ASPIM ASSOCIATION FRANÇAISE DES SOCIÉTÉS DE PLACEMENT IMMOBILIER

10 February 2022

Review of the AIFM directive

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Position paper

Introduction

ASPIM, the Association of Real-Estate Fund Managers in France, welcomes the European Commission (EC)'s legislative proposal on the revision of the AIFM/UCITS Directives published on 25 November 2021.

The original AIFMD introduced in 2014 represented a major sea change for the European real estate fund management sector (perhaps more than for any other sector), 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, except in relation to the provision of "ancillary services".**

ASPIM therefore **supports the EC's targeted approach** in reviewing the existing AIFMD framework, and believes that in particular the current reporting, liquidity management and leverage regimes should be neither diluted nor unnecessarily augmented without in-depth consideration of the potential impact on the unique specificities of managing real-estate funds: **unlike most other AIF managers**, real estate fund managers do not just portfolio and risk manage the fund, they also **directly manage the "real" property assets** in which a broad range of economic activities are carried out: offices, shops, maternity clinics, student and retirement homes, hotels, hospitals etc.

As such, real estate fund managers are **uniquely positioned to support Europe's ambitions to better allocate private savings and capital and to support the climate change transition**[1] by:

- Providing stable, long term alternative sources of diversification from bank deposits - helping turn savers into investors, a crucial piece of the Capital Markets Union project.
- Enabling income derived from such investments to complement shrinking state supported pension systems - an additional source of retirement income.
- Proactively helping a sector that is the biggest energy consumer and third largest producer of CO2 emissions transition towards the Paris Agreement climate change targets.

We believe that the **AIFMD has an important enabler role** to play in that context, and therefore would like to sensitise EU policy makers to **two issues which we see in AIFMD potentially limiting the growth and competitiveness of the real-estate (and possibly broader) fund management sector in Europe and its contribution to Europe's society and economy**[2].

[1] For example, in France we have a very demanding ESG label for the real estate sector: 57 funds are labelled.

[2] It is estimated that the real estate sector employs around 4 million people in Europe and contributes around 3% 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

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Two key concerns

First, it is crucial that there is a proportionality assessment built into the impact of the various requirements, in particular those of an organisational nature, in order to reflect and respect the diversity of the EU fund management ecosystem. For example, on **the substance requirements** as enunciated in **article 8** of the proposal, the requirement to have at least two senior managers working full-time would be 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.

Our **second concern** relates to **"ancillary services"**. The AIFMD provisions were inspired form the UCITS framework and are proving to not be well-suited to funds that manage real assets such as real-estate. We welcome the intention to increase flexibility in the provision of ancillary services in the amendment to **Article 6(4)** (ie now also including benchmarking and lending activities). However, this definition **still fails to capture activities in the real estate sector that are an integral part or natural extension of the core activity of managing the underlying real estate assets** - and therefore can hardly be dissociated from it.

The **two main types of activities** to which the definition of "ancillary activities should apply are:

- **Services provided under a mandate structure**

  In some Member states, such as France, real-estate can be managed either as collective investment scheme under the AIFMD or under an individual mandate from real-estate owners or investors and subject to national law. Real-estate management companies often do both, depending on the specific asset situation or client preference. Either way and **in both cases**, the AIF fund manager, or mandatee, has the same responsibility for managing the properties (eg rent collection, repairs, refurbishments, renovations etc) which is core to its overall management responsibility.

  The insurance sector faces a similar situation, where the ability to broker life insurance policies because the AIFs that asset management companies manage are included as units in those policies is simply a normal - and regulated - extension of their core insurance business.

  Therefore, the AIFMD should allow for the carrying out by fund managers of activities of a non-financial nature when they are an integral part of the management company's "core business", subject of course to ensuring full respect of conflict management rules.

- **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.

  As such, the d**efinition of "ancillary activities" should unambiguously recognise that such intra-group activities are permitted**.

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).

Proposed insertion to Article 6(4)

The challenges explained above could easily be addressed by adding a paragraph to Article 6(4) as follows:

"c) managers or real assets may carry out other ancillary activities that either form an integral part of their core activity or make use of internal resources, so long as procedures are in place to identify and manage any potential conflicts that may arise vis-à-vis their core activity."

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