

AMF Instruction
Procedure for marketing units or shares of AIFs – DOC-2014-03

Reference texts: Articles 421-1, 421-13, 421-13-1, 421-14 and 421-27 of the AMF General Regulation

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Annex 2-2 - Items to be attached to the file referred to in Annex 2-1 for each AIF

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Scope of application

This instruction sets out the conditions applicable to the procedure for marketing in France of units or shares of AIFs:

- established in France or in a European Union Member State other than France and managed by an asset management company authorised in France under Directive 2011/61/EU of the European Parliament and the Council of 8 June 2011 (AIFM Directive),
- established in France or in a European Union Member State other than France and managed by a management company authorised in a European Union Member State other than France under AIFM Directive,
- established in a third country and/or managed by a manager established in a third country.



This instruction also sets out the procedure applicable to marketing in another European Union Member State of the units or shares of a European Union AIF (including of French AIFs) managed by an asset management company authorised in France under the AIFM Directive ("out" passport).

This instruction does not explain the provisions relating to the passport mechanism provided by Directive 2003/71/EC of the European Parliament and the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading, amended by Directive 2010/73/EU of 24 November 2010.

In this respect it is stated that if an AIF is of the closed-ended type within the meaning of Directive 2003/71/EC, application should be made both of the provisions of this instruction and of those based on Directive 2003/71/EC of the European Parliament and the Council of 4 November 2003.

Finally, this instruction does not apply to French asset management companies not authorised under the AIFM Directive.¹ Nor does it concern marketing of units or shares of AIFs under Regulation (EU) n° 345/2013 of the European Parliament and the Council of 17 April 2013 on European venture capital funds or Regulation (EU) n° 346/2013 of the European Parliament and the Council of 17 April 2013 on European social entrepreneurship funds.

Terms used

The term AIF also refers to the "Other AIFs" referred to in Article L. 214-24, III of the Monetary and Financial Code.

When the AIF is self-managed, the terms "asset management company", "management company" and "manager" refer to the AIF itself.

The term professional clients refers to:

- professional clients corresponding to the criteria of Article D. 533-11 of the Monetary and Financial Code, and
- clients opting for professional client treatment.²

¹ In other words, this instruction does not apply to asset management companies for which the total value of the assets of the AIFs they manage, calculated in accordance with Article 2 of Delegated Regulation (EU) n° 231/2013 of the Commission of 19 December 2012, is below the thresholds set out in Article R. 532-12-1 of the Monetary and Financial Code and which have not opted for full application of the AIFM directive.

² Article L. 533-16 of the Monetary and Financial Code, see also Articles 314-6 and 314-7 of the AMF General Regulation applicable to asset management companies authorised under the AIFM Directive by reference to Article 319-4 of the AMF General Regulation.

Chapter I - Provisions applicable to marketing in France of units or shares of AIFs

Section I - Procedure for marketing in France of units or shares of European Union AIFs (French AIFs included) managed by an asset management company authorised in France under Directive 2011/61/EU (AIFM Directive)

As an introduction, when the application for marketing in France (to professional or retail clients) concerns a French authorised or declared AIF³ and is made at the same time as the authorisation application or declaration of the AIF, the asset management company shall refer to the instruction applicable to the AIF in question (see AMF Instructions - DOC 2011-20, 2011-21, 2011-22, 2011-23 and 2012-06). If the application for marketing in France (to professional or retail clients) is made after the authorisation or declaration, the asset management company shall refer to the procedure hereafter.

Only (French) AIFs authorised or declared after 22 July 2014 must comply with the obligation of notification and authorisation of marketing in France provided by Article L. 214-24-1 of the Monetary and Financial Code.

You are also reminded that pursuant to Article 33 of Decree n° 2013-676 of 25 July 2013 amending the legal framework of asset management, the regime for marketing in France of AIFs established in the European Union and managed by an asset management company does not apply to marketing of units or shares of AIFs subject to a public offer with a prospectus that was drafted and published in accordance with Directive 2003/71/EC of the European Parliament and the Council of 4 November 2003 prior to 27 July 2013, for the period of validity of the prospectus.

I - Procedure for marketing to professional clients

Article 1

Pursuant to Article 421-1 of the AMF General Regulation, all AIFs established in France or in another European Union Member State and managed by an asset management company authorised in France under Directive 2011/61/EU (AIFM Directive) must be the subject of a procedure of notification to the AMF prior to marketing their units or shares in France to professional clients.

