France Invest
Association des investisseurs pour la croissance

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France Invest's position paper on the Commission's proposal for a review of the Alternative Investment Fund Directive (AIFMD)

Executive Summary

From a general standpoint, France Invest supports the approach adopted by the Commission to perform a targeted review of the Directive.

France Invest acknowledges that the AIFMD contributed to improving financial stability, increasing investor confidence and enhancing the competitiveness of the EU industry. It however demanded a considerable adaptation effort from many market players, which have now integrated its impact.

At the end of 2019, the size of the EU AIF universe reached EUR 6.8 trillion in net asset value (NAV), a 15% increase from 2018. Overall, AIFs accounted for 40% of the EU fund industry. Private equity funds account for 7% of the NAV of all AIFs, or EUR 456 billion. Among AIF types, private equity funds experienced the largest growth in 2019 (+28% compared with 2018). They follow a range of strategies, invest mainly in the EEA (67% of NAV) and are almost exclusively sold to professional investors. The majority of private equity funds have access to the EU passport, with 60% able to be sold throughout the EU. France accounted for approximately 16% of the NAV (UK 40%, Luxembourg 23%)[1].

Venture capital and private equity funds invest in non-listed equity, mainly SMEs, over the long-term term (the average length of an investment into companies is around 6 years). They are primarily invested by professional investors and their distribution is mainly intermediated. As they are closed ended, they do not have to bear short term pressures from investors. In addition, they are typically unleveraged. Due to their specific features, venture capital and private equity funds actively participate to the financing of the real economy and contribute to smart, sustainable and inclusive growth.

For these reasons, we strongly support the targeted approach adopted by the Commission in reviewing the AIFMD.

[1] https://www.esma.europa.eu/sites/default/files/library/esma50-165-1734_asr_aif_2021.pdf

More specifically, we would see merit in tweaking some of the changes proposed by the Commission.

For instance, we propose:

- Limiting the **list of information to provide by AIFMs in their authorisation applications**: Indeed, in order to ensure a high level of harmonisation across Member States, there should be no discretion for national competent authorities to request additional pieces of information from AIFMs;
- Clarifying some **rules on delegations**:
  - o We consider the current AIFMD delegation rules to be appropriate and sufficient to ensure investor protection. However, considering the new wording of the obligation for AIMFs to notify the competent authorities of their home Member State of delegation arrangements, it should be clarified that AIFMs are allowed to either outsource or delegate the services included in Annex I depending on their specific situation;
  - o We propose setting out a bundle of indicators to demonstrate that the relevant functions are more delegated than retained by the AIFM. These indicators could include assets under management, number of managers, number of funds, breakdown of revenues between delegated and retained functions. In addition, we suggest taking into account whether delegations are performed within or outside the group of the AIFM: we believe that only delegations to entities which are outside the group of the AIFM and located in third countries should be reported upon;
- Specifying **conditions for granting authorisations**: In our view, the requirements proposed by the Commission should be alleviated so that the relevant functions can be performed by at least two natural persons working in the EU, one of which being a full-time person;
- Detailing some **requirements on loan origination**: We believe that it should be specified that loan origination does not include shareholder loans. In addition, the specificities of debt funds should be better take into account and the scope of the retention requirement should be strictly defined;
- Further tailoring new **obligations on liquidity management**: We propose adding an option to adapt the 60% threshold proposed by the Commission when a mechanism to meet redemptions requests is in place and justifies such an adjustment;
- Rewriting changes to **reporting requirements**: In our opinion, investor disclosures do not need to be more detailed or more frequent. We propose adapting the frequency of

investor disclosures to types of funds, in particular to closed ended AIFs. Also, the protection and confidentiality of information should be ensured.

Beyond these adjustments to the Commission's proposals, **we would like to suggest additional enhancements to the AIFM framework**.

In particular, we suggest:

- Inserting in the AIFMD a **definition of professional investors**, taken from existing texts – the EuVECA exemption and the ELTIF exemption. This would allow to better reflect the specificities of long-term investors;
- Introducing a **grandfathering clause for loan originating funds** and confirming that the new rules only apply from the date of implementation and not to existing investment structures;
- Introducing a **depositary passport**: Indeed, the lack of depositary passport leaves the market for depositary services fragmented and prevents AIFMs to tap the benefits of the EU market.

