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Additional Information

Level 1 Regulation
Alternative Investment Fund Managers Directive (AIFMD) Directive 2011/61/EU

Topic
AIFMD scope

Additional Legal Reference
Article 33 of Directive 2011/61/EU

Subject Matter
Scope of activities that an AIFM may carry out in a host Member State

Question
When an AIFM intends to provide the activities and services for which it has been authorised in a host Member State, either directly or through a branch, may that AIFM passport in that

host Member State only the other functions that an AIFM may additionally perform in the course of the collective management of an AIF, which are referred to in point (2) of Annex I to the AIFMD, without also passporting investment management functions?

ESMA Answer

13-06-2023

Original language

[ESMA34-32-352, Section IV, Q&A 6]

No. The AIFMD passporting regime is linked to the management of an EU AIF. Annex I lists the investment management functions which an AIFM shall at least perform when managing an AIF (point 1) and the other functions that an AIFM may additionally perform in the course of the collective management of an AIF (point 2). The activities referred to in Annex I, point 2 are therefore ancillary to the activities referred to in Annex I, point 1 and cannot be exercised independently from those. That is also the case when AIFM passport their services in another Member State. Furthermore, pursuant to Article 33(2), point (b), AIFMD, an AIFM intending to manage EU AIFs established in another Member State is to communicate to the competent authorities of its home Member State a program of operations referring to the services it intends to provide and the EU AIF it intends to manage. That requirement cannot be interpreted otherwise than referring to investment management foremost whereas auxiliary services remain as such auxiliary and are to be performed only in addition to the management of an EU AIF.

The answers provided by the European Commission clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed

in the internal Commission Decision cannot prejudge the position that the European Commission might take before the Union and national courts.