

Summary Comparison of AIFM-Directive-Drafts

Set out below is a comparison of the issues relevant for private equity fund managers as governed by the three draft AIFM Directives, which are currently being discussed:

- Draft Directive issued by the European Commission, 30 April 2009
- Council - Spanish Presidency Compromise of 11 March 2010
- European Parliament - Consolidated Text of 28 May 2010

		COMMISSION PROPOSAL	COUNCIL PROPOSAL	EUROPEAN PARLIAMENT PROPOSAL
1	SCOPE Art. 2	<p>The Directive applies to all AIFM established in the EU which provide management services to AIFs irrespective of whether the AIF is domiciled inside or outside the EU...</p> <p>Definition of "management services": <i>the activities of managing and administering one or more AIF on behalf of one or more investors.</i></p> <p>An AIFM authorized to provide management services to AIF is also entitled to market the interests in AIF to professional investors in the EU subject to the Directive.</p>	<p>The Directive applies to all AIFM established in the EU which provide management services to AIFs irrespective of whether the AIF is domiciled inside or outside the EU...</p> <p>Definition of "management services": <i>means providing at least investment management services set forth in 1(a) or (b) of Annex I:</i></p> <ul style="list-style-type: none"> - <i>Investment Management, i.e. portfolio management and risk management,</i> - <i>Administration, i.e. legal and fund management, customer inquiries, valuation and pricing, regulatory compliance monitoring, record keeping, distribution of income etc..</i> - <i>Marketing (see below)</i> <p>Note: Does not seem to include mere advisory services.</p> <p>An AIFM authorized to provide management services to AIF is also entitled to market the interests in AIF to professional investors in the EU subject to the Directive.</p>	<p>The Directive applies to all AIFM established in the EU which provide management services to AIFs irrespective of whether the AIF is domiciled inside EU or in 3rd country...</p> <p>Definition of "management services": <i>means the functions set forth in Annex Ia of the Directive:</i></p> <ul style="list-style-type: none"> - <i>Investment Management,</i> - <i>Administration, i.e. legal and fund management, customer inquiries, valuation and pricing, regulatory compliance monitoring, record keeping, distribution of income etc..</i> - <i>Marketing (see below)</i> <p>Note: Does not seem to include mere advisory services.</p> <p>An AIFM authorized to provide management services to AIF is also entitled to market the interests in AIF to professional investors in the EU subject to the Directive.</p>
2	EXEMPTIONS Article 2	<p>Article 2</p> <p>Exemption for AIFM managing unleveraged AIF, without redemption rights during a pe-</p>	<p>Article 2b (new)</p> <p>No automatic exemption, but optional exemption for AIFM managing smaller</p>	<p>Article 2a (new)</p> <p>Tailored regime for AIFM managing "PE AIF" (see definition below):</p>

