AREF

European Commission

Public Consultation on The Review of The Alternative Investment Fund Managers Directive (AIFMD)

AREF's response

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I. Functioning of the AIFMD Regulatory Framework, Scope And Authorisation Requirements

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?

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?

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:

Although we agree with the view in the Commission's report on AIFMD in June 2020 that AIFMD is mostly meeting its investor protection objectives we do feel that AIFMD's effectiveness has to a degree been impaired by national legislation or existing market practice. Gold plating at a local level, where additional requirements and costs are imposed, does not help encourage cross-border marketing and adds additional costs for AIFMs. Consistency in applying the rules across jurisdictions could be achieved by fine tuning and guidance at Level 2 or Level 3. We do not believe there is a need to open up the Directive itself for significant revision. Any potentially benefit received from making changes to Level 1 would probably not be outweighed by the cost required to implement them. Proposed regulatory changes may cause investors to pause and take a wait-and-see approach before making further investments, just at a time when investment is badly needed to speed recovery from the Covid-related economic downturn.

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						
enabling monitoring risks to the financial stability						
providing high level investor protection						

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:

The AIFMD has been successful in creating internal market for AIFs (somewhat agree)

AIFMD has in the main created an internal market for AIFs. Although we would note that in some jurisdictions, where there are significant barriers to market access, small AIFMs are often unable to comply with all the requirements expected of them. Otherwise, the small AIFM regime enables managers to benefit from a lighter touch form of regulation.

The AIFMD has been successful in enabling monitoring risks to the financial stability (somewhat agree)

In the main, AIFMD has been successful in monitoring risks to financial stability, although the information related to the use of leverage is not well tailored to real estate structures.

The AIFMD has been successful in providing high level investor protection (fully agree)

AIFMD has been successful in increasing investor protection.

The scope of the AIFM license is clear and appropriate (somewhat agree)

The AIFM licence is clear and appropriate. The only exception to this is in relation to debt funds which do not have clear rules within AIFMD although they play a significant role in institutional real estate investment

The AIFMD costs and benefits are balanced (in particular regarding the regulatory and administrative burden) (Neutral)

While the benefits of AIFMD are considerable, in general the costs are still quite high.

The different components of the AIFMD legal framework operate well together to achieve the AIFMD objectives (fully agree) & The AIFMD objectives correspond to the needs and problems in EU asset management and financial markets (fully agree)

The different components of the AIFMD legal framework operate well together to achieve the AIFMD objectives, enabling them to correspond to the needs of EU asset management and financial markets . The framework provides a balance between ensuring appropriate protections for both investors and financial stability, and ensuring it retains enough flexibility, enabling the EU AIFM industry to remain competitive and offer attractive AIF products to professional, and where appropriate, retail investors. We would urge policy makers to adopt a cautious approach to reviewing the AIFMD – changes to what has proved a successful framework may, however well intentioned, damage the competitiveness of the EU AIFM industry and lead to adverse outcomes for EU investors.

The AIFMD has provided EU AIFs and AIFMs added value (somewhat agree)

In the main, AIFMD has provided EU AIFs and AIFMs with added value.

Question 4. **Is the coverage of the AIFM licence appropriate?**

Yes

No

Don't know / no opinion / not relevant

Question 4.1 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:

We do not feel that there is a need to add any further functions to the AIFM licence. These functions are sufficient for additional guidance or regulation, where required, at level 2 or 3 to be put in place. For example, the access to retail investors by AIFMs and a wider list of MiFID top up permissions.

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

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:

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 5.1 Please explain your answer to question 5:

We believe the ability of AIFM's to invest in their own funds should continue as it achieves alignment of interest with investors in the fund and no limitations on this should be imposed. The requirements in Article 18 ensure there are safeguards in place to ensure AIFMs investing on their own account are not receiving better terms than other investors. Contractual terms and industry best practice codes already address any potential conflicts of interest and ensure that investors are aware that the AIFM can invest in the fund.

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

Yes

No

Don’t know / no opinion / not relevant

Question 6.1. 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:

In practice, we believe that securitisation vehicles are effectively excluded from the scope of the AIFMD. However, we would point out that the definition of “securitisation special purpose entities” (SSPE), for exemption purposes within AIFMD refers to Regulation (EC) No 24/2009 which has been recast as Regulation ECB/2013/40 (“ECB Regulation”). Also, reference should be made to the SSPE definition in Regulation (EU) 2017/2402, (“EU Securitisation Regulation. We suggest there should be an expansion of the exemption to refer to SSPEs whose sole purpose is to carry on a securitisation or securitisations within the meaning of the ECB Regulation and/or the EU Securitisation Regulation. We would advocate that the updated and expanded scope should be accomplished through AIFMD Level 2 or Level 3 measures.

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

Yes

No

Don’t know / no opinion / not relevant

Question 7.1 Please explain your answer to question 7:

No comment

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

Yes

No

Don't know / no opinion / not relevant

Question 8.1 Please explain your answer to question 8, presenting benefits and disadvantages of your approach as well as potential costs:

We believe the capital requirements of AIFMD are appropriate and there is no need to change them to be more risk-sensitive and proportionate to the risk-profile of the managed AIFs.

