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# AIFMD Developments

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Leading Business Advisors



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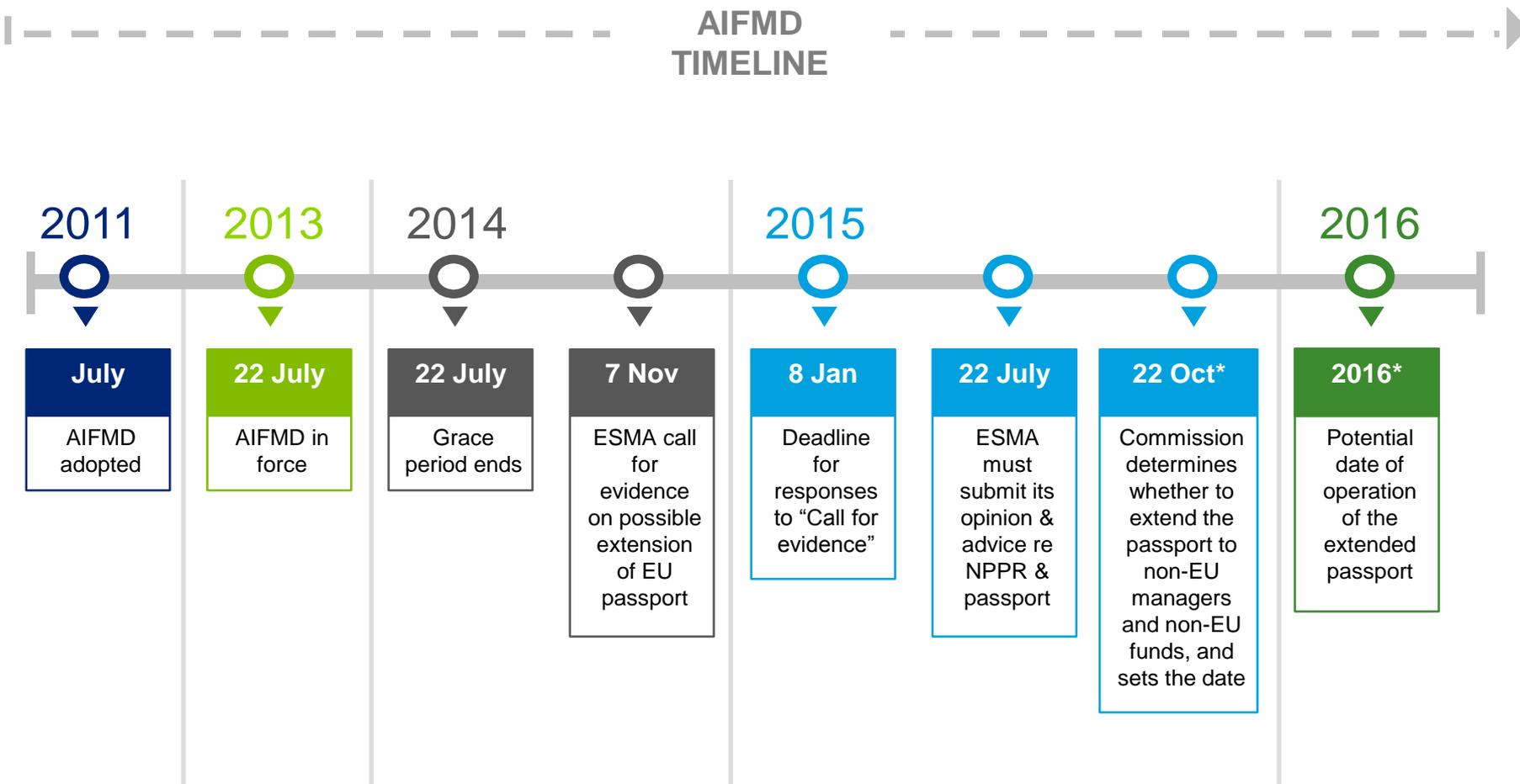
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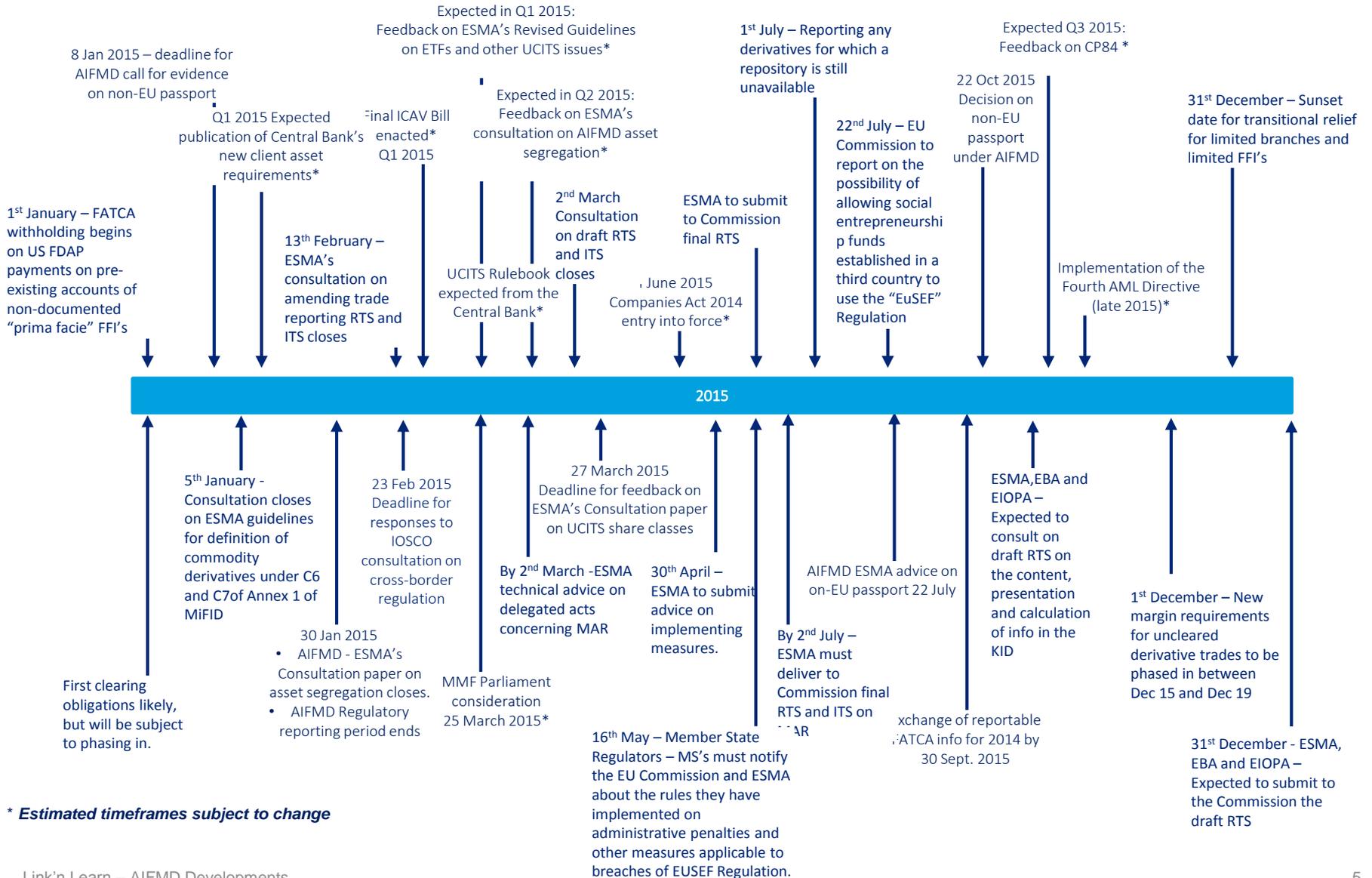
## Market review

