On behalf of the Public Affairs Executive (PAE) of the EUROPEAN PRIVATE EQUITY AND VENTURE CAPITAL INDUSTRY

Response to the European Commission’s Inception Impact Assessment on “Reducing barriers to cross-border distribution of investment funds”

Private equity (PE) fund managers face various problems when they try to raise capital from non-domestic investors. They are subject to burdensome and complex regulatory requirements, whether arising from the transposition of the AIFMD or from national rules, which very often do not seem to be proportionate to the risk they pose or appropriate to the PE world. Therefore, Invest Europe welcomes the Commission’s initiative to reduce national regulatory barriers to the cross-border distribution of investment funds.

Proportionate passport regimes alongside strong national private placement regimes are prerequisites to cross-border investment in the fund management space. Any type of manager, irrespective of its size and characteristics, should be able to raise capital cross-border from a wide range of investors without undue administrative burden and barriers to entry. This is essential to increase funding opportunities for all companies that are in need of finance, whatever their size and maturity.

However, care will be needed to ensure that any proposed changes encourage, rather than limit, legitimate fundraising activity. While harmonisation and legal certainty are desirable, they must not take primacy over having a legal structure which is appropriate for the market it regulates. Any potential solutions should be tailored to the different structures and business models of the fund managers that will be captured by this initiative. For example, the AIFM and UCITS Directives cover very different markets with their own specificities, and even within the scope of the AIFMD are managers and funds with very different characteristics.

Invest Europe agrees with the identified policy areas in the IIA, in particular:

1. **Marketing**: Being based inappropriately on the UCITS model - in which a standardised product is offered on a ‘take it or leave it’ basis to the retail market - the AIFMD fails to recognise that PE fundraising is a negotiated, iterative process in which managers and (potential) investors mutually determine the fund’s terms. This flaw is exacerbated by the significant divergences between Member State authorities on the question of when “marketing” begins for AIFMD purposes. For the AIFMD framework to work in the PE context, it is key that the manager can “pre-market” a fund without such activities being considered as “marketing” under the AIFMD. Pre-marketing involves approaching prospective investors to gauge possible investor interest prior to obtaining regulatory authorisation to market the fund. Marketing should only be deemed to take place once subscription documents are provided to investors, reflecting the fact that no offer can exist prior to that point.

2. **Regulatory fees**: A fund manager that is compliant with relevant EU law and is in possession of a valid passport should be free to market across the EU without any additional requirements being imposed by host jurisdictions, including fees and charges. There is no justification under the AIFMD for such
restrictions and we are concerned about the long-term adverse impacts this may have on market participants’ behaviour and the operation of the single market.

Finally, we believe that:

- Given that the current options provided under applicable EU regimes are often not sufficient, there remains a strong case for developing a (voluntary) pan-European passporting regime for sub-threshold fund managers regardless of whether they manage venture capital or growth/expansion funds. This should be appropriately tailored and with proportionate regulatory obligations.

- The “professional investor” definition in the AIFMD, being based on MiFID, is insufficiently tailored for the nature of the PE asset class and the diversity of financial investors. The creation of a new category or definition of “semi-professional” investor, based on the level of (industry or sector) experience and/or the level of wealth would provide appropriate flexibility without weakening investor protection.
Contact

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About the PAE

The Public Affairs Executive (PAE) consists of representatives from the venture capital, mid-market and large buyout parts of the private equity industry, as well as institutional investors and representatives of national private equity associations (NVCAs). The PAE represents the views of this industry in EU-level public affairs and aims to improve the understanding of its activities and its importance for the European economy.

About Invest Europe

Invest Europe is the association representing Europe’s private equity, venture capital and infrastructure sectors, as well as their investors.

Our members take a long-term approach to investing in privately held companies, from start-ups to established firms. They inject not only capital but dynamism, innovation and expertise. This commitment helps deliver strong and sustainable growth, resulting in healthy returns for Europe’s leading pension funds and insurers, to the benefit of the millions of European citizens who depend on them.

Invest Europe aims to make a constructive contribution to policy affecting private capital investment in Europe. We provide information to the public on our members’ role in the economy. Our research provides the most authoritative source of data on trends and developments in our industry.

Invest Europe is the guardian of the industry’s professional standards, demanding accountability, good governance and transparency from our members.

Invest Europe is a non-profit organisation with 25 employees in Brussels, Belgium.

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