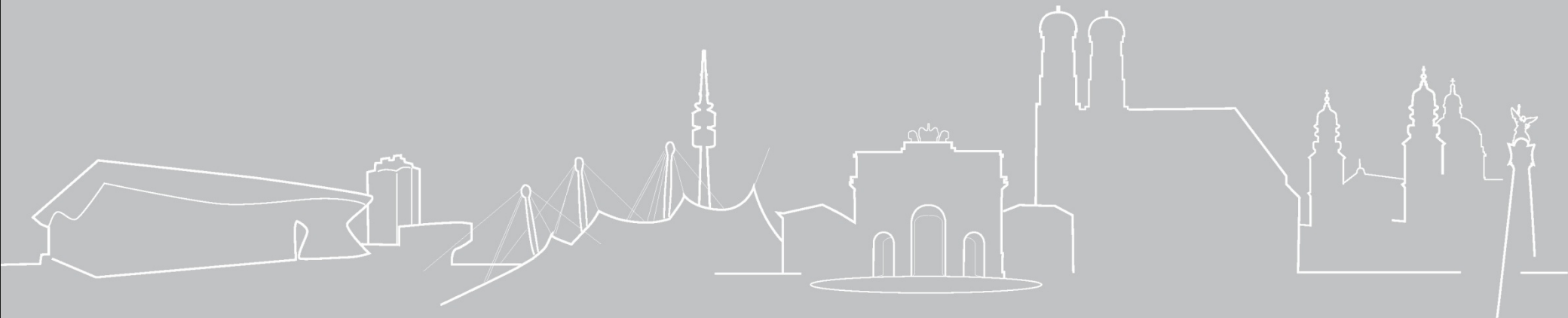


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# IMPACT OF AIFM-D ON GERMAN VC FUNDS



GERMAN VENTURE CAPITAL DAY  
19/20 January 2011

# AIFM – Status and Next Steps

- Level 1: EU-Parliament and Council pass Directive
- Level 2: Implementing Measures headed by EU-Commission
  - delegation to ESMA (supported by national regulatory authorities)
- Level 3: ESMA issues recommendations to national regulatory authorities
- Level 4: EU-Commission ensures proper implementation and consummation

# AIFM – Status and Next Steps

- 2011: Begin of Level 2
- 2011-2012: at the same time implementation of Directive into national law
- Possible alternatives in Germany:
  - introduction of a new Act
  - integration into Investment Act
- BUT: Directive only covers regulatory rules no tax rules (i. e. tax transparency, VAT)

# AIFM – Scope of the Directive

- **The Directive applies to:**
  - (i) All EU Managers (so called „AIFM“), which **manage** one or more alternative investment funds (so called „AIF“) irrespective of whether the AIF is EU or non-EU based;
  - (ii) All non-EU AIFM, which manage one or more EU AIF; and
  - (iii) All non-EU AIFM, which market one or more AIF in the European Union, irrespective of whether the AIF is an EU AIF or a non-EU AIF.
- **„Marketing“** means any direct or indirect offering or placement at the initiative of the AIFM or on behalf of the AIFM of units or shares in an AIF it manages to or with investors domiciled in the Union
  - No restriction upon investors when investing in non-EU funds upon their own initiative.
- **„Managing AIF“** means providing at least (discretionary) portfolio management and/or risk management services.
  - Not mere “advising”

# AIFM – Scope of the Directive

- Certain exemptions for smaller AIFM
  - Certain smaller Managers are exempt: managing in the aggregate assets of (i) less EUR 100 Mio. if they apply leverage and (ii) less EUR 500 Mio. if they manage only closed ended AIFs and apply no leverage.
    - Such smaller AIFM are generally exempt but are subject to registration requirements
  - „Leverage“:
    - Only at fund level
    - Not at level of portfolio company
  - „Asset under Management“:
    - Unclear whether reference to commitments, NAV, contributions, invested ... (to be determined at Level 2)
  - „Opt in“ possible

# AIFM – Main Requirements under AIFM

- Disclosure Requirements
- License requirements for Manager (AIFM)
  - In future only one manager for all funds of the group?
- Notification requirements with respect to marketing of AIFs (see next slides)
  - EU passport (simplifies cross-border marketing)
- Conduct of business requirements
- Custodian requirements
- Risk management requirements
- Valuation requirements
- Leverage control
- Remuneration guidelines
- Asset Stripping (see next slides)
- Third country rules (see next slides)

# AIFM – Impact on VC-Funds?

- Will „opt-in“ be a „MUST HAVE“ to be successful in fundraising?
- Impact on fundraising process?
  - Fund documentation needs to be submitted to BaFin prior to beginning of marketing activities.
    - Result of level 2 clarification will have to be that first drafts are submitted and final drafts once fundraising has been completed.
- Impact on deal doing?
  - Upon achieving control over portfolio company:
    - Asset Stripping Rules:

Before the end of 24 months, the AIFM must not facilitate/support/instruct any

      - Distribution
      - Capital reduction
      - Share redemption and/or
      - Acquisition of own shares
    - Special Disclosure/Transparency Rules
    - Notification once the following thresholds are exceeded:

10 %, 20 %, 30 %, 50 % and 75 %

# AIFM – Impact on VC-Funds?

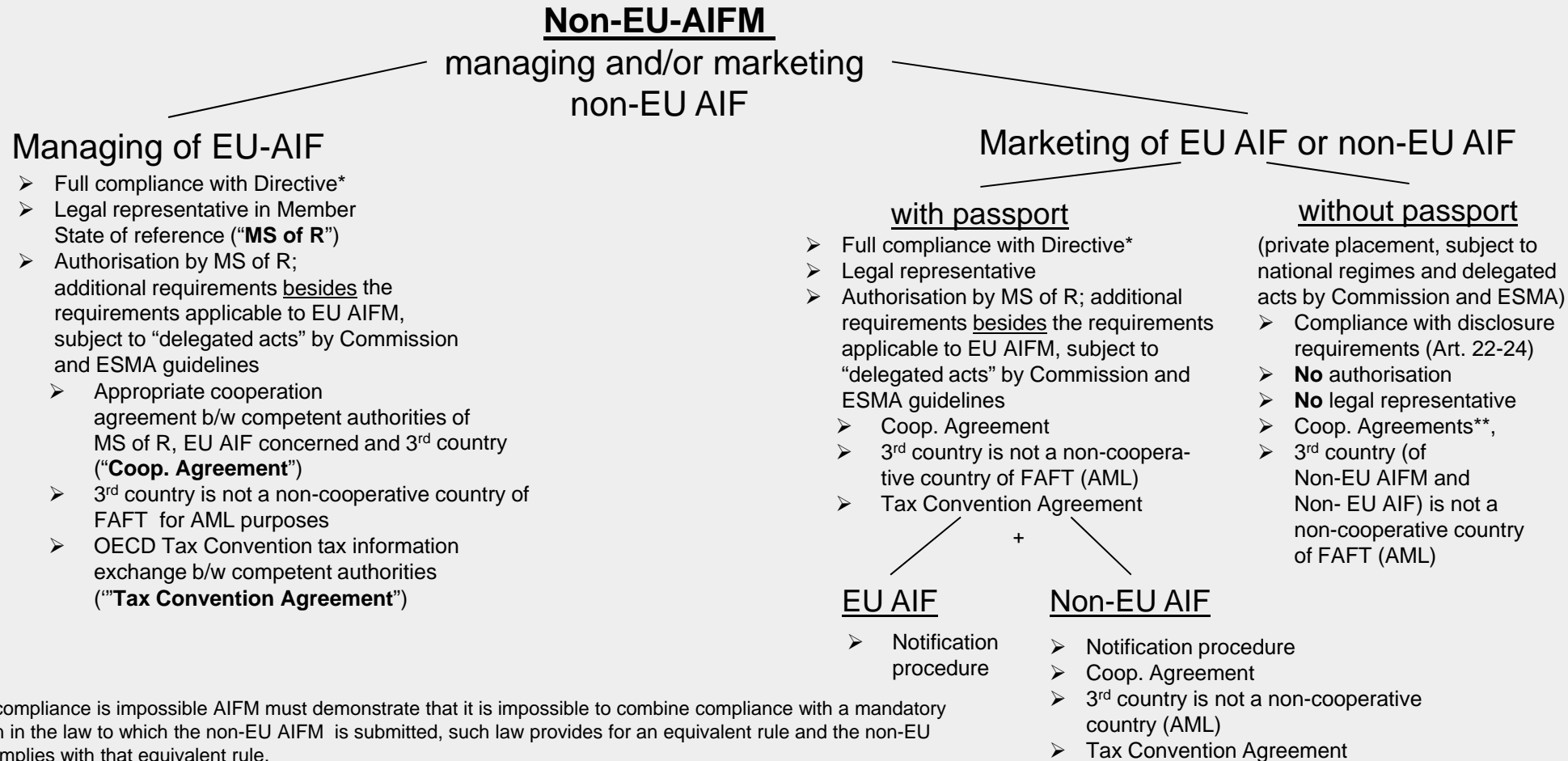
- Impact on offshore structure?





# AIFM – Impact on VC-Funds?

- Impact on offshore structure?



\* Where compliance is impossible AIFM must demonstrate that it is impossible to combine compliance with a mandatory provision in the law to which the non-EU AIFM is submitted, such law provides for an equivalent rule and the non-EU AIFM complies with that equivalent rule.

\*\* Agreements between competent authorities/3<sup>rd</sup> countries where non-EU AIFM **and**, as the case may be, non-EU AIF, is based **and** MS of R, respectively.

# Thank you for your attention.



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