ESMA_QA_2547

Submission Date
27/05/2025

Status: Answer Published

Additional Information

Level 1 Regulation
Regulation (EU) 2022/2554 - The Digital Operational Resilience Act (DORA)

Topic
Other DORA topics

Subject Matter
Does DORA also apply to non-EU AIFM?

Question
The regulation applies to managers of alternative investment funds according to Article 2, point (k) of DORA. According to Article 3, (point 44), of DORA a manager of alternative investment funds is defined as “a manager of alternative investment funds as defined in Article 4(1), point (b), of Directive 2011/61/EU”.
According to Article 4(1), point (b), of Directive 2011/61/EU (AIFM Directive) “AIFMs’ means

legal persons whose regular business is managing one or more AIFs”. We are of the understanding that Article 4(1), point (b), does not exclude non-EU AIFM. EU AIFM and non-EU AIFM are defined in Article 4(1), point (L) and point (ab). Since DORA only refers to article 4(1), point (b), of the AIFM Directive and not to article 4(1), point (L), we are wondering if DORA applies to both EU and non-EU AIFM as the definition implies.

ESMA Answer

27-05-2025

Original language

DORA applies to managers of alternative investment funds according to Article 2, point (k) of DORA, except for those managers of alternative investment funds referred to in Article 3(2) of Directive 2011/61/EU. According to Article 3, (point 44), of DORA, a manager of alternative investment funds is defined as “a manager of alternative investment funds as defined in Article 4(1), point (b), of Directive 2011/61/EU”.

However, the definition of the managers included in Article 4(1), point (b), of Directive 2011/61/EU should be read in conjunction with the scope of application of Directive 2011/61/EU, contained in Article 2 of that Directive.

Hence, in general terms - and provided that this answer is not carrying out a detailed recollection of all the criteria referred to in Article 2 of Directive 2011/61/EU - Article 4(1), point (b), in conjunction with Article 2 of Directive 2011/61/EU implies that DORA applies to EU AIFMs and also to non-EU AIFMs, which manage one or more EU AIFs, and to non-EU AIFMs which market one or more AIFs in the Union irrespective of whether such AIFs are EU AIFs or non-EU AIFs, to the extent that they benefit from the management and marketing passport in accordance with Articles 39, 40 and 41 AIFMD. Non-EU AIFMs will only be subject to DORA obligations once the European Commission adopts Delegated Acts extending the marketing and management passport to them.