AIFMD: the road to implementation

Analysis of results

September 2013

EY
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Alternative Investment Management Association

The survey: introduction

There has been a lot of attention in recent months on the progress of managers toward the adoption of the Alternative Investment Fund Managers Directive (AIFMD). In this survey, we have taken an alternative standpoint and sought to develop an understanding of EU Member States' AIFMD readiness. This will help clarify the likely future operating environment for firms and support their decision-making process as they move toward authorization.

AIFMD: background

The AIFMD, which came into force on 22 July 2013, seeks to establish a harmonized regulatory framework for firms that manage and/or market alternative investment funds (AIFs) in the EU. An AIF has been defined broadly and catches a variety of non-UCITS investment vehicles such as closed-end listed vehicles (e.g., investment trusts) and private equity, real estate and hedge funds.

Scope and approach

EY and AIMA conducted a survey to assess EU Member States' readiness for, and implementation approach to AIFMD, with emphasis on transposition timing, transitional provisions and private placement requirements. The survey also identified other key topical areas such as remuneration, depositary and reporting.

The initial findings, which were released on 24 July 2013, focused on transposition and transitional provisions for the 27 EU Member States as at 30 June 2013. The findings summarized here include Croatia, which became a member of the EU on 1 July 2013.

The survey was completed by leveraging EY and AIMA's respective networks of contacts.

The results represent responses collated by EY and AIMA as at 28 August 2013.

Transposition

In our initial report we identified 12 countries that had transposed the AIFMD within the deadline. Since then, two more countries have adopted the Directive, and Croatia (which was not part of the initial sample) also transposed within the deadline. So far, 15 EU Member States have transposed the AIFMD.

Bulgaria, Italy, Romania and Spain have drafted their final regulations and are waiting for parliamentary approval.

Belgium, Finland, Greece, Hungary, Lithuania, Poland, Portugal and Slovenia are in the early stages of drafting. Estonia has only partially implemented the Directive, which is the reason for its current classification.

The European Securities and Markets Authority (ESMA) has noted the lack of transposition in certain Member States and in a legal opinion issued on 2 Aug 2013, indicated that a lack of transposition should not be a barrier to market entry. EU firms that obtain AIFM authorization in one Member State should therefore be able to utilize the marketing and management passport in a country that has not transposed the Directive.

Transitional relief

While the formal launch date was 22 July 2013, the Directive allows Member States to provide a one-year transitional period. Some Members States have chosen to provide transitional relief related to the management and/or marketing of AIFs in their jurisdictions. However, depending on the Member State, transitional relief may be limited or conditional on the nature of the AIFM (domestic, other European Economic Area (EEA) or non-EEA), the nature of the AIF (e.g., open-end or closed-end) and/or where the AIF was established. The summary table below does not distinguish on the basis of these AIF-related factors or on whether the transitional relief relates to management or marketing activities.

Firms should not be complacent during any available transitional period as most regulators have emphasized that an application for authorization as an AIFM will take at least three months. In addition, regulators like the Financial Conduct Authority (FCA) in the UK and Commission de Surveillance du Secteur Financier (CSSF) in Luxembourg have urged firms to consider submitting their AIFM applications sooner rather than later. The FCA in particular has advised that firms should submit their application by 22 January 2014.

