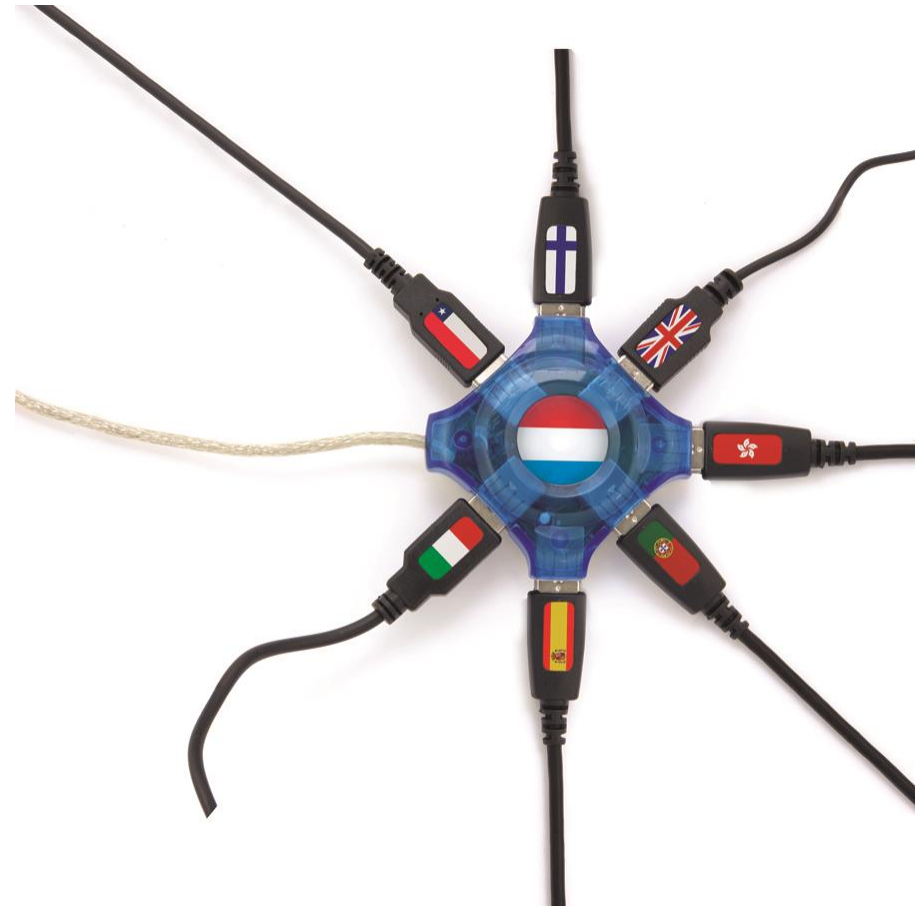


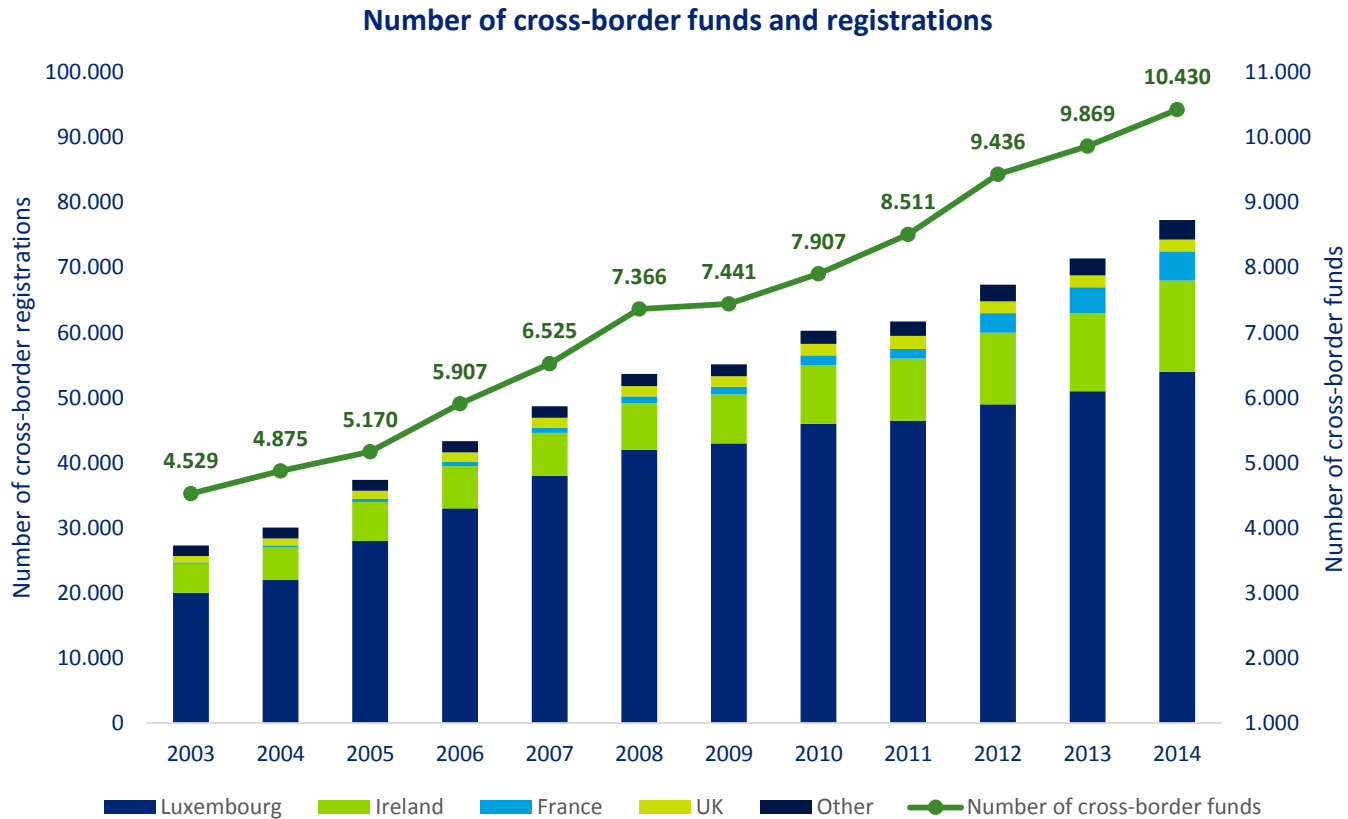
Cross-border distribution of investment funds



Martyna Krugiškytė, *Manager – Consulting* – mkrugiskyte@deloitte.lu

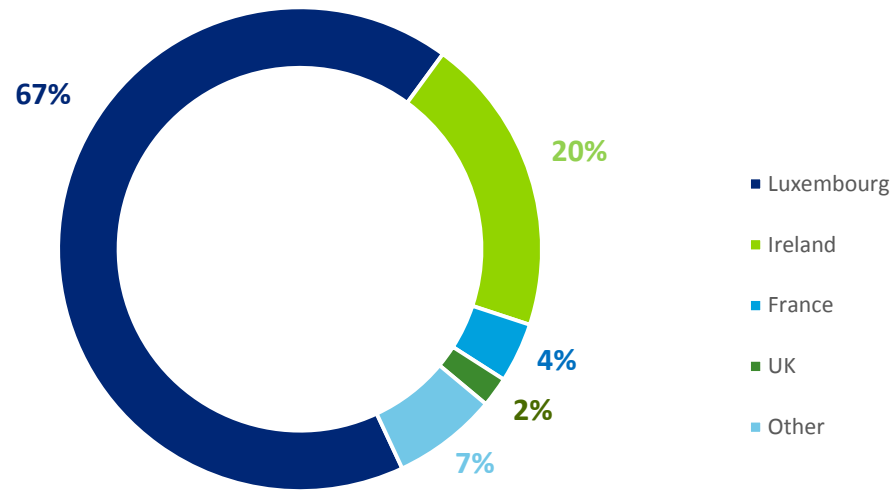
May 10th, 2016

Luxembourg as a leader in the cross-border distribution of investment funds



Source: ALFI analysis

Domicile share of authorisations for cross-border distribution in 2014



Source: ALFI analysis






Total number of cross-border funds:

10,430

Total number of cross-border registrations:

83,505

Key fund domiciles and target markets for distribution

Distribution Markets						Other	Total number	New registrations in 2014	% growth 2013 - 2014
Austria	4067	1124	237	113	87	269	5899	517	9,61%
Belgium	2045	312	153	57		10	2589	112	4,52%
Denmark	1407	459	26	81		8	2142	210	10,87%
Estonia	376	15				23	414	-19	-4,39%
Finland	2333	687	28	64	10	78	3358	331	10,93%
France	3470	1343		168	103	118	5517	256	4,87%
Germany	4704	1708	564	176	100	257	7867	464	6,27%
Ireland	1384		53	122		47	1729	261	17,78%
Italy	3026	933	371	79	29	67	4753	521	12,31%
Latvia	327	1				18	346	-2	-0,57%
Lithuania	272	1				27	300	2	0,67%
Luxembourg		1181	192	101	113	125	1712	104	6,47%
Netherlands	3252	1275	318	108	38	145	5192	206	4,13%
Norway	1983	538	2	30		77	2661	399	17,64%
Poland	433	8				20	461	20	4,54%
Portugal	1083	299	2	50		7	1512	15	1%
Spain	3183	956	307	91	32	56	4737	440	10,24%
Sweden	2807	1043	73	57	15	98	4207	579	15,96%
Switzerland	4098	1371	395	138	25	268	6295	606	10,65%
United Kingdom	3258	1880	309		1	76	5606	462	8,98%
Hong Kong	862	230		38		64	1194	39	3,38%