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?**

Yes

No

Don't know / no opinion / not relevant

Question 9.1 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:

We believe that the own funds requirements of AIFMD are appropriate and there is no need to make any changes.

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?**

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:

We believe that current ESMA guidance in this area is sufficient and no further clarification is required.

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?**

Yes

No

Don't know / no opinion / not relevant

Question 11.1 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:

We believe that the current capital requirements for AIFMs authorised to carry out ancillary services under Article 6 of the AIFMD are sufficient and therefore do not need to be calculated in a more risk sensitive manner.

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?

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 do not believe it is necessary to align the capital requirements for AIFMs carrying out ancillary services under Article 6 of AIFMD to the capital requirements applicable to the investment firms carrying out identical services.

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 do not believe that any changes are required to the AIFMD legal framework 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 thecredit institutions?

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:

The risk to market, client, and firm of an AIFM do not correspond to the risks that are applicable for credit institutions. Therefore, there would be no value in introducing a Supervisory Review and Evaluation Process (SREP) in AIFMD similar to that applicable to the credit institutions.

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

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:

We agree that a professional indemnity insurance option, available under the AIFMD, is useful.

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

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:

We believe that the assets under management thresholds, laid down in Article 3 of the AIFMD, are appropriate and no changes are required to these.

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

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:

We believe that the lack of an EU passport for the sub-threshold AIFMs impedes capital raising in other Member States. Small fund managers wishing to market their funds outside their home state have to weigh up, the costs and benefits of opting into AIFMD or using alternate marketing solutions such as NPPRs. Taking steps to reduce the cost of AIFMD regulatory compliance may be an effective way to encourage opt-in by sub threshold AIFMs and would give them access to an AIFMD marketing passport.

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

Yes

No

Don't know / no opinion / not relevant

Question 18.1 If yes, should the regulation of the sub-threshold AIFM 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 Please explain your answer to question 18:

We believe that the existing regulations are satisfactory; sub-threshold AIFMs are currently able to have access to EU level passport by opting into AIFMD. We do not believe that there is any benefit in the regulation for sub-threshold AIFMs differing from the regulation for full scope AIFMS under AIFMD.

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:

No comment as this question is not relevant for real estate funds.

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

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 Please explain your answer to question 20:

Although we agree that improvements are required to cross border marketing, there is no need to make changes to the directive itself in relation to this. The issues should be addressed at Level 2 and 3. We would recommend that the EU Commission first allows the cross-border distribution of funds regulation to bed-in before undertaking any further reviews of the cross-border marketing of AIFs.

II. Investor protection

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 depository 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)?

Yes

No

Don’t know / no opinion / not relevant

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:

Question 21.1 Please explain your answer to question 21:

We agree that definitions or classifications of investors should be aligned across relevant financial services directives. We believe that this could be achieved by making amendments to Level 2 or Level 3 of AIFMD rather than making modifications to Level 1. We would like to see guidance on how to definitions within AIFMD align to the client categories within MiFID II; in particular, the definition of a professional investor and the Annex 4 categories.

Question 22. How AIFM access to retail investors can be improved?

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 access to retail investors by AIFM is better addressed through regulation that sits alongside the AIFMD rather than in the AIFMD itself. One example of this is amending the ELTIF rules, a separate consultation for which is already underway, or through new regulation in parallel with the ELTIF rules.
There are a number of Member States that have open-ended real estate regimes for AIFs that can be accessed by retail investors. These have investment power rules and investor protection similar to UCITS. while ensuring the AIFs are subject to suitability and appropriateness requirements. We would suggest this model is used more by Member States to improve access by retail investors to AIFs with strong investor protection and straightforward investment strategies but investing in assets, such as real estate and infrastructure, which are not permitted assets under UCITS. The EU may wish to consider adding such assets to the permitted products that UCITS could invest in.

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

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:

Question 23.1 Please explain your answer to question 23:

There is a need for an AIF that could be marketed to retail investors with a passport, but it there is an open question as to whether this needs to be a new type of vehicle or an improvement to the rules for an existing vehicle. As noted in our response to Question 22, there are already some AIFs which can be marketed to retail clients; these have usually been developed to meet the needs of the local market. Member States should be encouraged to have regulatory frameworks to permit these types of AIFs.

To encourage more investment in infrastructure and real estate the ELTIF rules could be amended to enable them to be more useful. Although they can already be marketed to retail investors with a passport take up has been very limited. A significant barrier to use of ELTIFs has been the lack of clarity around the requirement that investments contribute to achieving an economic or social benefit under the Union's energy, regional and cohesion policies, or indeed if there is any need for this condition. We believe that if the requirement that funds support a social goal of the EU was satisfied by those funds complying with Sustainable Finance Disclosure Regulation (SFDR) or being classified as sustainable under the EU Taxonomy for sustainable activities, it would be much more certain how a fund could fulfil this requirement. Although, as we mentioned in our response to the ESA's consultation last year, the proposed RTS for SFDR were not suitable for real estate assets. Therefore, these would need to be changed, as we proposed in our response, to enable them to be used by ELTIFs.

