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**France Invest's response to the European Commission's
Consultation on AIFMD review**

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 2019, its members raised 41 bn EUR to finance companies, both through equity and debt, and infrastructure projects, over the coming 5 years. French private equity is no1 in the EU27 in terms of funds raised, capital invested, and number of companies funded. About half of the funds raised by French private equity players come from abroad, and European companies, in particular start-ups and SMEs, are the main recipients of their investments. In 2018, companies backed by French private equity created 75,000 jobs.

France Invest is a member of Invest Europe and shares the general views expressed in the Association's response to the Commission's consultation. Our response takes particular account of the specificities of the French market.

General comments

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.

Therefore, we are not in favour of a complete overhaul of the regulatory framework, even though we would welcome some slight adjustments.

At the end of 2018, AIFs reached EUR 5.8 tn in net asset value. They accounted for 40% of the EU fund industry. Among AIF types, private equity funds accounted for 6% of the NAV of all AIFs, or EUR 352 bn. These funds experienced the largest growth in 2018. 60% used the EU distribution passport and retail participation was 5%¹. As of end 2017, the French Autorité des Marchés Financiers counted 5,168 AIFs subject to reporting in France, representing EUR 688 bn in net assets and EUR 915 bn in exposure².

Regarding supervisory reporting, we believe that, from a general standpoint, AIFMs now operate with a sufficient level of transparency. For this reason, **we are not in favour of more detailed reporting requirements** which would imply unnecessary costs with no demonstrated benefit. However, we understand that the fund classification used could be made more granular.

As concerns leverage reporting, we would like to highlight that, overall, **the leverage calculation methods available under AIFMD are appropriate**. However, in our view, the implementation of the calculation metrics by the Member States could be further harmonised.

We are not against increased retail investor access to AIFs, provided this does not imply overly burdensome additional obligations and costs. For instance, **we support the development of a specific AIF under EU law that could be marketed to retail investors with a passport, in the context of the ELTIF review**. In addition, **we call for the definition of the “professional client” category in the AIFMD to be adjusted** on the model of the definition set out in the EuVECA Regulation.

With regards the highly sensitive issue of rules on remunerations, we believe it is crucial to maintain the proportionality principle, which is of utmost importance in implementing the rules.

Our members have now integrated the AIFMD transparency requirements on investments in private companies, even if some of them might not appear fully appropriate. Regarding asset stripping rules, we call for more consistency and for taking the time to reflect upon the relevance of the existing rules. Indeed, the prime aim of the French PE/VC industry is to support the development of private companies. Besides, we would like to take this opportunity to underline the pivotal role of FDI screening in protecting EU companies from potential malevolent takeovers by non-EU entities.

¹ ESMA's second statistical report on European Union (EU) Alternative Investment Funds, January 2020

² AMF's first results from AIFM reporting, January 2019

Last, regarding the delegation of AIFM functions to third parties, we call for the existing rules to remain unchanged, as they appear appropriate and efficient.

I. Chapter I - Functioning of the AIFMD regulatory framework, scope and authorisation requirements

Background:

The central pillar of the AIFMD regulatory regime is a European licence or a so-called AIFM passport. EU AIFMs are able to manage and market EU AIFs to professional investors across the Union with a single authorisation. This section seeks to gather views on potential improvements to the AIFMD legal framework to facilitate further integration of the EU AIF market. The objective is to look at the specific regulatory aspects where their potential refining could enhance utility of the AIFM passport, gathering data on concrete costs and benefits of the suggested improvements, at the same time ensuring that the investor and financial stability interests are served in the best way. A number of questions focus on the level playing field between AIFMs and other financial intermediaries.

Question 1 - What is your overall experience with the functioning of the AIFMD legal framework?

Please choose between:

- Very satisfied
- **Satisfied**
- Neutral
- Unsatisfied
- Very unsatisfied
- Don't know / no opinion / not relevant

Question 2 - Do you believe that the effectiveness of the AIFMD is impaired by national legislation or existing market practices?

Please choose between:

- Fully agree
- Somewhat agree
- Neutral
- Somewhat disagree
- Fully disagree
- Don't know / no opinion / not relevant

Question 2.1 - Please explain your answer to Question 2, providing concrete examples and data to substantiate it.

We believe that, overall, the AIFMD works rather well. Since its introduction, it has contributed to improving financial stability, increasing investor confidence and enhancing the competitiveness of the EU industry. In particular, in our opinion, **the functioning of both the management and the marketing passports is generally efficient.**

However, we agree that their efficiency could be further improved, as some regulators impose specific national requirements in addition to those provided in the Directive. Also, **NCA's should only address issues within their remit**, as provided by the AIFMD, and do so in full transparency. This issue could probably be addressed through Level 2 measures or ESMA's practice.

Question 3 - Please specify to what extent you agree with the statements below.

The AIFMD has been successful in achieving its objectives as follows:

| | 1 (fully disagree) | 2 (somewhat disagree) | 3 (neutral) | 4 (somewhat agree) | 5 (fully agree) | Don't know - No opinion - Not applicable |
|--|-----------------------|--------------------------|----------------|-----------------------|--------------------|--|
| creating internal market for AIFs | | | | X | | |
| enabling monitoring risks to the financial stability | | | | X | | |
| providing high level Investor protection | | | | | X | |

Other statements:

| | 1 (fully disagree) | 2 (somewhat disagree) | 3 (neutral) | 4 (somewhat agree) | 5 (fully agree) | Don't know - No opinion - Not applicable |
|--|-----------------------|--------------------------|----------------|-----------------------|--------------------|--|
| The scope of the AIFM license is clear and appropriate | | | | | X | |
| The AIFMD costs and benefits are balanced (in particular regarding the regulatory and administrative burden) | | | | X | | |
| The different components of the AIFMD legal framework operate well together to achieve the AIFMD objectives | | | | | X | |
| The AIFMD objectives correspond to the needs and problems in EU asset management and financial markets | | | | X | | |
| The AIFMD has provided EU AIFs and AIFMs added value | | | | | X | |

Question 3.1 - Please explain your answer to Question 3, providing quantitative and qualitative reasons to substantiate it.

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 2018, AIFs reached EUR 5.8 tn in net asset value. They accounted for 40% of the EU fund industry. Among AIF types, venture capital and private equity funds accounted for 6% of the NAV of all AIFs, or EUR 352 bn. These funds experienced the largest growth in 2018. 60% used the

EU distribution passport and retail participation was 5%³. As of end 2017, the French Autorité des Marchés Financiers counted 5,168 AIFs subject to reporting in France, representing EUR 688 bn in net assets and EUR 915 bn in exposure⁴.

In particular, in our opinion, **the functioning of both the management and the marketing passports is generally efficient**. However, we agree that their efficiency could be further improved, as some regulators impose specific national requirements in addition to those provided in the Directive. Also, **NCA's should only address issues within their remit**, as provided by the AIFMD, and do so in full transparency. This issue could probably be addressed through Level 2 measures or ESMA's practice.

Managers can freely market AIFs to professional investors across the EU and can also manage funds domiciled in other jurisdictions.

- 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" has become a competitive advantage for EU managers, in particular vis-à-vis non-EU investors. It is a proof of quality and security.

Question 4 - Is the coverage of the AIFM licence appropriate?

Please choose between:

- **Yes**
- No
- Don't know / no opinion / not relevant

Question 4.1 – If no, what other functions would you suggest adding to the AIFM licence? Please explain your choice also considering related safeguards and requirements, such as protecting against potential conflicts of interest, where appropriate, disadvantages and benefits of the proposed approach.

Question 5 - Should AIFMs be permitted to invest on own account?

³ ESMA's second statistical report on European Union (EU) Alternative Investment Funds, January 2020

⁴ AMF's first results from AIFM reporting, January 2019

Please choose between:

- Yes
- **No**
- Don't know / no opinion / not relevant

Question 5.1 - If yes, what methods and limitations to this possibility should be imposed? Please explain your proposition in terms of conflicts of interest, benefits and disadvantages as well as costs, where possible.

Question 5.1 – If No or Don't know, please explain your answer to Question 5.

As explained previously, we think that the coverage of the AIFM licence is appropriate and **we call for the rules on own account under AIFMD to remain unchanged. Indeed, we do not see any need to permit AIFMs to invest on own account other than for alignment of interests' purposes** (which is currently the case i.e. AIFMs may invest their carried interest in the funds they manage).

In our opinion, investing on own account may give rise to conflicts of interests and to investor concerns (investors may not feel comfortable investing in funds managed by an AIFM which could default because of its own unfortunate investments).

It should however be underlined that such prohibition to invest on own account should be limited to the AIFM itself and should not cover entities in the group of the AIFM (e.g. sister companies or holdings of the AIFM). For instance, the sponsoring of an entity in the group of an AIFM may be required for this AIFM to be able to launch a new fund and build a track record that will allow attracting investors.

Question 6 - Are securitisation vehicles effectively excluded from the scope of the AIFMD?

Please choose between:

- Yes
- No
- Don't know / **no opinion** / not relevant.

Question 6.1 – If no, what elements would you suggest introducing into the AIFMD to exclude securitisation vehicles from the scope of the AIFMD more effectively and reducing regulatory arbitrage possibilities? Please explain.

Question 7 - Is the AIFMD provision providing that it does not apply to employee participation schemes or employee savings schemes effective?

Please choose between:

- Yes
- **No**
- Don't know / no opinion / not relevant

Question 7.1 – If no, please explain your answer to Question 7.

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.**

Question 8 - Should the AIFM capital requirements be made more risk-sensitive and proportionate to the risk-profile of the managed AIFs?

Please choose between:

- Yes
- **No**
- Don't know / no opinion / not relevant

Question 8.1 – If yes, please explain your answer to Question 8, presenting benefits and disadvantages of your approach as well as potential costs.

Question 9 - Are the own funds requirements of the AIFMD appropriate given the existing initial capital limit of EUR 10 million although not less than one quarter of the preceding year's fixed overheads?

Please choose between:

- Yes
- No
- Don't know / no opinion / not relevant.

Question 9.1 – If no, please explain your answer to Question 9, detailing any suggestion of an alternative policy option, and presenting benefits and disadvantages of the entertained options as well as costs.

Question 10 - Would the AIFMD benefit from further clarification or harmonisation of the requirements concerning AIFM authorisation to provide ancillary services under Article 6 of the AIFMD?

Please choose between:

- Fully agree
- Somewhat agree
- Neutral
- Somewhat disagree
- Fully disagree
- Don't know / no opinion / not relevant

Question 10.1 - Please explain your answer to Question 10, presenting benefits and disadvantages of the entertained options as well as costs.

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.

Question 11 - Should the capital requirements for AIFMs authorised to carry out ancillary services under Article 6 of the AIFMD be calculated in a more risk-sensitive manner?

Please choose between:

- Yes
- **No**
- Don't know / no opinion / not relevant

Question 11.1 – If yes, please explain your answer to Question 11, presenting benefits and disadvantages of your suggested approach as well as potential costs of the change, where possible.

Question 12 - Should the capital requirements established for AIFMs carrying out ancillary services under Article 6 of the AIFMD correspond to the capital requirements applicable to the investment firms carrying out identical services?

Please choose between:

- Yes
- **No**
- Don't know / no opinion / not relevant

Question 12.1 - Please explain your answer to Question 12, presenting benefits and disadvantages of your suggested approach as well as potential costs of the change, where possible.

We believe that the capital requirements applying to AIFMs in relation to the provision of ancillary services should take into account the specificities of these market players, and in particular of

managers of private equity and venture capital funds, as compared to investment firms. Indeed, there are fundamental differences between investment firms and AIFMs carrying out ancillary services, including in relation to risk exposure. In particular, AIFMs managing only closed-ended unleveraged funds are not exposed to investor redemptions. Also, they are not exposed to the risk of fund insolvency due to inability to repay leverage.

In addition, it should be noted that AIFMs are subject to rules of good conduct and covered by civil liability insurance, which should allow to limit their capital requirements.

More generally, we would like to underline that the rules specifically applicable to AIFMs should be comprised in a single set of rules (i.e. the AIFMD), as far as possible, in order to ensure an appropriate level of consistency. Conversely, a layering of rules and/or references to other sets of rules should be avoided.

Last, we would like to stress the need for regulatory stability.