Article 2

The notification file comprises:

- 1) a duly completed copy of the form in Annex 1 to this instruction,
- 2) the attachments referred to in Annex I, along with any other document that the management company deems necessary for the examination of the application.

Article 3

The notification file is transmitted directly to the AMF through the GECO database extranet of the asset management company. If the AIF is not referenced in the GECO database when the application is made and does not require authorisation or declaration, the asset management company must register beforehand.

Article 4

When it receives a complete notification file, the AMF sends an acknowledgement of receipt for the file by e-mail.

Article 5

Pursuant to Article 421-2 of the AMF General Regulation, the AMF shall indicate within 20 business days of receipt of the complete notification file whether the asset management company may start marketing the units or shares of the AIF to professional clients.

³ These are retail investment funds, funds of alternative funds, private equity funds, real estate collective investment undertakings (OPCI), professional real estate collective investment undertakings, professional investment funds, professional specialised funds, professional private equity funds and employee investment undertakings.

The AMF may ask for further information; if it does so, it informs the asset management company to this effect. The asset management company may send this additional information to the AMF by e-mail, indicating the references of the file.

Pursuant to Article 421-2 of the AMF General Regulation, the AMF shall only object to marketing of the AIF if the management of said AIF by the asset management company is not, or will not be compliant with the laws and regulations applicable to asset management companies or with Books II and V of the Monetary and Financial Code.

Marketing may only start in France when the asset management company has received the positive decision of the AMF sent by e-mail.

Article 6

Pursuant to Article 421-3 of the AMF General Regulation, in the event of a material change to any of the particulars communicated in accordance with Article 2 of this Instruction, the asset management company shall inform the AMF to this effect by e-mail to the address passports-AIFM@amf-france.org, at least one month before implementing the change as regards any changes planned by the asset management company, or immediately after an unplanned change has occurred .

II - Procedure for marketing to retail clients

Article 7

Pursuant to Article 421-13 of the AMF General Regulation, all marketing in France to retail clients is subject to an authorisation procedure.

All authorisation applications for marketing in France to retail clients must also be accompanied by a marketing notification referred to in Article 1 of this instruction or must be made after such notification:

a) For French AIFs

1st case - An application is being made for marketing to retail clients at the same time as marketing to professional clients

If, when filing the application referred to in Article 1, the asset management company is also applying for an authorisation for marketing in France of units or shares of AIFs to retail clients, the AMF shall indicate within the same period of 20 business days referred to in Article 5, subject to the file being complete, whether the asset management company may start marketing the units or shares of the AIF to retail clients.

2nd case - An application is being made for marketing to retail clients when the AIF can already be marketed to professional clients

If, when filing the application referred to in Article 1, the asset management company did not also apply for an authorisation for marketing in France of units or shares of AIFs to retail clients, the AMF shall indicate within a period of 20 business days, subject to the file being complete, whether the asset management company may start marketing the units or shares of the AIF to retail clients.

b) For AIFs established in a European Union Member State other than France

Marketing in France to retail clients of units or shares of AIFs established in a European Union Member State other than France is subject to the particular conditions provided by Article 421-13 of the AMF General Regulation;

- 1) an instrument of information exchange and mutual assistance in the area of discretionary asset management has been put in place between the AMF and the supervisory authority of the AIF;
- 2) the AIF meets the conditions provided by a mutual recognition agreement for AIFs that may be marketed to retail clients, entered into between the AMF and the supervisory authority of the AIF.

In this case, the asset management company shall attach evidence of compliance with the abovementioned conditions to the file. Any incomplete application shall be inadmissible.

If the file is complete, the AMF shall indicate within 20 business days whether the asset management company may start marketing the units or shares of the AIF to retail clients

Section II - Procedure for marketing in France of units or shares of European Union AIFs (French AIFs included) managed by a management company authorised in a European Union Member State other than France under the AIFM Directive

I - Procedure for marketing to professional clients

Article 10

All AIFs established in France or in another European Member State and managed by a management company authorised under Directive 2011/61/UE in a European Member State other than France must be the subject, prior to marketing in France of their units or shares to professional clients, of a notification to the authority of the said management company (Article 32 of Directive 2011/61/EU).

