFMA") implementing the Directive is broad, covering direct and indirect offerings and placements to investors domiciled or with their registered office within the EEA. This includes all sale promoting actions, i.e. advertising, telemarketing, brochures, flyers, e-mail, Internet and investor events.

Notably, the preparatory works to the AIFMA express the view that marketing is not possible until the AIF actually exists. Activities that are conducted before the fund vehicle meets the criteria of an AIF should therefore not be considered as marketing for the purpose of the Directive. In relation to launching a private equity fund, it is argued that the fund vehicle would meet the definition of an AIF at the earliest by 'first closing' since there is typically nothing to be classified as an AIF nor any assets to be managed before a 'first closing'. Investor contacts or similar activities before a 'first closing' should therefore typically not be viewed as 'marketing'.

3. When was the Directive transposed into national law in Sweden?

The Swedish AIFMA implementing the Directive entered into force on 22 July 2013.

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Section two: Marketing in the EU on a country-by-country basis

- 4. Under the domestic implementing measures of Sweden, is the Directive relevant to marketing to investors established in Sweden (within the meaning of Article 4(1)(j)) but who are not physically located in Sweden at the time the marketing takes place⁶⁴?**

Provided that all marketing activities take place outside of Sweden, the domicile of the investor should not be decisive. However, given the wide scope of the marketing definition, the actual activities allowed are very limited since e-mail invitations (depending on content) and telephone contacts could be considered as marketing.

- 5. Once the Directive is in effect in Sweden, in relation to 'marketing' (as that term is understood in Sweden) can a non-EEA manager of a non-EEA fund rely on a transitional (or 'grandfathering') provision, for example a transitional provision implementing Article 61(1) to delay compliance with the requirements of Article 42? If it can, what conditions must be met? If the conditions are met, what limits are there on marketing (for example is it possible only to market a fund which was being actively marketed before 22 July 2013 or also other funds managed by the same manager)?**

Yes. In order to qualify for the transitional provisions, the AIFM must have actively marketed an AIF at the date of implementation (i.e. 22 July 2013). Please see the response to Question 2 for an explanation of what constitutes 'marketing' in Sweden. As explained on page 19, the Swedish regulator's view is that something which does not yet exist, cannot be marketed, i.e. any discussions with investors before the AIF has been legally constituted does not constitute marketing.

If the AIFM qualifies for the transitional provisions it may continue to market new and existing AIFs in Sweden under the previous legal regime.

- 6. Is there any list published of the cooperation arrangements which have been entered into (i.e. signed by both parties and dated) between the competent authorities of Sweden and those of non-EEA jurisdictions for the purposes of Article 42(1)(b)? What is expected to happen in future?**

The SFSA has signed the Memoranda of Understanding (MoUs), negotiated by the European Securities and Markets Authority (ESMA) on behalf of the EU/EEA national competent authorities, in relation to, among others, the Cayman Islands, Bermuda, Jersey and Guernsey. Please see:

<http://www.esma.europa.eu/node/66691>

<http://www.esma.europa.eu/content/AIFMD-MoUs-signed-EU-authorities-updated>

⁶⁴ Article 2(1)(c) may be interpreted as restricting the territorial scope of the Directive in relation to Article 42 firms.

Section two: Marketing in the EU on a country-by-country basis

7. After the expiry of any transitional provision, is there to be any gold-plating of the requirements of Article 42? In other words, will there be additional domestic restrictions on or conditions for marketing fund interests? Or is it necessary only to consider local implementation of Article 42? There might be restrictions on the type or number of investors who may be approached, or other conditions. For example, in the UK, it will continue to be necessary to comply with the pre-existing financial promotion regime, which (in theory) further restricts the category of 'per se professional client'. In Germany, it will be a requirement that the non-EEA fund has a depositary performing functions specified under Article 21.

Sweden has largely adopted a 'copy-out approach', with no significant gold-plating. The disclosure requirements set out in Article 23 of the AIFMD, i.e. information that needs to be furnished to investors prior to their investment in the AIF, shall in Sweden be presented in an 'information brochure' which also needs to be included in the application for authorisation.

Such an information brochure that needs to be supplied for authorisation does not need to be a specific (new) document. As long as the PPM (or other official fund documentation) contains the information which the Swedish competent authority asks for, the PPM can serve this purpose. Ideally, it will then have an index page which shows which sections/pages in the PPM include the requested information.

8. Must a firm seeking to market in Sweden in reliance on Article 42 notify, or register with, the competent authority in Sweden? What kind of information is required, will there be a public register, what fee will be charged etc.? Is there an online notification or registration form? What can be done while awaiting registration (if relevant)?

A non-EEA AIFM managing a non-EEA based AIF (irrespective of size) must obtain an authorisation from the SFSA in order to market the AIF. There will likely be a public register. The fee payable for the license is approximately SEK 16,000. No forms will be available.

An application for a licence to market an AIF must contain a description of how the AIFM intends to comply with the transparency and disclosure requirements, a business plan including information on the AIF intended to be marketed and where it is established, the AIF's rules, articles of association or similar document, information on where any master fund is established, an information brochure, the latest annual report and, where relevant, information on the measures which have been taken in order to prevent marketing to retail investors.

If the AIFM relies on the transitional provisions it may continue to market AIFs in Sweden until the application has been finally decided.

9. What restrictions are there on pre-marketing⁶⁵, taking into account considerations similar to those raised in Questions 3 to 8 above?

As stated above, the AIFMA expresses the view that marketing is not at hand before an AIF is established, i.e. normally before the 'first closing' of the AIF. Investor contacts and similar actions prior to this point are therefore not considered as marketing.

⁶⁵ This assumes that the answer to Question 2 distinguished between 'marketing' (as defined) and pre-marketing.

Section two:

Marketing in the EU on a country-by-country basis

10. Whether marketing (as defined) is banned or restricted by Article 42 or otherwise, what interpretation is given in Sweden to the concept of 'reverse solicitation', 'reverse enquiry' or marketing at the initiative of the investor, within the meaning of Recital 70?