The role of ELTIFs is addressed in a separate consultation. Whether the requirements of retail investors are addressed through the creation of a new type of vehicle or changes to the ELTIF rules, we think should be outside the AIFMD.

b) depositary regime

Question 24. **What difficulties, if any, 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.

We believe that there are no difficulties for depositaries in exercising their functions in accordance with AIFMD.

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

Yes

No

Don't know / no opinion / not relevant

Question 25.1 Please explain your answer to question 25:

No comment; not relevant to our membership.

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

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:

No comment; not a relevant issue for real estate funds.

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

- 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

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:

No comment

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:

No comment

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:

No comment

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:

No comment

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

Yes

No

Don't know / no opinion / not relevant

Question 28.1 Please explain your answer to question 28, providing concrete examples of ambiguities and where available suggesting improvements:

No comment

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

Yes

No

Don't know / no opinion / not relevant

Question 29.1 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:

No comment

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:

No comment

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

Yes

No

Don't know / no opinion / not relevant

Question 31.1 Please explain your answer to question 31:

As we are in the UK and therefore now outside of the scope of any depositary passport, we do not offer an opinion, on behalf of our depositary members, on the lack of the depositary passport inhibiting efficient functioning of the EU AIF market.

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:

As we are in the UK, we do not offer an opinion on the potential benefits and risks associated with the introduction of the depositary passport.

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:

As we are in the UK, we do not offer an opinion on any barriers to introducing a depositary passport.

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:

No comment

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

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:

There needs to be a level playing field with investor CSDs and other custodial service providers. When not acting as a top tier market CSD, CSDs providing custodial services should not be able to use the CSDR to avoid assuming the liabilities applicable as a delegate of a depositary.

c) transparency and conflicts of interest

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

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:

No comment.

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:

We do not believe that the mandatory disclosure requirements within AIFMD should differ depending on the type of investor. The AIFMD disclosure requirements should remain focused on the needs of institutional investors. Where Member States have decided to opt-in retail funds to the AIFMD regime, they are able to require additional disclosures appropriate for retail investors. Institutional investors can and do require managers to provide all the information that they consider relevant and appropriate to keep them adequately informed, and widely adopted industry standards specifically tailored to the asset classes' unique characteristics ensure this information is reported in a meaningful, consistent and comparable way.

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?**

Yes

No

Don't know / no opinion / not relevant

Question 38.1 Please explain your answer to question 38, presenting benefits and disadvantages of the potential changes as well as costs:

We do not believe that there are any additional disclosures that AIFMs should be obliged to make on an interim basis to investors. As noted in our response to Question 37, institutional investors are able to require managers to provide all the information that they consider relevant and appropriate to keep them adequately informed, which is normally done at least quarterly and more frequently in certain circumstances. Most real estate funds in the UK provided investors with additional information from March 2020 on material uncertainty of property valuations and rental income collection.

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

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:

We believe the AIFMD rules on conflicts of interest are appropriate and proportionate. ESMA provides some useful guidance in this area.

d) valuation rules

Question 40. Are the AIFMD rules on valuation appropriate?

Yes

No

Don't know / no opinion / not relevant

Question 40.1 Please explain your answer to question 40, presenting benefits and disadvantages of the potential changes as well as costs:

We believe that in the main the AIFMD rules on valuation are appropriate. The only exception to this is Article 19(10). Under this article, an external valuer has unlimited liability to the AIFM for any losses suffered by the AIFM as a result of the external valuer's negligence or intentional failure to perform its tasks.

In several Member States, "negligence" is interpreted to include relatively minor mistakes, whereas "gross negligence" is used to mean relatively more serious mistakes. In some Member States, real estate valuers refuse to accept the external valuer role for the buildings in real estate fund portfolios. Professional indemnity insurance in these Member States is not available for unlimited liability related to actions deemed less serious than gross negligence.

External valuers of real estate investments have long been a recognised and well-established means of ensuring that the valuation of property in funds are conducted according to industry standards by qualified, licensed independent third-parties. As a result of AIFMD Article 19(10), many AIFMs across Europe have been forced to perform the valuation function in-house i.e., operate with internal valuations – rather than independent external valuations. This runs counter to long-established investor protection and good corporate governance practices and adds unnecessary costs.

ESMA acknowledged this issue in their letter regarding the AIFMD review, sent to the EU Commission in August 2020. Although, ESMA prefer for this to be addressed directly in legislation AREF believes that guidance at Level 2 or 3 would suffice. A Level 2 or Level 3 interpretation of Article 19(10) would establish a harmonised scope of coverage of the article across the EU. This could be accomplished by noting that, under Article 19(10): "the external valuer is subject to unlimited liability to the AIFM for any losses suffered by the AIFM only from the external valuer's serious error or intentional failure to perform its tasks."