This notification is transmitted by the home authority of the management company to the AMF. This transmission is notified to the management company by its home authority. Marketing may start in France as of the date of that notification to the management company by its competent authority.

II - Procedure for marketing to retail clients

Article 11

All AIFs established in France or in another European Union Member State and managed by a management company authorised under Directive 2011/61/UE in a European Member State other than France must be the subject, prior to marketing in France of their units or shares to retail clients, of an authorisation procedure (Article 421-13 of the AMF General Regulation).

The marketing authorisation application file ("marketing application") shall be signed by a person duly empowered by the management company, which is to say either one of the senior managers of the management company or a person specifically empowered to that effect.

This marketing application may not be made before the AMF has received the notification referred to in Article 10. In other words, the notification procedure referred to in Article 10 must have been complied with beforehand.

Article 12

Marketing in France to retail clients of units or shares of AIFs managed by a management company established in a European Union Member State other than France is subject to the particular conditions provided by Article 421-13 of the AMF General Regulation:

- 1) an instrument of information exchange and mutual assistance in the area of discretionary asset management has been put in place between the AMF and the supervisory authority of the management company; and
- 2) the management company meets the conditions provided by a mutual recognition agreement setting out the particular requirements applicable to the authorisation of management companies of AIFs that may be marketed to retail clients, entered into between the AMF and the supervisory authority of the management company.

Also, marketing in France to retail clients of units or shares of AIFs established in a European Union Member State other than France is subject to the particular conditions provided by Article 421-13 of the AMF General Regulation:

- 1) an instrument of information exchange and mutual assistance in the area of discretionary asset management has been put in place between the AMF and the supervisory authority of the AIF;

- 2) the AIF meets the conditions provided by a mutual recognition agreement for AIFs that may be marketed to retail clients, entered into between the AMF and the supervisory authority of the AIF.

The management company shall attach evidence of compliance with the abovementioned conditions to the file. Any incomplete application shall be inadmissible.

The application file shall be transmitted by e-mail to the following address: gio@amf-france.org.

Article 13

When it receives a complete marketing application, the AMF sends an acknowledgement of receipt for the file by e-mail.

Article 14

The AMF shall indicate within 20 business days of receipt of the complete file whether the asset management company may start marketing the units or shares of the AIF to retail clients.

The AMF may ask for further information; if it does so, it informs the management company to this effect. The management company may send this additional information to the AMF by e-mail, by post or by fax, indicating the references of the file.

Marketing may only start in France when the management company has received the positive decision of the AMF.

Article 15

The management company shall inform the AMF promptly by e-mail to the address gio@amf-france.org of any material change to the particulars transmitted in the marketing authorisation application. The AMF may take any measure including, if necessary, the express prohibition of marketing in France to retail clients of the shares or units of the AIF.

Section III - Procedure for marketing in France of units or shares of AIFs established in a third country or European Union AIFs (French AIFs included) and managed by a manager established in a third country

This section applies, for marketing to professional clients and retail clients:

- to AIFs of third countries, whether they are managed by an asset management company, management company or manager established in a third country
- to AIFs, whether they are established in the European Union (France included) or in a third country, where they are managed by a manager established in a third country.

Article 16

Pursuant to Article 421-13-1 of the AMF General Regulation, any AIF established in a third country or any AIF established in the European Union and managed by a manager established in a third country, must be the subject, prior to marketing in France of its units or shares, of a procedure of authorisation by the AMF.

The marketing application must:

- provide evidence of compliance with the conditions set out in Article D. 214-32 of the Monetary and Financial Code; and
- for marketing to retail clients, provide evidence of compliance with the conditions set out in Article 421-13 of the AMF General Regulation.

Any incomplete application shall be inadmissible.

The marketing application shall be signed by a person duly empowered by the asset management company, management company or manager. This person shall be one of the senior managers of the

asset management company, management company or manager or a person specifically empowered to that effect.

Article 17

The marketing application shall comprise:

- 1) a duly completed copy of the form in Annex 3 to this instruction,
- 2) the attachments referred to in Annex 3, along with any other document that the asset management company, management company or manager deems necessary for the examination of the application.