With reference to Recital 70 of the Directive, the preparatory work of the AIFMA states that reverse solicitation is not considered marketing.

While there are no clear rules as to what would be considered as reverse solicitation, the preparatory works to the AIFMA exemplify a few situations that typically would not constitute marketing, e.g. if an investor on its own initiative contacts the AIFM to subscribe for units (e.g. on the company's website, provided that the website is not specifically directed to Swedish investors), or if an investor contacts an investment firm to execute or transmit an order of units or shares of an AIF which are not part of any offer from the investment firm. In order for the activities to be deemed taken at the investor's own initiative, neither the AIFM nor any other party (e.g. an investment firm) may initiate any contacts with the Swedish investor.

SCENARIO B: MARKETING NON-EEA AIFS MANAGED BY AN EEA AIFM UNDER ARTICLE 36 (NO PASSPORT)

Further assumptions for the purpose of Scenario B only

Licensing

The AIFM is a fully authorised AIFM in its home member state.

Who markets?

The legal person engaging in marketing is the Alternative Investment Fund Manager of the AIF.

There is no placement agent or other intermediary involved.

11. Is it possible to market a fund in the circumstances described above in Sweden and/or to investors established in Sweden?

Marketing of non-EEA AIFs to professional investors, semi-professional investors and retail investors in Sweden by an EEA AIFM duly licensed in its home member state will require an authorisation from the Swedish Financial Supervisory Authority (SFSA).

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Section two: Marketing in the EU on a country-by-country basis

12. If yes, is the AIFM required to obtain a local licence or authorisation or to observe other formalities?

Please briefly describe the process for obtaining such licence or authorisation (including any fees payable to a regulator) or the formalities required.

In order to obtain authorisation for marketing to professional investors, the conditions corresponding to the provisions in Article 36 must be satisfied. In brief, these conditions include that:

- (a) it can be expected that the AIFM will comply with all the applicable rules under the Directive;
- (b) appropriate cooperation arrangements for the purpose of systemic risk oversight are in place between the SFSA and the supervisory authority in the country where the AIF is established; and
- (c) the country in which the AIF is established has taken adequate measures to prevent money laundering and terrorist financing.

The application shall contain:

- (a) a certificate, issued by the home member state authority, evidencing that the AIFM is licensed to manage AIFs in its home member state;
- (b) a brief business plan including information on the AIF intended to be marketed and where it is established;
- (c) the AIF's rules, articles of association or similar documents;
- (d) information on the identity of the AIF's depository (or the entity that has been appointed to carry out the depository duties);
- (e) information on where any master fund is established (if it is a matter of marketing a feeder AIF to an AIF);
- (f) the information set out in Article 23 of the Directive, i.e. the information that the AIFM must furnish to investors prior to their investments in the AIF; and
- (g) information on the measures which have been taken in order to prevent marketing to non-professional investors (an AIFM with an authorisation to market AIFs to professional investors only must ensure that no marketing activities are directed to non-professional investors, e.g. by including a disclaimer in marketing materials).

A fee of SEK 16,000 (approximately EUR 1,700) shall be paid to the SFSA when submitting the application.

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Section two: Marketing in the EU on a country-by-country basis

An EEA AIFM may also, after obtaining an authorisation from the SFSA, market certain closed-ended funds to semi-professional investors (i.e. investors investing not less than EUR 100,000 and who have confirmed that they are aware of the risks associated with the investment). In order to obtain such authorisation, in brief, the following conditions must be satisfied:

- (a) appropriate cooperation arrangements for the purpose of systemic risk oversight are in place between the SFSA and the supervisory authority in the country where the AIF is established, and
- (b) the country in which the AIF is established has taken adequate measures to prevent money laundering and terrorist financing.

The funds must meet the following conditions:

- (a) there is no right of redemption for at least five years from the initial investment, and
- (b) the AIF (under its investment policy) generally invests in issuers or non-listed companies, in each case in order to acquire control according to provisions corresponding to Articles 26-30 of the AIFMD.

The application fee for an authorisation to market to semi-professional investors is SEK 16,000 (approximately EUR 1,700). The application for such authorisation shall, in addition to the information in the application described above, also contain information on the investors' right to redemption of fund units, the fund's investment policy and the latest annual report.

Further, an EEA AIFM may also subject to an authorisation by the SFSA and provided that the relevant funds meet certain criteria (which here are excluded), market non-EEA AIFs to retail investors in Sweden.

13. Are there any restrictions on the type or number of investors to whom the fund may be marketed on this basis?

An EEA AIFM which is duly licensed in its home member state and which has obtained an authorisation referred to in Question 12 to market its fund to a certain type of investors is permitted to market its fund to this type of investors.

There are no restrictions on the number of investors to whom the EEA AIFM may market its funds. However, the AIFM may choose to limit the number of investors marketed to in order to avoid falling under the Prospectus Directive's requirements, if applicable.

14. Whether or not a licence or authorisation is required, please briefly describe the key continuing obligations of the AIFM (including any obligation to make reports or to pay fees) if it markets on this basis in Sweden.

The AIFM has to report to the SFSA in accordance with the requirements set out in Article 24.1-24.5 and, if applicable, Articles 26-30 of the Directive.

EEA AIFMs marketing in Sweden under a marketing authorisation are not required to pay any recurring fees to the SFSA.

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Section two: Marketing in the EU on a country-by-country basis

SCENARIO C: MARKETING BY SUB-THRESHOLD AIFMS

15. Is there a difference in Sweden between the rules for non-EEA AIFs managed by non-EEA AIFMs and those applicable to sub-threshold AIFMs⁶⁶?

If yes, please explain how they are different and describe the rules, according to and based on the questions below.

If no, please go to Question 16.

A non-EEA AIFM needs an authorisation from the SFSA in order to market its funds to Swedish *professional investors*. The AIFM needs to comply with the requirements set out in Article 42 of the Directive.