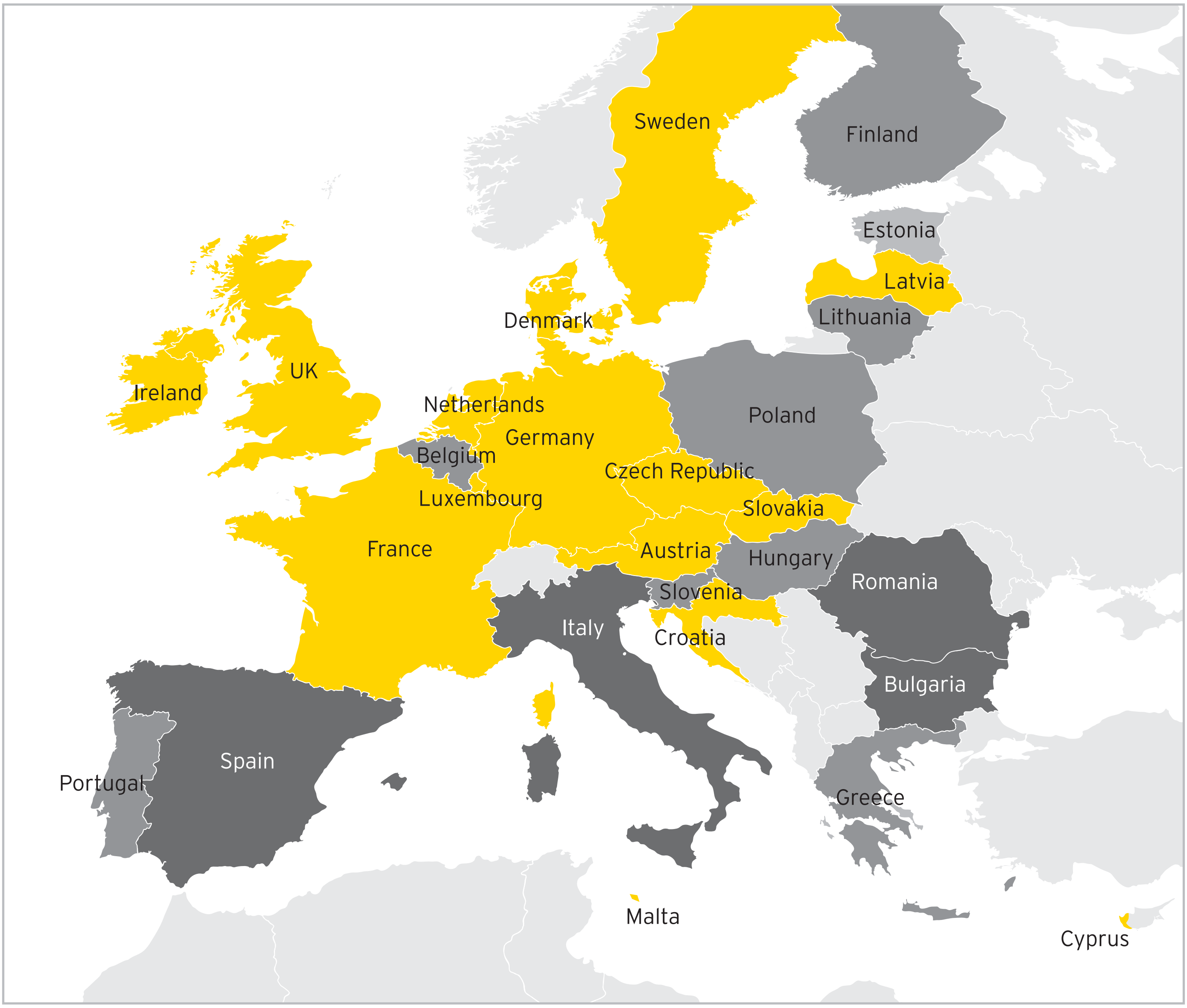
Firms who have planned to submit an application toward the last available date of the transitional period should bear in mind that regulators are likely to be inflexible with "incomplete" applications.

Summary of EU Member States allowing AIFMD transitional relief

Country	AIFM categories		
	Domestic	EEA	Non-EEA
Austria, Cyprus*, Czech Republic, Denmark, Estonia, Finland, France, Germany, Ireland, Italy, Luxembourg, Netherlands, Romania, Slovakia, Sweden and UK	Yes	Yes	Yes
Malta	Yes	Yes	No
Croatia and Latvia	Yes	No	No
Bulgaria	No	No	No

* Awaiting clarification regarding EEA and non-EEA AIFMs in Cyprus

Note: Status for Bulgaria, Estonia, Finland, Italy and Romania throughout the report are indicative and based on draft legislation.