# Alternative Investment Fund Managers Directive



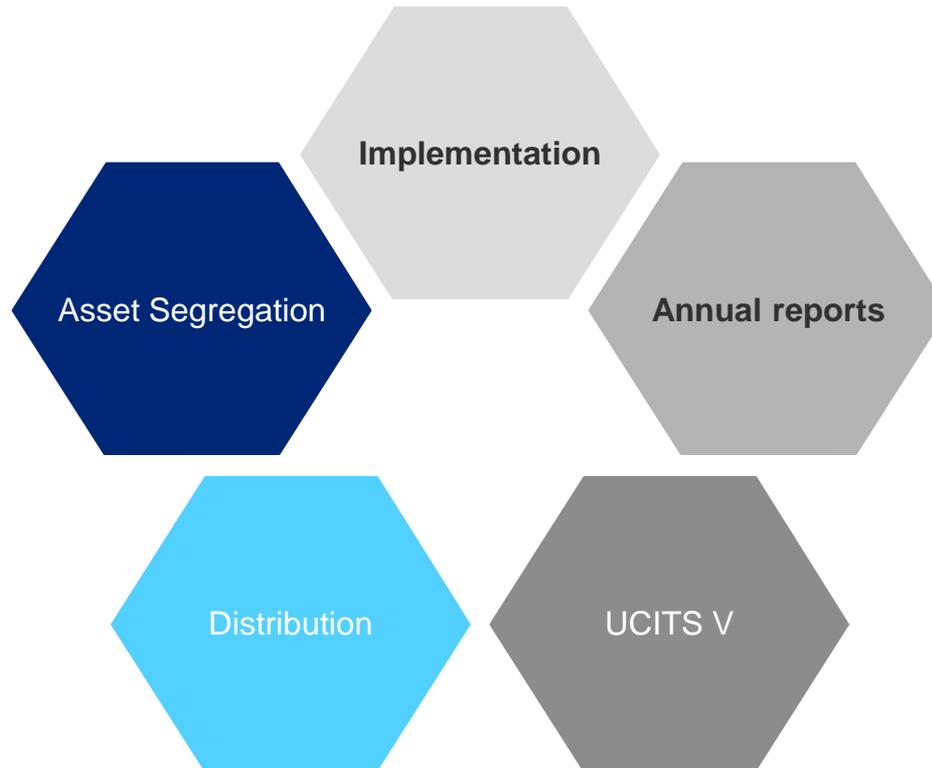


# Overview of European regulation



\* **Estimated timeframes subject to change**

# Market overview



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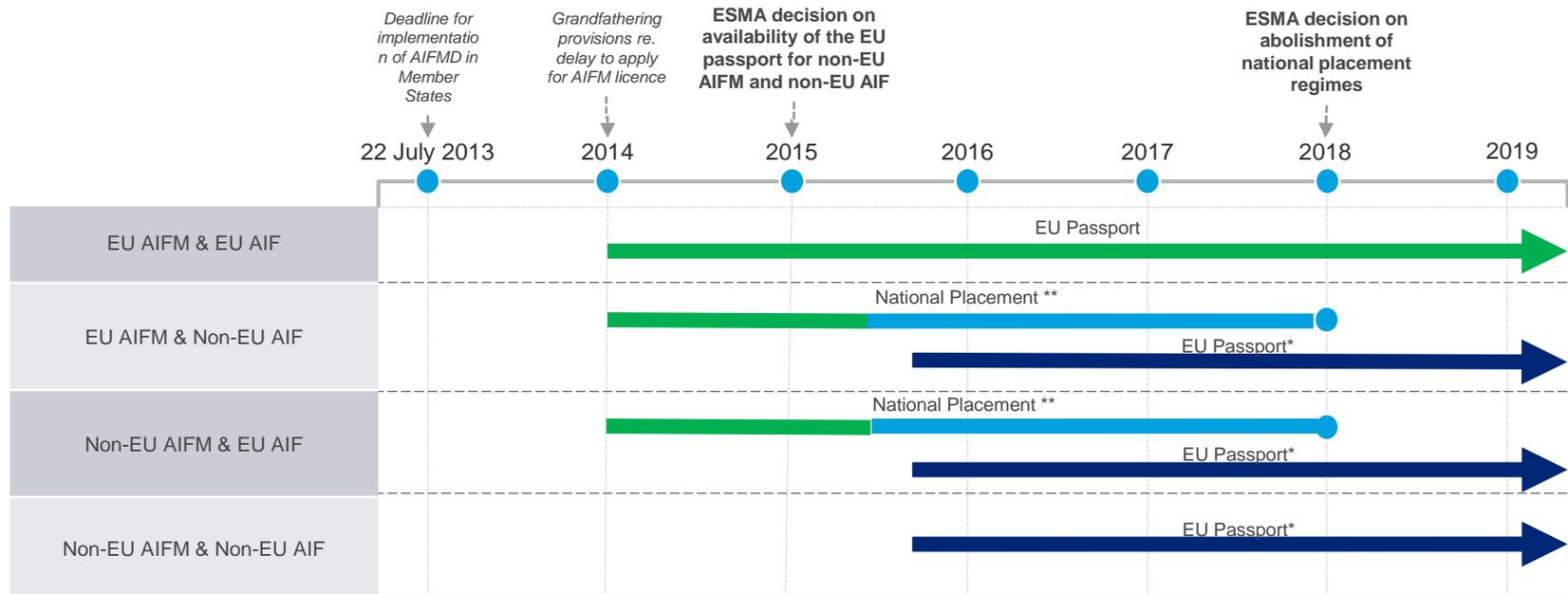
# Distribution



# AIFMD Timeline for Marketing in the EU

The AIFM Directive foresees different timelines for making an EU distribution passport available, and for ending EU National Placement regimes \*\*.