In brief, these conditions include that:

- (a) it can be expected that the AIFM will comply with applicable rules corresponding to Articles 22-24 and 26-30 under the Directive;
- (b) appropriate cooperation arrangements for the purpose of systemic risk oversight are in place between the SFSA and the authority supervising the AIFM; and
- (c) the country in which the AIFM or the AIF is established has taken adequate measures to prevent money laundering and terrorist financing.

A non-EEA AIFM can also obtain an authorisation from the SFSA for marketing closed-ended funds of the same type as described under Question 12 to *semi-professional investors*, if the conditions described above are satisfied.

Further, non-EEA AIFMs may market certain funds to *retail investors*, subject to an authorisation from the SFSA (the further requirements for such authorisation are here excluded).

15a. Can an AIFM which falls within Article 3(2) and is subject to domestic registration or authorisation only in its home Member State market a fund in Sweden and/or to investors established in Sweden?

Yes, an EEA sub-threshold AIFM which is subject to domestic registration or authorisation in its home member state may obtain a marketing authorisation from the SFSA to market closed-ended EEA and non-EEA funds of the same type described under Question 12 to *professional and semi-professional investors*. However, in order to obtain authorisation for marketing non-EEA funds, the conditions described under Question 12 (as to marketing to semi-professional investors) must be satisfied.

⁶⁶ A sub-threshold AIFM should be considered as an AIFM which falls within Article 3(2) and is subject to domestic registration or authorisation only in its home Member State.

Section two: Marketing in the EU on a country-by-country basis

15b. If yes, is the AIFM required to obtain a local licence or registration or to observe other formalities?

Please briefly describe the process for obtaining such licence or registration (including any fees payable to a regulator) or the formalities required.

As mentioned under Question 15, non-EEA AIFMs need to obtain a marketing authorisation from the SFSA in order to market their funds to Swedish *professional*, *semi-professional* and *retail investors* (the below summary excludes the procedures for an application for a marketing authorisation to retail investors).

The application for a non-EEA AIFM that wishes to market its funds to Swedish *professional investors* shall contain the following information:

- (a) a description of how the AIFM intends to comply with the transparency and disclosure requirements (Articles 22-24 and 26-30 of the AIFMD);
- (b) brief business plan for the intended marketing in Sweden including information on the AIF intended to be marketed and where it is established;
- (c) the AIF's rules, articles of association or similar documents;
- (d) information on where any master fund is established (if it is a matter of marketing a feeder AIF to an AIF)
- (e) an information brochure (the information requirements set out in Article 23 of the AIFMD, i.e. information that the AIFM must furnish to investors prior to their investments in the AIF, must be provided in an "information brochure");
- (f) the latest annual report; and
- (g) information on the measures which have been taken in order to prevent marketing to non-professional investors.

The fee for the application is SEK 16,000 (approximately EUR 1,700).

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Section two: Marketing in the EU on a country-by-country basis

The application for a non-EEA AIFM that wishes to market its funds to Swedish *semi-professional investors* shall, in addition to the information in sections (a)-(f) in the application described above, contain information on the measures which have been taken in order to prevent marketing to retail investors, information on the investors' right to redemption of fund units and the fund's investment policy.

The fee for the application is SEK 16,000 (approximately EUR 1,700).

As mentioned under Question 15a, EEA AIFMs managing sub-threshold funds may subject to a marketing authorisation from the SFSA market their funds to *professional and semi-professional investors* (provided that the funds meet certain criteria, described under Question 12).

The application shall contain the following:

- (a) a certificate, issued by the home member state authority, evidencing that the AIFM is licensed to manage AIFs in its home member state, or that the AIFM is registered there;
- (b) brief business plan for the intended marketing in Sweden including information on the AIF intended to be marketed and where it is established;
- (c) the AIF's rules, articles of association or similar documents;
- (d) information on where any master fund is established (if it is a matter of marketing a feeder AIF to an AIF)
- (e) information on the measures which have been taken in order to prevent marketing to retail investors (an AIFM with an authorisation to market AIFs to professional investors or semi-professional investors must ensure that no marketing activities are directed to retail investors, e.g. by including a disclaimer in marketing materials);
- (f) information on the investors' right to redemption of fund units; and
- (g) the fund's investment policy.

The fee for the application is SEK 16,000 (approximately EUR 1,700).

15c. Please briefly describe any restrictions on the type or number of investors to whom the fund may be marketed on this basis.

As described under Question 15, non-EEA AIFMs may market funds to professional, semi-professional and retail investors, provided that an authorisation is obtained and that the funds meet certain criteria (as to marketing to semi-professional and retail investors).

EEA AIFMs managing sub-threshold funds may only market closed-ended funds described under Question 12 to professional and semi-professional investors. Such AIFMs cannot obtain an authorisation to market to retail investors.

There are no restrictions with respect to the number of investors; however, depending on the circumstances, prospectus requirements may be triggered and thus limit the number of investors.

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Section two:

Marketing in the EU on a country-by-country basis

15d. Whether or not a licence or authorisation is required, please briefly describe the key continuing obligations of the AIFM (including any obligation to make reports or to pay fees) if it markets on this basis in Sweden?

Both non-EEA AIFMs and EEA AIFMs marketing sub-threshold funds need to comply with the provisions described under Question 14, i.e. certain reporting obligations.

Non-EEA AIFMs marketing to retail investors under a marketing authorisation are required to pay an annual fee of SEK 3,000 (approximately EUR 325) per fund to the SFSA.

16. Do the AIFMD implementing rules in Sweden provide for a different regime for non-EEA sub-threshold AIFMs?

If yes, please explain how the rules are different (for example, would non-EEA sub-threshold AIFMs be exempt from certain provisions?)

No, the rules described under Question 15, 15b, 15c and 15d apply to non-EEA AIFMs regardless of the size of the funds managed by such AIFMs.