Table of contents

I. France Invest strongly supports a targeted review of the AIFM Directive. 5
II. France Invest suggests revising some of the changes proposed by the Commission 6
1. The definition of the service of credit servicing should be enlarged (article 6) 6
2. The list of information to provide in authorisation applications should be limited (article 7 paragraph 2) 7
3. The wording of requirements relating to functions delegated by the AIFM should be clarified (article 7 paragraph 5) 7
4. Conditions for granting authorisations should be specified (article 8 paragraph 1) 8
5. Some requirements regarding loan origination should be clarified (Article 15) 9
a. The specificities of debt funds should be better taken into account (paragraph 4b)................ 9
b. The scope of the retention requirement should be strictly defined (paragraph 4e)................. 9
6. The new requirements on liquidity management should be tailored to the type of funds (article 16 paragraph 2a) 10
7. Rules on delegations should be clarified (article 20) 11
8. Changes to transparency requirements should be reworded 12
a. Investor disclosures do not need to be more detailed or more frequent (article 23)............. 12
b. Supervisory reporting requirements should be left unchanged (article 24 paragraph 1) 14
9. The function of originating loans should be specified and leave shareholder loans out of scope (Annex I) 16
III. France Invest suggests additional enhancements to the AIFM framework........................ 17
1. A definition of “professional investors” should be introduced (article 4) 17
2. Grandfathering provisions for loan originating funds should be introduced 18
3. One useful clarification would be that non-regulated ancillary services that are inherent to the management of the fund do not require a separate license (article 6) 18
4. The AIFMD provision providing that it does not apply to employee participation schemes or employee savings schemes should be made more effective 19
5. A depositary passport should be introduced 19

I. France Invest strongly supports a targeted review of the AIFM Directive.

France Invest acknowledges that **the AIFMD contributed to improving financial stability, increasing investor confidence and enhancing the competitiveness of the EU industry**.

At the end of 2019, the size of the EU AIF universe reached EUR 6.8 trillion in net asset value (NAV), a 15% increase from 2018. Overall, AIFs accounted for 40% of the EU fund industry. Private equity funds account for 7% of the NAV of all AIFs, or EUR 456 billion. Among AIF types, private equity funds experienced the largest growth in 2019 (+28% compared with 2018). They follow a range of strategies, invest mainly in the EEA (67% of NAV) and are almost exclusively sold to professional investors. The majority of private equity funds have access to the EU passport, with 60% able to be sold throughout the EU. France accounted for approximately 16% of the NAV (UK 40%, Luxembourg 23%)[2].

In particular, in our opinion, **the functioning of both the management and the marketing passports is generally efficient**. Managers can manage funds domiciled in other jurisdictions and freely market AIFs to professional investors across the EU.

- We count 65 branches of French AIFMs outside France and 44 branches of foreign AIFMs established in France;
- More than 10,000 funds are marketed in France, of which one third are AIFs, and of which more than 2,500 AIFs are non-French domiciled;
- 44% of French domiciled AIFs are distributed cross-border.

The AIFM "label" is a proof of quality and security for investors. Transparency obligations and the requirement for a depositary contribute to bringing them comfort. The passport not only provides EU investors with additional investment opportunities but also allows managers to consolidate capital from investors in multiple jurisdictions more efficiently, thus fostering competition within the EU. The AIFM "label" has become a competitive advantage for EU managers, in particular vis-à-vis non-EU investors.

The introduction of the AIFMD however demanded a considerable adaptation effort from many market players, which have now integrated its impact. From a general perspective, the balance between maintaining a robust and effective regulatory regime, while avoiding the introduction of

[2] https://www.esma.europa.eu/sites/default/files/library/esma50-165-1734_asr_aif_2021.pdf

a level of cost which creates too great a drag on investor returns and a disproportionate compliance burden on managers, is a key balance to be struck.