For these reasons, we believe that, overall, **rules on capital requirements are sufficiently harmonised at EU level and do not need to be changed.**

Question 13 - What are the changes to the AIFMD legal framework needed to ensure a level playing field between investment firms and AIFMs providing competing services? Please present benefits and disadvantages of your suggested approach as well as potential costs of the change, where possible.

We believe that **no changes to the AIFMD legal framework are needed** to ensure a level playing field between investment firms and AIFMs providing competing services.

Question 14 - Would you see value in introducing in the AIFMD a Supervisory Review and Evaluation Process (SREP) similar to that applicable to the credit institutions?

Please choose between:

- Yes
- **No**
- Don't know / no opinion / not relevant

Question 14.1 - Please explain your answer to Question 14, presenting benefits and disadvantages of your suggested approach as well as potential costs of the change, where possible.

We do not see any merit in introducing in the AIFMD a Supervisory Review and Evaluation Process (SREP) similar to that applicable to the credit institutions. Unlike credit institutions, AIFMs do not take deposits, do not hold money or securities belonging to their clients and do not place themselves in debt with those clients. Clients invest in AIFs and the AIFs' assets are separated from the AIFM's own assets and liabilities.

Question 15 - Is a professional indemnity insurance option available under the AIFMD useful?

Please choose between:

- Yes
- No
- Don't know / no opinion / not relevant

Question 15.1 - Please explain your answer to Question 15, presenting benefits and disadvantages of your suggested approach as well as potential costs of the change, where possible.

France Invest believes that **the professional indemnity insurance option provides flexibility to AIFMs and therefore should be kept in the AIFMD**, even though, in practice, it may currently be difficult for AIFMs to find adequate insurance solutions on the market.

Question 16 - Are the assets under management thresholds laid down in Article 3 of the AIFMD appropriate?

Please choose between:

- Yes
- No
- Don't know / no opinion / not relevant

Question 16.1 - If not, please suggest different thresholds and explain your choice, including benefits and disadvantages of your suggested approach as well as potential costs of the change, where possible.

Question 17 - Does the lack of an EU passport for the sub-threshold AIFMs impede capital raising in other Member States?

Please choose between:

- Yes
- No
- Don't know / no opinion / not relevant

Question 17.1 - Please further detail your answer to Question 17, substantiating it, also with examples of the alleged barriers.

In our view, **the lack of an EU passport for sub-threshold AIFMs impedes - but does not prohibit - capital raising in other Member States.** Indeed, sub-threshold AIFMs may rely on reverse solicitation and national private placement regimes, even though this implies complying with the specificities of the different Member States. They may also set up EuVEECAs or opt-in for the AIFMD regime to benefit from the EU passport.

Question 18 - Is it necessary to provide an EU level passport for sub-threshold AIFMs?

Please choose between:

- Yes
- No
- Don't know / no opinion / not relevant

Question 18.1 - If yes, should the regulation of the sub-threshold AIFMs differ from the regulation of the full-scope AIFMs under the AIFMD and in which way?

Please explain your proposition, including costs/benefits of the proposed approach.

Question 18.1 – If No or Don't know, please explain your answer to Question 18.

No, we do not believe that providing an EU level passport for sub-threshold AIFMs is necessary. As explained above, the lack of an EU passport for sub-threshold AIFMs impedes - but does not prohibit - capital raising in other Member States. Indeed, sub-threshold AIFMs may rely on reverse solicitation and national private placement regimes, even though this implies complying

with the specificities of the different Member States. They may also set up EuVECA or opt-in for the AIFMD regime to benefit from an EU passport.

However, we would appreciate further harmonisation of the regimes applying to sub-threshold managers in the different Member States.

We would like to take this opportunity to propose an upgrade to the EuVECA framework, which would provide for an optional and temporary regime for sub-threshold managers which sequentially launch funds complying with the EuVECA Regulation.

These sub-threshold managers would have to comply with national rules, and not with the full AIFMD, as they would not be able to bear the cost of compliance with all the requirements laid out in the Directive.

Indeed, sub-threshold managers may choose to use the EuVECA label to test whether their offer can be scaled up, rather than opting for the full AIFMD regime from the start, which is costly and burdensome, in particular in terms of own funds, organisational resources and time. However, obtaining the EuVECA label, prior to the launch of a fund, takes time. This time issue is key as regards fund raising, in particular in the case of “first time fund, first time team”.

In this context, we propose to streamline the procedure applicable to managers regulated at national level which sequentially launch funds complying with the EuVECA regulation and, upon their request, grant them a “multiple-fund authorisation” as part of their registration (“EuVECA upgrade”). This would allow them to avoid completing a lengthy procedure each and every time they launch a new EuVECA compliant fund.

This regime would be temporary by nature, as the relevant managers would turn into full AIFMs when reaching the applicable thresholds under AIFMD. In particular, it would help new managers to develop their activities and launch funds in a smoother manner without having to comply with all the AIFMD requirements (e.g. capital requirements) but at the same time benefitting from opportunities offered across the Member States.

Question 19 - What are the reasons for EuVECA managers to opt in the AIFMD regime instead of accessing investors across the EU with the EuVECA label? Please explain your answer.

As explained in our response to Question 18, EuVECA managers may opt in the AIFMD regime once they have tested their offer and wish to scale up their activities.

More generally, EuVECA managers may opt in the AIFMD regime in case the rules applicable to them at national level are close enough to the requirements of the AIFMD.

Question 20 - Can the AIFM passport be improved to enhance cross-border marketing and investor access?

Please choose between:

- Yes
- **No**
- Don't know / no opinion / not relevant

Question 20.1 - If so, what specific measures would you suggest? Please explain your suggestions, presenting benefits and disadvantages as well as potential costs thereof, where possible.

Question 20.1 – If No or Don't know, please explain your answer to Question 20.

In our opinion, **the rules governing the AIFM passport are appropriate and should be kept unchanged.** This being said, the *implementation* of the AIFM passport by national competent authorities could be further harmonised.

We understand that the Cross Border Fund Distribution Directive will contribute to a smoother use of the marketing passport. In particular, it will introduce a more streamlined and harmonised procedure allowing to opt out of the passport. We very much welcome this improvement. Furthermore, as regards pre-marketing, it will have to be ensured that the provisions included in the Cross Border Fund Distribution Directive are implemented properly. To this aim, we suggest putting standard procedures in place in order to ease the cross-border distribution of funds.

Chapter II - Investor protection

Background:

The AIFMD aims to protect investors by requiring AIFMs to act with the requisite transparency before and after investors commit capital to a particular AIF. Conflicts of interest must be managed in the best interest of the investors in the AIF. AIFMs must also ensure that the AIF's assets are valued in accordance with appropriate and consistent valuation procedures established

for each AIF. The AIF assets are then placed in safekeeping with an appointed depositary that also oversees AIF's cash flows and ensures regulatory compliance.

Questions in this section cover the topic of investor categorisation referencing to MiFID II, stopping short of repeating the same questions that have been raised in its [recent public consultation on MiFID II](#), rather inviting comments on the most appropriate way forward. Views are also sought on the conditions that would make it possible to open up the AIF universe to a larger pool of investors while considering their varying degrees of financial literacy and risk awareness. Examples of redundant or insufficient investor disclosures are invited.

Greater clarity on stakeholders' views of the AIFMD rules on depositaries is sought in particular where such rules may require clarification or amending. The introduction of the depositary passport is desirable from an internal market point of view, but stakeholders are invited to propose other potential legal solutions, if any, that could address the issue of the short supply and concentration of depositary services in smaller markets.

a) Investor classification and investor access

Question 21 - Do you agree that the AIFMD should cross-refer to the client categories as defined in the MIFID II (Article 4(1)(ag) of the AIFMD)?

Please choose between:

- Yes
- **No**
- Don't know / no opinion / not relevant

Question 21.1 - If no, how could the investor classification under the AIFMD be improved? Please give examples where possible and present benefits and disadvantages of your suggested approach as well as potential costs of the change.

The MiFID was drafted in the context of regulated markets, with a different objective to that of the AIFMD and, as explained previously, we believe the rules specifically applicable to AIFMs should be as far as possible comprised in a single set of rules (i.e. the AIFMD) in order to ensure an appropriate level of consistency.

In our opinion, **the binary distinction between (professional and non-professional) investors is not sufficiently tailored to take into account the nature, specificities and types of investors into the private equity and venture capital asset class.** Therefore, **we call for an extension of the “professional client” category in the AIFM Directive, in order to broaden the type of investors allowed to elect to be treated as professional clients.**

While the MiFID professional client/investor definition is likely to be appropriate in the context of most large institutional investors in funds, it is less appropriate for some investors in private equity and venture capital funds, who should be allowed to choose to be treated as professional clients. In practice, the MiFID definition has caused many sophisticated investors to be inappropriately classified as retail investors.

Beyond institutional investors, private equity and venture capital funds aim to meet the demand from (ultra-)high net worth individuals and their family offices as well as some affluent investors. The latter do not qualify as professional clients and are not eligible to be treated as professional clients under MiFID, even though they most of the time have sophisticated investment programmes and usually benefit from professional advice/management.

In addition, members of the management team may wish to invest their own money. Such investments contribute to align their interests with other investors. Also, allowing individual entrepreneurs to invest in private equity and venture capital funds they run is key to the performance of such funds, as it allows both to attract skills and competences. However, under MiFID, members of the management team are considered as retail investors. In our opinion, this categorisation is not appropriate. Indeed, the objective of aligning interests by paying part of their remuneration in the form of fund shares (they are considered as risk takers) does not seem consistent with their qualification as retail investors. Moreover, members of the management teams of EuVECAs and EuSEFs – which do not have any depositary – may be considered as professional investors. Such qualification should be available to them with regards funds which have a depositary.

Thus, **the MiFID client categorisation fails to reflect the diversity of investors into private equity and venture capital funds,** as the tests it relies on do not allow to capture all the investors who should be allowed to elect to be treated as professional clients:

- The frequency test, calibrated for participants in liquid markets, is not appropriate to private equity and venture capital funds. Indeed, very few investors - if any - make as many as 10 commitments per quarter to private equity and venture capital funds.

- The size of the client's financial instrument portfolio test may be difficult to meet by investors such as French individuals whose life insurance investments are not included in their financial portfolio.
- The expertise test is not suited to the members of the management team (executives, directors or employees engaged in the management of the funds), in particular with regards to their transactions or investments which are part of the remuneration policy of the management company. For instance, it does not make sense that a marketing director may be treated as professional under MiFID but a chief financial officer may not.

Also, this expertise test may be difficult to meet by new entrants (such as serial entrepreneurs who decide to invest into a fund for the first time). Most high-net-worth individuals and business angels as well as entrepreneurs may not have worked in the financial sector, but are very well suited to invest in private equity and venture capital funds, bringing with them both capital and expertise in building companies.

In addition, **the criteria allowing someone to be recognised as a professional investor upon request are a very important part of the discussion, but not the only part.** Indeed, to be recognised as a professional upon request, one needs to a) meet the criteria and b) find someone authorized under MIFID willing to take the responsibility to confirm that one meets the criteria. The legal nature of such entities is usually a credit institution or MiFID firm. The point is that, usually, in the EU, most VC/PE firms are not investment firms, but rather pure AIFMD-licensed firms and they cannot always recognise someone as professional upon request. This means one would have to rely on a third-party investment firm or credit institution to do that on one's behalf. The fact is that nobody would take the risk for the benefit of a third party. A large bank or investment firm would (maybe) only do that for the sake of selling homemade products. This favours closed-architecture products. Furthermore, even for the sake of selling homemade products, many firms would simply not accept to recognize someone as pro upon request: the legal risk is simply too high given the level of responsibility, duty of advice and so on. Many have had problems in the past and are now overly cautious.

The underlying hypothesis of this reasoning is that a pure AIFMD-licensed player (excluding MIFID firms) could not recognise someone as a professional client upon request. Assuming that, and given that now that the UK has left the EU, the vast majority of the market is now non-MIFID firms (with a few exceptions), the process should be fully automatic, with no risk-taking for intermediaries, in order to work.

Therefore, we propose extending the category of “professional clients” in the AIFMD and allow (ultra) high net worth individuals and family offices as well as executives, directors or employees involved in the management of an AIFM to choose to be treated as professional clients, at their request, in line with the provisions set out in the EuVECA Regulation. The introduction of an objective threshold will not only make the identification of eligible investors extremely simple but will also ensure that eligible investors do not depend on the willingness of financial services providers to accept their request to be treated as professional investors.