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20. Switzerland



1. Private placement

Unregulated private placement of funds is still possible, however, restricted to a limited group of regulated entities, such as banks, insurance companies, collective investment fund managers, regulated managers of foreign collective investment funds and the central bank. Through banks and other financial intermediaries and subject to conditions, private placement is possible in relation to certain high net worth individuals.

2. Distribution to qualified investors

All marketing and distribution activities are subject to regulation other than if directed to the restricted group under 1) above. Except for items not applicable to private equity funds (e.g. publication of prices) there are no sub-threshold marketing activities any more. In relation to qualified investors the following applies:

Qualified investors such as pensions and certain high net worth individuals must only be approached under the distribution rules for qualified investors. Note that family offices and the like are not deemed qualified investors.

Whilst the fund must not be authorised in Switzerland, it must appoint a Swiss representative (i.e. a regulated person) and a Swiss paying agent (i.e. a bank). The distributor/fund raiser/placement agent must be a financial intermediary that is regulated in Switzerland or in an equivalent way in its home jurisdiction (we suspect that an AIFM, certain MiFID firms, a bank, etc. would qualify, however, a sub-threshold AIFM would not). The financial intermediary must enter into a formal agreement with the Swiss representative and the paying agent of the fund.

Transitional rules allow for a grace period until 1 March 2015 until when foreign funds must have appointed the representative and paying agent.

Non-regulated foreign distributors are banned from distribution immediately, whilst unregulated Swiss distributors must register with the FINMA before 1 March 2015 unless they failed to register for the grace period by the 1 September 2013 deadline.

Distribution to non-qualified investors is subject to additional rules though they do not appear to be relevant in the typical private equity fund raising context.

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21. The United Kingdom



SCENARIO A: MARKETING NON-EEA AIFS MANAGED BY NON-EEA AIFMS UNDER ARTICLE 42 (NO PASSPORT)

Further assumptions for the purpose of Scenario A only

Licensing

No person concerned has any form of licence in the target market, or any EEA licence which entitles it to a passport.

Who markets?

The legal person engaging in marketing is the Alternative Investment Fund Manager (AIFM) of the AIF. There is no placement agent or other intermediary involved.

1. Is it possible in some manner to market a fund in the circumstances described above, in the United Kingdom and/or to investors established in the United Kingdom since 22 July 2013?

Yes, it is possible to market a fund in these circumstances, subject to certain conditions, which are outlined in further detail below.

2. In the United Kingdom, has there been any local elaboration on what constitutes 'marketing' within the meaning of Article 4(1)(x)? If not, what is the better interpretation of that term? For example, are distinctions made between concepts such as 'making the fund available for investment', 'offering', 'placing', circulating documents marked "draft", 'pre-marketing', 'soft marketing' or 'reverse solicitation'?

Questions 3 to 8 below relate to 'marketing' as that term is understood in the United Kingdom. Question 9 relates to pre-marketing, if relevant. Question 10 relates to reverse solicitation.

Yes. The UK Financial Conduct Authority (FCA) has published guidance on the definition of 'marketing' in the context of the AIFMD in chapter 8 of its Perimeter Guidance Manual ("PERG"). The specific section on AIFMD marketing in PERG 8.37 is available [here](#).

In the FCA's view, an offering or placement takes place when a person seeks to raise capital by making an interest in an AIF available for purchase by a potential investor. This includes situations which constitute a contractual offer that can be accepted by a potential investor in order to make the investment and form a binding contract, and situations which constitute an invitation to the investor to make an offer to subscribe for the investment. An 'offer' is to the public, whereas a 'placement' is to a select group of potential investors. In the FCA's opinion, secondary trading is not caught within the definition of either an 'offer' or a 'placement' because it does not involve capital raising in that AIF, except where there is an indirect offering or placement (e.g. distribution via a chain of intermediaries).

Communication in relation to draft documentation is generally not caught, but this should not be a means to avoidance. In a private equity context, this usually means circulating the final form PPM plus limited partnership agreement plus subscription document. Pre- or soft marketing is not 'marketing' but is regulated under the UK domestic financial promotion regime.

Section two: Marketing in the EU on a country-by-country basis

3. When was the Directive transposed into national law in the United Kingdom?

The Directive was transposed into national law on 16 July 2013 through the Alternative Investment Fund Managers Regulations 2013 (SI 2013/1773), which are available [here](#). The Regulations came into force on 22 July 2013.

The Alternative Investment Fund Managers (Amendment) Regulations 2013 (SI 2013/1797), which are available [here](#), were made on 17 July 2013. These will implement provisions in the Directive which do not take effect until the European Commission specifies a date in a delegated act. Most of the provisions in the Amendment Regulations will therefore come into effect when the corresponding Directive provisions do so.

4. Under the domestic implementing measures of the United Kingdom, is the Directive relevant to marketing to investors established in the United Kingdom (within the meaning of Article 4(1)(j)) but who are not physically located in the United Kingdom at the time the marketing takes place⁶⁷?

No. The UK AIFM Regulations restrict marketing “in the United Kingdom”.

In PERG 8.37.10, the FCA states that in addition to the requirement that the marketing must take place in the UK, the relevant investor must be domiciled in an EEA State or must have its registered office in an EEA State in order for the marketing to be caught. However, the FCA has declined to give further guidance on the definition of “domicile” for these purposes, other than to state that it must be “construed in line with its meaning under EU law”.

5. Once the Directive is in effect in the United Kingdom, in relation to ‘marketing’ (as that term is understood in the United Kingdom) can a non-EEA manager of a non-EEA fund rely on a transitional (or ‘grandfathering’) provision, for example a transitional provision implementing Article 61(1) to delay compliance with the requirements of Article 42? If it can, what conditions must be met? If the conditions are met, what limits are there on marketing (for example is it possible only to market a fund which was being actively marketed before 22 July 2013 or also other funds managed by the same manager)?

