

Pierre Gramegna
Chair
ECOFIN
Ministry of Finance
3, rue de la Congrégation
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Luxembourg

Ref: ESMA's opinion and advice to the European Parliament, the Council and the Commission on the AIFMD passport

Dear Mr Gramegna

In accordance with Articles 36 and 42 of Directive 2011/61/EU on Alternative Investment Fund Managers (AIFMD), non-EU AIFMs and non-EU AIFs managed by EU AIFMs are subject to the national private placement regime of each of the Member States where the AIFs are marketed or managed. However, the AIFMD makes provision for the passport to be potentially extended in future. Article 67(1) of the AIFMD establishes that, by 22 July 2015, ESMA shall issue to the European Parliament, the Council and the Commission the following:

- an opinion on the functioning of the passport for EU AIFMs pursuant to Articles 32 and 33 of the AIFMD and on the functioning of the national private placement regimes set out in Articles 36 and 42 of the AIFMD;
- advice on the application of the passport to non-EU AIFMs and AIFs in accordance with the rules set out in Article 35 and 37 to 41 of the AIFMD.

On behalf of the ESMA Chair, Steven Maijoor, I am pleased to submit to you ESMA's opinion and advice (ESMA/2015/1235 and 1236).

I would like to underline that ESMA has had regard to a wide range of sources of information in developing the opinion and advice, including the regular reporting by national competent authorities under Article 67(3) of the AIFMD, bilateral discussions with non-EU regulators and assessments by the International Monetary Fund. In addition, in November 2014 ESMA launched a call for evidence¹ aimed at gathering information from EU and non-EU

¹ http://www.esma.europa.eu/system/files/2014-esma-1340_call_for_evidence_aifmd_passport_3rd_country_aifms.pdf

stakeholders on the functioning of the EU passport, the national private placement regimes and the potential extension of the passport to non-EU countries. The summary of the feedback to this call for evidence is included in the annexes of the opinion and advice.

I would also like to draw your attention to the following points concerning the opinion and advice that are being submitted to you, and the related next steps:

- (i) In relation to the timing of the assessment needed for the purposes of the opinion on the functioning of the EU passport, ESMA considers that the delay in the implementation of the AIFMD together with the delay in the transposition in some Member States makes a definitive assessment difficult. ESMA would see merit in the preparation of another opinion on the functioning of the passport after a longer period of implementation in all Member States.
- (ii) Regarding the advice on the potential extension of the passport, ESMA has decided to opt for a country-by-country assessment. This allows for greater flexibility in the assessment and for a distinction to be made between the different situations of non-EU countries with respect to the aspects that ESMA has to consider in its assessment (i.e. investor protection, systemic risk, market disruption and competition).
- (iii) ESMA has assessed six non-EU countries in detail thus far. However, it has produced definitive views on only three of them. ESMA now intends to assess further groups of non-EU countries with a view to delivering advice at a later stage. ESMA intends to continue this work until it has provided advice on all the non-EU countries that it considers relevant for the purposes of Article 67. Work will also be carried out with a view to finalising the assessments of the non-EU countries on which ESMA has not yet reached a definitive view.
- (iv) In some cases, the advice cannot be considered 'positive' in the sense of Article 67(4) of the AIFMD. The European Council, Parliament and the Commission to which this advice is submitted pursuant to Article 67 of the AIFMD may wish to consider whether to wait until ESMA has delivered positive advice on a sufficient number of non-EU countries before triggering the legislative procedures foreseen by Articles 67(5) and (6), taking into account such factors as the potential impact on the market that a decision to extend the passport might have.
- (v) ESMA is conscious that the assessment methodology used for the advice focusses on regulatory issues. Other issues which the Commission and co-legislators may also wish to consider may include: (a) fiscal matters in the non-EU country and (b) latest intelligence on the Anti-Money Laundering and Counter-Terrorism Financing (AML/CTF) regime in the non-EU country (to the extent that this aspect is not covered under Articles 35(2)(b) and 37(7)(e) of the AIFMD).



Should you have any questions on this letter or the opinion and advice please do not hesitate to contact Laurent Degabriel, Head of the Investment and Reporting Division of ESMA or myself.

Finally, please note that I am sending similar letters to Commissioner Hill and the Chair of ECON respectively.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Verena Ross'. The signature is fluid and cursive.

Verena Ross