

Invest Europe’s response to European Commission’s Targeted Consultation on Integration of EU Capital Markets

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Section 1: Simplification and burden reduction

1. Is there a need for greater proportionality in the EU regulatory framework related to the trade, post-trade, asset management and funds sectors? Please choose from 1 (strongly agree) to 5 (strongly disagree) or 'no opinion'. If yes, please explain and provide suggestion on what form it should take.

Strongly agree.

As representatives of private equity managers operating in Europe, from small VC managers to large buy-out funds and including infrastructure and growth funds as well as their institutional investors, we will concentrate our responses solely on AIF managers.

The EU regulatory architecture for the management of alternative investment funds was prepared as a follow-up to the financial crisis to cover the non-UCITS world. In essence, the AIFMD framework, which covers a wide range of funds with different activities, is a harmonised one. Recent attempts to align AIFMD with UCITS (after creating it partly based on UCITS) have further participated to this.

This has led to an EU fund regulatory architecture that is not sufficiently accounting for the specificities of all managers, in particular small and mid-sized VC and growth fund managers, and is very clearly **hindering their ability to finance EU innovation**. The system in place typically requires firms of around 10 people to put in place a wide range of systems to comply with EU rules (AIFMD, AML, DORA,...), whether in terms of reporting or operational requirements, that is more similar to the ones that have to be put in place by very large institutions than the ones suited to their size.

Introducing further elements of proportionality, as was recently suggested by the FCA in the UK for the same framework, would therefore make sense, in particular to make a clearer distinction between managers:

- of **different sizes** (even with the 500 million threshold, similar rules effectively apply to both large conglomerates and relatively small players with teams of no more than 10-15 FTE)
- marketing nearly **exclusively to professional investors** (and those adopting retail strategies) or mass-marketing to retail clients
- investing in **daily-traded assets** or taking long-term ownership shares in businesses
- operating **open or closed-ended** funds (and therefore managing their investors' money very differently)

Specific examples of differences between types of AIFs (and types of marketing) and how they can justify different regulatory treatment are numerous and include for example:

- Reporting marketing and reporting requirements that are created with retail clients in mind imposed to professional only managers (AIFMD, CBDF)
- **Categorising the expertise of investors** investing based on trading experience (MiFID II/AIFMD interconnection)
- Calculating **costs and performance** without acknowledging the way managers are operating (or their closed-ended nature) (MIFID II/KID & AIFMD interconnection)
- Imposing (in some situations) unnecessary **depository requirements** on firms that do not trade assets and invest in assets that cannot be held in custody (AIFMD)
- Imposing all liquidity management tools to **semi-liquid funds** – despite these using different liquidity tools for sophisticated investors than the ones for mass-market highly liquid products (AIFMD & ELTIF Level 2 rules)
- Applying rules to **closed-ended funds which no longer market after a number of years** (AIFMD/CBDF Level 2)
- Confusion around who is the client in certain **distribution channels**, with an impact on inducement rules (AIFMD+MiFID Level 3 implementation)
- Lack of understanding by some regulators of **valuation mechanisms** – which could lead to confusion from a financial stability perspective (AIFMD & CRR Level 2)
- Portfolio company transparency requirements (Articles 26 to 29 AIFMD).

All these result in increased costs and operational burdens for managers, portfolio companies and regulators across the EU that are often unlikely to serve any useful practical purpose.

The lack of proportionality in EU law – which until recently was exemplified in the idea of merging AIFMD and UCITS into a ManCo proposal - also had other effects in practice. It *de facto* created a situation where EU and national regulators end up copying complex and costly rules based on the mass-retail, highly liquid UCITS world to business models that are very different from it – even when this is not specifically required in EU law. This indirect effect should not be underestimated given the fundamental impact implementation of Directives - as opposed to Directives themselves - can have on the overall regulatory burden faced by managers, as we will demonstrate in this response.