Singapore	1878	499	68	49		227	2740	322	13,32%
Taiwan	641	147	9	2		31	830	12	1,47%
Chile	917	54	96	69		309	1445	-21	-1,43%
Panama	41	4					45	43	2150%
Peru	356	86	11	20		296	769	2	0,26%
Total	48203	16154	3214	1613	553	2721	74320	5881	

UCITS IV transposition status across EU



Member States which transposed UCITS IV within the deadline

Member States which transposed within 6 months after the deadline

Member States which transposed later than 6 months after the deadline

- UCITS IV Directive (2009/65/EC) has entered into force on 1 July 2011
- Luxembourg was the first country to implement UCITS IV into its national law
- Poland and Lithuania were among the last Member States to implement UCITS IV

AIFMD transposition status across EU



Member States which transposed within the deadline

Member States which transposed within 6 months after the deadline

Member States which transposed later than 6 months after the deadline

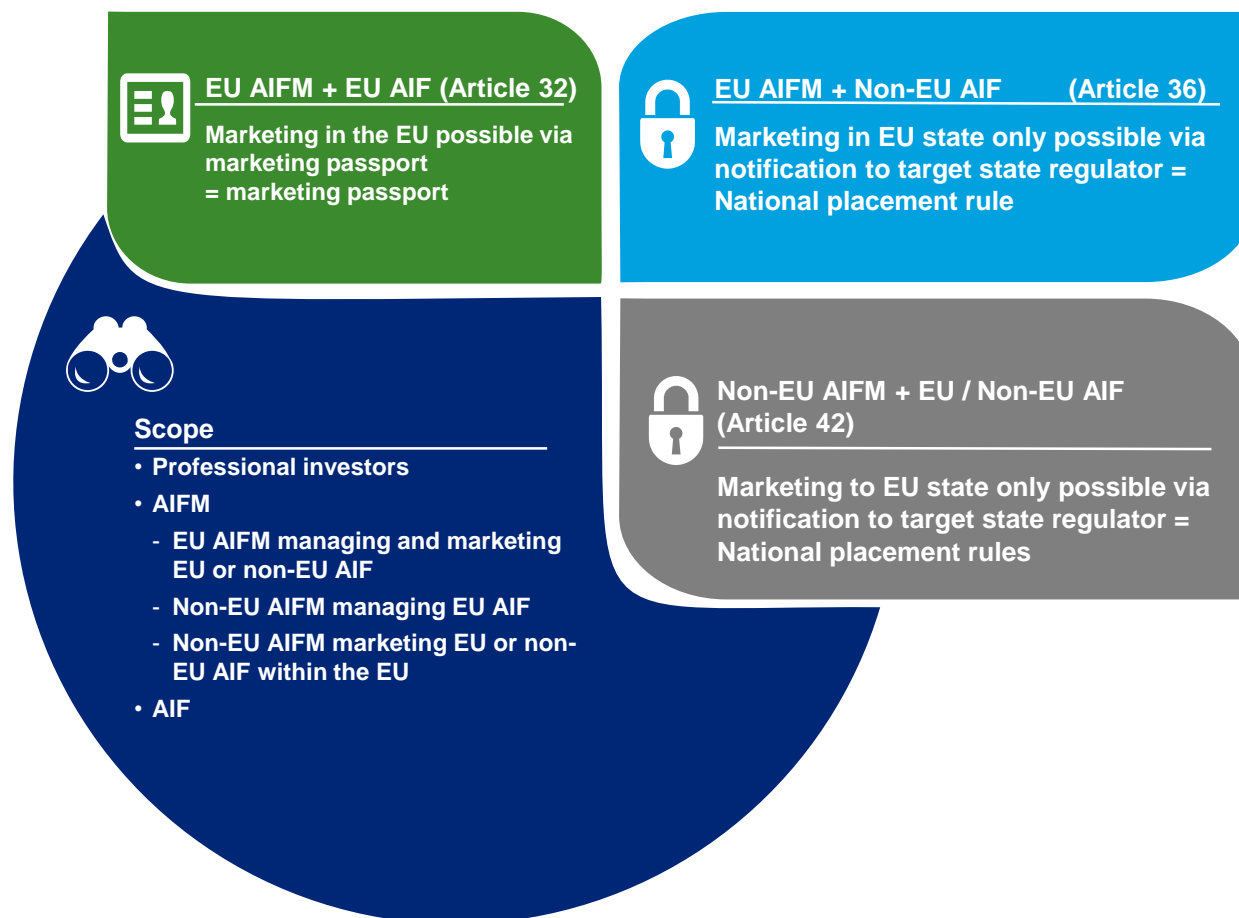
- AIFMD has entered into force on 22 July 2013
- Poland has still not transposed AIFMD into their national law yet