		COMMISSION PROPOSAL	COUNCIL PROPOSAL	EUROPEAN PARLIAMENT PROPOSAL
		<p>riod of five years, with cumulative AIF under management of below EUR 500 million.</p> <p>Such AIFM should continue to be subject to any relevant national legislation</p> <p>AND</p> <p>shall be allowed to be treated as AIFM subject to the opt-in procedure.</p> <p>Implementing measures to determine how this opt-in would work.</p> <p>Also EXEMPT:</p> <p>AIFM established in the Community ("EU AIFM") which do not provide management services to AIF domiciled in the Community ("EU AIF") and do not market AIF in the Community.</p>	<p>funds: Member States have <u>the option</u> not to apply the Directive to smaller AIFM with managed assets below EUR 500 million if they do not use leverage.</p> <p>Such smaller players would be subject to registration and reporting requirements in their home Member States</p> <p>AND</p> <p>shall be allowed to be treated as AIFM subject to the opt-in procedure. Opt-in would relate to the ENTIRE Directive, but with lighter capital requirements (see below).</p>	<ul style="list-style-type: none"> - exemption from depositary and capital requirements - periodical valuation is optional - compliance with: <ul style="list-style-type: none"> - Chapter II (authorisation) - Articles 9-10 (certain conduct of business rules) - Articles 18-20 (delegation and disclosure) - Chapter V (disclosure with respect to leverage and controlling AIF) - Chapter VII (third country) - Chapter VIII (Supervision) <p><i><u>Private Equity AIF (PE AIF) defined as AIF, including closed-end funds and funds of funds, the policy of which is to invest in equity and equity-related securities of, principally, private companies and businesses in order to finance venture capital, growth plans and buyouts.</u></i></p>
3	DETERMINATION OF AIFM	Silent.	<p>Art. 3a</p> <p>One AIF shall have one single AIFM which shall be responsible for ensuring compliance with the requirements of the Directive. The AIFM shall be an external manager appointed by the AIF (or on its behalf) or the AIF itself.</p>	Silent.
4	REMUNERATION Article 9	Silent.	<p>Remuneration policies (Article 9a)</p> <p>Remuneration policies for staff whose professional activities have a material impact on risk profiles must:</p> <ul style="list-style-type: none"> (i) be consistent with and promote sound and effective risk management (ii) be comprehensive and proportionate to the nature, scale and complexity of the AIFM's activities and to the AIF it manages; and 	<p>Remuneration policies (Article 9)</p> <p>AIFM remuneration rules must:</p> <ul style="list-style-type: none"> (i) be compatible with rules applicable to credit institutions and investment firms (ii) promote sound and effective risk management (iii) be comprehensive and proportionate to the nature, scale and complexity of the AIFM's activities and to the AIF it manages. (iv) comply with requirements in Annex Ib

		COMMISSION PROPOSAL	COUNCIL PROPOSAL	EUROPEAN PARLIAMENT PROPOSAL
			<p>(iii) "take into account" the principles in Annex II, while CESR will be required to ensure the existence of guidelines that "comply" with those criteria.</p> <p>These principles will NOT apply to returns paid when an AIF is liquidated or when amounts invested have been reimbursed to investors (Annex II.2).</p> <p>AIFMs of significant size shall have a remuneration committee (Annex II.3).</p> <p>Disclosure - Article 19.2(d) (e)</p> <p>To be disclosed in Annual Report:</p> <ul style="list-style-type: none"> - aggregate amounts of remuneration (split between fixed and variable) and disclosing the number of beneficiaries AND carry; and - further broken down by senior management and members of staff whose actions have a material impact on risk profile. 	<p>The Commission will adopt rules specifying the criteria to be used in Annex Ib (Article 9.2a).</p> <p>Principles in Annex Ib apply BOTH to remuneration paid by the AIFM and to the remuneration paid by the AIF itself, INCLUDING carried interest, and</p> <ul style="list-style-type: none"> - returns to employees from their investments in AIF managed by the AIFM - remuneration paid in connection with the liquidation of an AIF. <p>Disclosure - Articles 19 and 29</p> <p>To be disclosed in Annual Report:</p> <ul style="list-style-type: none"> - aggregate amounts of remuneration (split between variable and fixed) paid by the AIFM and AIFs (Article 19) - the remuneration policies and management compensation packages of portfolio companies in which AIFs have a controlling influence (Article 29)
5	LIQUIDITY MANAGEMENT Article 12	AIFMs required to adopt liquidity management systems irrespective of type of AIF.	Exemption for unleveraged closed-ended AIF.	Exemption for AIFM managing PE AIF. (Def. see above Art. 2 above)
6	CAPITAL REQUIREMENTS Article 14	<p>PE subject to full capital requirements:</p> <ul style="list-style-type: none"> - AIFM required to have own funds of at least EUR 125 000 - where the value of the portfolios of AIF managed by the AIFM exceeds EUR 250 million, the AIFM shall provide an additional amount of 	<p>PE subject to capital requirements (new Article 6a):</p> <ul style="list-style-type: none"> - initial capital of at least EUR 125 000 (EUR 300 000 if internally managed AIF) - where the value of the portfolios of AIF managed by the AIFM exceeds EUR 250 million, the AIFM shall provide an additional 	Exemption for AIFM managing PE AIF (definition see Art. 2)