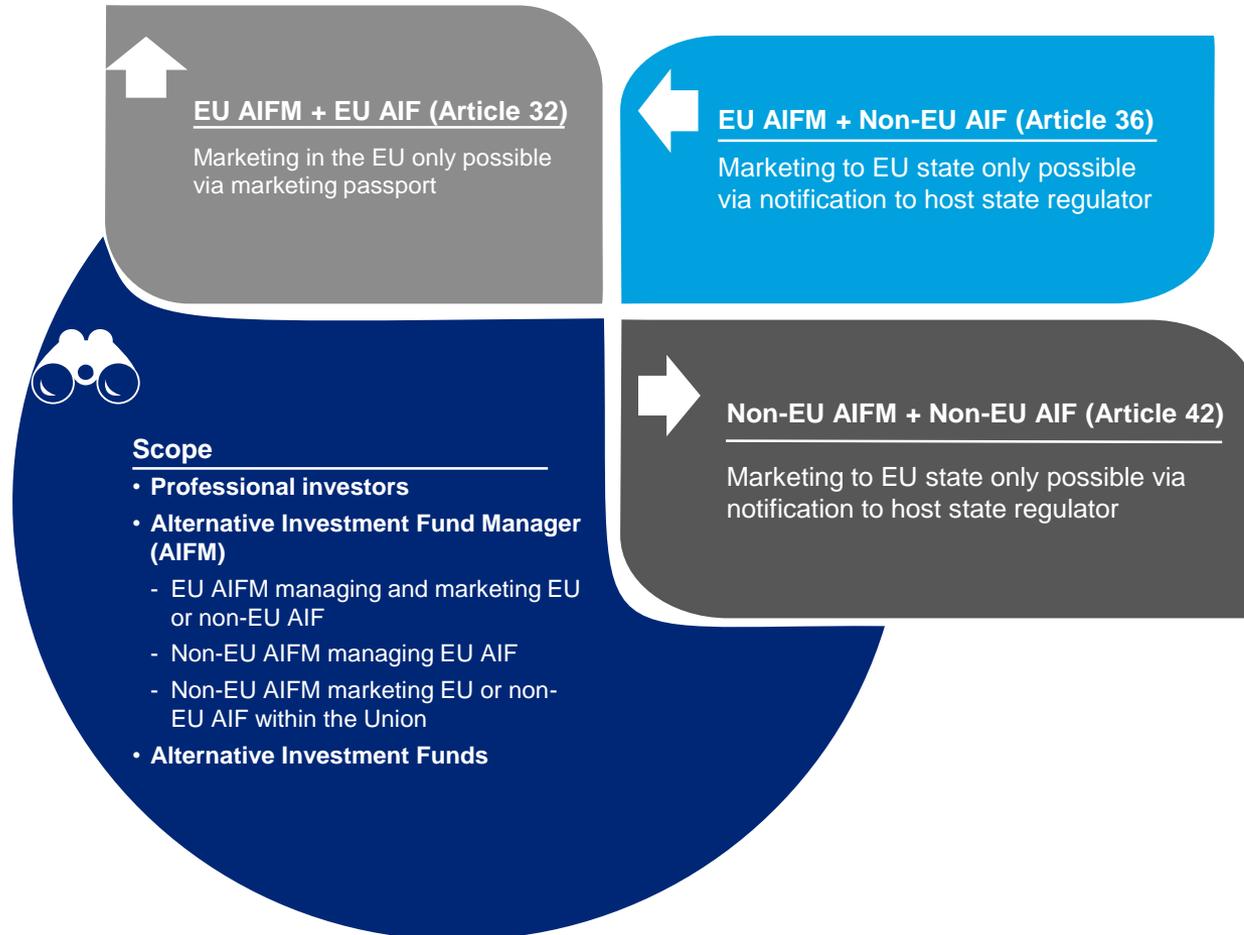
- Prior to 2018, marketing in the EU via either an EU passport or National Placement Regimes is, in principle, possible.
- After 2018, only marketing through an EU passport will be possible.



\* Passport anticipated end 2015 / early 2016 depending on ESMA opinion to be issued in July 2015

\*\* Member States may decide at their own discretion to end National Placement regimes anytime prior to 2018

# Scope & Distribution Options

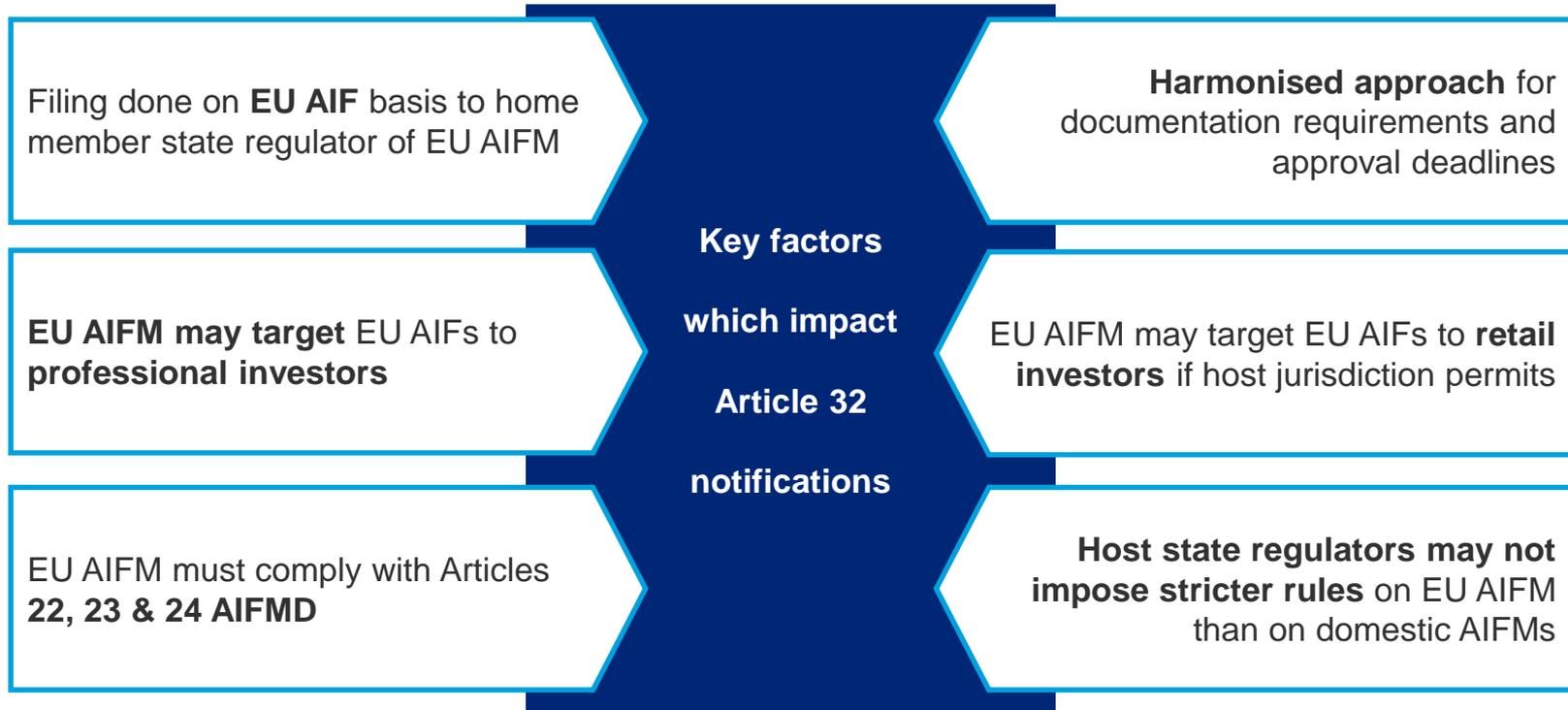


- AIFMD does not regulate the **product** (i.e. the AIF) but the AIFM
- AIFMD does not grant a **distribution passport** to the AIF but the AIFM
- **Investment policy** as such does not qualify an investment fund as AIF; rather all investment funds that do not qualify as UCITS, are *de facto* AIFs