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

Yes

No

Don't know / no opinion / not relevant

Question 41.1 Please explain your answer to question 41, presenting benefits and disadvantages of the potential changes as well as costs:

We believe that the recent pandemic has demonstrated the effectiveness of the AIFMD legal framework and there is no need for changes to the framework in relation to asset valuation. Real estate funds that suspended dealing due to material uncertainty in the valuation of property ensured that investors were protected from any disadvantage due to subscriptions and redemptions being processed at inaccurate prices.

Question 42. Are the AIFMD rules on valuation clear?

Yes

No

Don't know / no opinion / not relevant

Question 42.1 Please explain your answer to question 42:

We believe the AIFMD rules on valuation are clear and provide sufficient clarity.

Question 43. **Are the AIFMD rules on valuation sufficient?**

Yes

No

Don't know / no opinion / not relevant

Question 43.1 Please explain your answer to question 43, explaining what rules on valuation are desirable to be included in the AIFMD legal framework:

We believe the AIFMD rules on valuation are sufficient.

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

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:

We believe that input from both external and internal valuers is required in the asset valuation process. External valuers bring their independent view to the process, along with their expertise and knowledge of the values of similar properties in the market. Ultimately the AIFM is responsible for the valuation of the asset used for the fund valuation so their own internal valuation experts are important in assessing the independent valuations provided by the external valuers.

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:

Valuers have a duty of care to observe the skill and care of a 'reasonable' valuer in conducting a valuation. They are expected by the courts to achieve the standard of skill and care expected from a reasonable body of the valuer's peers. In the UK and in some other European countries valuers, are trained and certified by a recognised body such as the Royal Institute of Charted Surveyors (RICS). The valuers are expected to follow the recognised body's rules of conduct, code of practice and guidance. Not adhering to these professional standards is the most likely trigger of liability.

We understand that RICS, as a standards setter, have made a more detailed response to this question.

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:

In the UK, authorised property funds are AIFs that are classified as Non-UCITS Retail Scheme (NURS). Under the FCA's Collective Investment Scheme rules (COLL), the AIFM of a NURS is obliged to appoint a Standing Independent Valuer (SIV) but their liability is capped so they cannot be an external valuer. The FCA believes the SIV is an adviser on property valuations and is not an external valuer as defined in AIFMD. The AIFM has the final say on the property valuations used in the NAV and also takes account of other factors comprised in the NAV above and beyond the property valuations. To enable the AIFM to meet the external valuer requirements in AIFMD, the AIFM sets up an independent valuation committee, who are separate from the AIFM's portfolio management team, to be the external valuers. The AIFM's liability is not capped. This committee reviews and approves the valuations provided by the SIVs.

It would be more appropriate for the external valuer role to be undertaken by the SIV but, as explained in our response to question 40, due to their liability not being capped in AIFMD valuers will not take this role on in the UK.

To avoid having to make changes at Level 1 we would prefer guidance on how the rules could be interpreted in Level 1 so that the most appropriate party, the SIV, could be the external valuer with capped liability and the AIFM could take on the unlimited liability as they appoint the SIV and are ultimately responsible for the valuation of the assets held by the fund.

III. International relations

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:

We believe that the clarity, consistency and predictability of the AIFMD requirements strongly support the competitiveness of the EU AIF industry and allow increased comparability between different potential investment opportunities. Following in the steps of UCITS, AIFMD has become a well-known and trusted brand that is attractive to institutional investors globally.

The marketing passport allows European institutional investors to access a broader universe of investment funds which enables them to achieve the returns they need to deliver returns while increasing the diversification, and thereby lowering the risk, of their portfolios.

Fund managers, both in and outside the EU, are particularly attracted by the benefits of the passport for marketing and managing EU funds in Europe. If applied as AIFMD intended these allow fund managers to efficiently access the European market after setting up and obtaining authorisation of an EU domiciled subsidiary that manages and markets EU funds. Although, we would note that there have been barriers to using passports in some jurisdictions. This should be addressed to increase capital investment within the EU.

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 introduction of the third-country passport would significantly enhance the competitiveness of the EU AIF industry. Third-country passports for marketing funds would be especially helpful for EU authorised, supervised and domiciled AIFMs to market non-EU AIFs and would result in more investment opportunities being made efficiently available for European institutional investors.

We support the implementation of third-country passports as AIFMD intended (i.e. without re-opening the directive in this area) and in their absence, we strongly believe that national private placement regimes (NPPRs) in the EU should not be eliminated. In fact, NPPRs should be encouraged or even required in the Member States that do not have them, given that their absence presents a barrier to entry for sub-threshold EU AIFMs and hence a violation of free movement of capital freedoms guaranteed in the EU Treaty. Ideally, in the future, marketing under either the AIFMD passport or NPPRs should be allowed, which would enhance the competitiveness of the EU AIF industry.