AIFMD

Fund Distribution Principles



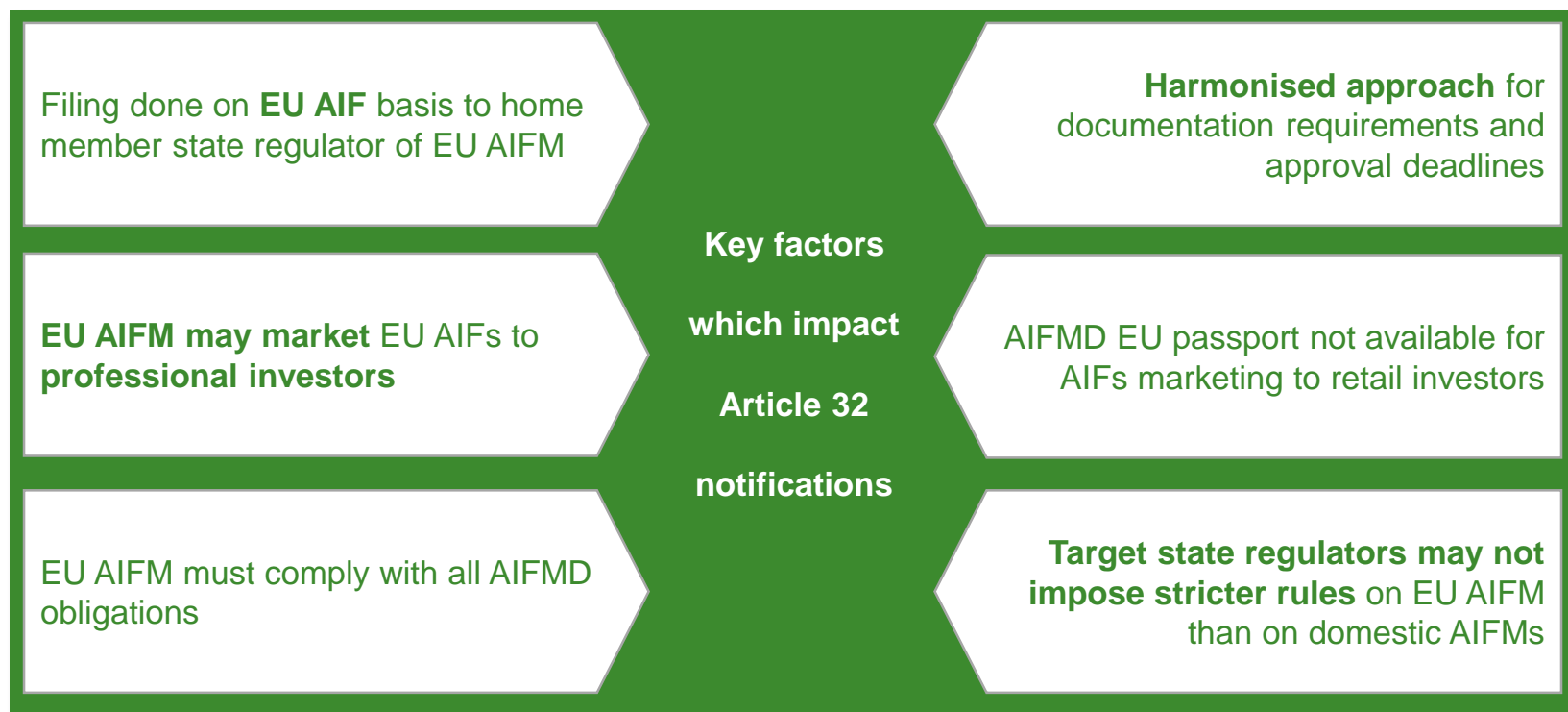
Scope & Marketing scenarios



- AIFMD does not regulate the **product** (i.e. the AIF) but the AIFM
- AIFMD does not grant a **marketing 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 – Marketing via EU Passporting

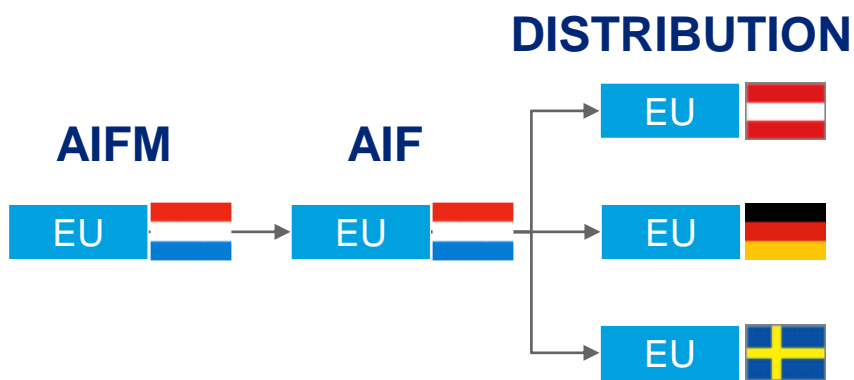
Operational Considerations



This applies to EU AIFMs managing and marketing EU AIFs

Article 32 Case Study – Lux AIFM with Lux AIF

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



- Submission is done to CSSF for each EU AIF it intends to market
- CSSF has 20 working days following receipt of a complete notification to submit to target state regulator
- EU AIF may start marketing once notification file is transmitted to target state regulator and confirmation received by AIFM from CSSF

Current AIFMD marketing options if AIFM is unable to access 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

- It cannot be used as a strategy for raising capital in the EU
- Requires complexity in demonstrating total absence of marketing

Opt for National Placement in the interim

- Best “low” requirements
- Possible until 2018, uncertain thereafter
- Specific regulatory requirements
- National Placement Regimes are not harmonised
- More regulatory and investor reporting requirements