More precisely, we propose to:

- Add in the AIFMD the criterion set out in article 6 of the EuVECA Regulation, as follows:

*Managers of qualifying venture capital funds shall market the units and shares of qualifying venture capital funds exclusively to investors which are considered to be professional clients in accordance with Section I of Annex II to Directive 2004/39/EC or which may, on request, be treated as professional clients in accordance with Section II of Annex II to Directive 2004/39/EC, or to **other investors that commit to investing a minimum of EUR 100 000.***

Similar thresholds already exist in some Member States (as well as in other on EU jurisdictions), and we believe that introducing one at EU level would increase harmonisation among the Member States. Such threshold would also make the identification of eligible investors extremely simple, as it is an objective figure. It would ensure that eligible investors do not depend on the willingness of financial services providers to accept their request to be treated as professional investors (many providers do not have any incentive to do so as they distribute products which are not theirs). Moreover, it would avoid service providers to bear the legal risk of recognising investors as eligible when validating their requests.

In our opinion, requiring investors to state 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, is not appropriate. Indeed, this requirement only increases the administrative burden weighing both on managers and investors.

- And **insert in the AIFMD a provision similar to article 6 paragraph 2 of the EuVECA Regulation**, as follows:

[The above requirements] shall not apply to investments made by executives, directors or employees involved in the management of a manager of AIFs that are unleveraged and have no redemption rights exercisable during a period of 5 years following the date of initial investment in each AIF when investing in the AIFs that are unleveraged and have no redemption rights exercisable during a period of 5 years following the date of initial investment in each AIF that they manage.

Question 21.1 – If Yes or Don't know, please explain your answer to Question 21.

Question 22 - How can AIFM access to retail investors be improved? Please give examples where possible and present benefits and disadvantages of your suggested approach as well as potential costs of the change.

As a preliminary remark, we would like to note that **Member States currently allow access to retail investors on a discretionary basis.**

The development of an AIF product under EU law that could be marketed to retail investors with a passport would allow to market such AIFs in a harmonised way throughout the EU, open new business opportunities for managers and increase the range of products offered to EU investors. **We suggest taking the opportunity of the review of the ELTIF regime to develop such product.** Furthermore, we suggest considering the introduction of an authorisation process specific to the AIFMs managing them. This being said, **our members do not call for a retail passport applicable to all AIFs.**

More generally, as explained above, we believe that, in order to allow AIFMs to reach a broader range of investors, the definition of professional clients to allow more investors to choose to be treated as professional clients should be extended.

Question 23 - Is there a need to structure an AIF under the EU law that could be marketed to retail investors with a passport?

Please choose between:

- **Yes**
- **No**
- **Don't know / no opinion / not relevant**

Question 23.1 - If yes, what are the requirements that should be imposed on such AIFs? Please give examples where possible and present benefits and disadvantages of your suggested approach as well as potential costs of the change.

We believe that the development of an AIF product under EU law that could be marketed to retail investors with a passport would allow to market such AIFs in a harmonised way throughout the EU, open new business opportunities for managers and increase the range of products offered to EU investors. **We suggest taking the opportunity of the review of the ELTIF regime to develop such product.** Furthermore, we suggest considering the introduction of an authorisation process specific to the AIFMs managing them. This being said, **our members do not call for a retail passport applicable to all AIFs.**

Question 23.1 – If No or Don't know, please explain your answer to Question 23.

b) Depositary regime

Question 24 - What difficulties, if any, do the depositaries face in exercising their functions in accordance with the AIFMD? Please provide your answer by giving concrete examples identifying any barriers and associated costs.

Question 25 - Is it necessary and appropriate to explicitly define in the AIFMD tri-party collateral management services?

Please choose between:

- Yes
- No
- Don't know / no opinion / not relevant

Question 25.1 - Please explain your answer to Question 25.

Question 26 - Should there be more specific rules for the delegation process, where the assets are in the custody of tri-party collateral managers?

Please choose between:

- Yes
- No

- Don't know / no opinion / not relevant

Question 26.1 - Please explain your answer to Question 26, presenting benefits and disadvantages of your suggested approach as well as potential costs of the change, where possible.

Question 27 - Where AIFMs use tri-party collateral managers' services, which of the aspects should be explicitly regulated by the AIFMD?

Please select as many answers as you like.

| | Yes / No |
|---|----------|
| the obligation for the asset manager to provide the depositary with the contract it has concluded with the tri-party collateral manager | |
| the flow of information between the tri-party collateral manager and the depositary | |
| the frequency at which the tri-party collateral manager should transmit the positions on a fund-by-fund basis to the depositary in order to enable it to record the movements in the financial instruments accounts opened in its books | |
| no additional rules are necessary, the current regulation is appropriate | |
| other | |

If yes, please explain why you think the obligation for the asset manager to provide the depositary with the contract it has concluded with the tri-party collateral manager should be explicitly regulated by the AIFMD. Please present benefits and disadvantages of this approach as well as potential costs of the change, where possible.

If yes, please explain why you think the flow of information between the tri-party collateral manager and the depositary should be explicitly regulated by the AIFMD. Please present benefits and disadvantages of this approach as well as potential costs of the change, where possible.

If yes, please explain why you think the frequency at which the tri-party collateral manager should transmit the positions on a fund-by-fund basis to the depositary in order to enable it to record the movements in the financial instruments accounts opened in its books should be explicitly regulated by the AIFMD. Please present benefits and disadvantages of this approach as well as potential costs of the change, where possible.

If yes, please specify what are the other aspect(s) that should be explicitly regulated by the AIFMD. Please present benefits and disadvantages of this/these approach(es) as well as potential costs of the change, where possible.

Question 28 - Are the AIFMD rules on the prime brokers clear?

Please choose between:

- Yes
- No
- Don't know / no opinion / **not relevant**

Question 28.1 – If not, please explain your answer to Question 28, providing concrete examples of ambiguities and where available suggesting improvements.

Our members do not use prime brokers.

Question 29 - Where applicable, are there any difficulties faced by depositaries in obtaining the required reporting from prime brokers?

Please choose between:

- Yes
- No
- Don't know / no opinion / **not relevant**

Question 29.1 – If yes, please explain your answer to Question 29, providing concrete examples and suggesting improvements to the current rules and presenting benefits and disadvantages of the potential changes as well as costs.

Question 30 - What additional measures are necessary at EU level to address the difficulties identified in the response to the preceding question? Please explain your answer providing concrete examples.

Question 31 - Does the lack of the depositary passport inhibit efficient functioning of the EU AIF market?

Please choose between:

- **Yes**
- **No**
- **Don't know / no opinion / not relevant**

Question 31.1 - Please explain your answer to Question 31.

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 agree with the Commission that **“the lack of a depositary passport is at odds with the spirit of the single market.”**⁵ 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.

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.

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. 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 underline 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.

Question 32 - What would be the potential benefits and risks associated with the introduction of the depositary passport? Please explain your position, presenting benefits and disadvantages of your suggested approach as well as potential costs of the change, where possible.

⁵ 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

We see the introduction of depositary passporting as **a logical step to achieve a complete internal market for the asset management industry** which would bring benefits in terms of financial stability, supervision, costs and investor protection.

- **Financial stability:** the establishment of the depositary passporting regime would fairly limit the concentration and the systemic risks at a domestic level. Indeed, the issue of concentration risk is seen in small jurisdictions where problems of scale make it less attractive for new and notably large depositaries to operate in these countries.
- **Supervision:** Allowing depositaries to obtain authorisation in a single jurisdiction and then passport services into other jurisdictions would reduce regulatory burdens for players and regulators.
- **Costs:** As a result of not having to deal with multiple business establishments along with a reduction in the regulatory capital requirements associated with multiple business establishments, the costs associated with running a depositary business would be reduced. In addition, the centralisation of employment in a single entity would lead to economies of scale and operational efficiencies. Given the level of competitiveness in the market this would undoubtedly lead to cost savings that would be passed on to AIF clients.
- **Benefits for investment funds and investor:** the depositary passport would bring more competition in the depositary field and more choice of service providers for investment funds and investors, possibly leading to a reduction in counterparty risks as well as lower depositary costs. For instance, in France, there is only a handful of large depositaries which dominate the market. In addition, by allowing for the centralisation of staff, it would be possible for 'centres of excellence' to develop leading to an increase in service quality and consistency.

Again, we would like to underline 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.

Question 33 - What barriers are precluding introducing the depositary passport? Please explain your position providing concrete examples and evidence, where available, of the existing impediments.

Question 34 - Are there other options that could address the lack of supply of depositary services in smaller markets? Please explain your position presenting benefits and disadvantages of your suggested approach as well as potential costs of the change.

Ideally (and in a well-functioning Capital Markets Union), managers should be able to benefit from the efficiencies and other benefits that flow from being able to choose freely from amongst depositaries located across the EU.

Question 35 - Should the investor CSDs be treated as delegates of the depositary?

Please choose between:

- Yes
- No
- Don't know / no opinion / not relevant

Question 35.1 - Please explain your answer to Question 35, providing concrete examples and suggesting improvements to the current rules and presenting benefits and disadvantages as well as costs.

c) Transparency and conflicts of interest

Question 36 - Are the mandatory disclosures under the AIFMD sufficient for investors to make informed investment decisions?

Please choose between:

- Yes
- No
- Don't know / no opinion / not relevant

Question 36.1 - If not, what elements of the mandatory disclosures under the AIFMD could be amended? Please explain your position presenting benefits and disadvantages of the potential changes as well as costs.

Question 37 - What elements of mandatory disclosure requirements, if any, should differ depending on the type of investor? Please explain your position, presenting benefits and disadvantages of the potential changes as well as costs.

In our opinion, mandatory disclosure requirements should not differ depending on the type of investor.

Question 38 - Are there any additional disclosures that AIFMs could be obliged to make on an interim basis to the investors other than those required in the annual report?

Please choose between:

- Yes
- **No**
- Don't know / no opinion / not relevant

Question 38.1 – If yes, please explain your answer to Question 38, presenting benefits and disadvantages of the potential changes as well as costs.

Question 39 - Are the AIFMD rules on conflicts of interest appropriate and proportionate?

Please choose between:

- **Yes**
- No
- Don't know / no opinion / not relevant

Question 39.1 - If not, how could the AIFMD rules on conflicts of interest be amended? Please provide your suggestions, presenting benefits and disadvantages of the potential changes as well as costs.

d) Valuation rules

Question 40 - Are the AIFMD rules on valuation appropriate?

Please choose between:

- **Yes**
- No
- Don't know / no opinion / not relevant

Question 40.1 – If not, please explain your answer to Question 40, presenting benefits and disadvantages of the potential changes as well as costs.

Question 41 - Should the AIFMD legal framework be improved further given the experience with asset valuation during the recent pandemic?

Please choose between:

- Yes
- **No**
- Don't know / no opinion / not relevant

In light of the recent pandemic, we believe that the existing legal framework remains appropriate. AIFMs were able to take the appropriate measures in timely manner, taking into account the recommendations of their professional associations or international guidelines, where relevant. **In our opinion, market practice was efficient in dealing with the emergencies stemming from the crisis.**

The International Private Equity and Venture Capital Valuation Guidelines, produced and regularly updated by the IPEV Board, provide high-quality, uniform, globally-acceptable, best practice, principles-based valuation guidelines for private equity and venture capital practitioners in order to assist their compliance with accounting and regulatory requirements, in a form that is simple for all practitioners, regardless of size, to implement.

We believe that such **guidance as well as other soft law measures are appropriate to deal with emergency situations.** In our opinion, legislative measures would most probably not be flexible and reactive enough.

Question 41.1 – If yes, please explain your answer to Question 41, presenting benefits and disadvantages of the potential changes as well as costs.

Question 42 - Are the AIFMD rules on valuation clear?

Please choose between:

- **Yes**
- No
- Don't know / no opinion / not relevant

Question 42.1 – If not, please explain your answer to Question 42.

Question 43 - Are the AIFMD rules on valuation sufficient?

Please choose between:

- **Yes**
- No
- Don't know / no opinion / not relevant

Question 43.1 – If not, please explain your answer to Question 43, explaining what rules on valuation are desirable to be included in the AIFMD legal framework.