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

Yes

No

Don't know / no opinion / not relevant

Question 49.1 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:

There are a number of areas surrounding AIFMD marketing where potential in-balances remain between EU and non-EU AIFMs:

- The non-accessibility of the EU marketing passport to non-EU AIFMs, meaning that their only marketing access is through NPPRs. This will be particularly prejudicial to UK AIFMs from 2021, complying with a regulatory regime entirely equivalent to AIFMD, but with no EU passport access.
- The broad variance in NCA requirements of NPPRs available to non-EU AIFMs across the EU which makes NPPR marketing to investors in a number of EU Member States complicated and costly.
- The variance in the NCA requirements across EU Member States in relation to passport marketing by EU AIFMs.
- Where non-EU AIFMs market into the EU they are required to comply only with limited parts of AIFMD (eg disclosure and reporting) but those requirements apply on top of the domestic regulatory requirements applicable to those non-EU AIFMs. Requiring non-EU AIFMs to comply with additional elements of AIFMD, as well as the domestic regulatory regime, to ensure EU market access (and particularly whilst there is no EU-wide marketing passport for those AIFMs) would create a confusing dual regulatory burden for limited benefit which would dissuade non-EU AIFMs from marketing into the EU and thereby deny EU investors access to non-EU AIFM funds and strategies.

The December 2018 KPMG survey report for FISMA on the operation of AIFMD, reported that:
"*Respondents and interviewees observed that it has therefore been of EU added value that national private placement regimes (NPPRs) are permitted to operate. Some interviewees called for the non-EU passports to be introduced and a significant number, from a range of Member States and third countries, called for the NPPRs to be retained, even if the non-EU passports are introduced*."

Against this backdrop, we note that AIFMD has not resulted in significant disruption to the marketing of AIFs in the EU and that some of the in-balances noted above favour EU AIFMs and some favour non-EU AIFMs. Therefore, we do not believe that NPPRs create an uneven playing field between EU and non-EU AIFMs. Pending any introduction of a marketing passport for non-EU AIFMs, a perpetuation of the *status quo*, with NPPR marketing for non-EU AIFMs alongside passport marketing for EU AIFMs, seems most appropriate.

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

Yes

No

Don't know / no opinion / not relevant

Question 50.1 Please explain your answer to question 50:

We believe that the delegation rules are sufficiently clear to prevent the creation of letter-box entities in the EU. We feel that guidelines should be produced to improve harmonisation of how delegation rules are interpreted and enforced. Under AIFM Regulation Article 82(3), ESMA already has the authority to issue guidelines to ensure consistent assessment of delegation structures across the EU.

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

Yes

No

Don't know / no opinion / not relevant

Question 51.1 Please explain your answer to question 51, presenting benefits and disadvantages of the current rules and where available providing concrete examples substantiating your answer:

We believe that the delegation rules under the AIFMD/AIFMR are appropriate to ensure effective risk management. In the event of a lapse in effective risk management by the AIFM under the rules or otherwise, the investor would in any case always have legal recourse to the AIFM for subsequent damages.

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

Yes

No

Don’t know / no opinion / not relevant

Question 52.1 Should the delegation rules be complemented with:

Please select as many answers as you like

- quantitative criteria
- a list of core or critical functions that would be always performed internally and may not be delegated to third parties
- other requirements

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:

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:

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?

Yes

No

Don't know / no opinion / not relevant

Question 53.1 Please explain your answer to question 53:

The AIFM is wholly and entirely legally responsible for any delegated activity and remains accountable for ensuring compliance with the relevant provisions of the AIFMD and its implementation measures. Therefore, regardless of their location, delegated portfolio management functions, should already be adhering to the relevant provisions within AIFMD. There is no need for any direct requirements for third parties within AIFMD. Instead, the NCAs should be ensuring the AIFMs are complying with the current regulations and undertaking the appropriate supervision of delegated functions.

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

Yes

No

Don't know / no opinion / not relevant

Question 54.1 Please explain your answer to question 54, presenting benefits and disadvantages of the current rules and where available providing concrete examples substantiating your answer:

As we noted in response to Question 50.1, ESMA should produce guidance on interpretation of the current delegation rules and use their authority under AIFM Regulation Article 82(3) to ensure consistent assessment of delegation structures across the EU. Improving harmonisation between Member States regarding how delegation rules are interpreted and enforced could provide additional benefits to both AIFMs and their investors.

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:

No comment.

IV. Financial stability

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?**

Yes

No

Don't know / no opinion / not relevant

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

- improving supervisory reporting requirements
- harmonising availability of liquidity risk management tools for AIFMs across the EU
- further detailing cooperation of the NCAs in case of activating liquidity risk management tools, in particular in situations with cross-border implications
- further clarifying grounds for supervisory intervention when applying macroprudential tools
- defining an inherently liquid/illiquid asset
- granting ESMA strong and binding coordination powers in market stress situations
- other

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 56.1 Please explain your answer to question 56:

We believe that no further enhancement to the AIFMD framework is required in relations to any macroprudential concerns. Although, there would be benefits to be achieved through enhanced guidance from ESMA to ensure greater consistency of interpretation.