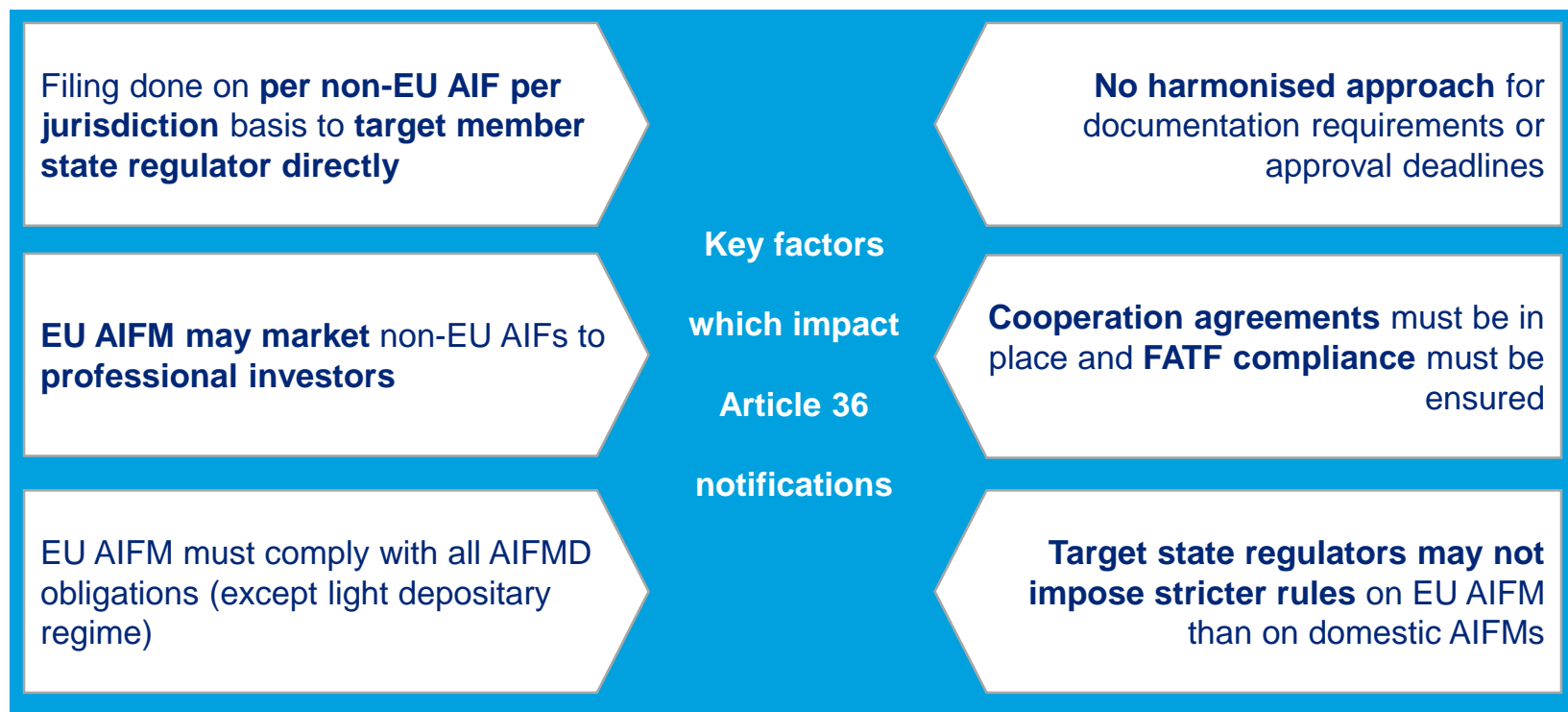
Wait until the Passport.....

- 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



Article 36 – Marketing via Notification

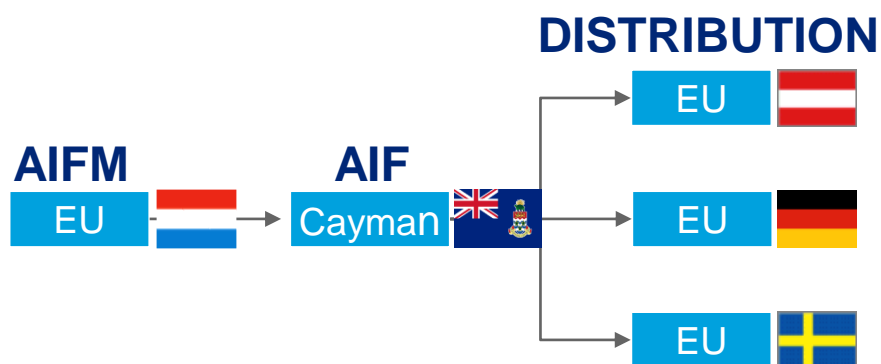
Operational Considerations



This applies to EU AIFMs managing and marketing non-EU AIFs or EU feeder AIF investing in non-EU AIFs; not all Member States have opened up this possibility