Question 44 - Do you consider that it should be possible in the asset valuation process to combine input from internal and external valuers?

Please choose between:

- **Yes**
- No
- Don't know / no opinion / not relevant

Question 44.1 - Please substantiate your answer to Question 44, also in terms of benefits, disadvantages and costs.

France Invest would like to note that, currently, AIFMs may use both internal and external valuers and combine their input in the asset valuation process. We deem this framework appropriate and **we call for the rules to remain unchanged. The combination of internal and external valuers should remain an option at the discretion of AIFMs.** Indeed, the involvement of two players implies additional costs and, in any case, the fund's accounts are reviewed by auditors.

We would like to stress the need for AIFMs to perform the valuation function internally, in compliance with the applicable rules, would they deem so appropriate. In particular, in the case of venture capital and private equity funds, AIFMs may have a better understanding of the companies in the funds' portfolio and may prefer using internal valuers. Therefore, **the existing option offered to AIFMs to use an internal valuer should be maintained.**

Question 45 - In your experience, which specific aspect(s) trigger liability of a valuer? Please provide concrete examples, presenting costs linked to the described occurrence.

We understand that the AIFM is ultimately responsible for the valuation of assets in any case.

Question 46 - In your experience, what measures are taken to mitigate/offset the liability of valuers in the jurisdiction of your choice? Please provide concrete examples, presenting benefits and disadvantages as well as costs of the described approach.

Chapter III - International relations

Background:

Considering the global nature of financial services, the AIFMD interacts with the third country regulatory regimes. By adopting the AIFMD the EU co-legislators sought to put in place a legal framework for tackling risks emanating from AIF activities that may impact the EU financial stability, market integrity and investor protection. The questions below are seeking views on where to strike the balance of having a functioning, efficient AIF market and ensuring that it operates under the conditions of a fair competition without undermining financial stability. Besides posing general questions on the competitiveness of the EU AIF market, this section seeks views on how the EU market could interact with international partners in the area governed by the AIFMD. The focus is on the appropriateness of the AIFMD third country passport regime and delegation rules.

Question 47 - Which elements of the AIFMD regulatory framework support the competitiveness of the EU AIF industry? Please explain providing concrete examples and referring to data where available.

At the end of 2018, AIFs reached EUR 5.8 tn in net asset value. They accounted for 40% of the EU fund industry. Among AIF types, private equity funds accounted for 6% of the NAV of all AIFs, or EUR 352 bn. These funds experienced the largest growth in 2018. 60% used the EU distribution passport and retail participation was 5%⁶. As of end 2017, the French Autorité des Marchés Financiers counted 5,168 AIFs subject to reporting in France, representing EUR 688 bn in net assets and EUR 915 bn in exposure⁷.

⁶ ESMA's second statistical report on European Union (EU) Alternative Investment Funds, January 2020

⁷ AMF's first results from AIFM reporting, January 2019

In addition, the management and marketing passports work well. Managers can freely market AIFs to professional investors across the EU and can also manage funds domiciled in other jurisdictions.

- 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” has become a competitive advantage for EU managers, in particular vis-à-vis non-EU investors. It is a proof of quality and security. In particular, transparency obligations and the requirement for a depositary contribute to bringing comfort to investors. 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. From a general perspective, the balance between maintaining a robust and effective regulatory regime, while avoiding the introduction of 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.

Question 48 - Which elements of the AIFMD regulatory framework could be altered to enhance competitiveness of the EU AIF industry? Please explain providing concrete examples and referring to data where available.

The competitiveness of the EU AIF industry could be further enhanced by a more harmonised supervision in the Single Market and increased consistency with regards the activity of non-EU AIFMs and distribution of non-EU AIFs in the EU.

Question 49 - Do you believe that national private placement regimes create an uneven playing field between EU and non-EU AIFMs?

Please choose between:

- Yes
- **No**
- Don't know / no opinion / not relevant

Question 49.1 - If yes, i.e. if you believe there is an uneven playing field between EU and non-EU AIFMs, which action would you suggest to address the issue? Please explain your choice, presenting benefits and disadvantages of the potential changes to the AIFMD as well as potential costs associated with your preferred option.

In the absence of passport for non-EU AIFMs and AIFs, **NPPRs allow the distribution of funds and allow investors to access performance opportunities outside the EU**. In this context, NPPRs create a different playing field for EU and non-EU AIFMs. In other words, EU AIFMs – which must comply with the requirements set out by the AIFMD – benefit from the EU passport and, conversely, non-EU AIFMs – which do not have to fulfil the obligations of the Directive – may use NPPRs. We call for NPPRs to be maintained and, where possible, to be harmonised.

Question 50 - Are the delegation rules sufficiently clear to prevent creation of letter-box entities in the EU?

Please choose between:

- Yes
- No
- Don't know / no opinion / **not relevant**

Question 50.1 – If not, please explain your answer to Question 50.

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.**

Question 51 - Are the delegation rules under the AIFMD/AIFMR appropriate to ensure effective risk management?

Please choose between:

- **Yes**
- No
- Don't know / no opinion / not relevant

Question 51.1 – If not, please explain your answer to Question 51, presenting benefits and disadvantages of the current rules and where available providing concrete examples substantiating your answer.

Question 52 - Should the AIFMD/AIFMR delegation rules, and in particular Article 82 of the Commission Delegated Regulation (EU) No 231/2013, be complemented?

Please choose between:

- Yes
- **No**
- Don't know / no opinion / not relevant

Question 52.1 – If yes, should the delegation rules be complemented with?

Please select as many answers as you like.

| | Yes/No |
|--|--------|
| quantitative criteria | No |
| a list of core or critical functions that would be always performed internally and may not be delegated to third parties | No |
| other requirements | No |

If yes, please explain why you think the AIFMD/AIFMR delegation rules should be complemented with quantitative criteria, presenting benefits and disadvantages of the potential changes as well as costs.

If yes, please explain why you think the AIFMD/AIFMR delegation rules should be complemented with a list of core or critical functions, presenting benefits and disadvantages of the potential changes as well as costs.

If yes, please explain with what other requirements the AIFMD/AIFMR delegation rules should be complemented, presenting benefits and disadvantages of the potential changes as well as costs.

Question 53 - Should the AIFMD standards apply regardless of the location of a third party, to which AIFM has delegated the collective portfolio management functions, in order to ensure investor protection and to prevent regulatory arbitrage?

Please choose between:

- Yes
- No
- Don't know / no opinion / **not relevant**

Question 53.1 - Please explain your answer to Question 53.

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.

Question 54 - Do you consider that a consistent enforcement of the delegation rules throughout the EU should be improved?

Please choose between:

- **Yes**
- No
- Don't know / no opinion / not relevant

Question 54.1 – If yes, please explain your answer to Question 54, presenting benefits and disadvantages of the current rules and where available providing concrete examples substantiating your answer.

In our opinion, 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.

Question 55 - Which elements of the AIFMR delegation rules could be applied to UCITS? Please explain your position, presenting benefits and disadvantages of the potential changes as well as costs.

We do not have any opinion on this issue, as our members only manage AIFs.

Chapter IV - Financial stability

Background:

One of the main objectives of the AIFMD is to enable supervisors to appreciate and mitigate systemic risks building up in financial markets from different sources. To this end, AIFMs are subject to periodic reporting obligations and supervisors are equipped with certain market intervention powers to mitigate negative effects to the financial stability that may arise from the activities on the AIF market.

The section below invites opinions whether the intervention powers and a tool-kit available to the relevant supervisors are sufficient in times of severe market disruptions. Shared views on the adequacy of the AIFMR supervisory reporting template will be important in rethinking the AIFM supervisory reporting obligations. According to the FSB report, markets for leveraged loans and CLOs have grown significantly in recent years exceeding pre-crisis levels ([FSB, Vulnerabilities associated with leveraged loans and collateralised loan obligations \(CLOs\), PLEN/2019/91-REV, 22 November 2019](#)). While most leveraged loans are originated and held by banks, investment funds are also exposed to the leveraged loan and CLO markets. In order to assess risks to the financial stability and regulatory implications associated with leveraged loans and CLOs it would be commendable to continue collecting the relevant data and monitoring the market. The stakeholders are invited to cast their views on the matter.

With particular regard to the loan originating AIFs, suggestions on the optimal harmonisation of the rules that could apply to these collective investment vehicles are welcome. Finally, questions are raised whether leverage calculation methods could benefit from further standardisation of metrics across the AIF market and potentially also across the UCITS for the supervisors to have a complete picture of the level of leverage engaged by the collective investment funds.

a) Macroprudential tools

Question 56 - Should the AIFMD framework be further enhanced for more effectively addressing macroprudential concerns?

Please choose between:

- Yes
- No
- Don't know / no opinion / not relevant

Question 56.1 – If No or Don't know, please explain your answer to Question 56.

As far as venture capital and private equity funds are concerned, **the AIFMD framework does not need to be further enhanced to address macroprudential concerns.**

We would like to take this opportunity to reassert that **closed ended funds investing in non-listed equity are subject to different liquidity requirements from “traditional” funds, as they do not offer redemption rights throughout their lifecycle and do not have to bear short term liquidity pressures from investors.**

In our opinion, this specific feature should be better taken 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, **the long-term nature of closed-ended venture capital and private equity funds should imply the non-application of liquidity requirements** relating to open-ended funds as they do not raise the same macro prudential concerns.

Furthermore, 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.

Question 56.1 - If yes, which of the following amendments to the AIFMD legal framework would you suggest?

Please select as many answers as you like.

| | Yes/No |
|--|--------|
| improving supervisory reporting requirements | No |

| | |
|---|----|
| harmonising availability of liquidity risk management tools for AIFMs across the EU | No |
| further detailing cooperation of the NCAs in case of activating liquidity risk management tools, in particular in situations with cross-border implications | No |
| further clarifying grounds for supervisory intervention when applying macroprudential tools | No |
| defining an inherently liquid/illiquid asset | No |
| granting ESMA strong and binding coordination powers in market stress situations | No |
| other | No |

Please explain why you would suggest improving supervisory reporting requirements. Please present benefits and disadvantages of the potential changes as well as costs.

Please explain why you would suggest harmonising availability of liquidity risk management tools for AIFMs across the EU. Please present benefits and disadvantages of the potential changes as well as costs.

Please explain why you would suggest further detailing cooperation of the NCAs in case of activating liquidity risk management tools, in particular in situations with cross-border implications. Please present benefits and disadvantages of the potential changes as well as costs.

Please explain why you would suggest further clarifying grounds for supervisory intervention when applying macroprudential tools. Please present benefits and disadvantages of the potential changes as well as costs.

Please explain why you would suggest defining an inherently liquid/illiquid asset. Please present benefits and disadvantages of the potential changes as well as costs.

Please explain why you would suggest granting ESMA strong and binding coordination powers in market stress situations. Please present benefits and disadvantages of the potential changes as well as costs.

Please explain what other amendments to the AIFMD legal framework you would suggest. Please present benefits and disadvantages of the potential changes as well as costs.

Question 57 - Is there a need to clarify in the AIFMD that the NCAs' right to require the suspension of the issue, repurchase or redemption of units in the public interest includes financial stability reasons?

Please choose between:

- Yes
- No
- Don't know / no opinion / **not relevant**

Question 57.1 - Please explain your answer to Question 57, presenting benefits and disadvantages of the potential changes to the existing rules and processes as well as costs.

Since venture capital and private equity funds are closed-ended (and typically unleveraged) and since they do not repurchase or redeem units, this tool is of little impact on our business.

Question 58 - Which data fields should be included in a template for NCAs to report relevant and timely data to ESMA during the period of the stressed market conditions? Please provide your suggestions, presenting benefits and disadvantages of the potential changes as well as costs.

We would like to reassert that closed-ended funds investing in non-listed equity are subject to different liquidity requirements from “traditional” funds, as they do not offer redemption rights throughout their lifecycle and do not have to bear short term liquidity pressures from investors. **The proportionality principle should fully apply with respect to any supervisory reporting requirements** in order to ensure that they are relevant to these funds.

Question 59 - Should AIFMs be required to report to the relevant supervisory authorities when they activate liquidity risk management tools?

