



European Securities and  
Markets Authority

# **Reply form for the Call for evidence AIFMD passport and third country AIFMs**





## Responding to this paper

The European Securities and Markets Authority (ESMA) invites responses to the specific questions listed in the Call for evidence - AIFMD passport and third country AIFMs, published on the ESMA website ([here](#)).

### *Instructions*

Please note that, in order to facilitate the analysis of the responses expected, you are requested to use this file to send your response to ESMA so as to allow us to process it properly. Therefore, please follow the instructions described below:

- i. use this form and send your responses in Word format;
- ii. do not remove the tags of type <ESMA\_QUESTION\_CE\_AIFM\_1> - i.e. the response to one question has to be framed by the 2 tags corresponding to the question; and
- iii. if you do not have a response to a question, do not delete it and leave the text “TYPE YOUR TEXT HERE” between the tags.

Responses are most helpful:

- i. if they respond to the question stated;
- ii. contain a clear rationale, including on any related costs and benefits; and
- iii. describe any alternatives that ESMA should consider

### **Naming protocol:**

In order to facilitate the handling of stakeholders responses please save your document using the following format:

ESMA\_CE\_AIFMD\_NAMEOFCOMPANY\_NAMEOFDOCUMENT.

E.g. if the respondent were ESMA, the name of the reply form would be

ESMA\_CE\_AIFMD\_ESMA\_REPLYFORM or ESMA\_CE\_AIFMD\_ESMA\_ANNEX1

Responses must reach us by **8 January 2015**.

All contributions should be submitted online at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading ‘Your input/Consultations’.

### *Publication of responses*

All contributions received will be published following the end of the consultation period, unless otherwise requested.

**Please clearly indicate by ticking the appropriate checkbox in the website submission form if you do not wish your contribution to be publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure.** Note also that a confidential response may be requested from us in accordance with ESMA’s rules on access to documents. We may consult you if we receive such a request. Any decision we make is reviewable by ESMA’s Board of Appeal and the European Ombudsman.

### *Data protection*

Information on data protection can be found at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading ‘Disclaimer’.

**Q1: Please describe your experience using the AIFMD passport:**

- **Indicate your home Member State**

<ESMA\_QUESTION\_CE\_AIFMD\_1a>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CE\_AIFMD\_1a>

- **Number of funds marketed in other Member States (please provide a breakdown by host Member State)**

<ESMA\_QUESTION\_CE\_AIFMD\_1b>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CE\_AIFMD\_1b>

- **Number of funds managed in other Member States (please provide a breakdown by host Member State)**

<ESMA\_QUESTION\_CE\_AIFMD\_1c>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CE\_AIFMD\_1c>

**Q2: How have you found the passport application process?**

- **Very satisfactory**
- **Satisfactory**
- **Problems encountered. Please explain**

<ESMA\_QUESTION\_CE\_AIFMD\_2>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CE\_AIFMD\_2>

**Q3: What is your overall experience of using the passport of the AIFMD? Please explain**

<ESMA\_QUESTION\_CE\_AIFMD\_3>

As a general remark, Assogestioni would like to note that the AIFMD transposition into Italian law is not a reality yet, as the implementation has not been completely finalized. As a consequence, Italian asset management companies are not benefitting from the possibility to use a passport yet. In the light of these circumstances, it is questioned that the necessary granularity of information on the AIFMD passport can be provided at this stage by market participants. A request for postponement of the assessment by the Commission could, therefore, be seen as a possible action ESMA could take, in order to allow some more appropriate time be in place for operators to ultimately provide the Commission with a more complete collection of evidence.

<ESMA\_QUESTION\_CE\_AIFMD\_3>

**Q4: What difficulties have you encountered when trying to use the passport?**

<ESMA\_QUESTION\_CE\_AIFMD\_4>

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<ESMA\_QUESTION\_CE\_AIFMD\_4>

**Q5: Have you been deterred from using the passport and, if so, why?**

<ESMA\_QUESTION\_CE\_AIFMD\_5>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CE\_AIFMD\_5>

**Q6: Have you experienced issues of investor protection in relation to AIFs marketed or managed from another Member State, including AIFs marketed to retail investors under Article 43? If so, please provide details (e.g. number of complaints from investors, the reasons for those complaints etc).**

<ESMA\_QUESTION\_CE\_AIFMD\_6>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CE\_AIFMD\_6>