Yes, the UK government has taken the view that Article 61(1) applies to non-EEA managers of non-EEA funds. If a non-EEA AIFM (a) was managing an AIF (as defined) immediately before 22 July 2013 and (b) at any time prior to 22 July 2013, marketed that AIF to a professional investor anywhere in the EEA, then it may continue to market that AIF to professional investors in the UK until 21 July 2014 in accordance with pre-existing financial promotion laws (only). The same AIFM may also establish and market future funds on the same basis.

For this purpose ‘marketing’ is as defined by the FCA (see Question 2) so pre- or soft marketing before 22 July 2013 is not enough to trigger the transitional provision.

6. Is there any list published of the cooperation arrangements which have been entered into (i.e. signed by both parties and dated) between the competent authorities of the United Kingdom and those of non-EEA jurisdictions for the purposes of Article 42(1)(b)? What is expected to happen in future?

As at 18 February 2015, the FCA had signed agreements with 50 non-EEA supervisory authorities. A list of the relevant authorities is available [here](#), under the “Supervisory co-operation Agreements (MoUs)” heading.

⁶⁷ Article 2(1)(c) may be interpreted as restricting the territorial scope of the Directive in relation to Article 42 firms.

Section two: Marketing in the EU on a country-by-country basis

7. After the expiry of any transitional provision, is there to be any gold-plating of the requirements of Article 42? In other words, will there be additional domestic restrictions on or conditions for marketing fund interests? Or is it necessary only to consider local implementation of Article 42? There might be restrictions on the type or number of investors who may be approached, or other conditions. For example, in the UK, it will continue to be necessary to comply with the pre-existing financial promotion regime, which (in theory) further restricts the category of 'per se professional client'. In Germany, it will be a requirement that the non-EEA fund has a depositary performing functions specified under Article 21.

Yes, the current UK financial promotion regime will remain in force. In summary, it is only lawful to make an invitation or inducement to engage in investment activity (including by subscribing for interests in a private equity fund) by addressing it specifically to a person who falls within an exempt category. Relevant exemptions facilitate marketing to: (a) institutions whose business it is to invest (generally, those authorised and regulated by the FCA or the UK Prudential Regulation Authority ("PRA"), such as banks, insurers, fund of funds managers) and (b) large companies or other undertakings with called up share capital or net assets of GBP 5,000,000 or more; and (c) trustees of trusts (including most occupational pension schemes) with gross assets of GBP 10,000,000 or more.

If no exemption is available, the content of the communication must be approved by a person authorised and regulated by the FCA and/or PRA. Breach of this restriction may be a criminal offence and/or lead to rescission of investor commitments.

Note:

This answer concerns only the activity of marketing the fund. If the manager were to take further steps in the UK with a view to arranging an investor's commitment to the fund (for example by negotiating the detailed terms of investment or receiving completed subscription documents in the UK) this may constitute a regulated activity for which UK Financial Conduct Authority authorisation would be required.

This analysis is complicated and would turn on what activities are conducted in the UK, what presence the manager has in the UK and the authorisation status of the prospective investor.

8. Must a firm seeking to market in the United Kingdom in reliance on Article 42 notify, or register with, the competent authority in the United Kingdom? What kind of information is required, will there be a public register, what fee will be charged etc.? Is there an online notification or registration form? What can be done while awaiting registration (if relevant)?

The rules differ as between non-EEA AIFMs which are above or below the thresholds in Article 3(2) of the Directive but, in both cases, the manager must notify the FCA before marketing. There is no public register. Further details on notification requirements are contained in chapter 10 of the FCA's Investment Funds sourcebook ("FUND"), and in particular in FUND 10.5 which is available [here](#).

Notification forms for this purpose are available [here](#), under the "Forms" heading. The fee for each notification is currently GBP 250 per AIF for an above-threshold non-EEA AIFM and GBP 125 per AIF for a sub-threshold non-EEA AIFM. Periodic fees are also payable on an annual basis - these are currently GBP 500 per AIF for an above-threshold non-EEA AIFM and GBP 350 per AIF for a sub-threshold non-EEA AIFM.

Section two: Marketing in the EU on a country-by-country basis

9. What restrictions are there on pre-marketing⁶⁸, taking into account considerations similar to those raised in Questions 3 to 8 above?

Invitations or inducements to engage in investment activity falling short of 'marketing' as described in the answer to Question 2 will be subject to the financial promotion regime mentioned in Question 7.

10. Whether marketing (as defined) is banned or restricted by Article 42 or otherwise, what interpretation is given in the United Kingdom to the concept of 'reverse solicitation', 'reverse enquiry' or marketing at the initiative of the investor, within the meaning of Recital 70?

As a matter of UK implementation, marketing at the initiative of the investor is not 'marketing' for the purposes of the Directive (but it is likely to involve a financial promotion (see Question 7)).

The FCA has given guidance in PERG 8.37.11 (available [here](#)) that a confirmation from the investor that the offering or placement of interests in an AIF was made at its initiative, should normally be sufficient to demonstrate that this is the case, provided this is obtained before the offer or placement takes place. However, managers should not be able to rely upon such confirmation if this has been obtained to circumvent the requirements of the Directive.

⁶⁸ This assumes that the answer to Question 2 distinguished between 'marketing' (as defined) and pre-marketing.

Section two:

Marketing in the EU on a country-by-country basis

SCENARIO B: MARKETING NON-EEA AIFs MANAGED BY AN EEA AIFM UNDER ARTICLE 36 (NO PASSPORT)

Further assumptions for the purpose of Scenario B only

Licensing

The AIFM is a fully authorised AIFM in its home member state.

Who markets?

The legal person engaging in marketing is the Alternative Investment Fund Manager of the AIF.

There is no placement agent or other intermediary involved.

11. Is it possible to market a fund in the circumstances described above in the United Kingdom and/or to investors established in the United Kingdom?

Yes.

12. If yes, is the AIFM required to obtain a local licence or authorisation or to observe other formalities?

Please briefly describe the process for obtaining such licence or authorisation (including any fees payable to a regulator) or the formalities required.