The marketing application may be transmitted directly to the AMF:

- via the GECCO database of the asset management company; or
- by e-mail to the address gio@amf-france.org for management companies established in a European Union Member State other than France or managers established in a third country.

Article 18

When it receives a complete marketing application, the AMF sends an acknowledgement of receipt for the file by e-mail.

Article 19

The AMF shall indicate within two months of receipt of a complete file, by e-mail to the asset management company, management company or manager, whether it may start marketing in France of the units or shares of the AIF and the conditions of that marketing.

The AMF may ask for further information; if it does so, it shall inform the asset management company, management company or manager to this effect. The asset management company, management company or manager may send this additional information to the AMF by e-mail, post or fax, indicating the references of the file.

Marketing may only start in France when the asset management company, management company or manager has received the positive decision of the AMF.

Article 20

The asset management company, management company or manager shall inform the AMF by e-mail to the address gio@amf-france.org of any material change to the particulars transmitted in the authorisation application for marketing of the units or shares of the AIF. The AMF may take any measure including, if necessary, the express prohibition of marketing in France of the units or shares of the AIF.

Section IV - Other general provisions relating to marketing in France of units or shares of AIFs

Article 21 - Centralising correspondent

You are reminded that, pursuant to Article 421-27 of the AMF General Regulation, "AIFs established in a European Union Member State other than France or their management company, or third country AIFs or their manager, must name one or more correspondents, including a centralising correspondent, established in France under the conditions set out in an AMF Instruction.

Where the AIF established in another European Union Member State is managed by an asset management company authorised in France, it is not required to name a centralising correspondent within the meaning of Article 421-27 of the AMF General Regulation.

Article 22 – Fixed-sum AMF filing fee relating to marketing

A filing fee is due to the AMF on the conditions set out in Articles L. 621-5-3, I, 4) and D. 621-27, 4) of the Monetary and Financial Code. Regardless of the attachments required within the framework of the passport or non-passport marketing procedure, proof of payment must be transmitted to the AMF for marketing in France.

Article 23 - Examination by the AMF of marketing of the AIF

The AMF is entitled to request any further information about the marketing of the UCITS and, in particular, the marketing materials before they are disseminated.

By the terms of Article 421-25 of the AMF General Regulation, the AMF may exercise the prerogatives referred to in Article 314-30 with regard to any person distributing AIFs.

All advertisements from the AIF aimed at investors shall be clearly identified as such. They shall be accurate, clear and not misleading. More specifically, if an advertisement containing an invitation to buy units or shares of an AIF includes specific information about the AIF, it may not contain information that contradicts the information provided in the information documents for investors, or that understates the importance of such information.

Such advertisements shall state whether information documents for investors are available.

They shall stipulate where and in which languages holders and potential investors in the AIF can obtain this information and these documents, or how they can gain access to them.

By the terms of Article 314-10 of the AMF General Regulation,⁴ "Investment services providers shall ensure that all information that they address to clients, including marketing information, satisfies the conditions laid down in I of Article L. 533-12 of the Monetary and Financial Code.⁵ Investment services providers shall ensure that all information, including marketing information, that they address to retail clients or that is likely to be received by retail clients, satisfies the conditions laid down in Articles 314-11 to 314-17 [of the AMF General Regulation]."

Finally, in accordance with Article 314-30 of the AMF General Regulation,⁶ "The AMF may require investment services providers to submit to it their marketing communications for the investment services that they provide and the financial instruments that they offer prior to publication, distribution or broadcast. It may require changes to the presentation or the content to ensure that the information is accurate, clear and not misleading."

The abovementioned provisions of Articles 421-25, 314-10 and 314-30 and following of the AMF General Regulation⁷ apply notably to advertising for the AIF.

If the AMF has asked the asset management company, management company or manager to submit the marketing communications of the AIF to it, such communications shall be sent to the following e-mail address: passports-AIFM@amf-france.org.

Article 24 - Disclosure to the public in France

1. Pursuant to Article 421-27 of the AMF General Regulation, management companies established in a European Union Member State other than France or managers established in a third country shall be required to inform unit or shareholders in the same conditions as those required by the national law of the country in which the AIF is marketed (for example, for AIFs authorised for marketing to retail or professional clients, in the conditions set out in Instruction n° 2011-20 and Instruction 2012-06 respectively).

⁴ Applicable to asset management companies authorised under the AIFM Directive by reference to Article 319-5 of the AMF General Regulation.

