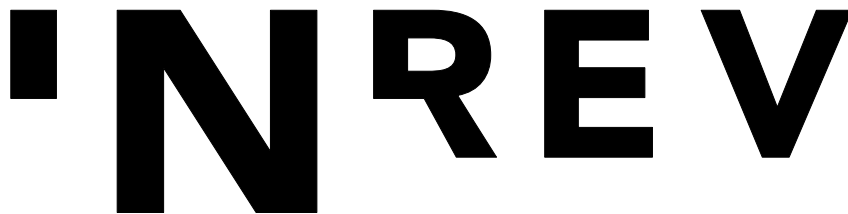


EUROPEAN ASSOCIATION FOR INVESTORS
IN NON-LISTED REAL ESTATE VEHICLES

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EUROPEAN SECURITIES AND MARKETS AUTHORITY (ESMA)
MR. RICHARD STOBO, SENIOR OFFICER
MR. CLÉMENT BOIDARD, OFFICER

11-13 AVENUE DE FRIEDLAND
75008 PARIS
FRANCE



Letter

Dear Mr Stobo and Mr Boidard,

SUBJECT
INREV RESPONSE TO ESMA'S
CONSULTATION PAPER ON
SUPERVISIONS AND THIRD
COUNTRIES

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23 SEPT 2011

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INREV is the European Association for Investors in Non-Listed Real Estate Vehicles. We provide guidance and information in relation to the development and harmonisation of professional standards, reporting guidelines and corporate governance within the non-listed property funds industry across Europe. In addition, INREV undertakes research and surveys of the industry and constructs the INREV Index which covers the performance of institutional non-listed real estate funds investing in Europe.

INREV has over 355 members. Our member base includes institutional investors, fund of funds managers, fund managers, investment banks and advisors representing all facets of investing into the non-listed real estate industry. These members have a representation in the European non-listed real estate investment market totalling 474 funds with a Gross Asset Value (GAV) of EUR 259.4 billion. INREV's members represent almost all jurisdictions of the European Union's internal market and their underlying investment vehicle structures.

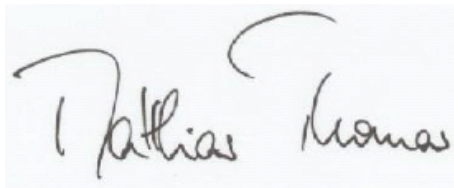
INREV has since its inception worked to achieve a more transparent, efficient and competitive internal market through promoting industry best practices at an EU level. Progress has been made against a background of an industry regulated at the Member State level, resulting in a juxtaposition of various national regulations. While most institutional investment managers and investors have managed to roll out cross border business models to the satisfaction of their customers, INREV clearly recognises that the current challenge taken up, in light of the principle of subsidiarity, by the Commission and ESMA is a first significant regulatory step in what may become a major step toward a bigger, more professional and high quality property investment industry in line with INREV's own objectives.

Please find attached INREV's response to the consultation paper on ESMA's draft technical advice to the European Commission on possible implementing measures of the Alternative Investment Fund Managers Directive in relation to supervision and third countries.

INREV

We hope to provide a meaningful contribution to your work to support the development of a sound EU regulatory framework and remain available should you have any specific questions about the non-listed real estate fund industry.

Kind regards,

A handwritten signature in black ink, reading "Matthias Thomas". The signature is written in a cursive style with a large, sweeping initial 'M'.

Matthias Thomas

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Attachments:

INREV response to ESMA's consultation paper
List of INREV members

General remarks

INREV welcomes the opportunity to provide feedback on ESMA's draft technical advice to the European Commission on possible implementing measures of the AIFMD in relation to supervision and third countries.

In general INREV welcomes ESMA's approach. However, we have serious concerns about the possible disruption that could be caused to operations and planned operations of fund managers in case of a failure to implement the technical measures in relation to supervision and third countries, which in essence would be outside the control of fund managers.

ESMA and the European Commission should provide a clear timeline and roadmap on how to overcome the challenges associated with agreements with third countries. Clear advice should also be provided about the consequences of failure to negotiate third country agreements in time, and the failure by third country authorities to comply with the requirements. We believe that it is essential that events outside the control of fund managers do not disrupt normal business operations. A grandfathering clause, to overcome a possible transition period until all agreements are in place, could provide fund managers with the necessary security and predictability to avoid significant uncertainty with regard to planning and execution business operations.

Furthermore, INREV highlights that all possible measures should be taken to avoid regulatory arbitrage between different jurisdictions that could result from the diverse pace of negotiations and different regulatory cultures in third countries.

III. Delegation (Articles 20 (1)(c), 20(1)(d) and 20(4))

Page 7

Box 1

Please see INREV's comments to Q1 and Q2.

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Q1

Do you agree with the above proposal? If not, please give reasons.

INREV supports ESMA's approach as it relies on existing standards.

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Q2

In particular, do you support the suggestion to use as a basis for the co-operation arrangements to be signed at EU level the IOSCO Multilateral Memorandum of Understanding of May 2002 and the IOSCO Technical Committee Principles for Supervisory Co-operation?

INREV believes that multilateral agreements are in principle preferable to bilateral agreements, as the latter could lead to regulatory arbitrage. However, the extra time needed to negotiate multilateral agreements might lead to considerable delays compared to bilateral agreements. INREV believes that both approaches should be considered. Bilateral agreements should be set up using a model approach that allows transition to a multilateral agreement at a later stage, provided that the concern of regulatory arbitrage is addressed.