For these reasons, **we strongly support the targeted approach adopted by the Commission in reviewing the AIFMD**. Indeed, in our view:

- **There is no need to further enhance the AIFMD to address macro-prudential concerns**. Regarding supervisory reporting, we are of the opinion that, from a general standpoint, **AIFMs now operate with a sufficient level of transparency**. In particular, **we are not in favour of more detailed or frequent reporting requirements**, and we would warn against harmonising the AIF reporting regime with that applicable to UCITS. However, we understand that the fund classification used could be made more granular.

- **Provisions on liquidity management should globally remain unchanged**, although the introduction of more tailored obligations for venture capital and private equity funds could be considered, due to their specificities and illiquid nature.

- **There is no need to further enhance the AIFMD to address leverage concerns as regards venture capital and private equity funds**. We believe that, overall, the leverage calculation methods available under the AIFMD are appropriate, even if the implementation of these calculation metrics by the EU Member States could be further harmonised.

- **The operating conditions set out by the AIFMD are generally appropriate**. In particular, capital requirements do not need to be modified and rules on own account should remain unchanged. With regards the sensitive issue of rules on remunerations, we believe it is crucial to maintain the proportionality principle. In the same way, regarding the delegation of AIFM functions to third parties, we call for the existing rules to stay unaltered. We believe that valuation rules are adequate; they have proven robust even through the recent crisis and do not need to be changed. In particular, our members insist that it should remain possible to combine input from internal and external valuers.

- **There is no need to change the AIFMD supervisory and sanctioning framework**. In particular, rules on the supervision of intra-EU cross-border entities should remain unchanged.

II. France Invest suggests revising some of the changes proposed by the Commission

1. The definition of the service of credit servicing should be enlarged (article 6)

The services referred to in Directive 2021/… only include recovery activities for certain types of debt. In our view, this definition is too narrow.

Paragraph (d) as proposed is actually very limited as it only relates to the credit servicing of non-performing loans (NPLs). **The servicing of loans or receivables that do not constitute NPLs** should also be included in the services external AIFMs are allowed to provide.

In the same way, **loan intermediation activities** should be included (including any advice in relation to the structuring or implementation of a loan facility). Indeed, it is quite usual for management companies to invest in loans or debt through companies which are not AIFs in which case the management company would carry out advisory services for such company.

We therefore suggest rewording the definition in article 6 as follows:

(d) credit servicing ~~in accordance with of Directive 2021/… of the European Parliament and of the Council~~ **activities as defined in Directive 2021/2167 of the European Parliament and of the Council as well as advice on loan origination and structuration**;

2. The list of information to provide in authorisation applications should be limited (article 7 paragraph 2)

France invests believes that the new requirements proposed by the Commission should be implemented in a harmonised way across the Member States and **there should be no discretion for national competent authorities to request additional pieces of information**.

We therefore propose rewording the new requirement as follows:

the following information about the persons effectively conducting the business of the AIFM, in particular with regard to the functions referred to in Annex I, ~~**including**~~:

3. The wording of requirements relating to functions delegated by the AIFM should be clarified (article 7 paragraph 5)

We fully agree with the Commission that delegations allow for “the efficient management of investment portfolios and for sourcing the necessary expertise in a particular geographic market or asset class.” Indeed, delegations may be justified by objective reasons.

The wording of this new requirement should be clarified as it creates legal uncertainty by granting too much flexibility to national competent authorities. In particular, it should specify:
- the meaning of "delegates more portfolio management or risk management functions […] than it retains";
- that it applies at the level of the AIFM (i.e. all AIFs managed by the AIFM altogether).

We propose to **set out a bundle of indicators to demonstrate that the relevant functions are more delegated than retained by the AIFM**. These indicators could include assets under management, number of managers, number of funds, breakdown of revenues between delegated and retained functions (cf. AMF position recommendation 2012-19: "*The weight of delegated activities in relation to non-delegated activities is assessed according to criteria adapted to each situation. The definition of a universal criterion would be illusory, given the diversity of situations encountered*."

In addition, it should be taken into account whether delegations are performed within or outside the group of the AIFM. We believe that only **delegations to entities which are outside the group of the AIFM and located in third countries** should be reported.

We therefore suggest adding the following:

Where an AIFM delegates more portfolio management or risk management functions to entities **which are outside its group and** located in third countries than it retains, the competent authorities shall, on an annual basis, notify ESMA of all such delegations ('delegation notifications').