In terms of liquidity and defining "inherently illiquid assets", this is something that has been partially incorporated into the rules for open-ended property funds in the UK but only for funds that are regulated as "Non-UCITS Retail Schemes" (NURS), i.e. suitable for marketing to retail investors. Such provisions were not considered necessary for funds for professional investors, where there is typically a much greater variety of liquidity terms and liquidity tools, and the investors are better able to understand the products in which they are investing. We do not believe changes are needed to the Directive for retail investors; if further regulation is required, we believe that this is better addressed outside the AIFMD in product specific regulation (such as the ELTIF rules) and as it is at present in MiFID II (for example, as a consideration as to whether or not a product is "complex").

We support the IOSCO recommendations and good practices to improve liquidity risk management for investment funds. NCAs should ensure that the broadest range of liquidity tools are available to AIFMs.

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?**

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:

We do not believe that there is 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. The reasons for suspending dealing should be decided upon by NCAs and it should be clear within rules at national level when the NCA expects a fund to consider suspending dealing.

We appreciate that the suspension in dealing of UK open-ended property funds in 2016 and in 2020 has highlighted how stressed market conditions can impact the valuation of assets held by the funds and also, their liquidity.

The UK regulators are currently reviewing the liquidity mismatch between trading in units in these funds and the liquidity of the underlying assets. This is part of their review of financial stability in the markets. AREF has responded to the FCA's consultation on liquidity mismatch in authorised property funds. We have supported the introduction of notice periods of up to 90 days; although we have made it clear that the whole ecosystem involved in fund dealing would need to have the processes and systems in place to accommodate this.

We would note, however, that suspension of dealing is a valid and sensible tool to use to manage fund liquidity when there are stressed market conditions. This was shown to be effective recently when there was uncertainty around the value of property due to COVID 19.. It ensures fairness to both remaining and redeeming investors. Although, there should be clear disclosures to investors of the circumstances when a fund may need to suspend dealing.

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:

No comment.

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

Yes

No

Don't know / no opinion / not relevant

Question 59.1 Please explain your answer to question 59, providing costs, benefits and disadvantages of the advocated approach:

We do not believe that funds should be required to report to the relevant supervisory authorities when they activate any liquidity risk management tools. Firstly, there would have to be a clear definition of what constitutes a liquidity management tool. For example, reviewing the cash position of a fund is part of the daily liquidity risk management process for a fund manager; would the fund manager have to report to the NCA when the cash balance is at a certain level?

The NCA should be able to request additional reporting on liquidity management reporting at times when it is appropriate such as stressed markets but to expect this type as part of regular reporting would be disproportionate and creates an additional layer of reporting.

If a fund has considered all the appropriate liquidity management tools for the fund and none of them would be effective, leading to the fund having to suspend dealing, we believe at that point the fund should notify the NCA.

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

Yes

No

Don't know / no opinion / not relevant

Question 60.1 Please explain your answer to question 60, suggesting thresholds and justification thereof, if applicable:

We believe that the current proportionality principles are sufficient in this regard and the AIFMD rules do not need to be adjusted to provide for the de minimis thresholds.

b) supervisory reporting requirements

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

Fully agree

Somewhat agree

Neutral

Somewhat disagree

Fully disagree

Don't know / no opinion / not relevant

Question 61.1 Please explain your answer to question 61:

We would note that some of the data requested for AIFMD Annex IV reporting is not appropriate for real estate funds. Ideally, we would like there to be a reporting section just for real estate funds. However, the reporting requirement have proved burdensome and costly to implement and the benefits of any changes to reporting would probably not outweigh the associated costs. The current data reported is extensive and should be sufficient for the NCAs' supervisory requirements.

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

Please select as many answers as you like

- overlaps with other EU laws
- the reporting coverage is insufficient
- the reporting coverage is superfluous
- 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:

Please specify for what other reason the supervisory reporting requirements as provided in the AIFMD and AIFMR's Annex IV are not appropriate.
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:

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

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

- a full portfolio reporting by relevant identifier as provided for statistical purposes
- a more granular geographical breakdown of exposures (e.g. at country level) by asset classes, investors, counterparties, and sponsorship arrangements
- requiring more details on leverage
- requiring more details on liquidity
- requiring more details on sustainability-related information, e.g. risk exposure and/or impacts
- other

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 onleverage.

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 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?

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:

We do not believe that there is any benefit in making the identification of an AIF with a LEI identifier mandatory. This would add additional costs for AIFMs without adding significant value.

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

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:

We do not believe that there is any benefit in making the identification of an AIFM with a LEI identifier mandatory. This would add additional costs for AIFMs without adding significant value.

Question 65. **Should the use of an 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?**

Yes

No

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

We do not believe that it should be mandatory for Annex IV reporting to use LEI identifier for the purposes of identifying the counterparties and issuers of securities in an AIF's portfolio. This would add additional costs for AIFMs without adding significant value.

