



EUROPEAN  
PRIVATE EQUITY &  
VENTURE CAPITAL  
ASSOCIATION

## AIFMD – and what's next

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# AIFMD - Timeline

- End of 2010
  - Approval of the final AIFMD text by the European Parliament (Nov)
  - Adoption of CESR/ESMA Mandate by EC
  - CESR Committee “kick off” meeting (26 Nov)
  - November 2010-February 2011: Translation into 23 languages by jurist linguists
- 2011
  - ESMA operational from 1 January
  - March / April: Publication in the Official Journal (*Estimated Timing*)
    - > EC/ESMA official work on Delegated Acts/Standards (*Estimated Timing*)
    - > Start of National Transposition
- 2013
  - End of adoption of all implementing acts and measures
  - End of National Transposition
- 2014
  - End of transitional period (to get authorisation) for EU AIFM operating before transposition
- 2017
  - Commission review of the application and scope of the AIFMD

## Third Countries - Timeline

- 2011  
Entry into force of Directive - national regimes for third countries continue subject to minimum harmonised conditions
- 2013  
End of transposition period
- 2015
  - A harmonised EU passport for non-EU AIFM regime should become applicable after the entry into force of a delegated act by the Commission.
  - This harmonised passport regime co-exists with the national regimes during a transitional period of 3 years.
- 2018  
It is the intention that the national regimes shall be terminated, after the entry into force of a delegated act by the Commission.

### Misunderstanding around LPAs

- The whole approval procedure as outlined in Articles 31-33 is completely at odds with how PE funds are raised and negotiated.
- The fund placement documentation usually gets modified during the placement period – meaning that investors will negotiate the LPA and this document therefore does very often differ from one closing to the next. There might be 2-4 versions of an LPA during the lifecycle of a fundraising.
- **The AIFMD does not really foresee that investors negotiate the LPA in the suggested process of filing the documents before the placement starts.**
- This should be taken into account in the implementing measures.

## AIFMD – Remaining concerns

### Lack of a tailored opt-in regime for small AIFM

- Exemption for AIFM managing unleveraged AIF, without redemption rights during a period of five years, with cumulative AIF under management of below EUR 500 million.
- Allowed to be treated as AIFM under the Directive subject to the opt-in procedure. **Opt-in would mean full compliance with the ENTIRE Directive**, including
  - Full capital requirements
  - Obligation to appoint depositary
  - Etc.
- Question mark also remains on how the threshold will be calculated.

# AIFMD – Remaining concerns

## Grandfathering

- Grandfathering for closed-ended AIF managed before the final transposition date which do not make any additional investments after the final transposition date (no authorisation under this Directive required)
- Grandfathering for closed-ended AIF whose subscription period for investors has closed prior to the entry into force and are constituted for a period of time which expires at the latest 3 years after the final transposition date (BUT compliance with annual report/disclosure requirements in case of control)
- **Implementation must take into account the long term nature of PE and VC funds and activities.**



## A regulated industry and its reputation

### **The next major industry priority – reset our reputation**

#### **Our reputation problem seems to be based around four perceptions:**

- Self-interest *versus* alignment of interest
- Financial engineering *versus* real business, entrepreneurship
- Secrecy/privacy *versus* transparency
- Poor returns *versus* outperformance

## A regulated industry and its reputation

### **The Public Relations Executive faces the challenges of:**

- Demonstrating the alignment of interest that is prevalent throughout the industry.
- Ensuring PE is associated with company investment and building better businesses, not confused with hedge funds/pure financial engineering.
- Ensuring PE is seen as a trusted player across stakeholder groups, as responsible and professional, not secretive.
- Contextualising VC's performance, and raising understanding of the VC industry's structure and potential.





## A regulated industry and its reputation

### **The next major industry priority – needs commitment from all**

- The industry's reputation and public image will be a major priority for the associations.
- At the same time, each of us needs to demonstrate behavioral commitment.
- EVCA has assembled a group of practitioners and national association reps to assess the findings of a reputation audit and formulate a strategy to rectify industry image.



**THANK YOU**