		COMMISSION PROPOSAL	COUNCIL PROPOSAL	EUROPEAN PARLIAMENT PROPOSAL
		<p>own funds equal to 0.02 % of the amount by which the value of the portfolios of the AIFM exceeds EUR 250 million.</p> <ul style="list-style-type: none"> - own funds of the AIFM should be at least a quarter of the firm's annual expenses. <p>No cap is foreseen.</p>	<p>amount of own funds equal to 0.02 % of the amount by which the value of the portfolios of the AIFM exceeds EUR 250 million</p> <ul style="list-style-type: none"> - own funds of the AIFM should be at least a quarter of the firm's annual expenses. - cap of EUR 10 million <p>A lighter regime of capital requirements (initial capital of EUR 50 000) for AIFM managing < € 500 million of non-leveraged AIF, with no redemption rights and no frequent trading when opting in (to benefit from the internal market EU passport).</p>	
7	VALUATOR Article 16	<p>Mandatory appointment of an independent valuator.</p> <ul style="list-style-type: none"> - Assets acquired by the AIF, and the shares and units of the AIF to be valued at least once a year and each time shares or units in the AIF are issued or redeemed. - Valuators can be established in a third country, provided the requirements of Article 37 are met. 	<p>No mandatory independent valuator.</p> <p>AIFM must ensure that, for each AIF it manages, appropriate and consistent procedures are established so that proper valuation of assets of AIF can be performed.</p> <ul style="list-style-type: none"> - Closed-ended AIF whose shares/units are traded on a regulated market, would be exempted from the requirement to calculate and publish the net asset value per share or unit of the AIF. - The assets are valued and the net asset value per share/unit must be calculated and published at least once a year, and for open-ended AIF, at a frequency taking into account issuance and redemption policy. - AIFM must ensure that the valuation function is independent, subject to a pro- 	<p>Periodical valuation is optional for AIFM managing PE AIF (see def. Art. 2).</p> <p>The frequency with which the valuation is performed shall be in compliance with the rules of the AIF and each time shares or units in the PE AIF are issued or redeemed.</p> <p>On a side note - EP sets the following valuation requirements:</p> <ul style="list-style-type: none"> - allows an AIFM to be its own valuator of the worth of its AIF provided there are safeguards in place allowing the valuation function to be carried out independently (Chinese walls). - AIF assets, shares and units to be valued at least once a year, and whenever needed to enable issuance or redemption - depositary responsible for verifying the conditions under

		COMMISSION PROPOSAL	COUNCIL PROPOSAL	EUROPEAN PARLIAMENT PROPOSAL
			<p>proportionality test except when the AIFM's compensation is linked to performance.</p> <ul style="list-style-type: none"> - When the valuation function is not independent, Member States may require that AIFMs' valuation procedures and/or valuations be verified by an external valuer or, where appropriate, an auditor. - Also adds requirements relating to the qualifications and liability of valuers. 	<p>which the valuation, calculation and publication are done</p> <ul style="list-style-type: none"> - the delegation of valuation tasks will not shift liability from the AIFM to the external valuator - if there is no external valuator, the Member State may require that AIFMs' valuation procedures and/or valuations be verified by an external valuer or, where appropriate, an auditor.
8	<p>DEPOSITARY</p> <p>Article 17</p>	<p>Mandatory appointment of a depositary for each AIF the AIFM manages;</p> <ul style="list-style-type: none"> - depositary to be a credit institution with registered office in the Community and authorized according to the Capital Requirements Directive - depositary can discharge himself from liability if it can prove that it could not have avoided the loss which has occurred - delegation of depositary tasks is allowed and will not affect the depositary's liability - depositary tasks can be delegated in respect of non-EU AIFs to a sub-depositary in the same country, provided the requirements of Article 38 are met. 	<p>Mandatory appointment of a depositary for each EU AIF the AIFM manages;</p> <ul style="list-style-type: none"> - broader choice of depositary than in the Commission draft – in addition to EU credit institution compliant with CRD: <ul style="list-style-type: none"> - a MiFID authorised investment firm - a member of another category already determined by Member States under the UCITS IV Directive; or - in the case of non-leveraged AIF with no redemption rights: other regulated entities (Article 17.3). - the competent authorities must approve the depositary - Council puts additional tasks for the depositary - not all tasks can be delegated and sub-delegation is allowed - in the case of loss of financial instruments held by a sub-custodian, the 	<p>Exemption for AIFM managing PE AIF.</p>