The weight of delegated activities in relation to retained activities shall be assessed at the level of the AIFM according to criteria adapted to each situation, including assets under management, number of managers, number of funds, breakdown of revenues between delegated and retained functions and taking into account whether delegations are performed within or outside the group of the AIFM.

4. Conditions for granting authorisations should be specified (article 8 paragraph 1)

The requirement proposed by the Commission appears too burdensome. It should be alleviated so that the relevant functions can be performed by **at least two natural persons, one of which being a full-time person**. This would for example allow a person to share his/her work time among different companies of a group or allow a senior manager to pass on his/her responsibilities in view of his/her retirement (please refer to AMF position 2012-19).

We propose rewording as follows:

'(c) the persons who effectively conduct the business of the AIFM are of sufficiently good repute and are sufficiently experienced also in relation to the investment strategies pursued by the AIF managed by the AIFM, the names of those persons and of every person succeeding them in the office being communicated forthwith to the competent authorities of the home Member States of the AIFM and the conduct of the business of the AIFM being decided by at least two natural persons, ~~who are~~ **one of which is** either employed full-time by that AIFM or ~~who are~~ committed full-time to conduct the business of that AIFM, and who are resident in the Union meeting such conditions.

5. Some requirements regarding loan origination should be clarified (Article 15)

a. The specificities of debt funds should be better taken into account (paragraph 4b)

The Commission proposes that, for specific borrowers, AIFM ensure that a loan originated to any single borrower by the AIF they manage does not exceed 20% of the AIF's capital. The Commission suggests that this requirement ceases to apply once the AIF starts to sell assets in order to redeem investors' units or shares after the end of the life of the AIF.

This requirement is not workable in relation to debt funds, as it implies that debt funds usually sell their assets. In practice, **most debt funds are "buy and hold" funds**, and the loans originated may be redeemed by the borrower at any time (as a result of any scheduled amortisation, prepayment event or voluntary redemption).

It would therefore be preferable to redraft as follows:

(b) cease to apply ~~once the AIF starts to sell assets in order to redeem investors' units or shares after the end of the life of the AIF~~ as from the date on which the AIF ends its investment period (as such date shall be specified in the rules or instruments of incorporation of the AIF);

b. The scope of the retention requirement should be strictly defined (paragraph 4e)

This provision is not in line with the explanation provided by the European Commission: "*Article 15(4e) is inserted to avoid moral hazard situations where the loans are originated to be immediately sold off on the secondary market*."

This new requirement should not be applicable in all cases. Its scope should be strictly defined. For instance, AIFMs should not be subject to such an obligation in case a fund is winding down or in case a debt is restructured.

This restriction should only apply to the syndication of loans made available by AIFs (i.e. to avoid "originate to distribute" strategies) and not generally to any disposal of loans made available by AIFs (there may be genuine reasons for a fund to dispose in full of a loan, for instance if the borrower is defaulting or as a result of concentration ratios being breached – it is important to ensure that in any "post syndication" scenario no restriction to disposal applies).

The proposed wording goes far beyond this explanation as it creates an on-going retention obligation.

We suggest narrowing down the subsequent sales of the loans to sales which take place within a short period of time after the loans were originated and reword as follows:

4e. An AIFM shall ensure that the AIF it manages retains, on an ongoing basis, 5% of the notional value of the loans it has originated and ~~subsequently~~ sold on the secondary market **within a short period of time after they were originated**.

The requirement set out in the first subparagraph does not apply to the loans that the AIF has purchased on the secondary market **or when:**

- **the fund is liquidated in the interest of the unit or shareholders,**
- **the outstanding principal amount of a loan in the fund which may be disposed of is less than a percentage of the maximum outstanding principal amount of that loan,**
- **the units or shares of the fund are held by a single holder,**
- **the fund has to meet its commitments resulting from a contract constituting a forward financial instrument, a loan, a guarantee or a sub-participation in risk,**
- **the financial situation of a debtor company is deteriorated, leading to the holding of bad or disputed loans,**
- **the disposal of the loans allows the fund to comply with its investment rules.**

6. The new requirements on liquidity management should be tailored to the type of funds (article 16 paragraph 2a)

As they do not offer redemption rights throughout their lifecycle and do not have to bear short-term liquidity pressures from investors, closed-ended funds investing in non-listed equity should indeed be subject to different liquidity requirements from “traditional” funds.