In the course of implementing the provisions relating to UCITS and AIFMs, national legislators often consolidate these regulations into a single piece of domestic legislation, which increases the tendency to introduce direct cross-references and to

apply certain requirements designed for UCITS managers also to AIFMs, despite such requirements being inappropriate or disproportionate for the latter. EU regulations should unequivocally indicate that AIF investors are a distinct professional client group and the application of legislation analogous to UCITS is a restriction on the development of products such as AIFM, making them uncompetitive and encouraging professional clients to look for alternative investment solutions, also outside the European market.

2. In particular, in relation to question 1 above, should the AIFMD threshold for sub-threshold AIFMs take into consideration for instance the market evolution and/or the cumulated inflation over the last 10-15 years? Please provide your answer by choosing from 1 (strongly agree) to 5 (strongly disagree) or 'no opinion'.

Yes, strongly agree.

Since the AIFMD entered into force, the customer price index in EU countries has increased by min 15% to max 60% - with an average of 35% - a significant part of the increase having happened recently. One could argue that yesterday's € 500 million threshold (for unleveraged funds investing in real businesses) is closer to today's € 700 million, and that many funds which were meant to be excluded from the Directive in 2013 will now be included just for the sake of price inflation.

We estimate that an increase of the AIFMD threshold to € 1.5 billion (potentially without a distinction made as to whether the AIFs use leverage or not) would allow venture and growth managers to continue growing without fearing to become subject to the complex AIFMD framework. However, for the entire EU asset management industry to become more competitive against other jurisdictions such as the US or the UK, increasing the threshold more substantially - for example to € 3 billion - would be needed.

Please also note that it would be important for the threshold to be adjusted by default to inflation every few years.

We suggest that individual EU managers who are below the adjusted threshold should retain the ability to "opt in" to the full AIFMD regime, if they deem this appropriate (for example, where this is necessary to access passporting or to meet certain regulatory conditions applied by other jurisdictions in which the manager may be active).

If it is considered necessary to maintain a registration regime for managers falling below the revised threshold, this should be as light as possible to avoid imposing disproportionate costs and compliance burdens (which we discuss further in our response to question 3).

How the EU AIFMD threshold shapes (negatively) the EU market

For many EU managers of a certain size (typically between € 300 million and € 1 to 2 billion of AuM) the current EU fund architecture constitutes a strong limitation in the ability of setting up cross-border funds and leads to a loss of competitiveness for Europe. Indeed, EU managers restrict themselves below the € 500 million threshold due to the significant cost of being AIFMD-regulated, leaving US and UK managers to take their market share.

From our perspective, **the AIFMD threshold constitutes a very significant hurdle to an overall increase in size of VC funds across Europe** and should be a priority objective of the Savings & Investments Union (as opposed to a consolidation of the sector, which could have disastrous effects given the importance of maintaining many small VC funds to finance companies at their early-stage).

Here is a real-life example of this.

A German venture capital fund manager, in activity for more than 10 years, has raised two separate funds, one of €150 million (about to be closed in a few years) and one of €200 million. The manager with a team of around 15 FTE, has a pan-European strategy and has been using the EuVECA passport to market its funds cross-border. The manager is about to raise its 3rd fund and has the expected capacity, with a mix of known investors which include KfW and EIF and a few small insurers, to raise around €350 million of capital.

At this stage of its life, the manager essentially has two possibilities:

- **Raising a third EuVECA-only fund:** In that case, the manager will limit its investment capacity at € 150 million with the aim not to breach the AIFMD threshold – but it will be able to continue to operate as it previously did with the team it currently has.
- **Becoming AIFMD regulated:** In that case, the manager would be in a position to raise additional capital – but this would require significant operational changes compared to national law, including in particular:
 - the need to introduce Chinese walls when it comes to portfolio management and limited flexibility for allocating carried interest to more junior employees
 - the need to mandate a depositary and a transfer agent (for a cost of around 100 to 200.000 € a year)
 - many other additional reporting requirements, some of which set in AIFMD (Annex IV reporting) or linked to AIFMD authorisation (e.g. DORA)

The manager estimates the overall operational changes and costs that cannot be passed on to the fund investors to require around 3 new FTE, meaning an increase of 20% of overhead costs on the manager.