		COMMISSION PROPOSAL	COUNCIL PROPOSAL	EUROPEAN PARLIAMENT PROPOSAL
			<p>depository may, on a contractual basis, discharge itself of its liability to return financial instruments, if it can prove that it has fulfilled its obligations and that is reasonable to contract such a discharge.</p> <ul style="list-style-type: none"> - a depository will be able to avoid liability in case of unforeseeable circumstances beyond their control - liability not affected by delegation - Although non-EU AIFs would not be subject to Article 17, an entity other than the AIFM would have to perform certain depository functions (Article 34b.1(a)). 	
9	<p>LEVERAGE</p> <p>Article 25</p>	<ul style="list-style-type: none"> - Leverage provisions apparently only apply at the AIF level - European Commission to adopt implementing measures setting limits to the level of leverage AIFM can employ, taking into account the type of AIF, their strategy and the source of their leverage. 	<ul style="list-style-type: none"> - Clarifies that leverage provisions only apply at the AIF level. - Member States may, when deemed necessary by their competent authorities, set limits to the leverage that an AIFM may employ or other restrictions on management of AIF (Article 25.3a). - European Commission to adopt implementing measures setting out principles specifying the circumstances in which limits on leverage would be set (Article 25.3b). 	<ul style="list-style-type: none"> - Definition of leverage covers any method by which the AIFM increases the exposure of an AIF it manages to particular investments whether through borrowing of cash or securities, or leverage embedded in derivative positions or by any other means, including leverage used by funds or other legal entities controlled by the AIF, alone or jointly with other AIF and which increases the financial debt supported by the AIF. - AIFMs would be required to set their own leverage limits for each AIF, taking into account the type of AIF, its strategy and other factors (Article 25.2b). - A new paragraph specifies various factors that the competent authorities must take into account in ensuring that the leverage limits set by an AIFM are reasonable (Article 25.2b). For example, in the

		COMMISSION PROPOSAL	COUNCIL PROPOSAL	EUROPEAN PARLIAMENT PROPOSAL
				case of a private equity AIF, the ratio of financial debt used for the acquisition to EBITDA.
10	ASSET STRIPPING	Silent.	Silent.	<p>Article 27a</p> <p>The net assets of a company owned by private equity must comply with Second Company Law Directive capital adequacy regime:</p> <ul style="list-style-type: none"> - Art. 27a relates in particular to the following restrictions: - <u>Article 15 (1) (a)</u> of the Second Company Law Directive provides for the prohibition of distributions (dividends, interest) where the distribution would exceed the aggregate of the subscribed capital and capital reserves that are protected against distributions by law or by the statutes (principle of capital maintenance). - Minimum capital requirement of EUR 25.000. - <u>Article 23</u>: sets the conditions under which a purchase of own shares by a third party is permissible if the target company grants loans, advances etc. to the buyer (financial assistance). <p>Does not apply where unlisted target company employs less than 50 employees.</p>
11	GENERAL DISCLOSURE Article 19 ff.	<p>Audited annual report (Art. 19, 30)</p> <ul style="list-style-type: none"> - For each of the AIF the AIFM manages - Within 4 months of the financial year-end - Available to investors and competent authorities 	<p>Audited annual report (Art. 19)</p> <ul style="list-style-type: none"> - For each of the AIF the AIFM manages - Within 6 months of the financial year-end - Available to competent authorities, and to investors upon request - disclosure on annual re- 	<p>Audited annual report (Art. 19)</p> <p>For each of the AIF the AIFM manages Within 4 months of financial year-end and 6 months where information in the Annual Report is required from third parties (e.g. audit of any underlying investments of the</p>