INREV highlights that agreements between countries are outside of the fund manager's control. Requirements should therefore be sufficiently flexible to ensure that fund managers can continue their operations or planned operations also in absence of any such agreement. This relates in particular to the explanatory text paragraph 6 suggesting that arrangements must be "in place before the delegation starts." We therefore urge ESMA to include in its advice a grandfathering provision, at least for existing funds, should agreements not be in place in time.

INREV would also like clarification from ESMA with regard to which countries it considers as a priority for such agreements and provide an indicative timeline of when such agreements could be expected to be in place.

Further, in line with INREV's comments to ESMA's consultation on delegation, we highlight that certain elements of portfolio and risk management require the provision of services that should not be considered as delegation. It also should be clarified that an investor group may use a regulated management company to provide the regulated fund vehicle and risk management, but retain the services of non-regulated EU or third-country managers to provide specialised portfolio management services. We assume that "private or white label funds" widely used in the UCITS industry or the Master-KAG concept for real estate funds in Germany to provide specialised portfolio management services will also be available to manage AIFs under AIFMD rules, but we seek clarification in this regard.

IV. Depositary (Article 21(6))

Page 10

Box 2

Please see INREV's comments to Q3 and Q4.

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Q3

Do you agree with the above proposal? If not, please give reasons.

While not very common in the case of non-listed real estate, INREV would like to point out that fund managers may need to use non-bank depositaries in third countries when local circumstances may require such steps. Such practices are allowed under AIFMD Article 21(3)(c). However, the current Level 2 advice by ESMA appears to restrict what is contained in the Level 1 Directive.

Q4

Do you have an alternative proposal on the equivalence criteria to be used instead of those suggested in point b above?

See INREV's comments to Q3.

V. Supervision

V.I. Co-operation between EU and third country competent authorities for the purposes of Article 34(1), 36(1) and 42(1) of the AIFMD

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Box 3

See INREV's comments to Q5.

Page 15

Q5

Do you agree with the above proposal? If not, please give reasons.

While INREV believes that the advice by ESMA is generally sensible, we would like to highlight that imposing such standards on 3rd countries may be impossible to achieve, or in any case would imply a very lengthy negotiation process. For instance, the requirement in 1(d) may be difficult to achieve. An adapted wording suggesting that on-site inspection can be performed where a material concern exists might be more adequate. Generally, the information requested should have a specific focus and purpose to avoid such measures being misused for general information gathering purposes.

In line with previous comments INREV reiterates that a grandfathering provision should be included in case such agreements cannot come into effect in time.

INREV also seeks clarification with regard to 'on-site inspection'. Specific areas where clarity is sought are what the implications of such an inspection would be, whether any limits would be placed on the scope of such inspections, what the consequences for fund managers of third country refusal to grant such inspections would be, and what the consequences of a third country not having 'similar' arrangements would be.

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Q6

In particular, do you support the suggestion to use as a basis for the cooperation arrangement to be signed at EU level the IOSCO Multilateral Memorandum of Understanding of May 2002 and the IOSCO Technical Committee Principles for Supervisory Co-operation?

See INREV's comments to Q5.

V.II. Co-operation arrangements between EU and non-EU competent authorities as required by Articles 35(2), 37(7)(d) and 39(2)(a) of AIFMD

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Box 4

See INREV's comments to Q5.

Page 17

Q7

Do you agree with the above proposal? If not, please give reasons.

See INREV's comments to Q5.

V.III. Co-operation and exchange of information between EU competent authorities

Page 18

Q8

Do you agree with the above proposal? If not, please give reasons.

INREV has no comments at this stage.

V.IV. Member State of reference: authorisation of non-EU AIFMs – Opt-in (Article 37(4))

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Box 5

INREV supports ESMA's approach to seek further criteria to identify the "Member State of reference" as it is not entirely clear from the current language.

Further, with regard to paragraph 2, we believe that the reference to 48 hours is impractical. Generally a timeline is necessary to ensure that actions are taken on a timely basis. However, a reference to 'working days' would be more appropriate. It also remains unclear from ESMA's advice what consequences a failure to respond would have. In line with INREV's previous comments, events outside of the fund manager's control should under no circumstances disrupt business operations.

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Q9

Do you have any suggestions on possible further criteria to identify the Member State of reference?

We would welcome clarification from ESMA on the extent to which the AIFM of the AIF (the units or shares of which are to be offered or placed) must comply with the marketing provisions of the AIFMD in order for an investment firm and the relevant AIFM to be able to rely on these provisions.

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Q10

Do you think that any implementing measures are necessary in the context of Member State of reference given the relatively comprehensive framework in the AIFMD itself?

Yes, INREV believes that implementing measures are necessary, as it is not clear what consequences would result from a failure to comply with requirements of Box 5. INREV believes that business operations should not be disrupted due to events outside the fund manager's control.

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Q11

Do you agree with the proposed time period for competent authorities identified as potential authorities of reference to contact each other and ESMA?

INREV appreciates in principle a timeline for authorities. However, the time period provided does not appear to be very practical. Further, it remains unclear what would be the consequences for fund managers of a failure by authorities to comply with the given timeline.