A full-scope EEA AIFM may market in the UK in these circumstances provided it notifies the FCA in advance. The relevant notification form is available here:

<http://www.fca.org.uk/firms/markets/international-markets/aifmd/nppr>, under the "Forms" heading. The relevant form is entitled, "Article 36 form".

The provisions of Article 36 apply, so that a full-scope EEA AIFM need not comply with the requirements of Article 21, provided that the full-scope EEA AIFM ensures that one or more persons are appointed to perform the depositary functions specified in Articles 21(7) to (9) and notifies the FCA of the identify of such persons.

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Section two: Marketing in the EU on a country-by-country basis

13. Are there any restrictions on the type or number of investors to whom the fund may be marketed on this basis?

There are no restrictions on the number of investors to whom the fund may be marketed under Article 36. In this context, the fund can only be marketed to professional investors (the UK uses the MiFID definition of professional client).

Notwithstanding this, it is possible for the fund to be marketed to retail investors in the UK in accordance with the UK financial promotions regime.

All firms are subject to section 21 of the Financial Services and Markets Act (FSMA). This prohibits a firm from making a financial promotion to UK investors in the course of its business. This restriction does not apply to firms which are “authorised persons”, such as a full-scope UK AIFM. However, this does not take a full-scope UK AIFM outside the scope of the UK financial promotions regime. There is a further restriction under section 238 FSMA. This restricts an authorised person from promoting units in an unregulated collective investment scheme in the UK (such as an AIF). Therefore, in order for a full-scope UK AIFM to promote its fund to a retail investor, it must either:

1. rely on an exemption set out in the Financial Services and Markets Act 2000 (Promotion of Collective Investment Schemes) (Exemptions) Order 2001, for example, the investor is a certified high net worth individual; or
2. promote the fund in accordance with the FCA’s Conduct of Business Sourcebook COBS 4.12, for example, by using a prescribed process to re-categorising investors from retail status to professional status (the UK definition of professional client).

A firm which is not an FCA authorised person, may only promote an AIF to retail investors:

1. where certain limited exemptions apply under the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 but these must be treated with great caution; or
2. where the content of a written promotion is approved by an FCA authorised firm as being suitable for retail investors by reference to detailed FCA rules.

14. Whether or not a licence or authorisation is required, please briefly describe the key continuing obligations of the AIFM (including any obligation to make reports or to pay fees) if it markets on this basis in the United Kingdom.

A full scope EEA AIFM which markets in the UK pursuant to Article 36 is required to pay an initial fee and annual fee per fund for each fund identified in the Article 36 form.

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Section two: Marketing in the EU on a country-by-country basis

SCENARIO C: MARKETING BY SUB-THRESHOLD AIFMS

15. Is there a difference in the United Kingdom between the rules for non-EEA AIFs managed by non-EEA AIFMs and those applicable to sub-threshold AIFMs⁶⁹?

If yes, please explain how they are different and describe the rules, according to and based on the questions below.

If no, please go to Question 16.

Yes, there is a difference between a non-EEA AIFM marketing pursuant to Article 42 and a sub-threshold EEA AIFM marketing in the UK.

(a) A sub-threshold non-EEA AIFM can market (EEA or non-EEA) funds which it manages into the UK provided it notifies the FCA in advance. The relevant notification form is available here:

<http://www.fca.org.uk/firms/markets/international-markets/aifmd/nppr>, under the "Forms" heading. The relevant form is entitled, "Small Third Country form".

The sub-threshold non-EEA AIFM is required to pay an initial fee and annual fee per fund for each fund identified in the Small Third Country form.

(b) A sub-threshold EEA AIFM can market (EEA or non-EEA) funds which it manages in the UK. It is only subject to the pre-existing financial promotion restriction (see Question 7 but note the rider in response to Question 7 concerning further steps to arrange investors' commitments which, if taken in the UK, may be licensable).

15a. Can an AIFM which falls within Article 3(2) and is subject to domestic registration or authorisation only in its home Member State market a fund in the United Kingdom and/or to investors established in the United Kingdom?

Yes, a sub-threshold EEA AIFM and a sub-threshold non-EEA AIFM can market funds managed by it in the UK on the basis described in response to Question 15.

15b. If yes, is the AIFM required to obtain a local licence or registration or to observe other formalities?

Please briefly describe the process for obtaining such licence or registration (including any fees payable to a regulator) or the formalities required.

Yes.

A sub-threshold non-EEA AIFM must notify the FCA of its intention to market funds managed by it using the Small Third Country form (see response to Question 15).

A sub-threshold EEA AIFM can market its funds in the UK subject to the pre-existing financial promotions regime (see response to Question 15).

Note the rider in response to Question 7 concerning further steps to arrange investors' commitments which, if taken in the UK, may be licensable.

⁶⁹ A sub-threshold AIFM should be considered as an AIFM which falls within Article 3(2) and is subject to domestic registration or authorisation only in its home Member State.

Section two: Marketing in the EU on a country-by-country basis

15c. Please briefly describe any restrictions on the type or number of investors to whom the fund may be marketed on this basis.

It is prudent to confine marketing to fewer than 150 prospective UK investors. Otherwise, advice should be taken on the possible implications of UK restrictions on the making of public offers for transferable securities.

Under the UK financial promotions regime, in summary, a sub-threshold EEA AIFM may only lawfully make an invitation or inducement to engage in an investment activity by addressing it specifically to a person who falls within an exempt category (see response to Question 7).

15d. Whether or not a licence or authorisation is required, please briefly describe the key continuing obligations of the AIFM (including any obligation to make reports or to pay fees) if it markets on this basis in the United Kingdom?

A sub-threshold non-EEA AIFM which markets in the UK is required to pay an initial fee and annual fee per fund for each fund identified in the Small Third Country form.

**16. Do the AIFMD implementing rules in the United Kingdom provide for a different regime for non-EEA sub-threshold AIFMs?
If yes, please explain how the rules are different (for example, would non-EEA sub-threshold AIFMs be exempt from certain provisions?)**

See response to Question 15.