		COMMISSION PROPOSAL	COUNCIL PROPOSAL	EUROPEAN PARLIAMENT PROPOSAL
			<p>port shall at least contain the following:</p> <ul style="list-style-type: none"> (a) a balance-sheet or a statement of assets and liabilities; (b) an income and expenditure account for the financial year; (c) a report on the activities of the financial year; (d) the total amount of remuneration for the financial year, split into fixed and variable remuneration paid by the AIFM, and number of beneficiaries, and, where relevant, carried interests paid by the AIF; (e) the aggregate amount of remuneration broken down by senior management and members of staff whose actions have a material impact on the risk profile of the AIF. 	<p>AIF (Article 19.1).</p> <ul style="list-style-type: none"> - Available to investors and competent authorities - disclosure on annual report shall at least contain the following: <ul style="list-style-type: none"> (a) a balance-sheet or a statement of assets and liabilities; (b) an income and expenditure account for the financial year; (c) a report on the activities of the financial year; (d) the information listed in Article 20, to the extent it has changed during the financial year covered by the report; - the amounts of remuneration, split into fixed and variable remuneration, paid by the AIFM and, where relevant, by the AIF. (e) disclosure on remuneration
12	<p>DISCLOSURE TO INVESTORS</p> <p>Article 20</p>	<p>Detailed information to investors about the fund BEFORE they invest, including:</p> <ul style="list-style-type: none"> - investment strategy - description of assets it CAN invest in - types and sources of leverage, and use of leverage - identity of the fund's depositary and valuator - a description of all fees, charges and expenses - in case of preferential treatment or the right to obtain it, the identity of the investor and a description of that treatment - internal arrangements with respect to risk management, including liquidity risks 	<p>Additional disclosure requirements to investors BEFORE they invest, including:</p> <ul style="list-style-type: none"> - the historical performance of the AIF (if available) - information on leverage if AIF employs leverage on systematic basis <p>BUT: in case of preferential treatment or the right to obtain it, NO disclosure of the identity of the investor.</p>	<p>Additional disclosure requirements to investors BEFORE they invest, including:</p> <ul style="list-style-type: none"> - asset re-use, and transfer and custody arrangements - maximum level of leverage, types and sources of leverage, and use of leverage - internal arrangements with respect to risk management, including liquidity risks - the domicile of underlying funds in case of "fund of funds", the domicile of any master fund. - description of the past performance of the AIF - changes in liability if there is a contractual agreement between the AIFM and the depositary, and information about the role of sub-depositaries if these are being used - information about the correlation of the applied investment approach vis-à-vis

		COMMISSION PROPOSAL	COUNCIL PROPOSAL	EUROPEAN PARLIAMENT PROPOSAL
				traditional investment strategies
13	DISCLOSURE TO COMPETENT AUTHORITIES Article 21	<ul style="list-style-type: none"> - The principal markets and instruments in which the AIFM trades, and in which the AIF invested - Principal exposures and concentrations of risk - Organisational and risk management arrangements established in relation to that AIF 	Additional reporting requirement in relation to stress testing.	Exemption for AIFM managing PE AIF.
14	SPECIFIC DISCLOSURE Article 26 ff.	<p>Specific disclosure requirements for AIFM acquiring controlling stakes in companies (30%)</p> <p><u>Note:</u> NOT applicable to the acquisition of control in SMEs (EU SME Definition, see above)</p> <p>Disclosure to the non-listed company, its respective shareholders and employee representatives (or, if there are no such representatives, to the employees themselves):</p> <ul style="list-style-type: none"> - Development plan for the non-listed company - Policy regarding management of conflicts of interests - Communication policy <p>Additional information in the AIF annual report for each non-listed company:</p> <ul style="list-style-type: none"> - Operational and financial developments - Financial and other risks - Employee matters - Statement on significant 	<p>Specific disclosure requirements for AIFM acquiring 'control' in companies (more than 50%)</p> <p><u>Note:</u> NOT applicable to the acquisition of control in SMEs (EU SME Definition) and these requirements are subject to the provisions on confidential information in Article 6 of Directive 2002/14/EC.</p> <p>REDUCED disclosure requirements towards the non-listed company, its respective shareholders and employee representatives (or, if there are no such representatives, to the employees themselves). E.g. NO development plan.</p> <p>Information in the annual report for each non-listed company to include:</p> <ul style="list-style-type: none"> - Operational and financial developments, including capital structure - Statement on significant divestment of assets - (changes in) number of employees 	<p>Specific disclosure requirements for AIFM acquiring 'significant interest' or controlling influence in companies</p> <ul style="list-style-type: none"> - Controlling influence set at 10%, 20%, 30%, and 50% of the voting rights of a non-listed company <p><u>Note:</u> NOT applicable to the acquisition of control in companies employing less than 50 persons and these requirements are subject to the provisions on confidential information in Article 6 of Directive 2002/14/EC</p> <p><u>Additional</u> disclosure requirements towards the competent authorities of the AIFM and portfolio company, the non-listed company, its respective shareholders and employee representatives (or, if there are no such representatives, to the employees themselves):</p> <ul style="list-style-type: none"> - PLANNED significant divestment of assets - person(s) authorized to conclude legally binding agreements relating to business strategy and employment policy <p>Additional information in the AIF annual report for each non-listed company:</p>