**Q7: Please describe the activity of your organisation in the EU:**

- **Identify whether your organisation operates under Article 36 (marketing of non-EU AIFs by EU AIFMs in a Member State) or Article 42 (management and/or marketing of AIFs by non-EU AIFMs in a Member State) of the AIFMD**

<ESMA\_QUESTION\_CE\_AIFMD\_7a>

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<ESMA\_QUESTION\_CE\_AIFMD\_7a>

- **Identify the non-EU country of the AIFM and/or the AIF**

<ESMA\_QUESTION\_CE\_AIFMD\_7b>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CE\_AIFMD\_7b>

- **Number of funds marketed in an EU Member State (please provide a breakdown by Member State)**

<ESMA\_QUESTION\_CE\_AIFMD\_7c>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CE\_AIFMD\_7c>

- **Number of funds managed in an EU Member State (please provide a breakdown by Member State)**

<ESMA\_QUESTION\_CE\_AIFMD\_7d>

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<ESMA\_QUESTION\_CE\_AIFMD\_7d>

**Q8: How many times has your organisation received a request for information from an EU NCA? Please indicate your average response time.**

<ESMA\_QUESTION\_CE\_AIFMD\_8>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CE\_AIFMD\_8>

**Q9: How many times has your organisation refused to provide the information requested by an EU NCA? Please explain the reasons.**

<ESMA\_QUESTION\_CE\_AIFMD\_9>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CE\_AIFMD\_9>

**Q10: How many times has an EU NCA performed an on-site visit at your organisation?**

<ESMA\_QUESTION\_CE\_AIFMD\_10>

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<ESMA\_QUESTION\_CE\_AIFMD\_10>

**Q11: How many times has an EU NCA initiated enforcement action against your organisation?**

<ESMA\_QUESTION\_CE\_AIFMD\_11>

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<ESMA\_QUESTION\_CE\_AIFMD\_11>

**Q12: How many times has an EU NCA imposed a sanction on your organisation?**

<ESMA\_QUESTION\_CE\_AIFMD\_12>

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<ESMA\_QUESTION\_CE\_AIFMD\_12>

**Q13: Are there any specific limitations in the legal framework in your country that impede or limit your organisation from collaborating with an EU NCA? If yes, please specify.**

<ESMA\_QUESTION\_CE\_AIFMD\_13>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CE\_AIFMD\_13>

**Q14: Has your organisation experienced issues of investor protection in relation to AIFs marketed or managed in an EU Member State? If so, please describe (e.g. number of complaints from investors, the reasons for those complaints etc).**

<ESMA\_QUESTION\_CE\_AIFMD\_14>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CE\_AIFMD\_14>

**Q15: What have been the benefits of the National Private Placement Regimes (NPPR) to you?**

<ESMA\_QUESTION\_CE\_AIFMD\_15>

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<ESMA\_QUESTION\_CE\_AIFMD\_15>

**Q16: What have been the obstacles or barriers to entry of the NPPR to you?**

<ESMA\_QUESTION\_CE\_AIFMD\_16>

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<ESMA\_QUESTION\_CE\_AIFMD\_16>

**Q17: What obstacles did you encounter when trying to register through the NPPR?**

<ESMA\_QUESTION\_CE\_AIFMD\_17>

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<ESMA\_QUESTION\_CE\_AIFMD\_17>

**Q18: What have been the costs?**

<ESMA\_QUESTION\_CE\_AIFMD\_18>

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<ESMA\_QUESTION\_CE\_AIFMD\_18>

**Q19: Have you exited countries since the entry into force of the AIFMD NPPR and, if so, why?**

<ESMA\_QUESTION\_CE\_AIFMD\_19>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CE\_AIFMD\_19>

**Q20: Have you been deterred from undertaking private placement and, if so, why?**

<ESMA\_QUESTION\_CE\_AIFMD\_20>

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<ESMA\_QUESTION\_CE\_AIFMD\_20>

**Q21: What is the possible impact on competition of an eventual extension of the passport to non-EU AIFMs?**

<ESMA\_QUESTION\_CE\_AIFMD\_21>

Assogestioni believes the eventual extension of the passport to non-EU AIFMs will likely have a considerable impact on competition within the Union.

In order to avoid that such an impact would put EU AIFMs in a possible disadvantageous position vis-à-vis some non-EU players, it is our view that the assessment on the extension of the passport should be realized on the basis of an evaluation of the existence of equivalent regulatory, supervisory and enforcement conditions in the third country in question, which aim to equivalence of outcomes for both regulation and enforcement purposes.