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2

3

Section three:
Glossary

3

In this section

Glossary

251-257

Glossary – List of abbreviations and references to AIFMD articles

This Glossary includes a list of abbreviations, as well as direct extracts of the relevant articles from the AIFMD.

AIFMD - Alternative Investment Fund Managers Directive (Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010)

AIF - Alternative Investment Fund

AIFM - Alternative Investment Fund Manager

EEA - European Economic Area

ESMA - European Securities and Markets Authority

EuVECA - Regulation (345/2013) of the European Parliament and of the Council of 17 April 2013 on European venture capital funds

(<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:115:0001:0017:EN:PDF>)

Recital 70

(70) This Directive should not affect the current situation, whereby a professional investor established in the Union may invest in AIFs on its own initiative, irrespective of where the AIFM and/or the AIF is established.

Article 2 Scope

1. Subject to paragraph 3 of this Article and to Article 3, this Directive shall apply to:

- (a) EU AIFMs which manage one or more AIFs irrespective of whether such AIFs are EU AIFs or non-EU AIFs;
- (b) non-EU AIFMs which manage one or more EU AIFs; and
- (c) non-EU AIFMs which market one or more AIFs in the Union irrespective of whether such AIFs are EU AIFs or non-EU AIFs.

(...)

3. This Directive shall not apply to the following entities:

- (a) holding companies;
- (b) institutions for occupational retirement provision which are covered by Directive 2003/41/EC, including, where applicable, the authorised entities responsible for managing such institutions and acting on their behalf referred to in Article 2(1) of that Directive or the investment managers appointed pursuant to Article 19(1) of that Directive, in so far as they do not manage AIFs;
- (c) supranational institutions, such as the European Central Bank, the European Investment Bank, the European Investment Fund, the European Development Finance Institutions and bilateral development banks, the World Bank, the International Monetary Fund, and other supranational institutions and similar international organisations, in the event that such institutions or organisations manage AIFs and in so far as those AIFs act in the public interest;
- (d) national central banks;
- (e) national, regional and local governments and bodies or other institutions which manage funds supporting social security and pension systems;
- (f) employee participation schemes or employee savings schemes;
- (g) securitisation special purpose entities.

(...)

Section three:

Glossary

Article 3 Exemptions

1. This Directive shall not apply to AIFMs in so far as they manage one or more AIFs whose only investors are the AIFM or the parent undertakings or the subsidiaries of the AIFM or other subsidiaries of those parent undertakings, provided that none of those investors is itself an AIF.
2. Without prejudice to the application of Article 46, only paragraphs 3 and 4 of this Article shall apply to the following AIFMs:
(...)
 - (a) AIFMs which either directly or indirectly, through a company with which the AIFM is linked by common management or control, or by a substantive direct or indirect holding, manage portfolios of AIFs whose assets under management, including any assets acquired through use of leverage, in total do not exceed a threshold of EUR 100 million; or
 - (b) AIFMs which either directly or indirectly, through a company with which the AIFM is linked by common management or control, or by a substantive direct or indirect holding, manage portfolios of AIFs whose assets under management in total do not exceed a threshold of EUR 500 million when the portfolios of AIFs consist of AIFs that are unleveraged and have no redemption rights exercisable during a period of 5 years following the date of initial investment in each AIF.(...)
 3. Member States shall ensure that AIFMs referred to in paragraph 2 at least:
 - (a) are subject to registration with the competent authorities of their home Member State;
 - (b) identify themselves and the AIFs that they manage to the competent authorities of their home Member State at the time of registration;
 - (c) provide information on the investment strategies of the AIFs that they manage to the competent authorities of their home Member State at the time of registration;
 - (d) regularly provide the competent authorities of their home Member State with information on the main instruments in which they are trading and on the principal exposures and most important concentrations of the AIFs that they manage in order to enable the competent authorities to monitor systemic risk effectively; and
 - (e) notify the competent authorities of their home Member State in the event that they no longer meet the conditions referred to in paragraph 2.This paragraph and paragraph 2 shall apply without prejudice to any stricter rules adopted by Member States with respect to AIFMs referred to in paragraph 2.
Member States shall take the necessary steps to ensure that where the conditions set out in paragraph 2 are no longer met, the AIFM concerned applies for authorisation within 30 calendar days in accordance with the relevant procedures laid down in this Directive.
(...)
 4. AIFMs referred to in paragraph 2 shall not benefit from any of the rights granted under this Directive unless they choose to opt in under this Directive. Where AIFMs opt in, this Directive shall become applicable in its entirety.
(...)
 5. The Commission shall adopt implementing acts with a view to specifying the procedures for AIFMs which choose to opt in under this Directive in accordance with paragraph 4. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 59(2).

Section three:

Glossary

6. The Commission shall adopt, by means of delegated acts in accordance with Article 56 and subject to the conditions of Articles 57 and 58, measures specifying:
- (a) how the thresholds referred to in paragraph 2 are to be calculated and the treatment of AIFMs which manage AIFs whose assets under management, including any assets acquired through the use of leverage, occasionally exceed and/or fall below the relevant threshold in the same calendar year;
 - (...)
 - (b) the obligation to register and to provide information in order to allow effective monitoring of systemic risk as set out in paragraph 3; and
 - (...)
 - (c) the obligation to notify competent authorities as set out in paragraph 3.

Article 4 Definitions

1. For the purpose of this Directive, the following definitions shall apply:
- (a) 'AIFs' means collective investment undertakings, including investment compartments thereof, which:
 - i. raise capital from a number of investors, with a view to investing it in accordance with a defined investment policy for the benefit of those investors; and
 - ii. do not require authorisation pursuant to Article 5 of Directive 2009/65/EC;
 - (...)
 - (j) 'established' means:
 - i. for AIFMs, 'having its registered office in';
 - ii. for AIFs, 'being authorised or registered in', or, if the AIF is not authorised or registered, 'having its registered office in';
 - iii. for depositaries, 'having its registered office or branch in';
 - iv. for legal representatives that are legal persons, 'having its registered office or branch in';
 - v. for legal representatives that are natural persons, 'domiciled in';
 - (...)
 - (x) 'marketing' means a direct or indirect offering or placement at the initiative of the AIFM or on behalf of the AIFM of units or shares of an AIF it manages to or with investors domiciled or with a registered office in the Union;
 - (...)
 - (ag) 'professional investor' means an investor which is considered to be a professional client or may, on request, be treated as a professional client within the meaning of Annex II to Directive 2004/39/EC.