Therefore, we welcome provisions which aim at taking this specific feature better into account when designing macroprudential tools (requirements applicable to funds invested in listed equity may not be relevant for funds invested in non-listed equity), in particular in the current context, whereby long-term financing and support is particularly needed by companies in the real economy.

In other words, **we support amendments which imply the non-application of liquidity requirements relating to open-ended funds to closed-ended venture capital and private equity funds**, as they do not raise the same macro prudential concerns.

The Commission proposes that AIFMs should ensure that the AIFs they manage are closed-ended if the notional value of their originated loans exceeds 60 % of their net asset value.

It should be noted that the proposed threshold is based on NAV and that it will fluctuate accordingly.

We propose adding an option to increase this threshold when a mechanism to meet redemptions requests is in place and justifies such an increase (there are many ways in which liquidity risks may be managed in addition to adopting a closed end fund structure: lock-up periods, run-off periods, lock-up periods, long notice periods…).

We suggest the following wording:

An AIFM shall ensure that the AIF it manages is closed-ended if the notional value of its originated loans exceeds 60 % of its net asset value, **except when the AIF has put in place a policy for the redemption of units or shares which would ensure the fund to meet redemption requests under conditions that preserve the interests of the unitholders or shareholders and their fair treatment**.

7. Rules on delegations should be clarified (article 20)

Regarding the delegation of AIFM functions to third parties, we call for the existing rules to remain unaltered, as they appear appropriate and efficient. We consider the current AIFMD delegation rules to be appropriate and sufficient to ensure investor protection.

From a general point of view, **firms rely on the ability to delegate portfolio management to entities to access relevant expertise for specific investment strategies**. This is not with a view to regulatory arbitrage but simply reflects the global nature of the asset management industry. For example, an AIFM may – for obvious reasons – want to delegate portfolio management in relation to its investments to local teams with particular experience and expertise. We do not believe this is to the detriment of investors, quite the opposite.

France Invest's members are located in France; they are regulated and supervised by the AMF. They trust their regulator to implement the AIFMD delegation rules so as to prevent the creation of letter box entities in France.

This being said, the implementation of the existing rules on delegations of collective portfolio management functions could be further harmonised (in particular in relation to the distinction between delegation and outsourcing and in relation to third country entities), in order to ensure investor protection and to prevent regulatory arbitrage.

Regarding the new wording of article 20 paragraph 1, it should be allowed to either outsource or delegate the services included in Annex I depending on the specific situation of the AIFM. The responsibilities of the AIFM in each of these two different situations should be clarified. For instance, it should still be allowed to outsource marketing activities. This new provision should not be an opportunity to circumvent the absence of MiFID passport for activities such as providing advice and to have these activities performed by entities located outside the EU (e.g. in the UK, US, Switzerland…).

We suggest the following wording:

AIFMs, which intend to delegate to third parties the task of carrying out, on their behalf, one or more of the functions listed in Annex I or of the services referred to in Article 6(4), shall notify the competent authorities of their home Member State before the delegation arrangements become effective**. This obligation does not apply when the relevant functions are outsourced.**

8. Changes to transparency requirements should be reworded

a) Investor disclosures do not need to be more detailed or more frequent (article 23)

- Paragraph 1 (ia)

It does not make sense to describe of all fees and charges. Making an exhaustive list is hardly possible. **Such a list would not be legible and would not add much value for investors**, in particular for professional investors. Retail investors receive key information documents which show the relevant fees and charges. In any case, charges borne by the AIFM are taken into account in its budget and are of little interest to investors. **It would only increase costs**.

Furthermore, **disclosures on fees and charges are already covered in other regulations** (i.e. Article 24 of AIFM delegated regulation on inducements and MiFID).

AIFMs have put in place systems to meet disclosure requirements and changing these obligations would imply significant costs. As a consequence, call for keeping fee disclosures unchanged.

We therefore suggest removing the proposed requirement.