		COMMISSION PROPOSAL	COUNCIL PROPOSAL	EUROPEAN PARLIAMENT PROPOSAL
		<p>divestment of assets</p> <ul style="list-style-type: none"> - Management arrangements <p>This information will also need to be provided to all employee representatives of the company concerned.</p> <p>Art. 30 (listed company)</p> <p>Specific provisions regarding companies whose shares are no longer admitted to trading on a regulated market</p>	<p>Article 30 (listed company)</p> <p>DELETED</p>	<ul style="list-style-type: none"> - Research and development - capital structure - remuneration policy - management compensation - environment policy - profit upon exit - material changes in places of business <p>Article 30</p> <p>AIFMs taking a listed company private would continue to be subject to public company disclosure requirements, but for 1 year rather than 2.</p> <p><u>Directive calls on the Commission to review existing company law legislation at the latest by the date of entry into force of this Directive, to ensure that companies owned by private equity are not at a disadvantage in comparison to companies owned by other means, especially regarding reporting requirements and information which needs to be divulged to employees.</u></p>
15	<p>MARKETING EU AIFS</p> <p>Article 31</p>	<p>The definition of “marketing” includes passive marketing (Article 3(e)) to investors within the EU.</p> <p>Authorized AIFMs have the right to market shares or units of AIFs to professional investors in their home Member State if certain conditions are met.</p> <p>Conditions and restrictions may be imposed.</p>	<p>The definition of “marketing” does NOT include passive marketing (Article 3(e)).</p>	<p>The definition of “marketing” does NOT include passive marketing (Art. 3 (e))</p> <p>BUT: A new Article 35a prohibits a professional investor domiciled in a Member State from investing in shares or units of non-EU AIFs if any of the requirements above are not met.</p> <p>Authorized AIFM may market interests in AIF to professional investors in the home Member State if proper notification, etc.</p> <p>Article 31 applies “whether the AIF is established inside or outside” the EU (Article 31(4a)).</p>
16	<p>EU Marketing Passport</p>	<p>Authorized AIFMs have the right to market interests in EU</p>	<p>Authorized AIFMs have the EU marketing passport for</p>	<p>Follows the Commission proposal, except that AIFM’s pass-</p>