Article 36 Case Study – Lux AIFM with Cayman AIF

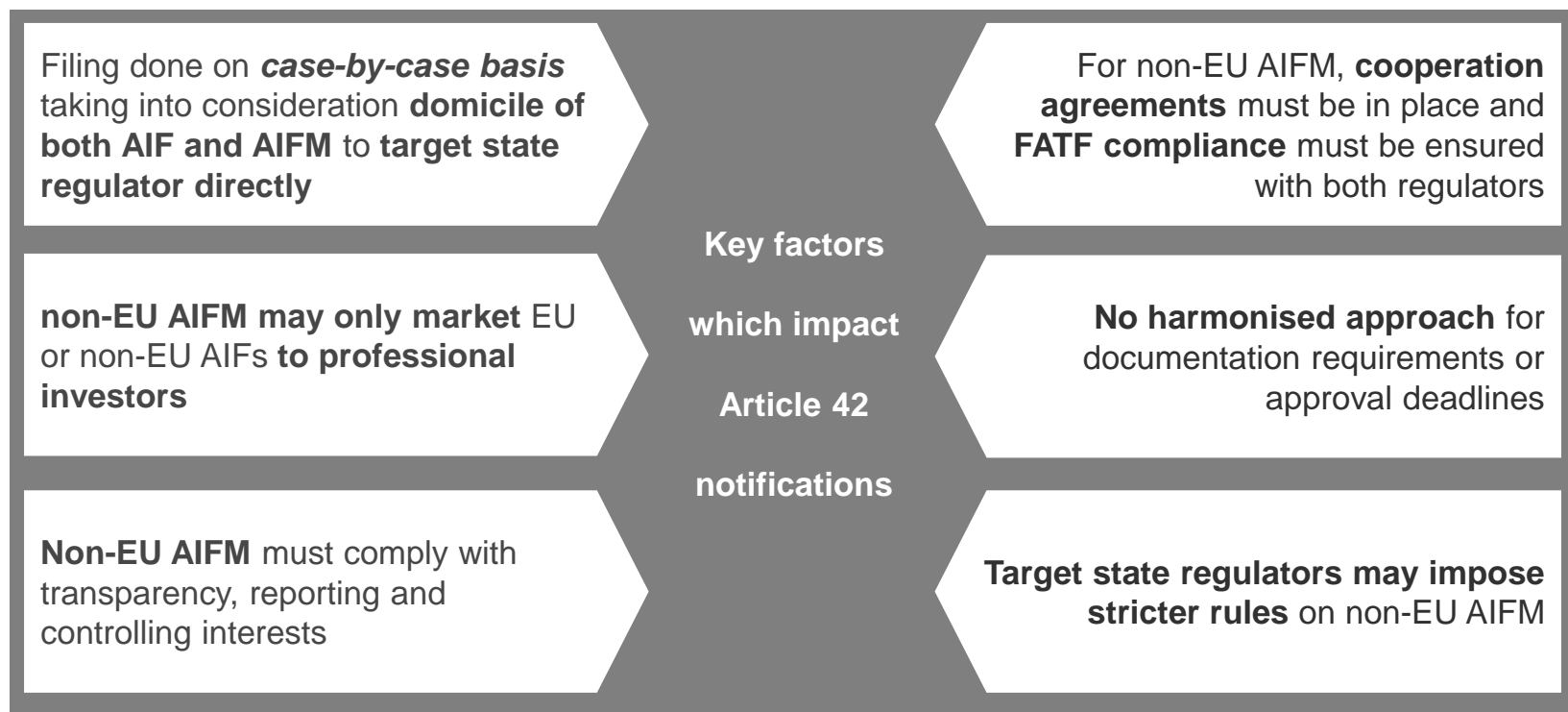
- ABC IM Lux entity has its AIFM license from its home state regulator, the CSSF
- ABC IM Lux entity intends to submit notifications of intention to market Cayman domiciled AIFs in several jurisdictions across the EU in accordance with **Article 36 AIFMD** (*i.e. marketing via national placement and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



- Submission is done to each target member state individually by AIFM
- Notification shall comprise the documentation and information set out in local regulations
- Approval delay varies from country to country, marketing of non-EU AIF may start only once formal approval has been received