# Article 32 – Distribution via EU Passporting

## Operational Considerations

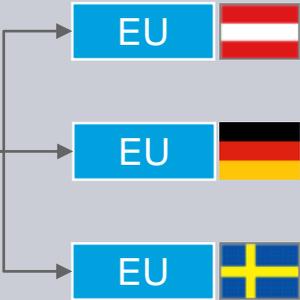


*This applies to EU AIFMs managing and marketing EU AIFs*

# Case Study – Lux AIFM with Lux AIF (Article 32 AIFMD)



- **ABC IM Lux** entity has its AIFM license from its home state regulator, the CSSF
- ABC IM Lux entity intends to use its AIFM notification passport to submit notifications of intention to market its Luxembourg domiciled AIFs in several jurisdictions across the EU in accordance with **Article 32 AIFMD**

AIFM	AIF	Distribution	Steps taken
			<ul style="list-style-type: none"> <li>• <b>Submission is done to CSSF</b> for each EU AIF it intends to market</li> <li>• Notification shall comprise the documentation and information set out in Annex IV AIFMD</li> <li>• CSSF has <b>20 working days</b> following receipt of a complete notification to submit to host state regulator</li> <li>• EU AIF may start marketing once notification file is transmitted to host state regulator and confirmation received by AIFM from CSSF</li> <li>• EU AIFM shall submit Annex IV notification for each EU AIF it intends to market in each host state</li> </ul>

*\* Only country to have imposed major gold-plating is France with the requirement to appoint an agent centralisateur*



# Current AIFMD marketing options

if the AIFM is unable to access the EU passport

## Do Nothing

- Not an option if you raise capital or approach investors in the EU

## Reverse Solicitation

- Sometimes presented as a possible “option” but
  - is not a strategy for raising capital in the EU
  - requires complexity in demonstrating total absence of marketing
  - poses a major future compliance risk as cooperation is foreseen between EU and non-EU authorities



## Opt for National Placement in the interim

- Best “low” requirements
- Possible until 2018, uncertain thereafter
- Specific regulatory requirements
- National Placement Regimes are not harmonised
- Prudential reporting to both regulators and investors in each jurisdiction where the AIFs are distributed

## Wait until the Passport.....

- Full fledged and most costly option
- Preferred solution from a regulatory standpoint if you actively raise capital in the EU or wish to have easier market access to EU investors
- Possibility for efficient solutions leveraging existing infrastructure and potential fund restructuring to minimise cost impact for non-EU investors



# AIFMD Article 36 & 42 notifications



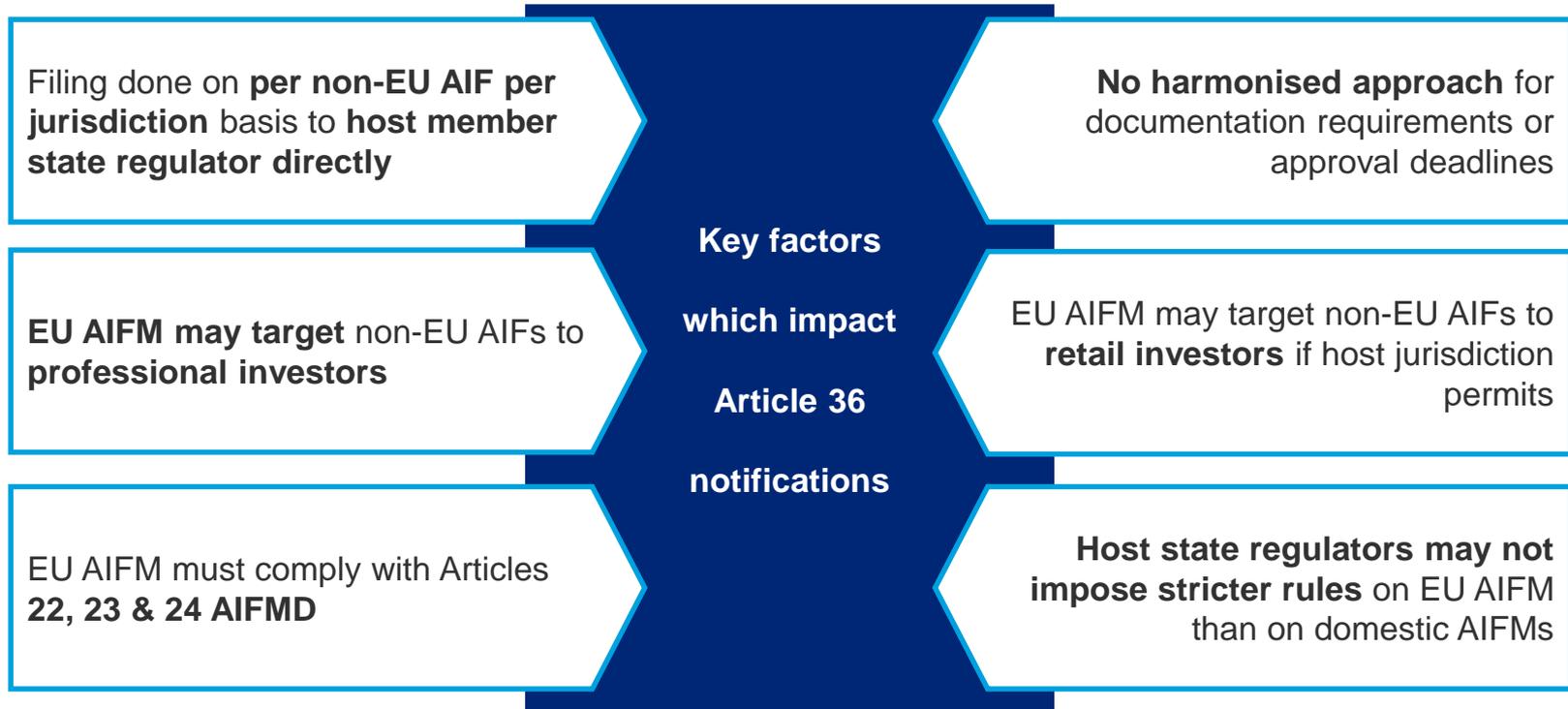
- AIFMD Articles 36 & 42 notifications possible
- AIFMD transposed; further guidance to be released
- AIFMD transposed; Articles 36 & 42 not possible
- AIFMD not yet transposed