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

Yes

No

Don't know / no opinion / not relevant

Question 66.1 Please explain your answer to question 66:

We believe that the data required to be reported by AIFMs to the relevant NCAs are adequate to supervise the activities of loan originating AIFs and therefore that no further data reporting is necessary.

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

Please select as many answers as you like

- loans originated by AIFs
- leveraged loans originated by AIFs
- other

Please explain why you think loans originated by AIFs should be added as a data fields 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 fields 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?

Yes

No

Don't know / no opinion / not relevant

Question 67.1 Please explain your answer to question 67:

We have no opinion on whether supervisory reporting by AIFMs is submitted to a single-central authority or not. Although we would suggest that there is some consistency around the formatting and systems for reporting.

Question 67.1 If yes, which one:

- ESMA
- 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?**

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

Question 68.1 Please explain your answer to question 68:

No comment.

Question 68.1 If yes, please specify which one:

- ESRB
- ECB
- NCBs
- National macro-prudential authorities
- Other

Please specify to which other relevant national and/or EU institutions the access to the AIFMD supervisory reporting data should be granted:

Question 68.2 Please explain your answer to question 68.1:

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

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:

No comment.

Question 69.1 Please explain your answer to question 69:

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

Yes

No

Don't know / no opinion / not relevant

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

Please select as many answers as you like

- permitting multiple choice of investment strategies in the AIFMR template
- adding additional investment strategies
- other
- it cannot be improved, however, if a portfolio breakdown is provided to the supervisors this can be inferred

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:

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 70.1 Please explain your answer to question 70:

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

- value at Risk (VaR)
- additional details used for calculating leverage
- additional details on the liquidity profile of the fund's portfolio details on initial margin and variation margin
- the geographical focus expressed in monetary values
- the extent of hedging through long/short positions by an AIFM/AIF expressed as a percentage
- liquidity risk management tools that are available to AIFMs
- 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
- the role of external credit ratings in investment mandates LEIs of all counterparties to provide detail on exposures
- 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)
- other

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:

No comment

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:

No comment

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:

No comment

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:

No comment

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:

No comment

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:

No comment

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:

No comment

Please explain why the role of external credit ratings in investmentmandates 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:

No comment

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:

No comment

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:

No comment

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:

No comment

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:

No comment.

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

Yes

No

Don't know / no opinion / not relevant

Question 73.1 Please explain your answer to question 73, presenting the costs, benefits and disadvantages of each data field suggested for deletion:

No comment.

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

Yes

No

Don't know / no opinion / not relevant

Question 74.1 Please explain your answer to question 74, presenting the costs, benefits and disadvantages for a suggested change, if any:

No comment.

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:

No comment.

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

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:

No comment.

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

Yes

No

Don't know / no opinion / not relevant

Question 77.1 Please explain your answer to question 79, also in terms of costs, benefits and disadvantages:

The UCITS directive imposes far stricter requirements on the fund management, investment risk and investor protection than AIFMD. Therefore, we do not believe it is necessary to applying the more extensive supervisory requirements for AIFs to UCITS.

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

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:

No comment

c) leverage

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

- 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:

We believe the leverage calculation methods, gross and commitment, provided in AIFMR are appropriate and workable and that therefore no further adjustments are needed.

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

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 Please explain your answer to question 80:

We do not believe there is any need to harmonise the leverage measures used in UCITS and AIFMD. The methodologies are used for different purposes across these directives, and attempting to harmonise them could have unintended and undesirable outcomes eg. limiting the ability of UCITS to manage portfolio risks through the use of hedging instruments.

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:

The two-stage process envisaged in the IOSCO recommendations with respect to a framework for monitoring leverage in investment funds that may pose financial stability risks is already reflected in the recently published ESMA guidelines for Article 25 of AIFMD, and indeed for Step 1, the new ESMA guidelines go beyond the IOSCO recommendations. In our view, the new ESMA guidelines for Article 25 of AIFMD effectively implement the IOSCO recommendations.

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

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:

Leverage is defined differently in different directives as a result of the specific regulatory purposes of each. Therefore, we do not believe that harmonisation of leverage calculation metrics at the EU level would result in any significant benefits.

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:

No comment.

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

Yes

No

Don't know / no opinion / not relevant

Question 84.1 Please explain your answer to question 86, in terms of the costs, benefits and disadvantages:

We believe that the current AIFMD rules permitting NCAs to cap the use of leverage are appropriate and therefore that no further rules in this area are needed. We note that the recent guidelines issued by ESMA should harmonise the use of this power by NCAs.

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

Yes

No

Don’t know / no opinion / not relevant

Question 85.1 Please explain your answer to question 85:

We believe that the Member State rules, setting the requirements for loan originating AIFs, are adequate and workable and that they do not need to be harmonised at the EU level. The purpose of AIFMD is to regulate AIFMs and is not the place for product-level regulations.

