

MICHEL BARNIER

*Membre de la Commission européenne*

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Dear Minister, *Dear Jeroen*

Many thanks for consulting the Commission regarding the transposition of the AIFMD. You ask whether managers that manage AIF's that are not pension funds/IORP's, but a fund in which only pension funds/IORP's invest are exempted from the AIFMD.

From the Commission's perspective this question should receive a clear negative answer. Managers that manage AIFs that are not pension funds/IORPs, but a fund in which only pension funds/IORPs invest are not exempted from the AIFMD.

Article 2(3)(b) of Directive 2011/61/EU exempts from the application of the Directive "institutions for occupational retirement provision which are covered by Directive 2003/41/EC, including, where applicable, the authorized entities responsible for managing such institutions and acting on their behalf referred to in Article 2(1) of that Directive or the investment managers appointed pursuant to Article 19(1) of that Directive, in so far as they do not manage AIFs".

Hence under Article 2(3)(b) of Directive 2011/61/EU only the following categories are exempted:

- Institutions for occupational retirement provision - IORPs governed by Directive 2003/41/EC;
- Authorized entities responsible for managing IORPs and acting on their behalf – provided they are listed in Article 2(1) of Directive 2003/41/EC and provided they do not manage also one or more AIFs;
- Investment managers appointed pursuant to Article 19(1) of Directive 2003/41/EC provided they do not manage also one or more AIFs. No other entity is exempted under this Article.

Hence, a manager is exempted from the AIFMD if it manages exclusively one or more IORPs. A manager managing an AIF that is not a IORP is subject to the AIFMD. The fact that an AIF is exclusively invested in by IORPs does not make a difference and the manager of that AIF will be subject to the AIFMD.

I hope that this clarifies the exemptions under Article 2(3)(b) of Directive 2011/61/EC and remain at your disposal for any further questions.

Best personal regards, *Amicalement*



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