*\* As per February 2015; provided on a best endeavours basis using information in the public domain; regulators reserve the right to change requirements at any time*



# Article 36 – Distribution via Notification

## Operational Considerations

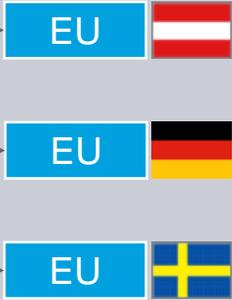


*This applies to EU AIFMs managing and marketing non-EU AIFs;  
not all Member States have opened up this possibility*

# Case Study – Lux AIFM with KY AIF (Article 36 AIFMD)



- **ABC IM Lux** entity has its AIFM license from its home state regulator, the CSSF
- ABC IM Lux entity intends to submit notifications of intention to market Luxembourg domiciled AIFs in several jurisdictions across the EU in accordance with **Article 36 AIFMD** (*i.e. distribution via notification and not via the passport*)

AIFM	AIF	Distribution	Steps taken
			<ul style="list-style-type: none"><li>• <b>Submission is done to each host member state individually</b></li><li>• Notification shall comprise the documentation and information set out in local regulations</li><li>• <b>Approval delay varies from country to country</b></li><li>• Non-EU AIF may start marketing only once formal approval has been received</li><li>• EU AIFM shall submit notification for each non-EU AIF it intends to market in each host state</li></ul>



# Key Requirements for Article 36 AIFMD registration

## Selected EU Member States – marketing to professional investors

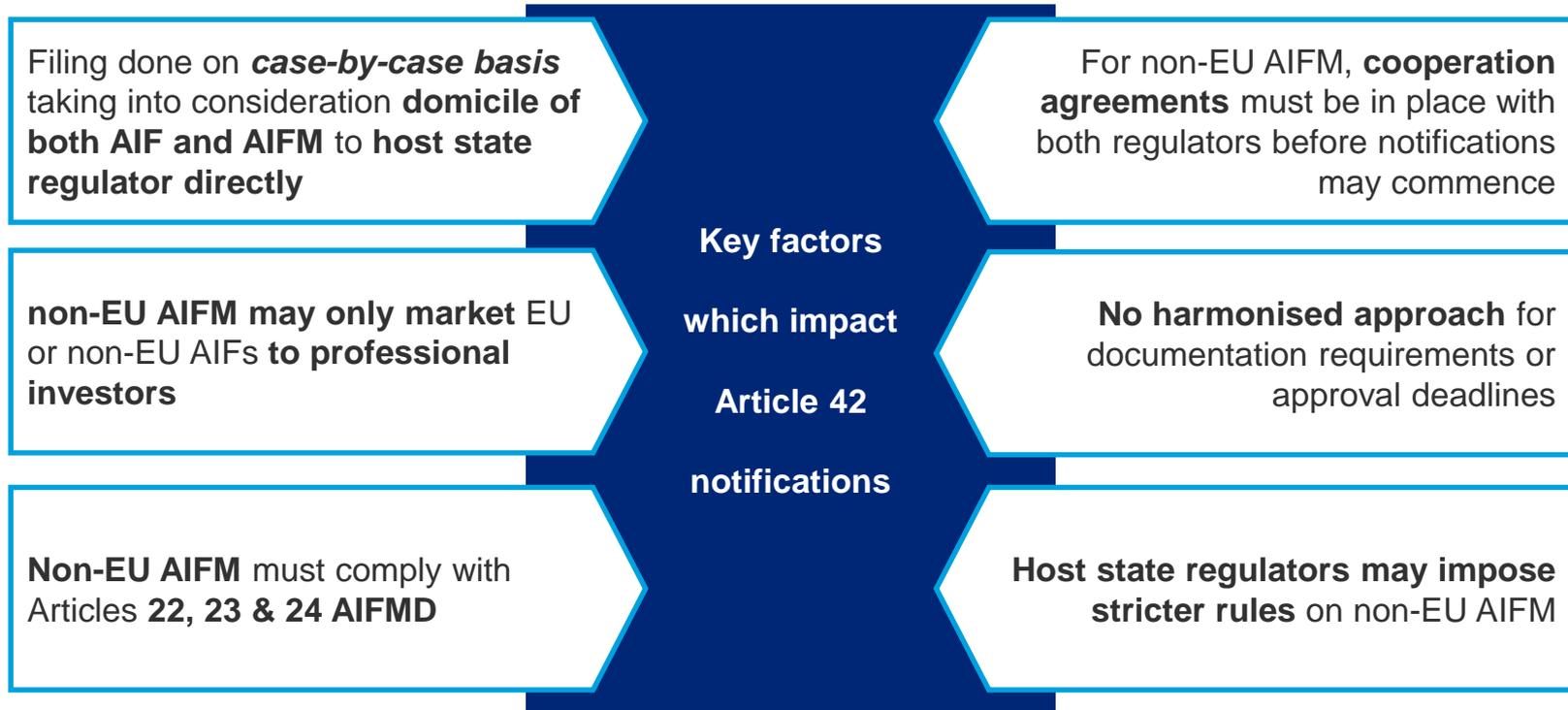
	Austria	Denmark	France	Germany	Spain	United Kingdom
<b>Examples of documents for Notification</b>	AIF Prospectus, articles of incorporation, financial statements, notification letter  Proof of payment of fees	AIF Prospectus, articles of incorporation, financial statements, notification letter  Reciprocity statement from non-EU AIF's home state regulator	AIF Prospectus, articles of incorporation, financial statements, notification letter	AIF Prospectus, articles of incorporation, financial statements, notification letter  Proof of payment of fees	<i>Although legally possible, it will be very difficult in practice as the CNVM requires, inter alia, that non-EU AIFs are similar to Spanish AIFs and has a discretionary power to accept such notifications or not</i>	AIF Prospectus, articles of incorporation, financial statements, notification form
<b>Examples of other requirements</b>	Compliance with depositary lite regime  Certificate of compliance of non-EU AIF with AIFMD issued by home state regulator of AIF	Compliance with depositary lite regime  Proof of registration of the non-EU AIF issued by the home state regulator	Compliance with depositary lite regime  Appointment of <i>agent centralisateur</i>	Compliance with depositary lite regime  Declaration signed by EU AIFM of compliance with specific requirements  Notion of Semi-professional investors	N/A	Compliance with depositary lite regime
<b>Initial Registration fees</b>	Euro 2,200 (AIF + 1 <sup>st</sup> sub-fund) plus Euro 440 per additional sub-fund	Currently understood to be DKK 2,500 per notification	Euro 2,000 per AIF & Euro 2,000 per sub-fund	Euro 3,291 per sub-fund	N/A	GBP 250 per AIF (if non-UK AIFM)
<b>Annual Maintenance fees</b>	Euro 1,200 (AIF + 1 <sup>st</sup> sub-fund) plus Euro 440 per additional sub-fund	Currently understood to be DKK 4,155	Euro 2,000 per AIF & Euro 2,000 per sub-fund	Euro 772 per sub-fund	N/A	GBP 500 per AIF (if non-UK AIFM)
<b>Time to market</b> <i>must always wait for formal approval from regulator before commencing marketing</i>	2 months	3 months (which may be extended to 6 months)	2 months	2 to 5 months depending if master feeder structure	N/A	A few days