⁵ Article L. 533-12 of the Monetary and Financial Code states that:

"I. - All the information, including communications of a promotional nature, that is sent to clients, including potential clients, by an investment service provider, shall have a content which is accurate, clear and not misleading. Communications of a promotional nature shall be clearly identifiable as such.

II. Investment service providers shall communicate to their clients, including their potential clients, information that enables them to have a reasonable understanding of the nature of the investment service and the specific type of financial instrument proposed, as well as the risks associated therewith, thus enabling them to make their investment decisions in full knowledge of the facts."

⁶ Applicable to asset management companies authorised under the AIFM Directive by reference to Article 319-5 of the AMF General Regulation.

⁷ Articles 314-10 and 314-30 and following are applicable to asset management companies authorised under the AIFM Directive by reference to Article 319-5 of the AMF General Regulation.

2. Pursuant to Article 421-34, I of the AMF General Regulation, the asset management company, management company or manager shall provide investors of the AIF with the following information before they invest in the AIF:

a) a description of the investment strategy and objectives of the AIF, information on where any master AIF within the meaning of the AIFM Directive⁸ is established and where the underlying funds are established if the AIF is a fund of funds, a description of the types of assets in which the AIF may invest, the techniques it may employ and all associated risks, any applicable investment restrictions, the circumstances in which the AIF may use leverage, the types and sources of leverage permitted and the associated risks, any restrictions on the use of leverage and any collateral and asset reuse arrangements, and the maximum level of leverage which the asset management company, management company or manager is entitled to employ on behalf of the AIF;

b) a description of the procedures by which the AIF may change its investment strategy or investment policy, or both;

c) a description of the main legal implications of the contractual relationship entered into for the purpose of investment, including information on jurisdiction, on the applicable law and on the existence or not of any legal instruments providing for the recognition and enforcement of judgements in the territory where the AIF is established;

d) the identity of the asset management company, management company or manager, of the AIF's depository, auditor and any other service providers and a description of their duties and the investors' rights;

e) a description of how the asset management company, management company or manager is complying with the requirements of Article 9(7) of Directive 2011/61/EU;⁹

f) a description of any management function delegated by the asset management company, management company or manager and of any safe-keeping function delegated by the depository, the identification of the delegate and any conflicts of interest that may arise from such delegations;

g) a description of the AIF's valuation procedure and of the pricing methodology for valuing assets, including the methods used in valuing hard-to-value assets;

h) a description of the AIF's liquidity risk management, including the redemption rights both in normal and in exceptional circumstances, and the existing redemption arrangements with investors;

i) a description of all fees, charges and expenses and of the maximum amounts thereof which are directly or indirectly borne by investors;

j) a description of how the asset management company, management company or manager ensures a fair treatment of investors and, whenever an investor obtains preferential treatment or the right to obtain preferential treatment, a description of that preferential treatment, the type of investors who obtain such preferential treatment and, where relevant, their legal or economic links with the AIF or asset management company, management company or manager;

k) where available, the last annual report referred to in point 3 of this article;

l) the procedure and conditions for the issue and sale of units or shares;

m) where available, the latest net asset value of the AIF;

⁸ This definition is transposed into French law in Article L. 214-24 IV of the Monetary and Financial Code.

⁹ Transposed into French law in Article 317-2 IV of the AMF General Regulation.

- n) where available, the historical performance of the AIF;
- o) the identity of the prime broker and a description of any material arrangements of the AIF with its prime brokers and the way the conflicts of interest in relation thereto are managed and the provision in the contract with the depositary on the possibility of transfer and reuse of AIF assets, and information about any transfer of liability to the prime broker that may exist;
- p) description of how and when the information required under paragraphs 4 and 5 of Article 23 of the AIFM Directive¹⁰ will be disclosed.

You are also reminded that Article 421-34 of the AMF General Regulation also makes the following provisions:

"II. - The AIF or its asset management company, management company or manager shall inform the investors before they invest in the AIF of any arrangement made by the depositary to contractually discharge itself of liability in accordance with Article L. 214-24-10, II and II of the Monetary and Financial Code. The AIF or its asset management company, management company or manager shall also inform unit or shareholders of any changes with respect to depositary liability without delay.