		COMMISSION PROPOSAL	COUNCIL PROPOSAL	EUROPEAN PARLIAMENT PROPOSAL
		AIF interests in other Member States, subject to notice (the "EU marketing passport").	EU AIF interests, unless the EU AIF is a "feeder AIF" for a non-EU AIF (defined as an AIF that invests 85% or more of its assets in the non-EU AIF - Article 3.1(ga)). (Article 31.1).	port would also cover the marketing of non-EU AIFs subject to all conditions set forth below with respect to non-EU AIFs being met.
17	THIRD COUNTRIES Article 35 ff Chapter VII			
18	a) Summary	<p>The activities of "management and administration" (as defined above) of AIF are reserved to EU domiciled and authorised AIFM, with the possibility for AIFM to delegate administration (but not management) functions to offshore entities subject to appropriate conditions.</p> <p>After an additional period of three years (i.e. three years after the transposition period) and subject to strict conditions ("equivalence"):</p> <ul style="list-style-type: none"> - EU AIFM could market non-EU AIF to professional investors throughout Europe; and - non-EU AIFM will be allowed to market their funds in the EU. 	<p>The right for an AIFM (established in the EU) to market AIF to professional investors in the EU on the basis of a single authorisation (the European passport for AIFM) should only be granted where the AIF is established in a Member State.</p> <p>Member States may, however, allow or continue to allow AIFM to market AIF established in third countries to professional investors on their territory subject to national law.</p> <p>Within two years after the deadline for implementing the AIFM directive, the Commission should review rules on institutional investors to assess the need to impose tighter requirements on their investments in AIF managed by non-EU AIFMs (Recital 19b).</p>	<p>In order to get access to the EU markets, a non-EU AIFM would have to voluntarily subject itself to the Directive's requirements. The financial supervisors of that third country would have to act as agents to ESMA in the supervision of that manager.</p> <p>Non-EU AIF allowed to be marketed in the EU if the country where it is located has high enough standards to combat money laundering and terrorist financing, grants reciprocal access to marketing of EU funds on its territory and has agreements in place with the Member States where marketing is intended on exchange of information related to taxation and monitoring matters.</p>
19	b) Third Country AIFs	<p>Article 35, 33(3),54(1)</p> <p>Marketing of non-EU AIF by EU AIFM</p> <p>AIFM can only market interests in non-EU AIFs to professional investors throughout Europe after the end of a 3-year transition period after implementation, provided that:</p> <ul style="list-style-type: none"> - the AIF's jurisdiction has 	<p>Article 34 a,b</p> <p>Marketing of non-EU AIF by EU AIFM (34b)</p> <p>Member States' national law may allow marketing of interests in non-EU AIFs that are managed by an authorized AIFM (Article 34b), provided that:</p> <ul style="list-style-type: none"> - AIFM complies with the 	<p>Article 35, 35 a</p> <p>Marketing of non-EU AIF by EU AIFM (35)</p> <p>An AIFM may only market non-EU AIF interests to professional investors in the EU if the following conditions are satisfied:</p> <ul style="list-style-type: none"> - a cooperation-agreement between the competent authorities governing information

		COMMISSION PROPOSAL	COUNCIL PROPOSAL	EUROPEAN PARLIAMENT PROPOSAL
		<p>entered into a tax treaty compliant with Article 26 of the OECD Model Tax Convention and ensures an effective exchange of tax information.</p> <p>During this period of three years, AIFM cannot market such AIF to professional investors in other Member States on the basis of (passport) rights granted under this Directive.</p> <p>However, Member States may allow or continue to allow AIFM to market AIF domiciled in 3rd countries to professional investors on their territory subject to national law.</p> <p>After 3-years transition period EU passport if conditions are met.</p>	<p>Directive except Article 17</p> <ul style="list-style-type: none"> - appropriate cooperation agreements in line with international standards are in place in order to ensure efficient exchange of information. <p>Such authorised EU AIFM would not benefit from the EU marketing passport (Art.31 (1)).</p> <p>Managing of Non-EU AIF not marketed in EU by EU AIFM (34a)</p> <p>Authorized AIFMs can <u>manage AIFs which are neither established nor marketed in the Union</u> only if:</p> <ul style="list-style-type: none"> - the AIFM complies with the Directive (except Articles 17 and 19 and Chapter VI (Articles 31 ff. marketing and managing AIF in the Union)) - appropriate cooperation arrangements in line with international standards are in place in order to ensure efficient exchange of information (Article 34a). <p><u>Note: Member States could decide not to require co-operation arrangements for an additional 3 years after implementation (Article 51.2b).</u></p>	<p>exchange</p> <ul style="list-style-type: none"> - the third country is the subject of an anti money laundering equivalence decision by the Commission - the third country has signed an agreement with the Member State in which it applies for authorisation and with each other Member State in which those shares or units are proposed to be marketed, a tax agreement that complies with Article 26 of the OECD Model Tax Convention and ensures an effective exchange of information in tax matters - the third country is the subject of a Commission decision that it grants Community AIFM reciprocal effective market access. <p><u>If such conditions above are met with respect to non-EU AIF, EU AIFM would benefit from EU passport regime (Art. 31 (5)).</u></p> <p><u>Note: A new Article 35a prohibits a professional investor domiciled in a Member State from investing in shares or units of non-EU AIFs if any of the requirements above are not met.</u></p>
20	c) Third Country AIFMS	<p>Article 39</p> <p>Marketing</p> <p>Member States may authorize non-EU AIFMs to market units or shares of an AIF to professional investors in the EU, provided that:</p> <ul style="list-style-type: none"> - third country is subject to decision stating that its legislation regarding prudential 	<p>Article 35</p> <p>Marketing</p> <p>Member States may allow non-EU AIFMs to market AIF interests to professional investors on THEIR territory subject to:</p> <ul style="list-style-type: none"> - compliance with the disclosure and reporting obligations (Articles 19 	<p>Article 39 a</p> <p>Marketing (39a (1))</p> <p>A non-EU AIFM may market shares or units of AIF to professional investors on their territory only if:</p> <ul style="list-style-type: none"> - the conditions for marketing non-EU AIF set out above are met also with respect to the third country in which the