\* As per February 2015; provided on a best endeavours basis using information in the public domain; regulators reserve the right to change requirements at any time

# Article 42 – Distribution via National Placement Regime



## Operational Considerations

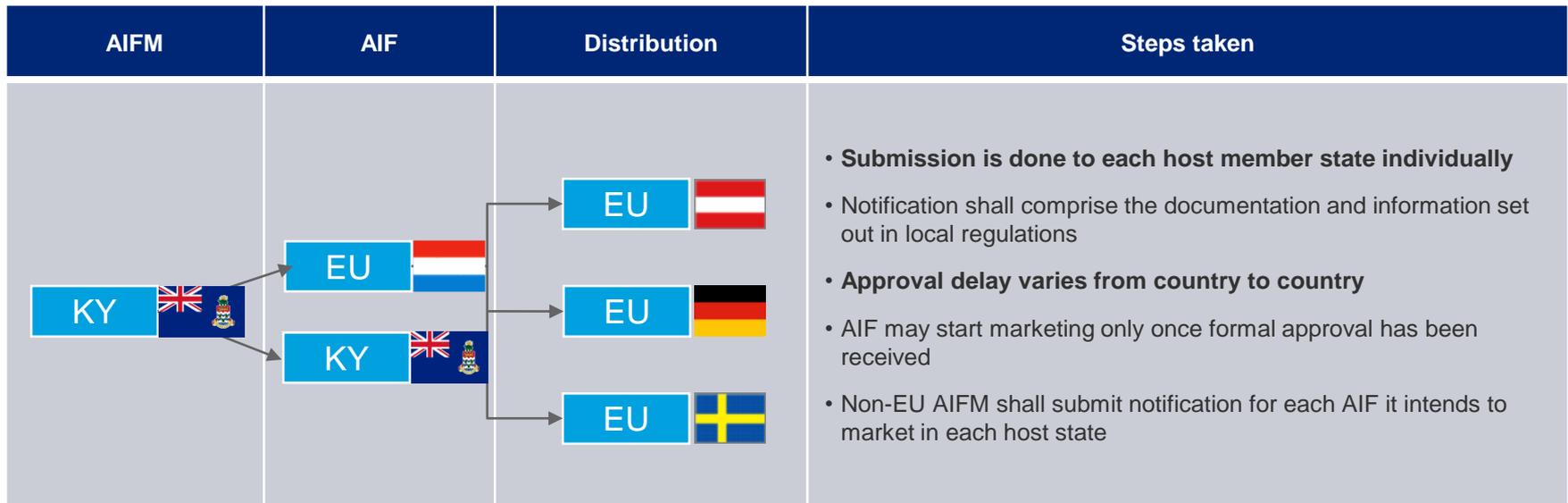


*This applies to non-EU AIFMs managing and marketing both EU and non-EU AIFs; not all Member States have opened up this possibility*



# Case Study – KY AIFM with Lux AIF or KY AIF

- **KY AIFM** entity **CAN NOT** receive an AIFM license from its home state regulator, the CIMA
- KY AIFM entity intends to submit notifications of intention to market either Luxembourg or Cayman domiciled AIFs in several jurisdictions across the EU in accordance with **Article 42 AIFMD** (*i.e. distribution via national placement and not via the passport*)





# Key Requirements for Article 42 AIFMD registration

## Selected EU Member States – marketing to professional investors

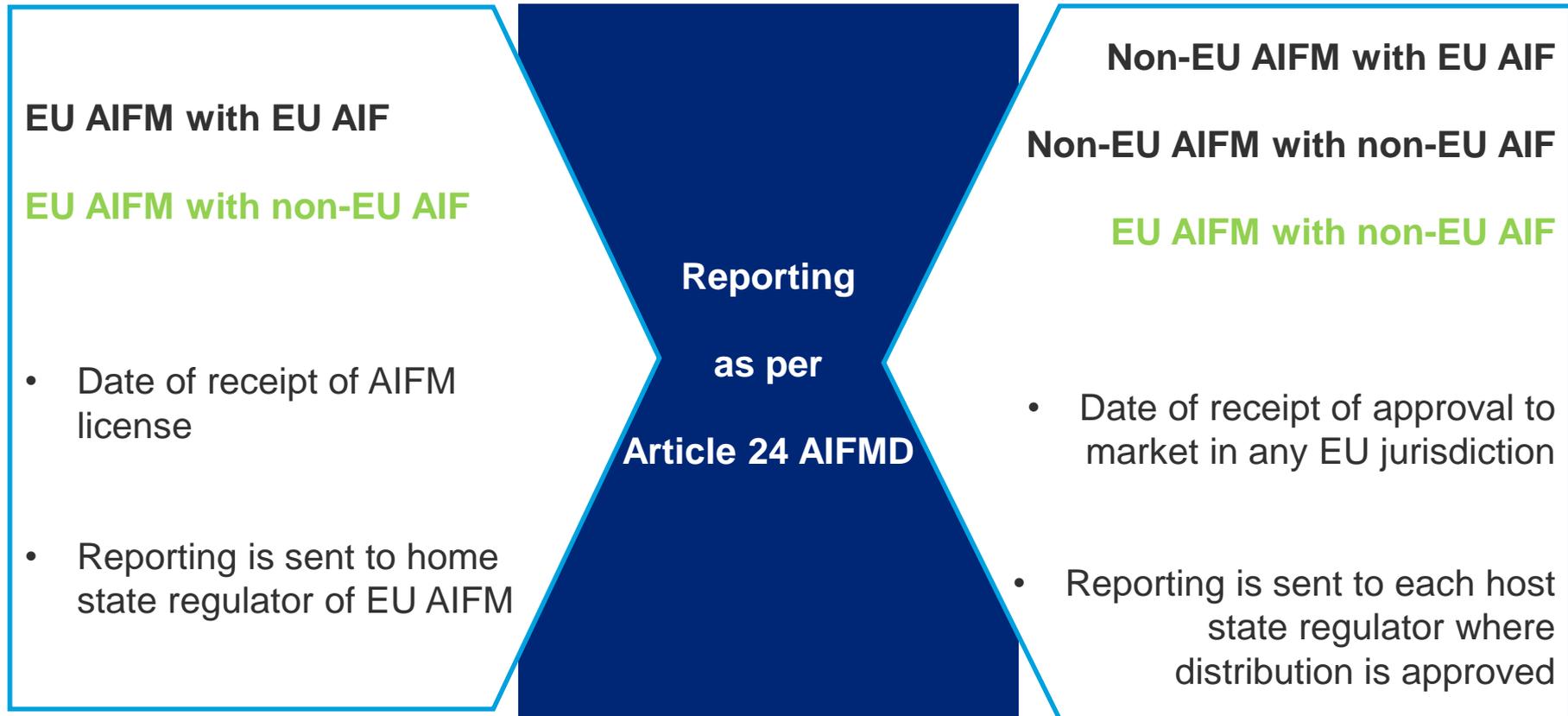
	Austria	Denmark	France	Germany	Spain	United Kingdom
<b>Examples of documents for Notification</b>	AIF Prospectus, articles of incorporation, financial statements, notification letter <i>Proof of payment of fees</i>	AIF Prospectus, articles of incorporation, financial statements, notification letter <i>Reciprocity statement from non-EU AIFM's home state regulator</i>	AIF Prospectus, articles of incorporation, financial statements, notification letter	AIF Prospectus, articles of incorporation, financial statements, notification letter <i>Proof of payment of fees</i>	<i>Although legally possible, it will be very difficult in practice as the CNVM requires, inter alia, that non-EU AIFs are similar to Spanish AIFs and has a discretionary power to accept such notifications or not</i>	AIF Prospectus, articles of incorporation, financial statements, notification form
<b>Examples of other requirements</b>	Full compliance with AIFMD incl Article 21 (depository) <i>Appointment of local representative</i> <i>Declaration by non-EU AIFM of full compliance with AIFMD</i>	Compliance with depository lite regime <i>Proof of registration of the non-EU AIF issued by the home state regulator</i>	Compliance with depository lite regime <i>Appointment of agent centralisateur</i>	Compliance with depository lite regime <i>Agreement between AIFM and depository must be filed</i> <i>All info required for both feeder and master structure</i>	N/A	Compliance with depository lite regime
<b>Initial Registration fees</b>	Euro 4,500 (AIF + 1 <sup>st</sup> sub-fund) plus Euro 1,000 per additional sub-fund	Currently understood to be DKK 2,500 per notification	Euro 2,000 per AIF & Euro 2,000 per sub-fund	Euro 6,582 per sub-fund	N/A	GBP 250 per AIF
<b>Annual Maintenance fees</b>	Euro 2,500 (AIF + 1 <sup>st</sup> sub-fund) plus Euro 600 per additional sub-fund	Currently understood to be DKK 4,155	Euro 2,000 per AIF & Euro 2,000 per sub-fund	Euro 1,088 per sub-fund	N/A	GBP 500 per AIF
<b>Time to market</b> <i>must always wait for formal approval from regulator before commencing marketing</i>	4 months	3 months (which may be extended to 6 months)	2 months	5 to 8 months depending if master feeder structure	N/A	A few days