Please choose between:

- Yes
- No
- Don't know / no opinion / **not relevant**

Question 59.1 – If not, please explain your answer to Question 59, providing costs, benefits and disadvantages of the advocated approach.

Question 60 - Should the AIFMD rules on remuneration be adjusted to provide for the de minimis thresholds?

Please choose between:

- Yes
- **No**
- Don't know / no opinion / not relevant

Question 60.1 – If yes, please explain your answer to Question 60, suggesting thresholds and justification thereof, if applicable.

With regards rules on remunerations, we support maintaining the application of the proportionality principle.

Nevertheless, we acknowledge that it could be considered to complement it by the introduction of de minimis thresholds at EU level, which are already used in practice in some Member States, in order to ensure the appropriate level of harmonisation throughout the EU.

In our opinion, these thresholds should take into account tax and social contribution issues, size and, internal organization of the AIFM as well as the nature, scope and complexity of its activities, conditions prevailing on the job market, labour laws and equal pay:

- **Tax issues and social contributions:** we would like to recall that the financial sector is a significant contributor to the finances of the Member States. Capping remunerations would therefore lead to a reduction in public financing. It also pays social contributions, which should be taken into account when considering setting a threshold. Taking these two factors into consideration, **we call for the de minimis thresholds to apply to “net net” remunerations**, in order to ensure a level playing field across the EU.
- **The size and, internal organization of the AIFM as well as the nature, scope and complexity of its activities:**
 - Variable remunerations depend on the performance of both individuals and firms. At the early stage of their development, firms may not be in a position to offer high levels of remuneration.
 - The introduction of de minimis thresholds should provide for a specific treatment of specific remuneration arrangements. For instance, private equity carried interest and co-investment arrangements feature inherent long-term deferral and risk-adjustment characteristics. In addition, distributions (i.e. the payments made as a result of these arrangements) are based only on realised (not accounting)

- profits. These arrangements align interests and provide a variable long-term incentive to executives / “identified staff” of the fund manager.
- Any threshold effects should be monitored and mitigated.
- **Conditions prevailing on the job market** (especially in a Brexit context): job markets are competitive and global, and it may be difficult to attract the appropriate skills and competences, as they are volatile and can relocate easily. Too restrictive rules might have unintended consequences and in the end benefit non-EU jurisdictions.
- **Labour laws** (on deferred payments in particular) and equal pay.

The de minimis thresholds should trigger the application of the proportionality principle, which is an essential tool for ensuring that private equity and venture capital fund managers can adopt effective and workable remuneration practices that are appropriate and necessary to the financial sub-sector in which they operate, to their risk profiles and governance structures.

b) Supervisory reporting requirements

Question 61 - Are the supervisory reporting requirements as provided in the AIFMD and AIFMR’s Annex IV appropriate?

Please choose between:

- Fully agree
- Somewhat agree
- Neutral
- Somewhat disagree
- Fully disagree
- Don’t know / no opinion / not relevant

Question 61.1 – If you agree, are neutral or don’t know, please explain your answer to Question 61.

We believe that supervisory requirements 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 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 + control | | 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 leverage + 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 |

Question 61.1 - If you disagree that the supervisory reporting requirements as provided in the AIFMD and AIFMR’s Annex IV are appropriate, it is because of:

Please select as many answers as you like.

| | Yes/No |
|--|--------|
| overlaps with other EU laws | |
| the reporting coverage is insufficient | No |
| the reporting coverage is superfluous | Yes |
| other | |

Please detail as much as possible your answer providing examples of the overlaps. Where possible, please provide concrete examples and where relevant information on costs and benefits in changing the currently applicable reporting requirements.

Please detail as much as possible your answer providing examples of the insufficient reporting coverage. Where possible, please provide concrete examples and where relevant information on costs and benefits in changing the currently applicable reporting requirements.

Please detail as much as possible your answer providing examples of the superfluous reporting coverage. Where possible, please provide concrete examples and where relevant information on costs and benefits in changing the currently applicable reporting requirements.

It should be ensured that the data provided to regulators is relevant and useful.

Please specify for what other reason the supervisory reporting requirements as provided in the AIFMD and AIFMR’s Annex IV are not appropriate. Where possible, please provide concrete examples and where relevant information on costs and benefits in changing the currently applicable reporting requirements.

Question 62 - Should the AIFMR supervisory reporting template provide a more comprehensive portfolio breakdown?

Please choose between:

- Yes
- **No**
- Don’t know / no opinion / not relevant

Question 62.1 - If yes, the more detailed portfolio reporting should be achieved by:

Please select as many answers as you like.

| | Yes/No |
|---|--------|
| a full portfolio reporting by relevant identifier as provided for statistical purposes | No |
| a more granular geographical breakdown of exposures (e.g. at country level) by asset classes, investors, counterparties, and sponsorship arrangements | No |
| requiring more details on leverage | No |
| requiring more details on liquidity | No |
| requiring more details on sustainability-related information, e.g. risk exposure and/or impacts | No |
| other | No |

Please explain why you think the more detailed portfolio reporting should be achieved by a full portfolio reporting by relevant identifier as provided for statistical purposes. Please include concrete examples and, where possible, provide information on the benefits, disadvantages and costs of implementing this proposition.

Please explain why you think the more detailed portfolio reporting should be achieved by more granular geographical breakdown of exposures by asset classes, investors, counterparties, and sponsorship arrangements. Please include concrete examples and, where possible, provide information on the benefits, disadvantages and costs of implementing this proposition.

Please explain why you think the more detailed portfolio reporting should be achieved by requiring more details on leverage. Please include concrete examples and, where possible, provide information on the benefits, disadvantages and costs of implementing this proposition.

Please explain why you think the more detailed portfolio reporting should be achieved by requiring more details on liquidity. Please include concrete examples and, where possible, provide information on the benefits, disadvantages and costs of implementing this proposition.

Please explain why you think the more detailed portfolio reporting should be achieved by requiring more details on sustainability-related information. Please include concrete examples and, where possible, provide information on the benefits, disadvantages and costs of implementing this proposition.

Please explain by what other ways you think the more detailed portfolio reporting should be achieved. Please include concrete examples and, where possible, provide information on the benefits, disadvantages and costs of implementing this proposition.

Question 63 - Should the identification of an AIF with a LEI identifier be mandatory?

Please choose between:

- Yes
- **No**
- Don't know / no opinion / not relevant

Question 63.1 - Please explain your answer to Question 63, presenting benefits and disadvantages as well as costs associated with introducing such a requirement.

The use of LEIs is already covered by existing regulations and does not need to be addressed in the AIFMD. For example, it is required for the performance of investment services. Therefore, there is no need to replicate these rules in the AIFMD. More generally, the use of LEIs should be carefully assessed with regard to their cost. Introducing such a mandatory requirement would generate additional costs as well as increased complexity and potential overlaps.

Question 64 - Should the identification of an AIFM with a LEI identifier be mandatory?

Please choose between:

- Yes
- **No**
- Don't know / no opinion / not relevant

Question 64.1 - Please explain your answer to Question 64, presenting benefits and disadvantages as well as costs associated with introducing such a requirement.

The use of LEIs is already covered by existing regulations and does not need to be addressed in the AIFMD. For example, it is required for the performance of investment services. Therefore, there is no need to replicate these rules in the AIFMD. More generally, the use of LEIs should be carefully assessed with regard to their cost. Introducing such a mandatory requirement would generate additional costs as well as increased complexity and potential overlaps.

Question 65 - Should the use of a LEI identifier for the purposes of identifying the counterparties and issuers of securities in an AIF's portfolio be mandatory for the Annex IV reporting of AIFMR?

Please choose between:

- Yes
- **No**
- Don't know / no opinion / not relevant

Question 65.1 - Please explain your answer to Question 65, presenting benefits and disadvantages as well as costs associated with introducing such a requirement.

The use of LEIs is already covered by existing regulations and does not need to be addressed in the AIFMD. For example, it is required for the performance of investment services. Therefore,

there is no need to replicate these rules in the AIFMD. More generally, the use of LEIs should be carefully assessed with regard to their cost. Introducing such a mandatory requirement would generate additional costs as well as increased complexity and potential overlaps.

Question 66 - Does the reporting data adequately cover activities of loan originating AIFs?

Please choose between:

- Yes
- No
- Don't know / no opinion / not relevant

Question 66.1 – If Yes or Don't know, please explain your answer to Question 66.

In our opinion, the reporting data adequately covers activities of loan originating AIFs. In addition, French AIFMs are subject to national requirements in this respect.

Question 66.1 - If not, what data fields should be added to the supervisory reporting template?

Please select as many answers as you like.

| | Yes/No |
|------------------------------------|--------|
| loans originated by AIFs | No |
| leveraged loans originated by AIFs | No |
| other | No |

Please explain why you think loans originated by AIFs should be added as a data field to the supervisory reporting template, providing information on the benefits, disadvantages and costs of implementation.

Please explain why you think leveraged loans originated by AIFs should be added as a data field to the supervisory reporting template, providing information on the benefits, disadvantages and costs of implementation.

Please explain what other data field(s) should be added to the supervisory reporting template, providing information on the benefits, disadvantages and costs of implementation.

Question 67 - Should the supervisory reporting by AIFMs be submitted to a single central authority?

Please choose between:

- Yes
- No
- Don't know / no opinion / not relevant

Question 67.1 – If No or Don't know, please explain your answer to Question 67.

We are not against submitting the supervisory reporting by AIFMs to a single central authority, such as ESMA, as this would allow supervisors to have an integrated view, provided that:

- the latter actually treats and analyses it, and publishes its work;
- AIFMs are not required to multiply their reporting submissions;
- NCAs have easy access to such reporting.

In any case, As regards supervisory responsibilities, it is crucial to make a distinction between the collation and provision of data on the one hand and authorisation and supervision on the other. We believe that the NCAs should continue to have direct supervisory responsibility over AIFMs; that should remain a national responsibility. ESMA should not take over this role from the NCAs.

Question 67.1 - If yes, which one?

| | Yes/No |
|---------------|--------|
| ESMA | Yes |
| other options | |

Please explain your choice, particularly substantiating 'other options', and provide information, where available, on the benefits, disadvantages and costs of implementing each proposition.

Question 68 - Should access to the AIFMD supervisory reporting data be granted to other relevant national and/or EU institutions with responsibilities in the area of financial stability?

Please choose between:

- Yes
- No
- Don't know / no opinion / not relevant

Question 68.1 – If No or Don't know, please explain your answer to Question 68.

Question 68.1 - If yes, please specify which one.

Note: Only one option possible.

| | Yes/No |
|---------------------------------------|--------|
| ESRB | |
| ECB | |
| NCBs | |
| National macro-prudential authorities | |
| Other | |

Question 68.2 – If one of the first four options, please explain your answer to Question 68.1.

If Other, please specify to which other relevant national and/or EU institutions the access to the AIFMD supervisory reporting data should be granted.

Question 69 - Does the AIFMR template effectively capture links between financial institutions?

Please choose between:

- Yes
- No
- Don't know / no opinion / not relevant

Question 69.1 - If not, what additional reporting should be required to better capture inter-linkages between AIFMs and other financial intermediaries? Please provide your suggestion(s) providing information on the costs, benefits and disadvantages of each additional reporting.

Question 69.1 – If Yes or Don't know, please explain your answer to Question 69.

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).

Question 70 - Should the fund classification under the AIFMR supervisory reporting template be improved to better identify the type of AIF?

Please choose between:

- Yes
- No
- Don't know / no opinion / not relevant

Question 70.1 – If No or Don't know, please explain your answer to Question 70.

Question 70.1 - If yes, the AIF classification could be improved by:

Please select as many answers as you like.

| | Yes/No |
|--|--------|
| permitting multiple choice of investment strategies in the AIFMR template | No |
| adding additional investment strategies | Yes |
| other | No |
| it cannot be improved, however, if a portfolio breakdown is provided to the supervisors this can be inferred | No |

Please explain why you think the AIF classification could be improved by permitting multiple choice of investment strategies in the AIFMR template, providing information, where available, on the costs, benefits and disadvantages of this option.

Please explain why you think the AIF classification could be improved by adding additional investment strategies, providing information, where available, on the costs, benefits and disadvantages of this option.

