ASPIM ASSOCIATION FRANÇAISE DES SOCIÉTÉS DE PLACEMENT IMMOBILIER

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Review of the AIFM Directive
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Position paper on the European Parliament's draft report and MEP amendments

ASPIM[1] welcomes the European Commission (EC)'s legislative proposal on the revision of the AIFM/UCITS Directives, as well as the Council position agreed upon on 15 June 2022, and the European Parliament's draft report and amendments.

The original AIFMD introduced in 2014 represented a major sea change for the European fund management sector, and in particular for European real estate fund managers, with entirely new requirements from supervisory reporting to liquidity and leverage management.

The sector has now adapted to these new requirements, which are **overall working well** (with a few exceptions); it is therefore important to maintain the targeted approach to the AIFMD review proposed by the EC.

We believe that the **AIFMD has an important enabler role** to play in **the growth and competitiveness of the real-estate and overall fund management sector in Europe and its contribution to Europe's society and economy**[2].

As such, we focus our comments below on the aspects of the AIFMD and related EP Amendments that are most likely to enhance or hinder such enabler role.

ASPIM'S MAIN COMMENTS AND RECOMMENDATIONS

1. Ancillary services

The AIFMD provisions on ancillary services were inspired form the UCITS framework and have proved to be ill-suited to funds that manage real assets such as real-estate assets. The EC's attempt at increasing flexibility in the provision of ancillary services (by also including benchmarking and lending activities in Article 6(4)) still fails to capture activities in the real

[1] ASPIM is the association representing 103 French real-estate asset management companies, approved by the French Financial Markets Authority (AMF), which manage approximately €280.5 billion in real estate assets (housing, retail, office and logistics) in France and in Europe.

[2] It is estimated that the real estate sector employs around 4.2 million people in Europe and contributes around 3.1% to Europe's GDP - the equivalent to both the automotive and telecom sectors combined. An important portion of such contribution comes from the real estate fund management sector (around 40% of the EU real estate sector is held as an investment, of which unlisted real estate funds are the largest providers) (Source/ Eurostats, EPRA/InRev data 2020).

estate sector that are an **integral part or natural extension** of the core activity of managing the underlying real estate assets - and can hardly be dissociated from it.

ASPIM therefore supports the modifications proposed by the Rapporteur in amendments 1, 30 and 31[3], which should allow managers to carry out two essential types of “ancillary activities”, namely:

- services provided under a **mandate structure** (as an alternative to a collective investment scheme) when they are an integral part of the management company's "core business"; and
- services provided **intra-group**: many real estate asset management companies belong to a larger group structured through specific "business line" subsidiaries, however with horizontal shared resources such as IT, middle office and human resources that support the entire group. The ability to create synergies and efficiencies from support activities allows managers significant economies of scale which improve their competitiveness, and ultimately contribute to reducing costs for investors.

2. Financial stability & liquidity management tools

ASPIM considers that:

- AIFs that manage an open-ended AIF should retain primary responsibility for use of liquidity management tools (LMTs) (in line with EP amendments 405 and 532). If a selection of appropriate liquidity management tool from the list set out in Annex V is mandatory, the selection of one LMT should be enough;
- guidelines or recommendation would be more flexible than RTS (EP amendments 294, 295, 298), allowing fund managers to adapt their liquidity management processes to the situation as rapidly and efficiently as possible;
- no additional details added to liquidity management tool descriptions are needed, ESMA should be able to further describe LMTs in level 2.

3. Changes to reporting for AIFs

ASPIM agrees with:

- annual reporting instead of a quarterly reporting (EP amendments 333 and 335); and
- information/consultation of ESMA & ESRB before requiring further information from AIFs (EP amendments 341 and 343).

However, ASPIM is concerned by the additional unnecessary burdens in of broadening reporting to include aggregated amount of the originated loan portfolios, covering “parties related to employment relationships” rather than staff, on any material changes relevant to authorisation and on leverage (EP amendments 332, 335, 336 and 339).

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[3] “*(da) any other ancillary service which is not a service listed in Section A of Annex I to Directive 2014/65/EU, which represents a continuation of the services already undertaken by the AIFM or a use of internal competences and which does not create conflicts of interest that could not be managed by additional rules*;”

(3) “*To increase the efficiency of AIFM activities, the list of authorised ancillary services set out in Article 6(4) of Directive 2011/61/EU should be extended to include benchmark administration governed by Regulation (EU) 2016/1011 of the European Parliament and of the Council and credit servicing governed by Directive 2021/…./EU of the European Parliament and of the Council and any other ancillary service which is not regulated as an investment service under Directive 2014/65/EU, which represents a continuation of the services already undertaken by the AIFM or a use of internal competences, and which does not create conflicts of interest that could not be managed by additional rules.*”

4. Entry into force

ASPIM is in favour of:

- the introduction of a grandfathering clause (new rules will not apply to AIFs/UCITS marketed before review proposals entry into force) (EP amendments 207, 553); and
- the extension of delayed Member State transposition to 3 years rather than 2 years after entry into force (EP amendment 552).