Ultimately, while the decision to be AIFMD regulated or not will vary from manager to manager (see below comment on established funds) and from jurisdiction to jurisdiction, this specific manager has, in real life, decided to choose the first option – and to limit its fundraising in order to avoid being AIFMD regulated. The manager indeed estimated that as a manager, it would have to raise twice as much capital for being able to scale to the AIFMD regime.

AIFMD threshold: a disincentive for established funds

The AIFMD threshold looks at the assets under management (AUM) at the level of the manager as a whole, and not at specific funds it has raised.

This means that in an industry with more established managers (which is the case of the EU industry compared to 2013), it is more likely that entities will exceed the thresholds, not necessarily because their funds are larger but because they have more assets under management under several different funds (created in the course of the funds' life).

This further contributes to fragmentation of the market, as managers may have less of an interest to raise a third or fourth fund if they are at risk of going above the threshold and to be subject to additional regulatory requirements. In the most optimistic scenarios, team members who could have run third or fourth funds within existing managers will rather leave the fund for lack of opportunity and create their own separate structures, leading to additional market fragmentation.

On top of this, one has to acknowledge that full management fee is only earned on the latest funds but not on older funds¹ – leading to a situation where smaller managers (VC and growth capital) with funds at the end of their life are 'always-on-a-budget' – and costs of AIFMD-like requirements rapidly swallow the remaining margin.

Why the AIFMD threshold participates to the lack of EU's competitiveness

The fund manager in our example does not live in isolation. In its area of specialty (tech businesses), it essentially competes with UK and US managers for investments in EU companies. Any decision by a manager to fundraise less to avoid regulatory burden makes it weaker compared to its international counterparts, a reality that may become much worse if the UK, as it is currently considering, raises its AIFMD thresholds.

This has two negative consequences:

¹ Many investment funds, such as private equity or venture capital funds, have a declining management fee schedule. The management fee is often higher (e.g., 2% of assets under management) during the investment period but gradually decreases (e.g., 1.5% or 1%) as the fund matures.

- it lowers the amount of financing of EU businesses at an early and mid-stage
- it gives non-EU managers a larger role in the financing of EU businesses at a late-stage... with ultimate adverse consequences on EU competitiveness

Whilst Invest Europe welcomes and supports all cross-border capital flows, including from non-EU funds into EU companies, and vice versa, the competitiveness of EU fund managers should not be hindered by the AIFMD threshold.

Smaller markets have no additional capacity to finance national companies. Larger EU markets are well-developed but not sufficiently integrated to the rest of the EU ecosystem to compensate the lower levels of investments in other EU countries.

This means that US and UK managers will be the most likely candidates to take over the financing of innovative companies within the EU. The prevalence of large US managers as EU scale-ups equity investors means that EU companies supported by these managers are much more likely to be sold to US businesses or to be listed on Nasdaq in New York.

In other words, the AIFMD threshold has, in this illustrative case, a very direct impact on the EU's ability to keep its scale-ups at home.

On top of the above, there are several questions related to the ***effective calculation of the threshold***.

Questions surrounding the calculation of the threshold

The impact of the authorisation threshold does not solely depend on its actual numerical value but also on **how that value is calculated**. We understand from our members that calculation can have a very significant impact on whether the threshold applies to small to mid-sized fund managers. There are currently inconsistencies between Member States as to how the threshold is calculated. These can be significant depending on the approach of the relevant supervisor and the relevant national GAAP that is used in each of the Member States.

Where the applicable approach is a fair value regime (as in Luxembourg, for example), the value for the purposes of the AIFMD threshold is calculated on a fair value basis including write-ups on unrealized assets that may be performing well but without knowing if that will ever materialize into a realized profit at some point in time.

Where the applicable approach is a cost-less-impairment regime (as in Germany, associated with German-GAAP, for example), the relevant value is the unadjusted book value cost of the investment at the time it was made – which will typically be lower.