IV. European Union AIFs and AIFs marketed in the European Union employing leverage, or their asset management company, management company or manager, periodically disclose to unit or shareholders:

1. The percentage of the AIF's assets which are subject to special arrangements arising from their illiquid nature;
2. Any new arrangements for managing the liquidity of the AIF;
3. The current risk profile of the AIF and the risk management systems employed by the AIF or its asset management company, management company or manager to manage those risks.

V. European Union AIFs and AIFs marketed in the European Union employing leverage, or their asset management company, management company or manager, disclose the following information regularly for each of these AIFs:

1. Any changes to the maximum level of leverage which the asset management company, management company or manager may employ on behalf of the AIF as well as any right of reuse of collateral or any guarantee granted under the leveraging arrangement;
2. The total amount of leverage employed by that AIF.
3. The annual report shall contain at least the following:
 - the management report,
 - the financial statements defined by the chart of accounts and including the certification issued by the statutory auditor,
 - any material changes, within the meaning of Article 106 of Delegated Regulation (EU) n° 231/2013 of the Commission of 19 December 2012, to the information referred to in point 2 of this article of the instruction during the financial year covered by the report,
 - the total amount of remuneration for the financial year, split into fixed and variable remuneration, paid by the asset management company, management company or manager to its staff, the number of beneficiaries and, where relevant, carried interests paid by the AIF.
 - the aggregate amount of remuneration broken down by senior managers and members of staff of the asset management company, management company or manager whose activities have a material impact on the risk profile of the AIF.

Pursuant to Article L. 214-24-19 of the Monetary and Financial Code, the accounting information given in the annual report shall be prepared in accordance with French accounting standards or the accounting standards of the country in which the AIF is established.

The report issued by the statutory auditor and, where appropriate, any qualifications, shall be reproduced in full in the annual report.

¹⁰ Transposed in Article 421-34 IV and V of the AMF General Regulation.

Chapter II - Procedure for marketing in another Member State of units or shares of European Union AIFs (French AIFs included) managed by an asset management company authorised in France under Directive 2011/61/EU (AIFM Directive) ("out" passport)

Article 25

Pursuant to Article 421-14 of the AMF General Regulation, all AIFs established in France or in another European Union Member State and managed by an asset management company authorised in France under Directive 2011/61/EU (AIFM Directive) must be the subject of a procedure of notification to the AMF prior to marketing their units or shares in a European Union Member State other than France to professional clients.

Article 26

Pursuant to Article 421-14 of the AMF General Regulation, the marketing notification file comprises:

- 1) A copy of the notification letter in Annex 2-1 to this Instruction, drafted in a language customary in the sphere of international finance, in which each section is completed;
- 2) The attachments referred to in Annex 2-2, along with any other document that the asset management company deems necessary for the examination of the application. These attachments are drafted in a language customary in the sphere of international finance or in a language accepted by the competent authorities of the Member State in which the asset management company intends to market the units or shares of the AIF.

The notification file is transmitted directly to the AMF through the GECO database extranet of the asset management company.

Article 27

When it receives a complete marketing notification file, the AMF sends an acknowledgement of receipt for the file by e-mail.

Article 28

According to Article L. 214-24-2, III and Article D. 214-32-4-1 of the Monetary and Financial Code, the AMF shall transmit the notification file within 20 business days to the competent authorities of the host Member State where it is intended that the units or shares of the AIF be marketed. The AMF shall enclose a statement to the effect that the asset management company of the AIF concerned is authorised to manage AIFs with a particular investment strategy.

The AMF shall, without delay, notify the asset management company about the transmission of the abovementioned file to the competent authorities of the host Member State. The units or shares of the AIF may be marketed to professional clients in the host Member State as of the date of the abovementioned notification.

It is hereby stated that the asset management company shall:

- check any additional requirements of the host Member State relating to marketing;
- if it intends to market units or shares of the AIF to retail clients in the host Member State, check any conditions and arrangements for such marketing, where appropriate.

Article 29

In accordance with Article L. 214-24-2, V of the Monetary and Financial Code, in the event of a material change to any of the particulars communicated in the notification file, the asset management company shall inform the AMF to this effect by e-mail to the address passports-AIFM@amf-france.org, using the template in Annex 2-1, at least 1 month before implementing the change or immediately after an unplanned change has occurred.