5. Fund governance

ASPIM is concerned by EP Amendment 383 requiring "*Member States to impose EU independent members – with equal powers – in the board of directors or executive management of the fund*".

Introducing such a "one-size-fits-all" requirement on funds governance across all EU AIFs would be entirely disproportionate and not reflect the great diversity of funds in the different Member States both in terms of their size and their legal structure. In France for example, funds are not self-managed, and the investment decision is not taken by the board which has mainly a power of controlling the management company. In some specific funds, such as SCPIs (closed-ended real estate funds), the supervisory board is even already composed by investors, so the argument that EU independent board members would ensure acting towards the best interests of investors does not stand. It should be up to the management company to verify that decisions are taken in the best interests of investors as already required under, and in accordance with provisions that already exist in, the AIFM directive.

6. Substance requirements

It is crucial that there is a proportionality assessment built into the impact of the various requirements of an organisational nature, in order to reflect and respect the diversity of the EU fund management ecosystem. For example, EP amendment 253 requiring to have at least 3 (instead of 1) natural person working full-time and in addition one of whom shall be an independent director would be highly problematic for some of the smaller real-estate fund managers – and no doubt the same applies in other sectors.

Flexibility should be provided to allow smaller funds to have only one full-time senior manager, and/or to be able to have recourse to expert fund managers working part-time.

Member States must impose EU independent members – with equal powers – in the board of directors or executive management of the fund to ensure proactive behaviour towards acting in the best interests of clients

7. Sustainability

The combination of growing demand for ESG investing and fast evolution of the funds industry has significantly increased the risk of greenwashing. It is crucial to harmonize the rules across the EU for tackling greenwashing and promoting transparency, notably to regulate the use of fund names to counter greenwashing as well as to incorporate climate and transition risks into investment decisions.

However, including further rules on authorisation requirements, investor disclosure, and NCA reporting before the Sustainable Finance Disclosure (SFDR) and the Taxonomy Regulations are stabilized would be tricky for management companies, especially:

- regarding the fund characteristics:
  - ASPIM agrees to the addition of an ESMA RTS on situations where a fund name could be deceptive (see EP amendments 163, 184, 243-244, 428-429), which is in line with the AMF guidelines 2020-03.
  - However, giving a definition of "AIFM marketed as environmentally sustainable" would create a sub-category of AIFs (see amendments 210 and 383) which would be misleading for investors, especially if in parallel a sub-category of "Environmentally sustainable" ELTIFs is also created (as proposed by the EP).
- regarding the fund manager process: ASPIM considers that sustainable rules governing the funds' strategy and the reporting are already included in the SFDR and Taxonomy regulations. Adding parallel rules in the AIFMD such as:
  - integrate SFDR into authorisation process (amendments 252, 255, 257, 435-436);
  - incorporate climate & transition risks into general principles (amendments 258 and 469);
  - integrate ESG into investor disclosure (amendments 329 and 331); and
  - integrate ESG into NCA reporting (amendments 337 and 486)

  would create conflict of interpretation of parallel rules.

8. Costs

Several amendments are proposed that seek to introduce a new concept of "undue costs" which fund managers would be prevented from charging to investors in the name of investor protection (new Recital 31 a & b, new Article 14c, new Article 18.10(a), new Article 89(a)).

Cost regulation is already well established under both MIFID and PRIIPS, reflecting the key aspects of investor protection which are transparency and the ability of the investor to compare the costs between funds. Indeed, when a retail investor benefits from investment advice for the subscription of an AIF, MiFID requires the financial adviser to communicate to the investor, in an understandable manner, all the appropriate information, in particular concerning costs and charges, so that he/she can make an informed decision. This information is provided via the PRIIPs KID, which presents the cost details charged by the fund and the impact of those costs on the fund performance (*ex ante* information). After the subscription, the investor receives an annual reporting presenting the real costs charged by the fund during the past year (*ex post* information).

However, it currently remains (and should continue to remain) the responsibility of the management companies to set the optimal level of the costs of the funds they manage, taking account of the characteristics of the underlying assets and the type of distribution channel.

ASPIM considers that the objective of investor protection is already well achieved by the MiFID Directive and PRIIPs Regulation; we believe that the introduction of a new undefined concept of "undue" costs would have a negative impact on fund managers' needed flexibility, with no obvious benefit for retail investors.

9. Remuneration policies

In the past years, the rise of ESG issues was reflected in the remuneration of the management of listed companies. It is also logical to implement those key principles of good governance in the investment funds industry. ASPIM, who is promoting the SRI label in France, is in favour the integration of sustainability risks in AIFM remuneration rules.

However, management companies must first reach sufficient maturity in the application of new sustainable finance regulations to find relevant criteria, calibrated and adapted to their activity. The rules should be limited to variable salary and be consistent with existing regulations apply to corporates (in particular the Shareholder rights Directive - SRD II).

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