~~**(ia) a list of fees and charges that will be applied in connection with the operation of the AIF and that will be borne by the AIFM or its affiliates.**~~

- Paragraph 4 (d)

The addition of a new reporting on the "originated loan portfolio" is difficult to understand (why are originated loans treated differently?) and may raise certain difficulties in practice, for instance with respect to confidentiality obligations.

In order to **ensure the protection and confidentiality of information**, we believe that it would be useful to add the following language that derives from article 7 of the securitisation regulation:

When complying with this paragraph, the AIFM shall comply with applicable law and contractual restrictions governing the protection of confidentiality of information and the processing of personal data in order to avoid potential breaches of such law as well as any confidentiality obligation, unless such confidential information is anonymised or aggregated.

- Paragraph 4 (e) and 4 (f)

In addition, France Invest proposes adapting the frequency of investor disclosures to types of funds (article 23 paragraph 4). Indeed, these requirements do not make sense for closed ended AIFs. **The frequency of such disclosure should be adapted to the nature of the AIF considered** (e.g. annual or semi-annual).

We therefore propose rewording these requirements as follows:

(e) ~~on a quarterly basis~~ **at a frequency adapted to the nature of the AIF,** all direct and indirect fees and charges that were directly or indirectly charged or allocated to the AIF ~~**or to any of its investments**~~.

(f) ~~on a quarterly basis~~ **at a frequency adapted to the nature of the AIF,** any parent company, subsidiary or special purpose entity established in relation to the AIF's investments by the AIFM, the staff of the AIFM or the AIFM's direct or indirect affiliates.

b) Supervisory reporting requirements should be left unchanged (article 24 paragraph 1)

We do not understand the objective of such a broad requirement. It does not make sense, in particular to the extent that such information is already available in the AIFs' accounting documents. The impact of such requirement should be assessed. **Reporting should be simplified rather than replicated. We suggest maintaining the existing obligations**, which would avoid changing the systems in place at a significant cost, as follows:

It shall provide information on the **main** instruments in which it is trading, on markets of which it is a member or where it actively trades, and on the **principal** exposures **and most important concentrations** of each of the AIFs it manages.

From a more general standpoint, regarding supervisory reporting, **we believe that AIFMs currently operate with a sufficient level of transparency**. Supervisory reporting requirements (including reporting frequency) as provided in the AIFMD and AIFMR's Annex IV are rather appropriate. Our members have now integrated them, and we are not in favour in changing them.

We would like to take this opportunity to point out that **AIFMs are subject to comprehensive periodic reporting obligations**, as summarised below:

Assets under Management	Criteria for all AIFs	Criteria for each AIF	Frequency of reporting on asset management company (AMC) and the AIFs it manages		
			Yearly	Half yearly	Quarterly
< EUR 100M or EUR 500M thresholds			AIF + AMC		
> EUR 100M or EUR 500M thresholds but < EUR 1 bn	All AIFs with no leverage + contol		AIF + AMC		
	At least one AIF with leverage with or without control	AIF with leverage with/without control and < EUR 500 M		AIF + AMC	
		AIF with leverage with/without control and > EUR 500 M		AMC	AIF
		AIF with no leveraage + control	AIF	AMC	
> EUR 1 bn	All AIFs with no leverage + control		AIF		AMC
	At least one AIF with leverage with or without control				AIF + AMC

For these reasons, we are not in favour of more detailed or more frequent supervisory reporting requirements, which would imply unnecessary costs with no demonstrated benefit. We call for the AIFMR template to remain unchanged. We do not support the introduction of any additional requirements to provide data that would not be used and not adapted to the specificities of the venture capital and private equity industry (i.e. long term investments in non-listed equity).

In particular, concerning sustainability-related data, we believe that the requirements set out in other EU regulations (in particular Disclosure and Taxonomy Regulations) provide for sufficient transparency.

France Invest sees no need to further enhance the AIFMD reporting requirements to address leverage concerns. We would like to point out that venture capital and private equity funds mostly invest in non-listed SMEs - i.e. companies that employ less than 250 people and whose annual turnover does not exceed EUR 50 million or whose annual balance sheet total does not

exceed EUR 43 million – and apply tacit diversification rules. This significantly contributes to limiting any macro prudential concerns.