Such an assessment should be duly realized, in order to avoid that EU-AIFMs could suffer from competitive disadvantages, e.g. vis-à-vis cases of less strict regulatory regimes, and is highly welcome as it should be seized as an opportunity by ESMA and the Commission to improve those conditions which render market access to some non-EU markets still not broadly feasible for non-EU AIFMs.

<ESMA\_QUESTION\_CE\_AIFMD\_21>

**Q22: What are the risks of an eventual extension of the passport to non-EU AIFMs in relation to market disruptions and investor protection?**

<ESMA\_QUESTION\_CE\_AIFMD\_22>

Assogestioni is of the opinion that the assessment on the extension of the passport to non-EU AIFMs should duly take into account both the impact on competition, as per answer to Q21, as well as the risks of market disruption and investor protection.

In particular, as for the latter, it is our belief that, in order to provide that the extension of the passport does not lead to a decreased level of investor protection, the assessment on the extension of the passport should consider the existence of a regulatory and enforcement environment between the EU and the third country in question, with the aim to provide equivalence of outcome in terms of investors protection, which both EU and non-EU AIFMs should safeguard.

Attention should be also driven to the already established set of provisions in AIFM Directive, where safeguards are foreseen for the extension of the AIFMD passport in art. 37(2), (4) and (7), establishing a general obligation of compliance with the directive, the conditions for determination of the Member State of reference and further conditions for authorization, to ensure that a comparable level of investor protections is met.

It should also be noted that co-operation arrangements between EU Member States and the authorities of third countries are important tools that can contribute to ensure an increased level of investor protection, encouraging smoother collaboration between regulators in exercising their supervisory duties, in the ultimate interests of investors.

<ESMA\_QUESTION\_CE\_AIFMD\_22>

**Q23: Is there any particular non-EU country where, as a consequence of the regulatory environment (financial regulation, supervision, tax and anti-money laundering provisions), an eventual extension of the passport would put EU AIFMs and UCITS management companies at a disadvantage vis-a-vis the AIFMs from that country? Please specify and explain.**

<ESMA\_QUESTION\_CE\_AIFMD\_23>

With regard to the scope of the Call for Evidence, the reference for the collection should be limited to EU AIFMs and not extended to UCITS management companies, as they do not form part of the mandate for the advice under AIFMD and might entail different experiences compared to AIFs.

<ESMA\_QUESTION\_CE\_AIFMD\_23>

**Q24: Is there any particular non-EU country that imposes heavier requirements for EU AIFMs or UCITS management companies in comparison to those that non-EU AIFMs have to comply with in order to do business in the EU? Please specify and explain.**

<ESMA\_QUESTION\_CE\_AIFMD\_24>

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<ESMA\_QUESTION\_CE\_AIFMD\_24>

**Q25: Have you experienced difficulties or limitations in establishing or marketing AIFs or UCITS in any non-EU country? Please specify the non-EU country and the specific difficulties or limitations that you have encountered.**

<ESMA\_QUESTION\_CE\_AIFMD\_25>

Please, see our reply to Q23.

<ESMA\_QUESTION\_CE\_AIFMD\_25>

**Q26: Do you have evidence showing that existing difficulties or limitations in non-EU countries have deterred fund managers in your jurisdiction from deciding to establish or market AIFs or UCITS they manage in the non-EU country? Please specify the non-EU country and explain the difficulties or limitations.**

<ESMA\_QUESTION\_CE\_AIFMD\_26>

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<ESMA\_QUESTION\_CE\_AIFMD\_26>

**Q27: Could you please identify the non-EU countries that, in your opinion, grant market access to EU AIFMs and UCITS management companies under broadly equivalent conditions?**

<ESMA\_QUESTION\_CE\_AIFMD\_27>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CE\_AIFMD\_27>

**Q28: What are the conditions that EU AIFMs and UCITS management companies have to comply with in order to manage or market AIFs or UCITS in your jurisdiction? Please specify.**

<ESMA\_QUESTION\_CE\_AIFMD\_28>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CE\_AIFMD\_28>

**Q29: In what way is your current regime (regulatory, tax etc.) different from the EU framework? Please explain.**

<ESMA\_QUESTION\_CE\_AIFMD\_29>

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<ESMA\_QUESTION\_CE\_AIFMD\_29>