AIFs are currently classified into the following categories: "private equity", "real estate", "hedge funds", "funds of funds", "other" and "none". ESMA's latest statistical report on EU AIFs⁸ shows that private equity funds represent 2% of AIFs and that "other" funds represent about half of AIFs.

⁸ <https://www.esma.europa.eu/press-news/esma-news/esma-report-values-eu-alternative-investment-funds-%E2%82%AC58-trillion>

Private equity fund types include growth, mezzanine, venture capital and multi-strategy private equity funds. Currently, private equity fund types do not include buyouts, although this category accounts for a significant proportion of the private equity industry. **We therefore propose to add a category “buyout” into the private equity fund types.**

The “other AIFs” category, which concerns about half of EU AIFs, includes in particular infrastructure funds. **We suggest removing infrastructure funds from this category and turning it into a standalone category of AIFs**, alongside the private equity, real estate, hedge funds and funds of funds categories. This would contribute not only to reducing the portion of “other funds” and making the supervisory reporting more meaningful, but also to giving more visibility to these funds which are key in meeting the needs in long term financing of the real economy.

Please explain by what other ways the AIF classification could be improved, providing information, where available, on the costs, benefits and disadvantages of this option.

Please explain why you think the AIF classification cannot be improved unless a portfolio breakdown is provided to the supervisors. Please provide information, where available, on the costs, benefits and disadvantages of this option.

Question 71 - What additional data fields should be added to the AIFMR supervisory reporting template to improve capturing risks to financial stability?

Please select as many answers as you like.

As far as private equity and venture capital funds are concerned, **we do not think that additional data fields should be added to the AIFMR supervisory reporting template** to improve capturing risks to financial stability. **Most data fields proposed by the Commission are not relevant to private equity and venture capital funds.** Concerning sustainability-related data, we believe that the requirements set out in other EU regulations (in particular Disclosure and Taxonomy) provide for sufficient transparency.

| | Yes/No |
|---|--------|
| value at Risk (VaR) | No |
| additional details used for calculating leverage | No |
| additional details on the liquidity profile of the fund’s portfolio | No |

| | |
|---|----|
| details on initial margin and variation margin | No |
| the geographical focus expressed in monetary values | No |
| the extent of hedging through long/short positions by an AIFM/AIF expressed as a percentage | No |
| liquidity risk management tools that are available to AIFMs | No |
| data on non-EU master AIFs that are not marketed into the EU, but which have an EU feeder AIF or a non-EU feeder marketed into the EU if managed by the same AIFM | No |
| the role of external credit ratings in investment mandates | No |
| LEIs of all counterparties to provide detail on exposures | No |
| sustainability-related data, in particular on exposure to climate and environmental risks, including physical and transition risks (e.g. shares of assets for which sustainability risks are assessed; types and magnitudes of risks; forward-looking, scenario-based data) | No |
| other | No |

Please explain why value at Risk (VaR) should be added to the AIFMR supervisory reporting template, providing as much detail as possible and relevant examples as well as the costs, benefits and disadvantages of this option.

Please explain why additional details used for calculating leverage should be added to the AIFMR supervisory reporting template, providing as much detail as possible and relevant examples as well as the costs, benefits and disadvantages of this option.

Please explain why additional details on the liquidity profile of the fund's portfolio should be added to the AIFMR supervisory reporting template, providing as much detail as possible and relevant examples as well as the costs, benefits and disadvantages of this option.

Please explain why details on initial margin and variation margin should be added to the AIFMR supervisory reporting template, providing as much detail as possible and relevant examples as well as the costs, benefits and disadvantages of this option.

Please explain why the geographical focus expressed in monetary values should be added to the AIFMR supervisory reporting template, providing as much detail as possible and relevant examples as well as the costs, benefits and disadvantages of this option.

Please explain why the extent of hedging through long/short positions by an AIFM/AIF expressed as a percentage should be added to the AIFMR supervisory reporting template,

providing as much detail as possible and relevant examples as well as the costs, benefits and disadvantages of this option.

Please explain why data on non-EU master AIFs that are not marketed into the EU, but which have an EU feeder AIF or a non-EU feeder marketed into the EU if managed by the same AIFM should be added to the AIFMR supervisory reporting template, providing as much detail as possible and relevant examples as well as the costs, benefits and disadvantages of this option.

Please explain why the role of external credit ratings in investment mandates should be added to the AIFMR supervisory reporting template, providing as much detail as possible and relevant examples as well as the costs, benefits and disadvantages of this option.

Please explain why LEIs of all counterparties to provide detail on exposures should be added to the AIFMR supervisory reporting template, providing as much detail as possible and relevant examples as well as the costs, benefits and disadvantages of this option.

Please explain why sustainability-related data, in particular on exposure to climate and environmental risks, including physical and transition risks should be added to the AIFMR supervisory reporting template, providing as much detail as possible and relevant examples as well as the costs, benefits and disadvantages of this option.

Please explain what other data fields should be added to the AIFMR supervisory reporting template, providing as much detail as possible and relevant examples as well as the costs, benefits and disadvantages of this option.

Question 72 - What additional data fields should be added to the AIFMR supervisory reporting template to better capture AIF's exposure to leveraged loans and CLO market?

Please explain your answer providing as much detail as possible and relevant examples as well as the costs, benefits and disadvantages.

The members of France Invest do not manage AIFs exposed to leverage loans and CLO market.

Question 73 - Should any data fields be deleted from the AIFMR supervisory reporting template?

Please choose between:

- Yes
- No
- Don't know / no opinion / not relevant

Question 73.1 – If yes, please explain your answer to Question 73, presenting the costs, benefits and disadvantages of each data field suggested for deletion.

Question 74 - Is the reporting frequency of the data required under Annex IV of the AIFMR appropriate?

Please choose between:

- Yes
- No
- Don't know / no opinion / not relevant

Question 74.1 – If not, please explain your answer to Question 74, presenting the costs, benefits and disadvantages for a suggested change, if any.

Question 75 - Which data fields should be included in a template requiring AIFMs to provide ad hoc information in accordance with Article 24(5) of the AIFMD during the period of the stressed market in a harmonised and proportionate way? Please explain your answer presenting the costs, benefits and disadvantages of implementing the suggestions.

Private equity and venture capital funds are closed ended and as a consequence are not concerned by reporting during periods of stress market.

Question 76 - Should supervisory reporting for UCITS funds be introduced?

Please choose between:

- Yes
- No
- Don't know / no opinion / not relevant

Question 76.1 - Please explain your answer to Question 76, also in terms of costs, benefits and disadvantages.

The members of France Invest do not manage UCITS funds. We do not have an opinion on whether supervisory reporting for UCITS should be introduced.

Question 77 - Should the supervisory reporting requirements for UCITS and AIFs be harmonised?

Please choose between:

- Yes
- **No**
- Don't know / no opinion / not relevant

Question 77.1 - Please explain your answer to Question 77, also in terms of costs, benefits and disadvantages.

Supervisory reporting requirements should be tailored to the funds' investment strategy. The strategies of AIFs, may they be real estate, infrastructure, venture capital and private equity funds, are very specific and different from the strategies of UCITS. While it may be considered to harmonise supervisory reporting requirements for UCITS and "UCITS like" funds, we believe this does not make sense to harmonise them for UCITS and other AIFs.

Question 78 - Should the formats and definitions be harmonised with other reporting regimes (e.g. for derivatives and repos, that the AIF could report using a straightforward transformation of the data that they already have to report under EMIR or SFTR)?

Please choose between:

- Yes
- No
- Don't know / no opinion / not relevant

Question 78.1 - If yes, please explain your response indicating the benefits and disadvantages of a harmonisation of the format and definitions with other reporting regimes.

c) Leverage

Question 79 - Are the leverage calculation methods – gross and commitment – as provided in AIFMR appropriate?

Please choose between:

- Fully agree
- Somewhat agree
- Neutral
- Somewhat disagree
- Fully disagree
- Don't know / no opinion / not relevant

Question 79.1 - Please explain your answer to Question 79 in terms of the costs, benefits and disadvantages.

In our opinion, the leverage calculation methods – gross and commitment – as provided in AIFMR 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.

Question 80 - Should the leverage calculation methods for UCITS and AIFs be harmonised?

Please choose between:

- Yes
- No
- Don't know / no opinion / not relevant

Question 80.1 - If yes, what leverage calculation methods should be chosen to be applied for both UCITS and AIFs? Please explain your proposal, indicating the difficulties, costs and benefits of applying such methodology(ies) to both UCITS and AIFs.

Question 80.1 – If No or Don't know, please explain your answer to Question 80.

France Invest's members do not manage any UCITS funds. We would like to note, however, that private equity and venture capital funds and UCITS are two different categories of funds, in respect of their structure, purpose and investor base (the former invested in non-listed real assets and illiquid, the latter invested in listed financial markets and liquid) and that it would make sense to apply tailored rules to each of them.

Question 81 - What is your assessment of the two-step approach as suggested by International Organisation of Securities Commissions ('IOSCO') in the [Framework Assessing Leverage in Investment Funds published in December 2019](#) to collect data on the asset by asset class to assess leverage in AIFs?

Please provide it, presenting costs, benefits and disadvantages of implementing the IOSCO approach.

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.

Question 82 - Should the leverage calculation metrics be harmonised at EU level?

Please choose between:

- Yes
- No
- Don't know / no opinion / not relevant

Question 82.1 - Please explain your answer to Question 82, presenting the costs, benefits and disadvantages of your chosen approach.

We believe that the *implementation of leverage calculation metrics under the AIFMD should be harmonised among Member States* (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.

Question 83 - What additional measures may be required given the reported increase in CLO and leveraged loans in the financial system and the risks those may present to macro-prudential stability?

Please provide your suggestion(s) including information, where available, on the costs and benefits, advantages and disadvantages of the proposed measures.

The members of France Invest do not use CLO and leveraged loans.

Question 84 - Are the current AIFMD rules permitting NCAs to cap the use of leverage appropriate?

Please choose between:

- Yes
- No
- Don't know / no opinion / not relevant

Question 84.1 – If not, please explain your answer to Question 84, in terms of the costs, benefits and disadvantages.

Question 85 - Should the requirements for loan originating AIFs be harmonised at EU level?

Please choose between:

- Yes
- No
- Don't know / no opinion / not relevant

Question 85.1 – If No or Don't know, please explain your answer to Question 85.

Question 85.1 - If yes, which of the following options would support this harmonisation?
Please select as many answers as you like.

| | Yes/No |
|--|--------|
| limit interconnectedness with other financial intermediaries | |
| impose leverage limits | |
| impose additional organisational requirements for AIFMs | |
| allow only closed-ended AIFs to originate loans | |
| provide for certain safeguards to borrowers | |
| permit marketing only to professional investors | |
| impose diversification requirements | |
| impose concentration requirements | |

| | |
|-------|--|
| other | |
|-------|--|

Please explain why you think limiting interconnectedness with other financial intermediaries would support this harmonisation. Please provide information, where available, on the costs and benefits, advantages and disadvantages of this option. Concrete examples are welcome.

Please explain why you think imposing leverage limits would support this harmonisation. Please provide information, where available, on the costs and benefits, advantages and disadvantages of this option. Concrete examples are welcome.

Please explain why you think imposing additional organisational requirements for AIFMs would support this harmonisation. Please provide information, where available, on the costs and benefits, advantages and disadvantages of this option. Concrete examples are welcome.

Please explain why you think allowing only closed-ended AIFs to originate loans would support this harmonisation. Please provide information, where available, on the costs and benefits, advantages and disadvantages of this option. Concrete examples are welcome.

Please explain why you think providing for certain safeguards to borrowers would support this harmonisation. Please provide information, where available, on the costs and benefits, advantages and disadvantages of this option. Concrete examples are welcome.

Please explain why you think permitting marketing only to professional investors would support this harmonisation. Please provide information, where available, on the costs and benefits, advantages and disadvantages of this option. Concrete examples are welcome.

Please explain why you think imposing diversification requirements would support this harmonisation. Please provide information, where available, on the costs and benefits, advantages and disadvantages of this option. Concrete examples are welcome.

Please explain why you think imposing concentration requirements would support this harmonisation. Please provide information, where available, on the costs and benefits, advantages and disadvantages of this option. Concrete examples are welcome.

Please explain what other option would support this harmonisation. Please provide information, where available, on the costs and benefits, advantages and disadvantages of this option. Concrete examples are welcome.