**\* For all Article 42 notifications, non-EU AIFM must comply with Articles 22, 23 and 24 AIFMD**

*\* As per February 2015; provided on a best endeavours basis using information in the public domain; regulators reserve the right to change requirements at any time*



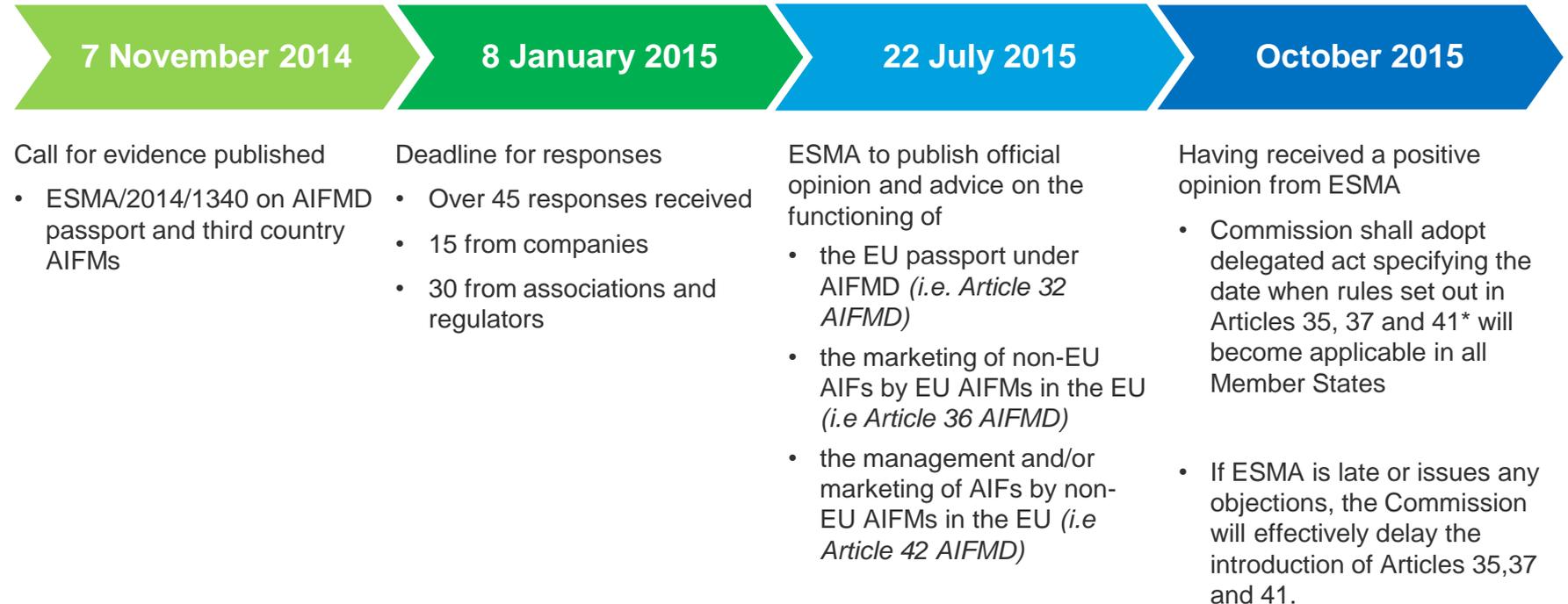
# So when does Article 24 Reporting start?