We generally support IOSCO's two step approach to collect data on the asset-by-asset class to assess leverage in AIFs: first, eliminating those funds unlikely to pose risks to the financial system, and second, performing a risk-based analysis on those funds that remain. We note that the main goal of such an approach is to ensure no time is wasted looking at funds that clearly pose no concern from a financial stability perspective. In particular, we support the definition of the leverage set out by IOSCO as the ratio of the fund's market exposure over its net asset value.

As concerns leverage reporting, we would like to highlight that, overall, **the leverage calculation methods – gross and commitment – available under AIFMD are appropriate** and should not be changed. They are sufficiently clear and, even though some may be quite complex, market players have learnt how to use them. While there are some caveats with the current approach, we do not believe any of those warrant a review of the framework.

This being said, in our view, the implementation of the calculation metrics by the EU Member States could be further harmonised (there should be little room for interpretation for national competent authorities). Private equity and venture capital managers deploy their activities cross border and need a level playing field among the different Member States.

9. The function of originating loans should be specified and leave shareholder loans out of scope (Annex I)

The successful growth of private credit in the EU is a significant achievement. As traditional lenders have reduced their lending to SMEs and mid-market businesses, private credit funds have filled the gap and become a vital source of finance for European businesses. Private credit's growth in Europe has taken place under the existing regulatory and supervisory framework of the AIFMD. We therefore strongly support a stable regulatory framework for private credit and recognise its value in promoting investor confidence in the European market.

As per the Commission's proposal, AIFMs may carry out loan origination on behalf of AIFs and other clients. We welcome this policy.

The proposed Directive does not set out any definition for loan origination, although the text does clearly distinguish between origination (primary market) and participation and/or trading of loans (secondary market). We support such a distinction made between primary and secondary loan market activities.

In order to support the growth of cross-border lending across the EU, it would be useful to clarify that the definition applies to the **activities necessary to effect loan origination and subsequent asset management in relation to any AIFs or associated entities**.

It would be useful to specify in the text of the Directive that loan origination does not include shareholder loans, as they are already covered by other regulatory frameworks.

We therefore suggest rewording as follows:

Originating loans, **except shareholder loans**.

More generally, we believe that participating in syndications and/or 'club' deals or simply having portions of loans being allocated as part of an intra-group process should not be considered origination.

III. France Invest suggests additional enhancements to the AIFM framework

1. A definition of "professional investors" should be introduced (article 4)

The AIFMD review, as well as the upcoming MiFID review, should provide an opportunity to recalibrate the definition of a "professional investor upon request" to better reflect the specificities of long-term investors.

We suggest inserting a **definition of professional investors in Article 4, taken from existing texts** – the EuVECA exemption (Article 6) and the ELTIF exemption (Article 30 of currently discussed review):

(ag) 'professional investor' means, for the purpose of this Directive, an investor:

- **which is considered to be a professional client or may, on request, be treated as a professional client within the meaning of Annex II to Directive 2014/65/UE;**
- **which has committed to investing a minimum of EUR 100 000; and stated in writing, in a separate document from the contract to be concluded for the commitment to invest, that they are aware of the risks associated with the envisaged commitment or investment; or**
- **which is a member of senior staff, portfolio manager, director, officer, agent or employee of the manager or of an affiliate of the manager and has sufficient knowledge about the AIF concerned.**

2. We suggest introducing grandfathering provisions for loan originating funds

We propose to introduce appropriate **grandfathering provisions for funds that were launched prior to the implementation of proposed legislative changes**. Private credit managers have long term investment horizons. For example, a typical loan to an SME or mid-market business may have a duration of between three and seven years. This means that private credit managers lending to businesses today will be making investments which may not come to fruition until after any amendments to the Directive are finalised. It is therefore essential for any proposed amendments that affect loan origination activity by the AIFM and its AIFs and clients to incorporate grandfathering provisions that would confirm **such rules only apply from the date of implementation and not to existing investment structures**. This will provide private credit managers with certainty to continue lending and prevent any disruption to the flow of capital to European businesses.