		COMMISSION PROPOSAL	COUNCIL PROPOSAL	EUROPEAN PARLIAMENT PROPOSAL
		<p>regulation is equivalent to provisions of the directive</p> <ul style="list-style-type: none"> - EU operators enjoy comparable access to that 3rd country market - a co-operation agreement exists between competent authorities of Member State and third country - the AIF's jurisdiction has entered into a tax treaty compliant with Article 26 of the OECD Model Tax Convention and ensures an effective exchange of tax information. <p>Although the Commission proposal is silent on marketing by non-EU AIFMs during the 3-year window period, it is understood to permit Member States to allow marketing by non-EU AIFMs under national law, but without benefit of an EU marketing passport.</p>	<p>to 21) and the additional requirements for AIFs acquiring control of companies (Articles 26 ff.)</p> <ul style="list-style-type: none"> - appropriate cooperation arrangements in line with international standards exist between the relevant authorities (Article 35). <p>Member States could decide not to require cooperation arrangements for an additional 3 years after implementation (Article 51.2b).</p>	<p>AIFM is established;</p> <ul style="list-style-type: none"> - the AIFM must agree with ESMA to comply with this AIFM Directive - there must an agreement between ESMA and the competent authority of the third country: <ul style="list-style-type: none"> - delegating ESMA's powers in relation to the AIFM - the AIFM must agree to submit to the jurisdiction of EU courts. - If AIF is established in another third country in which the AIFM is established art. 35 needs to be met also with respect to such third country. <p>Managing (Art. 39a (2))</p> <p>EU Member State must permit a non-EU AIFM to provide management services in its territory (Note: not sure what this means exactly: management services to EU AIF ? or to AIFs with EU investors ?) if:</p> <ul style="list-style-type: none"> - the conditions for marketing non-EU AIF set out above are met; - the AIFM must agree with ESMA to comply with the AIFM Directive. - there must an agreement between ESMA and the competent authority of the third country: <ul style="list-style-type: none"> - delegating ESMA's powers in relation to the AIFM - the AIFM must agree to submit to the jurisdiction of EU courts.
21	Transition	- AIFM operating in the	- EU AIFM operating in the	Same as European Commis-

		COMMISSION PROPOSAL	COUNCIL PROPOSAL	EUROPEAN PARLIAMENT PROPOSAL
		<p>Community before the deadline for transposition of this Directive will need to adopt all necessary measures to comply with this Directive and submit an application for authorisation within 1 year of the deadline for the transposition of this Directive.</p> <ul style="list-style-type: none"> - However, Member States shall apply the provisions transposing Chapter VII (Third Country Rules) as from three years after the deadline for transposition. 	<p>Community before the deadline for transposition will need to adopt all necessary measures to comply with this Directive and submit an application for authorisation within 1 year of that deadline.</p> <ul style="list-style-type: none"> - The same applies to non-EU AIFMs marketing AIFs in the EU before the transposition deadline. 	sion.
22	Grandfathering Article 51	<ul style="list-style-type: none"> - No grandfathering. 	<ul style="list-style-type: none"> - No "real" grandfathering but rather extended transition: Closed-ended AIFs that do not make additional investments after implementation, may continue to manage such AIF without authorization until 3 years after entry into force. (Article 51 Nr. 2). 	No grandfathering.

Notice: *This is only a general overview of the draft Directives representing our understanding of the rules which we have simplified and roughly summarized and should always be read together with the draft Directives. We do not guarantee any completeness or correctness of this overview which is for information purposes only and may not be relied upon.*