Transposed

Early stages

Draft pending transposition

Partially implemented

Private placement

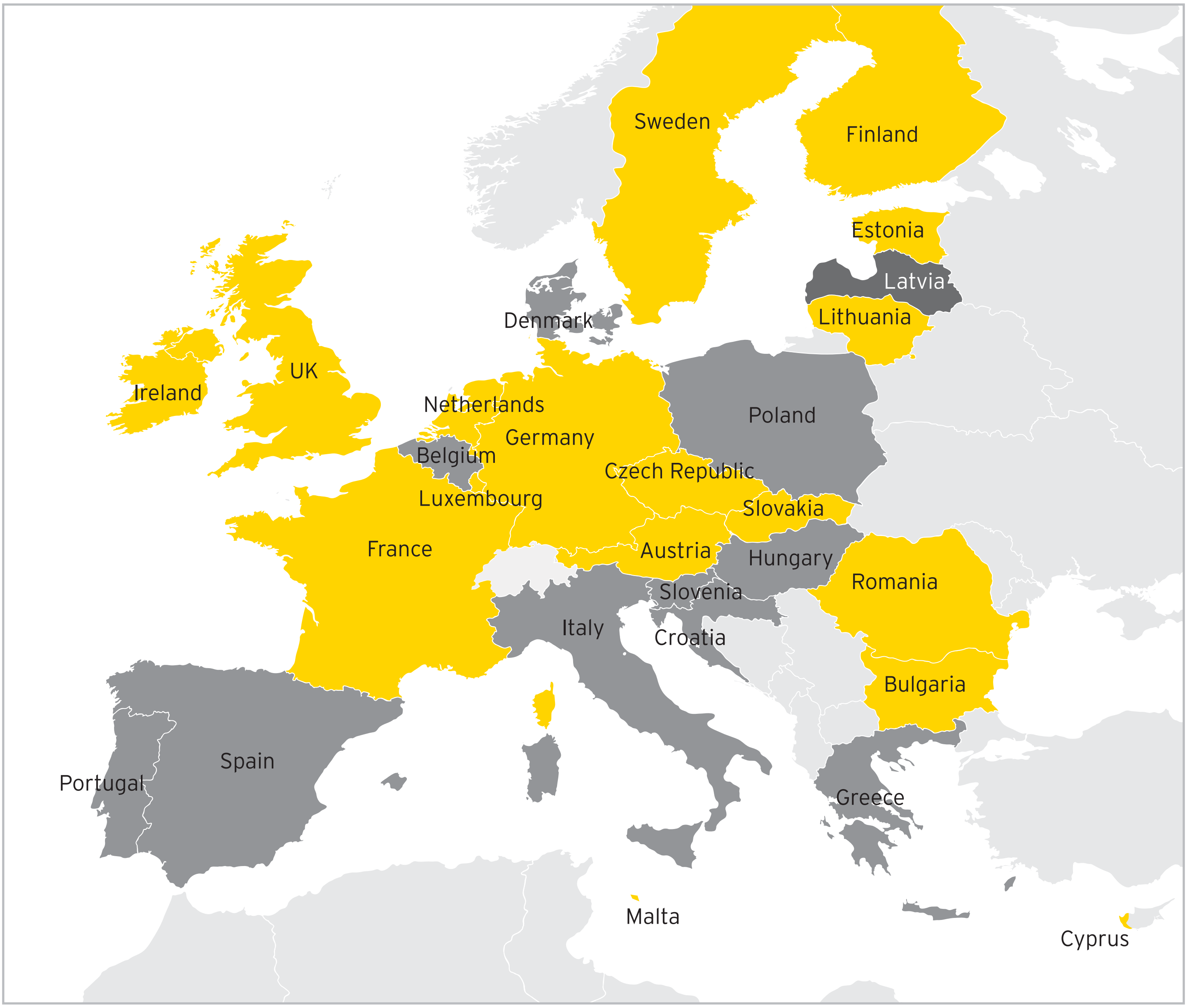
The survey shows that 17 countries intend to allow some form of private placement (under Articles 36 and/or 42 or otherwise), but the requirements vary among Member States:

- All countries that intend to allow private placement will apply at least the minimum AIFMD standards: (1) transparency and disclosure (for AIFs managed by non-EEA AIFMs), (2) depositary-lite services (for non-EEA AIFs managed by EEA AIFMs), (3) cooperation arrangements, (4) the country where the AIF/AIFM is established should not be listed as a Non-Cooperative Country by the Financial Action Task Force (FATF).
- France appears all but closed to the private placement of open-ended AIFs.
- Germany will require non-EEA AIFMs to appoint a depositary to perform depositary-lite services.
- Austria has imposed a tax treaty condition for non-EEA AIFs.
- The UK, Ireland, Luxembourg and Sweden are part of a group of countries that have not imposed additional conditions.