# ESMA Call for evidence

## AIFMD passport & third country AIFMs



\* Article 35 – Conditions for marketing in the Union with a passport of a non-EU AIF managed by an EU AIF

- Will eventually replace Article 36 notifications

Article 37 - Authorisation of non-EU AIFMs intending to manage EU AIFs and/or market AIFs managed by them in the Union in accordance with Article 39 or 40

- Article 39 - Conditions for the marketing in the Union with a passport of EU AIFs managed by a non-EU AIFM
- Article 40 - Conditions for the marketing in the Union with a passport of non-EU AIFs managed by a non-EU AIFM
- Articles 39 & 40 will eventually replace Article 42 notifications

Article 41 - Conditions for managing AIFs established in Member States other than the Member State of reference by non-EU AIFMs

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# Asset Segregation



# Asset segregation

## ESMA's options

<b>Policy Objective</b>	<b>The AIFMD asset segregation rules are intended to protect the interest of the AIF's investors by ensuring that the assets of the AIF are not exposed to events (such as bankruptcy) which may affect the third party to whom the safekeeping of its assets may be delegated by the depositary or any other third party (e.g. other clients of the delegated third party). These rules should be applied consistently across Europe.</b>
<b>Option 1</b>	AIF and non-AIF assets should not be mixed in the same account and there should be separate accounts for AIF assets of each depositary when a delegate is holding assets for multiple depositary clients.
<b>Option 2</b>	The separation of AIF and non-AIF assets should be required, but it would be possible to combine AIF assets of multiple depositaries into a single account at sub-custodian level.
<b>Option 3</b>	AIF and non-AIF assets could be commingled in the account on which the AIF's assets are to be kept at the level of the delegate. However, the delegate could not commingle in this account assets coming from different depositaries.
<b>Option 4</b>	AIF and non-AIF assets could be commingled in the account on which the AIF's assets are to be kept at the level of the delegate.
<b>Option 5</b>	The delegate could commingle in this account assets coming from different depositary clients. AIF assets should be segregated on an AIF-by-AIF basis at the level of the delegate.



# Asset segregation

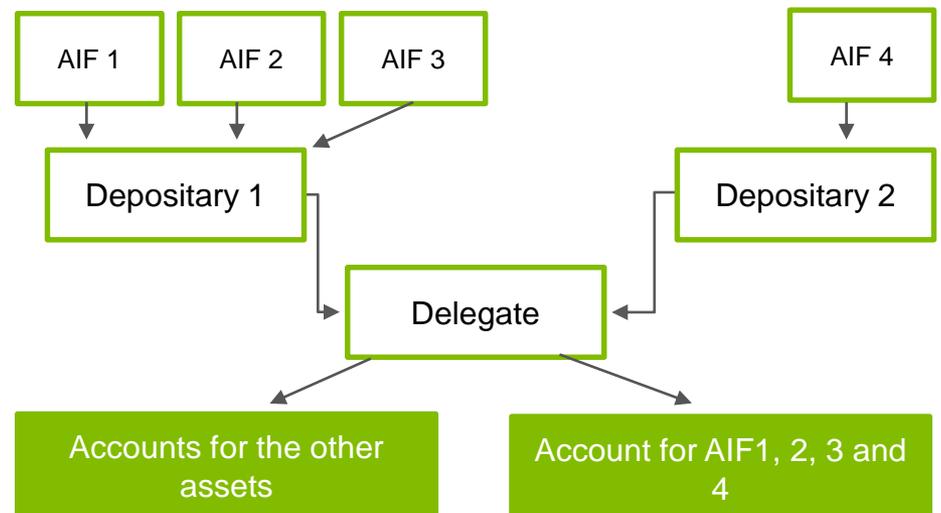
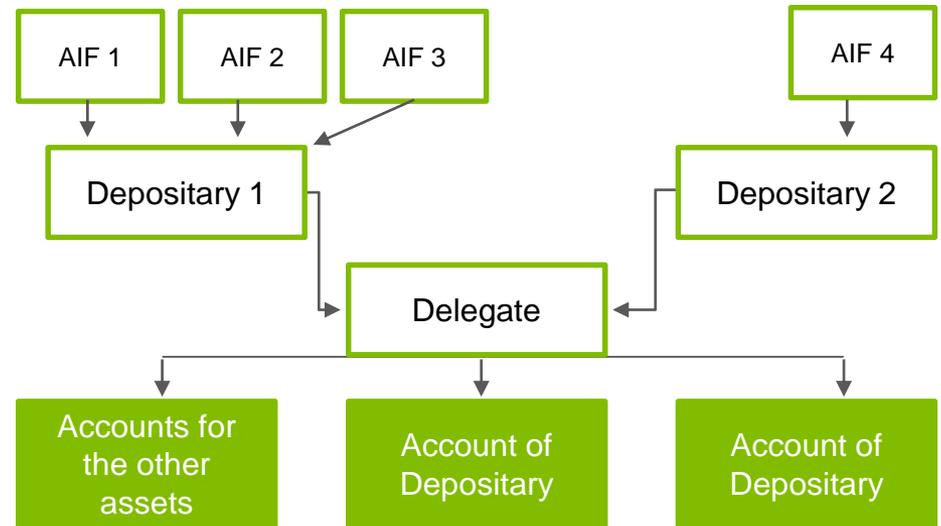
## ESMA's preferred options

ESMA decided to consult on options 1 and 2 and discarded options 3, 4 and 5.

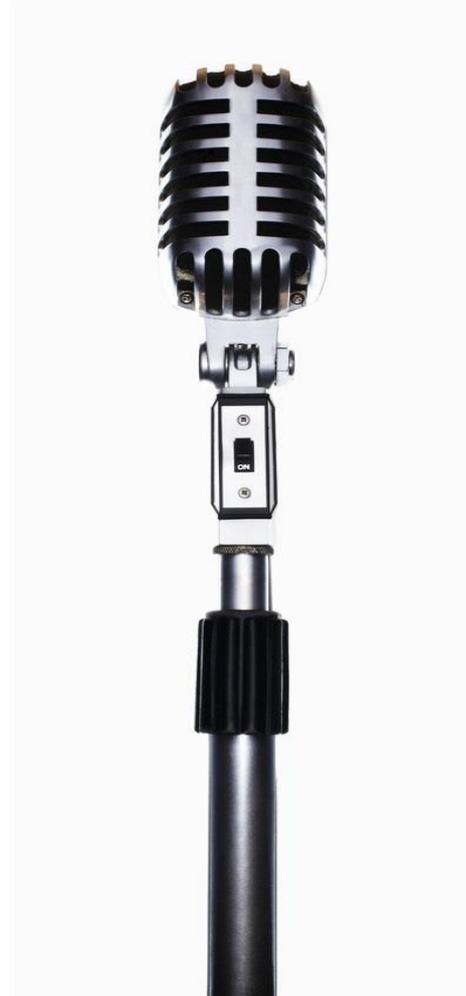
It that options 3 and 4 were suboptimal as they would have provided a clearly lower level of investor protection given that they would have allowed a higher level of commingling of the assets of AIFs which might frustrate the recovery of assets in the event of a bankruptcy of a depositary or sub-depositary.

Option 5 was discarded, as the marginal benefit of the additional level of segregation (compared to Options 1 and 2) in terms of an expeditious return of assets in the event of the bankruptcy of a depositary or sub-depositary does not seem likely to exceed the marginal cost of this level of segregation.

Furthermore, options 3-5 do not seem to be compatible with the provisions of the AIFMD and its implementing measures (the latter judgement having been based, inter alia, on the provisions of the Impact Assessment accompanying the Level 2 Regulation).



**Q&A**





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