Article 42 – Marketing via NPR

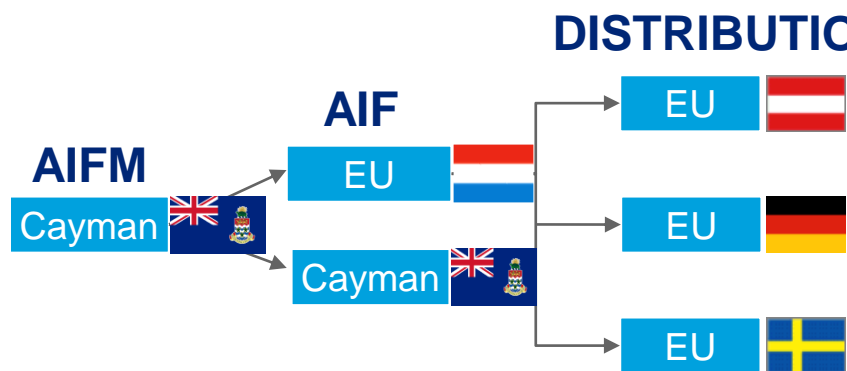
Operational Considerations



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

Article 42 Case Study – Cayman AIFM with Lux / Cayman AIF

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



- Submission is done to each target member state individually by AIFM
- Notification shall comprise the documentation and information set out in local regulations
- Approval delay varies from country to country, non-EU AIFM may start marketing only once formal approval has been received

AIFMD passport & third country AIFMs

ESMA Call for evidence

8 January 2015

Deadline for responses

- Over 45 responses received
- 15 from companies
- 30 from associations and regulators

22 July 2015
delayed to 30 July 2015

ESMA issued an opinion and advice on the functioning of

- EU passport under AIFMD (*i.e. Article 32 AIFMD*)
- Marketing of non-EU AIFs by EU AIFMs in the EU (*i.e. Article 36 AIFMD*)
- Management and/or marketing of AIFs by non-EU AIFMs in the EU (*i.e. Article 42 AIFMD*)

13 October 2015

ESMA concluded

- It was too early to form a definitive opinion
- There is merit in preparation of another opinion
- It will continue its assessment of Hong Kong, Singapore & the USA as well as start its assessment of Australia, Canada, Japan, Cayman Islands, Isle of Man & Bermuda
- EC has provided ESMA with a deadline for a new opinion to be issued by approximately March 2016

17 December 2015

EC addresses letter to ESMA concerning the advice for AIFMD passport extension

- EC agrees on country-by-country approach
- Deadline for assessment extended to 30 June 2016

AIFMD implementation across the EEA

Overview of marketing possibilities

																		
AIFMD Article 32 (EU AIFM & EU AIF)	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✗	✓	✓	✓
Marketing to Professional investors*	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Marketing to Retail investors**	✓	✓	✓	✓	✓	✓	✓	✓	✓	✗	✓	✓	✓	✗	✓	✓	✓	
AIFMD Article 36 (EU AIFM & non-EU AIF) **	AT	BE	DE	DK	BE	FI	FR	IE	IT	LT	LU	LV	NL	PL	NO	SE	UK	
Marketing to Professional investors	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✗	✓	✗	✓	✓	✓	
Marketing to Retail investors***	✓	✓	✓	✓	✓	✓	✓	✓	✓	✗	✓	✗	✗	✗	✓	✓	✗	
AIFMD Article 42 (non-EU AIFM & EU / non-EU AIF) **	AT	BE	DE	DK	ES	FI	FR	IE	IT	LT	LU	LV	NL	PL	NO	SE	UK	
Marketing to Professional investors	✓	✓	✓	✓	✓	✓	✓	✓	✗	✗	✓	✗	✓	✗	✓	✓	✓	
Marketing to Retail investors***	✓	✓	✓	✗	✓	✗	✗	✗	✗	✗	✗	✗	✗	✗	✗	✓	✗	

* Although AIFMD may not yet have been transposed into the national law, the host state regulator is required to accept notification requests from EU AIFMs wishing to market EU AIFs in accordance with Article 32 passporting requirements providing the EU AIFM has already obtained the AIFM license in its home state.

** These notifications may be subject to compliance with specific conditions, additional requirements and may trigger supplementary reporting.

*** These notifications are permitted only under the following provisions:

- appropriate co-operation arrangements for the purpose of systemic risk oversight are in place between the home state regulator and the supervisory authority of the third country where the non-EU AIF/M is established (MoU) and
- the third country where the non-EU AIFM is established is not listed as a non-cooperative country by FATF.

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



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