Private placement: headlines from some key markets

EEA AIFMs marketing non-EAA AIFs to professional investors only

	France	Germany	UK
Minimum conditions	Yes	Yes	Yes
Additional conditions	Yes	Yes	No
Summary of the additional conditions	AIFM to comply with requirements applicable to French AIFMs; additional investor protection and transparency requirements for open-ended non-EEA AIFs; non-AIFMD cooperation agreement between the AMF and supervisory authorities of the non-EEA AIF and the AIFM	Arrangements to prevent sale to private investors must be in place	No
Regulator			
Notification	Yes	Yes	Yes
Approval required	Yes	Yes	No
Approval period	Indeterminate	Up to five months	No



Open for private placement | Closed to private placement | Waiting for clarification

Private placement: headlines from some key markets (continued)

Non-EEA AIFMs marketing EEA or Non-EAA AIFs to professional investors only

	France	Germany	UK
Minimum conditions	Yes	Yes	Yes
Additional conditions	Yes	Yes	No
Summary of the additional conditions	AIFM to comply with requirements applicable to French AIFMs; additional investor protection and transparency requirements for open-ended non-EEA AIFs; non-AIFMD cooperation agreement between the AMF and supervisory authorities of the non-EEA AIF and the AIFM	Arrangements to prevent sale to private investors must be in place; depositary appointed to carry out the duties of cash monitoring, safekeeping of assets and oversight; certain declarations to BaFin also required	No
Regulator			
Notification	Yes	Yes	Yes
Approval required	Yes	Yes	No
Approval period	Indeterminate	Up to four months	No

Other areas of concern

Remuneration

Most Member States are aligning the application of the remuneration requirements to AIFM authorization, regardless of whether the AIFM is authorized during the transitional period. Financial groups whose employees manage a range of "regulated" portfolios will face a remuneration conundrum in that they will have to consider and potentially comply with at least two (AIFMD and CRD III/IV), and possibly three (UCITS), remuneration standards.

Depositary flexibility

Seven countries intend to allow AIFMs to appoint a depositary in a different EU location to an EU AIF during the transition period. After 2017, the depositary and the AIF must be in the same location. The initiative may lead to opportunities for product development and should increase competition in the depositary space in some countries.

Reporting

Most countries are looking to ESMA for guidance and clarification in relation to reporting dates, reporting languages and format. Where the local regulator has defined the requirements, there is variation in the reporting dates. In most cases, the reporting language has been defined as either English or the official local language with the exception of the Netherlands, which appears set to require reporting in both. In addition, the reporting format will differ depending on the systems used by individual regulators.

Auditors

Nine Member States will require AIFMs marketing non-EEA AIFs in their jurisdiction to engage a qualified auditor to perform statutory audits of each non-EEA AIF under the Statutory Audits Directive. This may result in an extra audit cost for such non-EEA AIFs.

Country	Allowing depositary flexibility until July 2017	
	Yes	No
Cyprus, Czech Republic, Denmark, Finland, Malta, Sweden and UK	✓	
Austria, Bulgaria, Croatia, Estonia, France, Germany, Ireland, Italy, Latvia, Luxembourg, Netherlands, Romania and Slovakia		✓

Country	Statutory audit of non-EEA AIFs in line with the EEA AIFM's Member State audit standards	
	Yes	No
Austria, Croatia, Denmark, Estonia, France, Italy, Latvia, Luxembourg, Netherlands and Romania	✓	
Bulgaria, Cyprus, Czech Republic, Finland, Germany, Ireland, Malta, Slovakia, Sweden and UK		✓

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