3. One useful clarification would be that non-regulated ancillary services that are inherent to the management of the fund do not require a separate license (article 6)

The AIFMD provisions on ancillary activities were inspired by the UCITS Directive. Taking into consideration the date of establishment of the UCITS Directive, it could be argued that there are sections of the directive that are long dated and do not take into consideration market developments, such as the evolution of asset managers business models. In addition, these provisions may not be fully tailored to the specificities of AIFMs.

Moreover, we should acknowledge the current focus on **enhancing the competitiveness of the AIF market**. To this end, asset managers have to be able to create economies of scale to be able to compete at international level (intra-group service providers of supporting functions such as IT or middle office for instance). These economies of scale are generating additional revenues for both big players and small managers. Large managers may directly benefit from economies of scale, while smaller managers may secure their business model by diversifying their sources of revenues. Ultimately, final investors would benefit from these economies of scale in the costs applied to them.

In this context, the members of France Invest call for clarification that **non-regulated ancillary services that are inherent to the management of the fund do not require a separate license**. Indeed, Member States have different interpretations in this respect (e.g. administrative and accounting management), which creates uncertainty. In our opinion, the provision of ancillary services should not rely on a derogation granted to Member States but rather should be harmonised at EU level.

4. The AIFMD provision providing that it does not apply to employee participation schemes or employee savings schemes should be made more effective

In our opinion, the AIFMD provision providing that it does not apply to employee participation schemes or employee savings schemes is not fully effective. Indeed, in spite of this provision, some schemes fall in the scope of the AIFMD. As a consequence, it may be difficult in practice for companies to set up and operate employee participation or employee savings schemes at EU level. This issue should be addressed properly, as we strongly believe that value sharing is key.

5. A depositary passport should be introduced

Depositaries perform crucial functions and are pivotal to investor protection. For instance, French depositaries have developed a long-standing experience and provide quality services, including to venture capital and private equity funds. Not mentioning that using their services may prove a competitive advantage for AIFMs, for instance vis-à-vis non-European investors.

From a general standpoint, we think that "*the lack of a depositary passport is at odds with the spirit of the single market*."[3] The lack of depositary passport leaves the market for depositary services fragmented and prevents AIFMs to tap the benefits of the EU market. It particularly affects the supply side of these services in smaller markets.

A depositary passport would alleviate fears of concentration risk where a single depositary could hold the assets of all AIFs established in a Member State due to the limited choice of service providers. In France, the depositary market is concentrated on a limited number of players insofar as nearly 90% of assets under management are held on the books of 4 custodians. Conversely, it would allow quality depositaries to deploy their activities across the Member States and increase choice, in particular for smaller AIFMs.

We would however like to note that, in order for the depositary passport to be fully efficient, the related rules will have to be harmonised and implemented in an appropriate manner by the different national competent authorities across the EU.

[3] REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL assessing the application and the scope of Directive 2011/61/EU of the European Parliament and of the Council on Alternative Investment Fund Managers, 10.06.2020

About France Invest

Established nearly 40 years ago, France Invest brings together venture capital, private equity, infrastructure and private debt teams based in France, as well as the associated professions which support them. Its membership currently counts 340 management firms and 170 associate members.

Private equity supports unlisted companies for a fixed period of time and provides them with the equity capital, through the acquisition of minority or majority stakes in their capital, needed to finance growth and transformation projects. It supports the creation of start-ups (venture capital), participates in the growth and transformation of many regional SMEs and mid-caps (growth capital) and contributes to the transfer of companies (replacement capital).

France Invest's members represent one of the main growth drivers for the French and European economy and support a significant portion of employment in France and Europe. In 2020, French private equity and infrastructure players invested €23.1 billion in 2,150 companies and infrastructure projects. They raised €23.5 billion from investors, a third of which at international level, which will be invested over the next 5 years. In addition to that, private debt players (structures financing companies and infrastructure projects) invested €8.1 billion in 209 transactions and raised €7.7 billion that will finance new transactions in the coming years. European companies, in particular start-ups and SMEs, are the main recipients of these investments. In 2019, companies backed by French venture capital and private equity created 56,000 jobs.

In particular, during the pandemic, the venture capital and private equity industry has demonstrated its adaptability, supporting existing portfolio companies as and when needed, while continuing to invest in new businesses that require capital and operational expertise to grow.