Chapter V - Investing in private companies

Background:

The AIFMD rules regulating investing in private companies aim to increase transparency and accountability of collective investment funds holding controlling stakes in non-listed companies. This section seeks insights whether these provisions are delivering on the stated objectives and whether there are other ways to achieve those objectives more efficiently and effectively. Private equity industry has been growing for years from a few boutique firms to € 3,7 T global industry. The questions are raised therefore whether the AIFMD contains all the relevant regulatory elements that are fit for purpose.

Question 86 - Are the rules provided in Section 2 of Chapter 5 of the AIFMD laying down the obligations for AIFMs managing AIFs, which acquire control of non-listed companies and issuers, adequate, proportionate and effective in enhancing transparency regarding the employees of the portfolio company and the AIF investors?

Please choose between:

- Fully agree
- Somewhat agree
- Neutral
- Somewhat disagree
- Fully disagree
- Don't know / no opinion / not relevant

Question 86.1 - Please explain your answer to Question 86, providing concrete examples and data, where available.

Our members have now integrated the AIFMD transparency requirements on investments in private companies, even if some of them might not appear as generating much added value or as inconsistent with national laws. We believe that the rules provided in Section 2 of Chapter 5 of the AIFMD laying down the obligations for AIFMs managing AIFs, which acquire control of non-listed companies and issuers, are adequate and proportionate in enhancing transparency regarding the employees of the portfolio company and the AIF investors.

It should be noted that venture capital and private equity funds are subject to specific reporting obligations, as summarised below:

| Informations |
|---|
| Franchissement, à la hausse ou à la bai dans une société établie dans l'UE : 10% |
| Prise de contrôle par un FIA d'une socié |
| <ul style="list-style-type: none">• l'identité des actionnaires impliqu• la date de prise de contrôle et ses |
| Identité du FIA impliqué dans la prise d'éventuels autres FIA et leurs sociétés |

We would like to underline here that many venture capital and private equity funds share ownership of the relevant company with its founder and possibly other investors (these funds hold minority stakes in portfolio companies).

Having said that, **the added value of some reporting requirements may be reassessed**, in particular when small non listed companies are involved. Indeed, only relevant information should be disclosed to the regulators. For instance, some reporting thresholds could be reviewed, especially in the case of VC/PE funds investing in small companies.

As regards transparency vis-à-vis the employees of the portfolio company, we would like to underline that **there is no direct link between the shareholders of a company and its employees**. For instance, in France, the fund informs the board of the portfolio company, not its employees directly. Indeed, operational decisions are not made by shareholders: the manager of the company is responsible for managing the staff. In this context, **some of the obligations on transparency towards employees under the AIFMD may not articulate smoothly with labour**

laws prevailing in the country where the portfolio company is located. For example, under French labour law, works councils should receive certain information prior to employees. In addition, information may be provided to employees in a language that is not familiar to the AIFM's NCA, which may imply significant translation costs.

Question 87 - Are the AIFMD rules provided in Section 2 of Chapter 5 of the AIFMD whereby the AIFM of an AIF, which acquires control over a non-listed company, is required to provide the NCA of its home Member State with information on the financing of the acquisition necessary, adequate and proportionate?

Please choose between:

- Fully agree
- Somewhat agree
- Neutral
- Somewhat disagree
- Fully disagree
- Don't know / no opinion / not relevant

Question 87.1 - Please explain your answer to Question 87, providing concrete examples and data, where available.

In the case of venture capital and private equity funds, the financing of the acquisition of portfolio companies comes from the capital raised from investors (they do not use leverage to finance acquisitions).

Question 88 - Are the AIFMD provisions against asset stripping in the case of an acquired control over a non-listed company or an issuer necessary, effective and proportionate?

Please choose between:

- Fully agree
- Somewhat agree
- Neutral
- Somewhat disagree
- Fully disagree
- Don't know / no opinion / not relevant

Question 88.1 - Please explain your answer to Question 88, providing concrete examples and data, where available.

First and foremost, we would like to highlight that **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 2019, they raised EUR 41 bn to finance companies, both through equity and debt, and infrastructure projects, over the coming 5 years.

The French private equity and venture capital industry generates value for European companies, in particular SMEs, across all sectors and in all regions. Overall, as of 2020, 8,000 companies are funded by French venture capital and private equity, of which ¾ are start-ups & SMEs. Venture capital and private equity increases the value of companies by developing them, strengthening them in their markets, triggering innovation processes, and projecting them internationally. The value of French SMEs and mid-caps that have a venture capital and private equity fund as a shareholder increases sharply: between the entry and the exit of the fund (in average a period of 6 years), this value increase arises mainly from a sharp increase in the value of the companies' securities, which is multiplied by 2.5.

Besides, **the French venture capital and private equity industry creates jobs.** In 2018, 10 million European employees worked in venture capital and private equity backed companies (4.5% of total European workforce). Nearly 900,000 of them were employed in SMEs. In 2018, companies backed by European venture capital and private equity created 170,000 net jobs. French venture capital and private equity supports more than 7,700 companies employing more than 1.3 million people in France. In 2018, companies backed by French venture capital and private equity created 75,000 jobs.

We understand the regulator's aim to put safeguards in place. However, we would like to reassert that the main objective of French private equity and capital funds is far removed from what some might wrongly believe it is.

France Invest members have now integrated the AIFMD provisions against asset stripping in the case of an acquired control over a non-listed company or an issuer. However, they are not easy to implement and may hinder the activity of turnaround funds, which are still few in France but would probably prove very useful in the current context.

Question 89 - How can the AIFMD provisions against asset stripping in the case of an acquired control over a non-listed company or an issuer be improved? Please provide your suggestion(s)

including information, where available, on the costs and benefits, advantages and disadvantages of the proposed measures.

We believe that the AIFMD provisions against asset stripping in the case of an acquired control over a non-listed company or an issuer could be clarified (e.g. with respect to the different levels of restructuring) **and their implementation by Member States should be further harmonised.**

More generally, **we call for taking the time to reflect upon the relevance of the existing rules** on against asset stripping in the case of an acquired control over a non-listed company or an issuer. Indeed, the prime aim of the French venture capital and private equity industry is to support the development of private companies. Besides, we would like to take this opportunity to underline the pivotal role of FDI screening in protecting EU companies from potential malevolent takeovers by non-EU entities.

Chapter VI - Sustainability/ESG

Background:

Integrating sustainability factors in the portfolio selection and management has a double materiality perspective, in line with the [non-financial reporting directive \(2014/95\)](#) and the [European Commission's 2017 non-binding guidelines on non-financial](#). Financial materiality refers in a broad sense to the financial value and performance of an investment. In this context, sustainability risks refer to potential environmental, social or governance events or conditions that if occurring could cause a negative material impact on the value of the investment. For example, physical risks from the consequences of climate change may concern a single investment/company, e.g. due to potential supply chain disruptions or scarcity of raw materials, and may concern welfare losses for the economy as a whole. Non-financial materiality, also known as environmental and social materiality, refers to the impacts of an investment/corporate activity on the environment and society (i.e. negative externalities). Still, there is also a financial dimension to non-financial materiality. Notably, so-called transition risks arise from an insufficient consideration for environmental materiality, for instance due to potential policy changes for mitigating climate change (e.g. to regulatory frameworks, incentive structures, carbon pricing), shifts of supply chains and end-demand, as well as stakeholder actions for mitigating climate change.

The [disclosure regulation 2019/2088](#) requires a significant part of the financial services market, including AIFMs, to integrate in their processes, including in their due diligence processes,

assessment of all relevant sustainability risks that might have a material negative impact on the financial return of an investment or advice. However, at the moment AIFMs are not required to integrate the quantification of sustainability risks. Regulatory technical standards under the disclosure regulation 2019/2088 will specify principal adverse impacts to be quantified or described. This section seeks to gather input permitting better understand and assess the appropriateness of the AIFMD rules in assessing the sustainability risks.

Question 90 - The disclosure regulation 2019/2088 defines sustainability risks, and allows their disclosures either in quantitative or qualitative terms. Should AIFMs only quantify such risks?

Please choose between:

- Yes
- No
- Don't know / no opinion / not relevant

Question 90.1 - Please substantiate your answer to Question 90, also in terms of benefits, disadvantages and costs as well as in terms of available data.

We believe that consideration of sustainability risks is a vital part of the assessment of any prospective portfolio company and plays a key role in the stewardship of that investment during the private equity or venture capital fund's holding period.

However, it is important to stress that quantification of the many different sustainability risks that are faced by an investment fund can be very complex, or not possible at all, and has to be considered on a product-by-product basis. The choice and assessment of the relative importance of various ESG factors will vary from one investment to another. What is relevant for a certain investment may not necessarily be important for another. Not all factors will likely have the same impact for the concerned stakeholders. Materiality may differ depending on the ESG issue in question, the timeframe, the investment practice and strategy, market, country, and company.

In any case, it should be noted that venture capital and private equity funds mainly invest in non-listed SMEs, i.e. enterprises which employ fewer than 250 persons and which have an annual turnover not exceeding EUR 50 million, and/or an annual balance sheet total not exceeding EUR 43 million. That is to say that most companies in the portfolio of venture capital and private equity funds are not subject to many EU provisions on non-financial reporting and disclosure and do not publish detailed non-financial information. Also, some of the most innovative sectors may

not even have a NACE code. As a consequence, there are often no processes to collect the data required to perform a reliable quantitative analysis of sustainability risk. A requirement to quantify a risk when appropriate data is not available is likely to mislead investors.

Further, in the private equity industry (sustainability-related) data is held directly by portfolio companies and may be confidential. This data is private and not publicly available, but it will be compared to indicators built on public data sources (i.e. listed companies). Public data relates to companies whose size and geographical scope of impact are far removed from unlisted SMEs and mid-caps. Therefore, the use of indicators built on this public data to quantify sustainability risks for unlisted SMEs and mid-caps may lead to unreliable information for investors.

As a consequence, we believe that **AIFMs should have the flexibility to choose** the terms in which they disclose sustainability risks, either quantitative or qualitative.

Question 91 - Should investment decision processes of any AIFM integrate the assessment of non-financial materiality, i.e. potential principal adverse sustainability impacts?

Please choose between:

- Yes
- **No**
- Don't know / no opinion / not relevant

Question 91.1 - Please substantiate your answer to Question 91, also in terms of benefits, disadvantages and costs. Please make a distinction between adverse impacts and principal adverse impacts and consider those types of adverse impacts for which data and methodologies are available as well as those where the competence is nascent or evolving.

1/ We see no reason to include any additional rules in this respect in the AIFMD as, in our view, asset managers already take account of “principal adverse impacts” in their investment decision processes.

Indeed, many such impacts may have a material impact on investment return or risk. Also, end-investors may require such impacts to be taken into account in investment decision processes and/or reported to them. In addition, our members benefit from guidance on ESG dialogue between LPs and GPs⁹.

⁹ France Invest published a number of recommendations to harmonize ESG questionnaires according to a number of principles established by UN PRI and TCFD, among others. These recommendations were updated in October

2/ We would like to take this opportunity to highlight that one of the specificities of venture capital and private equity funds consists in supporting portfolio companies throughout a holding period, which is on average 5 or even 7 years.

It is during this holding period that ESG actions can be carried out and monitored. This support on ESG criteria is all the more impactful when the venture capital and private equity fund has a majority stake in the capital of the portfolio company/SME.

3/ We would also like to take this opportunity to point out that, in practice, only factors which may have a material impact on the value of investments can be taken into account in the decision process of AIFMs.

Indeed, it would be hardly possible for AIFMs to consider all factors which may potentially have an adverse impact on the value of their investments. In addition, venture capital and private equity funds invest in a large diversity of economic sectors, and all listed indicators are not relevant for all sectors. For instance, assessing its impact on biodiversity may not be relevant for cybersecurity companies or care homes for dependent elderly people.

In addition, it should be noted that the impact of SMEs and mid-caps will not compare to that of large (multinational) companies. Materiality and proportionality should be key in identifying the factors to integrate in AIFMs' investment decisions processes.

Furthermore, at this stage, the European regulation on the establishment of a framework to facilitate sustainable investment is focused on environmental factors. However, in our view, the Just Transition encompasses not only climate and other environment related indicators but also social and governance related indicators. We believe that the environmental and social aspects of sustainable finance are inseparable.