We would particularly like to point out that we do not believe that allowing only closed-ended AIFs to originate loans is appropriate. After the Global Financial Crisis, AREF commissioned a report, “Unlisted funds – lessons from the crisis”. One of the key points from this was that many institutional investors were investing in open-ended funds not because they wanted liquidity but because they wanted to invest for the long-term without the cliff-edge of the end of life of a closed-ended fund. Originating loans is no different to open-ended funds investing in other inherently illiquid assets.

Question 85.1 If yes, which of the following options would support this harmonisation:

Please select as many answers as you like

- 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 organizational 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 harmonization.

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

harmonization.

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:

V. Investing in private companies

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?

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:

No comment

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?

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:

No comment

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?

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:

No comment

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:

No comment

VI. Sustainability/ESG

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?

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 AIFMD should not be more restrictive than the SFDR; AIFMs should have the choice to give quantitative or qualitative response. There should be a level playing field across all institutions and there should not be any different requirements for AIFMs in relation to the disclosure of sustainability risks. Although, we would welcome ESMA guidance on the application of SFDR for AIFMs.

We would note that in our response to the ESA's SFDR RTS consultation, we pointed out that the proposed RTS was unworkable for real estate as an assets class. We suggested ways that it could be adapted so it is more functionable for property.

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

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:

We agree that AIFM should integrate the assessment of non-financial materiality in their investment decision process. However, we do not believe that additional provisions on this are required in AIFMD as these are included in SFDR. We believe that there should be a level playing field across all institutions and there should not be any different requirements for AIFMs in relation to integrating the assessment of non-financial materiality into the investment decision process. Although, we would welcome ESMA guidance on the application of SFDR for AIFMs.

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

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 Please explain your answer to question 92:

We agree that the adverse impacts on sustainability factors should be integrated in the quantification of sustainability risks by AIFM. However, we do not believe that there should be any additional requirements in AIFMD for this as they are already included in SFDR. We believe that there should be a level playing field across all institutions and there should not be any different requirements for AIFMs when quantifying sustainability risks. Although, we would welcome ESMA guidance on the application of SFDR for AIFMs.

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?**

Yes

No

No, ESMA's current competences and powers are sufficient

Don't know / no opinion / not relevant

Question 93.1 If so, 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 Please explain your answer to question 93:

We do not believe it is necessary to prescribe additional requirements for AIFM to take into account sustainability-related impacts beyond what is currently required by the EU law when considering investment decisions.

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?**

Yes

No

Don't know / no opinion / not relevant

Question 94.1 Please explain your answer to question 94:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The EU Taxonomy Regulation should not play a role when AIFM's are making investment decisions. The EU Taxonomy is not designed for capturing sustainability risk.

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?**

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:

AIFMs will have to take other sustainability-related requirements or international principles into account when appropriate but we do not believe there is a need for this to be explicitly included in AIFMD.

VII. Miscellaneous

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?

Please select as many answers as you like

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

No comment.

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:

No comment.

Please explain why you think ESMA's powers should be enhanced in taking action against individual AIMFs and AIFs where their activities threaten integrity of the EU financial market or stability the financial system.

Please present costs, advantages and disadvantages associated with the chosen option. Concrete examples substantiating your answer are welcome:

No comment.

Please explain why you think ESMA's powers should be enhanced in getting information

about national supervisory practices, including in relation to individual AIFM and AIFs

Please present costs, advantages and disadvantages associated with the chosen option. Concrete examples substantiating your answer are welcome:

No comment.

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:

No comment.

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

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

Question 97.1 Please explain your answer to question 97, providing information, where available, on the costs and benefits, advantages and disadvantages of implementing your suggestion:

No comment.

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

- 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:

No comment.

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:

No comment.

Question 100. **Should the sanctioning regime under the AIFMD be changed?**

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

Question 100.1 Please explain your answer to question 100, substantiating your answer in terms of costs/benefits/advantages, if possible:

No comment.

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

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

Question 101.1 Please explain your answer to question 101, in terms of costs, benefits and disadvantages:

No comment.

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:

We would like to note a couple of examples where EEA Member States do not currently take a consistent position and where greater clarity could be provided at Level 2 or 3 to ensure further consistency across Member States:

1. Whether the promotion by the AIFM on the secondary market of an AIF that it manages constitutes marketing for the purpose of the AIFMD (e.g. where an AIFM managing a listed AIF promotes the AIF to investors with a view to them purchasing shares in the AIF at their own initiative on a trading venue). Typically, it is necessary to obtain local advice to establish whether an AIFMD marketing passport or national private placement regime notification is required for such promotion in any Member State. Given that such promotion does not involve a capital raising by the AIFM, we think that there should be further clarity at an EU level, similar to that provided by the UK Financial Conduct Authority, that this activity should not amount to marketing;

2. Whether the marketing of an AIF by the AIFM itself can amount to MiFID activity (e.g. the reception and transmission of orders in interests in the AIF or dealing as agent in interests in the AIF). While some Member States do not see marketing by the AIFM itself as a MiFID activity, we think that there should be further clarity at an EU level on this.