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3

Section three:

Glossary

Article 36 Conditions for the marketing in member states without a passport of non-EU AIFs managed by an EU AIFM

1. Without prejudice to Article 35, member states may allow an authorised EU AIFM to market to professional investors, in their territory only, units or shares of non-EU AIFs it manages and of EU feeder AIFs that do not fulfil the requirements referred to in the second subparagraph of Article 31(1), provided that:
 - (a) the AIFM complies with all the requirements established in this Directive with the exception of Article 21. That AIFM shall however ensure that one or more entities are appointed to carry out the duties referred to in Article 21(7), (8) and (9). The AIFM shall not perform those functions. The AIFM shall provide its supervisory authorities with information about the identity of those entities responsible for carrying out the duties referred to in Article 21(7), (8) and (9);
 - (b) appropriate cooperation arrangements for the purpose of systemic risk oversight and in line with international standards are in place between the competent authorities of the home member state of the AIFM and the supervisory authorities of the third country where the non-EU AIF is established in order to ensure an efficient exchange of information that allows the competent authorities of the home member state of the AIFM to carry out their duties in accordance with this Directive;
 - (c) the third country where the non-EU AIF is established is not listed as a Non-Cooperative Country and Territory by FATF.
2. Member states may impose stricter rules on the AIFM in respect of the marketing of units or shares of non-EU AIFs to investors in their territory for the purpose of this Article.
3. The Commission shall adopt, by means of delegated acts in accordance with Article 56 and subject to the conditions of Articles 57 and 58, measures regarding the cooperation arrangements referred to in paragraph 1 in order to design a common framework to facilitate the establishment of those cooperation arrangements with third countries.
4. In order to ensure uniform application of this Article, ESMA shall develop guidelines to determine the conditions of application of the measures adopted by the Commission regarding the cooperation arrangements referred to in paragraph 1.

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Section three:

Glossary

Article 42 Conditions for the marketing in member states without a passport of AIFs managed by a non-EU AIFM

1. Without prejudice to Articles 37, 39 and 40, member states may allow non-EU AIFMs to market to professional investors, in their territory only, units or shares of AIFs they manage subject at least to the following conditions:
 - (a) the non-EU AIFM complies with Articles 22, 23 and 24 in respect of each AIF marketed by it pursuant to this Article and with Articles 26 to 30 where an AIF marketed by it pursuant to this Article falls within the scope of Article 26(1). Competent authorities and AIF investors referred to in those Articles shall be deemed those of the member states where the AIFs are marketed;
 - (b) appropriate cooperation arrangements for the purpose of systemic risk oversight and in line with international standards are in place between the competent authorities of the member states where the AIFs are marketed, in so far as applicable, the competent authorities of the EU AIFs concerned and the supervisory authorities of the third country where the non-EU AIFM is established and, in so far as applicable, the supervisory authorities of the third country where the non-EU AIF is established in order to ensure an efficient exchange of information that allows competent authorities of the relevant member states to carry out their duties in accordance with this Directive;
 - (c) the third country where the non-EU AIFM or the non-EU AIF is established is not listed as a Non-Cooperative Country and Territory by FATF.

Where a competent authority of an EU AIF does not enter into the required cooperation arrangements as set out in point (b) of the first subparagraph within a reasonable period of time, the competent authorities of the member state where the AIF is intended to be marketed may refer the matter to ESMA which may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No 1095/2010.

2. Member states may impose stricter rules on the non-EU AIFM in respect of the marketing of units or shares of AIFs to investors in their territory for the purpose of this Article.
3. The Commission shall adopt, by means of delegated acts in accordance with Article 56 and subject to the conditions of Articles 57 and 58, measures regarding the cooperation arrangements referred to in paragraph 1 in order to design a common framework to facilitate the establishment of those cooperation arrangements with third countries.
4. In order to ensure uniform application of this Article, ESMA shall develop guidelines to determine the conditions of application of the measures adopted by the Commission regarding the cooperation arrangements referred to in paragraph 1.

Section three:

Glossary

Article 61 Transitional provisions

1. AIFMs performing activities under this Directive before 22 July 2013 shall take all necessary measures to comply with national law stemming from this Directive and shall submit an application for authorisation within 1 year of that date.
2. Articles 31, 32 and 33 shall not apply to the marketing of units or shares of AIFs that are subject to a current offer to the public under a prospectus that has been drawn up and published in accordance with Directive 2003/71/EC before 22 July 2013 for the duration of validity of that prospectus.
3. AIFMs in so far as they manage AIFs of the closed-ended type before 22 July 2013 which do not make any additional investments after 22 July 2013 may however continue to manage such AIFs without authorisation under this Directive.
4. AIFMs in so far as they manage AIFs of the closed-ended type whose subscription period for investors has closed prior to the entry into force of this Directive and are constituted for a period of time which expires at the latest 3 years after 22 July 2013, may, however, continue to manage such AIFs without needing to comply with this Directive except for Article 22 and, where relevant, Articles 26 to 30, or to submit an application for authorisation under this Directive.
5. The competent authorities of the home member state of an AIF or in case where the AIF is not regulated the competent authorities of the home member state of an AIFM may allow institutions referred to in point (a) of Article 21(3) and established in another member state to be appointed as a depositary until 22 July 2017. This provision shall be without prejudice to the full application of Article 21, with the exception of point (a) of paragraph 5 of that Article on the place where the depositary is to be established.

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