4/ Finally, we would like to recall that venture capital and private equity funds mainly invest in non-listed SMEs which are not subject to many EU provisions on non-financial reporting and disclosure. Also, some of the most innovative sectors may not even have a NACE code.

As a consequence, access to data may be an issue for venture capital and private equity fund managers when assessing potential principal adverse sustainability impacts, whether qualitative

2019 (https://www.franceinvest.eu/wp-content/uploads/Rapports-guides/ESG/France-Invest-Commission-ESG-GT5_Projet-de-recommandation-18-octobre-2019.pdf). Thus, a common repository (definitions and DDQ) was adopted and made available to all LPs and GPs.

or quantitative. In the venture capital and private equity industry, the data accessible is held directly by portfolio companies. SMEs do not have to carry out processes to collect data and take into account all the listed indicators. As explained previously, venture capital and private equity firms are at the forefront of the ESG approach implemented by SMEs.

It should also be noted that such data is private. It will however be compared to indicators built on public data sources (i.e. listed companies, whose size and geographical scope of impact are far removed from unlisted SMEs and mid-caps). That is to say that the use of indicators built on public data applied to unlisted SMEs and mid-caps may prove inconsistent. Last, it should be noted that data relating to unlisted SMEs or mid-caps may be protected under business secrecy.

Question 92 - Should the adverse impacts on sustainability factors be integrated in the quantification of sustainability risks (see the example in the introduction)?

Please choose between:

- Fully agree
- Somewhat agree
- Neutral
- Somewhat disagree
- Fully disagree
- Don't know / no opinion / not relevant

Question 92.1 - If you agree, please explain how and at which level the adverse impacts on sustainability factors should be integrated in the quantification of sustainability risks (AIFM or financial product level etc.). Please explain your answer including concrete proposals, if any, and costs, advantages and disadvantages associated therewith. Please make a distinction between adverse impacts and principal adverse impacts and consider those types of adverse impacts for which data and methodologies are available as well as those where the competence is nascent or evolving.

Question 92.1 – If you disagree, are neutral or don't know, please explain your answer to Question 92.

As explained previously, our members already integrate the assessment of non-financial materiality in their investment decision processes. However, **we do not agree that there should be a legal requirement in the AIFMD to integrate adverse impacts on sustainability factors in the quantification of sustainability risks.**

Indeed, such quantification may be very complex or not possible at all and has to be assessed on a product-by-product basis. The choice and assessment of the importance of ESG factors will vary from one investment entity to another. What is relevant for a certain investment entity may not necessarily be important for another. Not all factors will likely have the same impact for the concerned stakeholders. Materiality may differ depending on the ESG issue in question, the timeframe, the investment practice and strategy, market, country, and company.

In addition, as explained previously, the impact of SMEs and mid-caps will not compare to that of large (multinational) companies. In other words, materiality and proportionality should be key in identifying the factors to integrate in AIFMS' investment decisions processes.

From a more general standpoint, we would like to highlight the **need for a smooth articulation among the Disclosure, Taxonomy and AIFM (as well as ELTIF, EuVECA and EuSEF) regulations**. As far as we can understand, Regulatory Technical Standards (RTS) under the Disclosure Regulation 2019/2088, which will specify principal adverse impacts to be quantified or described, have not been adopted yet. It would therefore be premature to take a position in the AIFMD.

In any case, as explained in our response to question 90, AIFMs should retain the option to disclose sustainability risks either in quantitative or qualitative terms.

Question 93 - Should AIFMs, when considering investment decisions, be required to take account of sustainability-related impacts beyond what is currently required by the EU law (such as environmental pollution and degradation, climate change, social impacts, human rights violations) alongside the interests and preferences of investors?

Please choose between:

- Yes
- **No**
- No, ESMA's current competences and powers are sufficient
- Don't know / no opinion / not relevant

Question 93.1 - If Yes, how should AIFMs be required to take account of the long-term sustainability and social impacts of their investment decisions? Please explain.

Question 93.1 – If No or Don't know, please explain your answer to Question 93.

As explained previously, our members already integrate sustainability-related impacts in their investment decision process. However, in our opinion, **they should not be required to take account of sustainability-related impacts beyond what is currently required by EU law alongside the interests and preferences of investors.** We believe that AIFMs should focus on implementing the existing EU requirements, which will in itself require a lot of time and effort.

In addition, introducing such a requirement would create an unlevel playing field for AIFMs vis-a-vis other market players.

From a general standpoint, we would like to stress the need for a smooth articulation among the Disclosure, Taxonomy and AIFM (as well as ELTIF, EuVECA and EuSEF) regulations and the need for a level playing field for all market players.

Question 94 - The [EU Taxonomy Regulation 2020/852](#) provides a framework for identifying economic activities that are in fact sustainable in order to establish a common understanding for market participants and prevent green-washing. To qualify as sustainable, an activity needs to make a substantial contribution to one of six environmental objectives, do no significant harm to any of the other five, and meet certain social minimum standards. In your view, should the EU Taxonomy play a role when AIFMs are making investment decisions, in particular regarding sustainability factors?

Please choose between:

- **Yes**
- No
- Don't know / no opinion / not relevant

Question 94.1 - Please explain your answer to Question 94.

The EU Taxonomy already plays a role when AIFMs are making investment decisions, in particular regarding sustainability factors. In our opinion, AIFs should include ESG criteria in their communications, regardless of their activity. However, **we do not see any reason to include any additional rules in this area in the AIFMD.**

More generally, **it is crucial that consistency and proper articulation of the different EU regulatory frameworks is ensured.** More precisely, we would warn against replicating of the rules on sustainable finance in the AIFMD; rather, we would recommend including references to the

relevant texts (e.g. Taxonomy, Disclosure...) and calibrating the application of these texts to the venture capital and private equity fund industry, for instance through guidance from ESMA.

Question 95 - Should other sustainability-related requirements or international principles beyond those laid down in Regulation (EU) 2020/852 be considered by AIFMs when making investment decisions?

Please choose between:

- Yes
- No
- **Don't know** / no opinion / not relevant

Question 95.1 - Please explain your answer to Question 95, describing sustainability-related requirements or international principles that you would propose to consider. Please indicate, where possible, costs, advantages and disadvantages associated therewith.

As mentioned in our previous response, AIFMs are subject to a significant number of sustainability-related requirements at EU level when making investment decisions. We do not see any need to add any more in the AIFMD.

In addition to these regulatory requirements, it should be noted that, considering their specific relationships with investors in the AIFs they manage, venture capital and private equity AIFMs strive to meet any specific demands raised by investors in this respect.

Chapter VII - Miscellaneous

Background:

This section contains a few questions on the competences and powers of supervisory authorities. It also opens up the floor for any other comments of the stakeholders on the AIFMD related regulatory issues that are raised in the preceding sections. Respondents are invited to provide relevant data to support their remarks/proposals.

Question 96 - Should ESMA be granted additional competences and powers beyond those already granted to them under the AIFMD?

No. We believe that **the competences and powers granted to ESMA should remain unchanged with regards EU AIFMs and EU AIFs**. At this stage, extending ESMA’s competences and powers appears premature, as there still are significant discrepancies among national jurisdictions.

Please select as many answers as you like.

| | Yes/No |
|--|--------|
| entrusting ESMA with authorisation and supervision of all AIFMs | No |
| entrusting ESMA with authorisation and supervision of non-EU AIFMs and AIFs | - |
| enhancing ESMA’s powers in taking action against individual AIFMs and AIFs where their activities threaten integrity of the EU financial market or stability of the financial system | No |
| enhance ESMA’s powers in getting information about national supervisory practices, including in relation to individual AIFMs and AIFs | No |
| no, there is no need to change competences and powers of ESMA | Agree |
| other | |

Please explain why you think ESMA should be entrusted with authorisation and supervision of all AIFMs. Please present costs, advantages and disadvantages associated with the chosen option. Concrete examples substantiating your answer are welcome.

Please explain why you think ESMA should be entrusted with authorisation and supervision of non-EU AIFMs and AIFs. Please present costs, advantages and disadvantages associated with the chosen option. Concrete examples substantiating your answer are welcome.

Please explain why you think ESMA’s powers should be enhanced in taking action against individual AIFMs and AIFs where their activities threaten integrity of the EU financial market or stability of the financial system. Please present costs, advantages and disadvantages associated with the chosen option. Concrete examples substantiating your answer are welcome.

Please explain why you think ESMA’s powers should be enhanced in getting information about national supervisory practices, including in relation to individual AIFMs and AIFs. Please present costs, advantages and disadvantages associated with the chosen option. Concrete examples substantiating your answer are welcome.

Please explain with what other additional competences and powers ESMA should be granted. Please present costs, advantages and disadvantages associated with the chosen option. Concrete examples substantiating your answer are welcome.

Question 97 - Should NCAs be granted additional powers and competences beyond those already granted to them under the AIFMD?

Please choose between:

- Yes
- **No**
- Don't know / no opinion / not relevant

Question 97.1 – If so, please explain your answer to Question 97, providing information, where available, on the costs and benefits, advantages and disadvantages of implementing your suggestion.

We are not in favour of granting NCAs additional powers and competences beyond those already granted to them under the AIFMD. This would generate the risk of facing diverging views and go against further integration at EU level. In our opinion, cooperation among NCAs should be reinforced.

Question 98 - Are the AIFMD provisions for the supervision of intra-EU cross-border entities effective?

Please choose between:

- Fully agree
- **Somewhat agree**
- Neutral
- Somewhat disagree
- Fully disagree
- Don't know / no opinion / not relevant

Question 98.1 - Please explain your answer to Question 98, providing concrete examples.

In our opinion, **the AIFMD provisions for the supervision of intra-EU cross-border entities are sufficiently clear.** The management and marketing passports are working well, and we see no reason to change them.

- 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.

However, the implementation of the passporting rules could be further improved. More precisely, **NCA**s should only address issues within their remit, as provided by the AIFMD. In addition, they should do so in full transparency. They should trust each other rather than compete among themselves.

Question 99 - What improvements to intra-EU cross-border supervisory cooperation would you suggest? Please provide your answer presenting costs, advantages and disadvantages associated with the suggestions.

In our opinion, cooperation and coordination of the work of ESMA and the NCAs could be a first step to increase harmonisation of supervision at EU level.

Question 100 - Should the sanctioning regime under the AIFMD be changed?

Please choose between:

- Yes
- **No**
- Don't know / no opinion / not relevant

Question 100.1 – If so, please explain your answer to Question 100, substantiating your answer in terms of costs/benefits/advantages, if possible.

Question 101 - Should the UCITS and AIFM regulatory frameworks be merged into a single EU rulebook?

Please choose between:

- Yes
- **No**
- Don't know / no opinion / not relevant

Question 101.1 – If so, please explain your answer to Question 101, in terms of costs, benefits and disadvantages.

We would warn the Commission against merging the UCITS and AIFM regulatory frameworks into a single EU rulebook. Indeed, UCITS and AIFs are quite different. For instance, real estate, VC/PE, debt and infrastructure funds have very specific investment strategies and aim at different categories of investors. Therefore, the regulatory framework applicable to UCITS needs to be distinct from that applicable to AIFs in order to properly reflect the strong differences that exist between these two types of funds.

Question 102 - Are there other regulatory issues related to the proportionality, efficiency and effectiveness of the AIFMD legal framework? Please detail your answer, substantiating your answer in terms of costs/benefits/advantages, where possible.

The proportionality principle is of utmost importance to the implementation of the AIFM regulatory framework. Unfortunately, it is not applied in a consistent manner by the different Member States (e.g. in relation to the remuneration rules). In addition, **it should be better integrated with regards venture capital and private equity managers and funds, whose features are quite unique.** For example, rules on reporting and liquidity should better take into account their specificities, as closed-ended long-term investment funds are not subject to the same pressure as open-ended funds. This is especially relevant in the current context, whereby companies in the real economy will require strong funding and support. Also, it should fully apply with regards the implementation of sustainability-related requirements laid out in the relevant EU texts.

Additional information

Should you wish to provide additional information (e.g. a position paper, report) or raise specific points not covered by the questionnaire, additional documents can be uploaded.

The maximum file size is 1 MB. Only files of the type pdf,txt,doc,docx,odt,rtf are allowed.

Contact

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