EUROPEAN COMMISSION
IMPACT ASSESSMENT BOARD

Brussels,
D(2012)

Opinion

Title **DG MARKT - Impact Assessment on a proposal for Alternative Investment Fund Management Directive Level 2 Measures**

(draft version of 20 February 2012)

(A) Context

Coming into force on 22 July 2011, the Directive on Alternative Investment Fund Managers (AIFMD) introduced for the first time in the Union harmonised requirements for the management of alternative investment funds (AIF) and their marketing to professional investors. AIFs are all those funds which do not comply with Directive 2009/65/EC on Undertakings for Collective Investment in Transferable Securities (UCITS). The AIFMD defines an overall regulatory framework ("level 1") and makes provisions for an extensive set of implementing measures to be defined at a later stage. The Commission is currently considering these "level 2" measures on the basis of the technical advice received from the European Securities and Market Authority (ESMA) which ran extensive public consultations. The report focuses on those level 2 measures which have a decisive impact for the overall efficiency of the new regulatory framework for which a meaningful set of alternative options has been left available by level 1 provisions.

(B) Overall assessment

The report provides an adequate and proportionate analysis but should be further improved in a number of aspects. First, the scope of the initiative should be further defined with respect to both UCITS and the framework AIFM Directive. Secondly, the analysis of impacts should be strengthened, providing more precise indications of the likely increases in costs, the different implications in terms of coverage and the risk of offshoring. The report should also discuss more in depth the distribution of impacts across different types of investors and AIFMs. Finally, the standard methodology for the comparison of options should be adopted.

In its written communication with the Board, DG MARKT agreed to revise the report in line with the recommendations in this opinion.

(C) Main recommendations for improvements

(1) Clarify the scope of the initiative. The report would benefit from further background information on the scope of the initiative, in particular with respect to the differences with UCITS (which could be placed into an additional annex) and the content of AIFMD. In this respect, the report should discuss whenever relevant the extent to which level 1 provisions may limit the range of available policy options (for instance with regard to the possible tailoring of measures to reflect the heterogeneity of AIFMs and their investment strategies) or already determine the majority of impacts (as for instance in the case of compliance costs).

(2) Strengthen the analysis of impacts. The report should improve its assessment of impacts in several respects. First, it should try to quantify them as much as possible. This is particularly important for impacts on costs and administrative burden as well as for the effect that different methods for the calculations of total assets under management would have on coverage. The report should transparently indicate whenever the necessary data are not available, explaining the underlying reasons. It should nevertheless make a further effort to provide broad order of magnitudes in either absolute or relative terms. In this context, the report should discuss how the provisions under discussion could increase any risk of offshoring (and explain how measures would affect offshore AIF/Ms). In addition, the report should also measure impacts against a better defined status quo, notably with respect to the obligations that existing national or EU law may already pose on AIF/Ms and the impacts already determined at the level of the AIFMD. Finally, the report should systematically and more extensively discuss how all these various impacts would be distributed across different stakeholders including different types of investors (pension funds etc.) and different types of AIFMs (Venture Capital Funds, Social Investment Funds etc.).

(3) Improve the comparison of options. The report should compare options in terms of the differences in impacts measured against the baseline and not on the basis of absolute value as currently done. It should also compare them in terms of efficiency and not only costs. Finally, the assessment of the different options for the calculation of leverage should rest on a clearer discussion of the relationship between leverage and risk within the regulatory framework set up by the level 1 provisions.

Some more technical comments have been transmitted directly to the author DG and are expected to be incorporated in the final version of the impact assessment report

(D) Procedure and presentation

The report should be shortened and the presentation of some options improved to make them more readily understandable for the non-expert. A shorter summary of stakeholder views should be annexed distinguishing between different types of AIFMs and investors whenever possible and relevant. Materially different views should be systematically flagged in the main text and in the executive summary which should also highlight when an option diverging from ESMA technical advice is selected and why.

(E) IAB scrutiny process	
Reference number	2012/MARKT/036
External expertise used	No
Date of Board Meeting	14 March 2012