Basing the calculation on cost results in a more predictable and stable figure, which makes it much easier for the manager to plan for the impact of the AIFMD threshold on its business. By contrast, if the calculation is based on fair value, a manager:

- 1) has an own-interest incentive (which it must manage), to keep valuations lower than they ought otherwise to be; and
- 2) illogically, may be penalized by becoming subject to more onerous regulation if its investments perform well.

For the reasons given above, we consider the most appropriate basis of calculation to be cost-less-impairments (at least for private equity, venture capital and infrastructure managers and other managers investing in illiquid assets). This should be harmonised across all Member States.

If the Commission were to consider that too complicated, the next best measure would be net asset value, which is calculated for other purposes and widely understood. NAV would be to the current approach set out in article 2(1) of the AIFMD Delegated Regulation, which in summary appears to refer to gross asset value.

Questions around the concept of leverage and its definition

In AIFMD whether a fund is deemed leveraged or not has an important impact on the threshold, as the threshold is 5x higher for unleveraged funds.

The vast majority of private equity funds do not use leverage at fund level, as is recognised by ESMA in its latest TRV survey, and therefore can have up to € 500 million AUM before becoming AIFMD authorised.

Background on leverage

The Commission Delegated Regulation (EU) No 231/2013 of 19 December 2012 supplementing AIFMD (“CDR”) specifies the methods of calculating leverage and it provides that “exposure contained in any financial or legal structures involving third parties controlled by the relevant AIF shall be included in the calculation of the exposure where the structures referred to are specifically set up to directly or indirectly increase the exposure at the level of the AIF”.

According to such rule, borrowing by a legal structure (including for example the SPV) held by the AIF needs to be included in the leverage calculation if such legal structure is “controlled” by the relevant AIF. If the latter is not the case, borrowing at the level of such structure should generally not to be included in the calculation of leverage.

In addition to the "control" condition set out above, article 6(3) of the CDR also provides for the requirement of "exposure".

Specifically, article 6(3) of the CDR provides that “exposure contained in any financial or legal structures involving third parties controlled by the relevant AIF shall be included in the calculation of the exposure where the structures referred to are specifically set up to directly or indirectly increase the exposure at the level of the AIF”. This is then further qualified in article 6(3) of the CDR which provides that “For AIFs whose core investment policy is to acquire control of non-listed companies or issuers, the AIFM shall not include in the calculation of the leverage any exposure that exists at the level of those non-listed companies and issuers provided that the AIF or the AIFM acting on behalf of the AIF does not have to bear potential losses beyond its investment in the respective company or issuer”.

This qualification is given further colour in the ESMA Q&A on the application of the AIFMD (ESMA34-32-352) (the “**ESMA Q&A**”) which, in summary, provides that a private equity fund raising debt at SPV-level would not need to include this debt in its AIFMD leverage calculations provided that there is no recourse to the fund. This in our option is in line with the above general principle in the CDR rules that where leverage does not cause exposure at the level of the AIF it can be disregarded.

However, the ESMA Q&A (last update on 13 June 2023) further noted that in the context of real estate strategies it would be necessary to include exposure of SPVs

Yet, the ESMA Q&A (last update on 13 June 2023) concerning the inclusion of leverage in the assets of unlisted companies controlled by real estate AIFs, has muddied the waters for some NCAs regarding the important distinction between fund, SPV leverage and portfolio company leverage.

From a financial stability perspective, borrowing at the level of a portfolio —or, frequently, at the level of a SPV – does not impact on the leverage of the fund itself, provided there is no recourse to the fund’s assets. The debt incurred by each individual portfolio company or SPV is usually ring-fenced, meaning it is isolated from the obligations of the fund and from the debts of the other portfolio companies or SPVs controlled by the fund. Any counterparty (a bank, for example) that lends to a portfolio company (typically at the level of the SPV) is only exposed to the operating companies in the portfolio company structure. It is not exposed to, nor does it have recourse to, any fund that owns shares in the SPV.

The lack of clarity of ESMA Q&A, which appears to suggest the exemption only applies to one asset class (private equity) regardless of the general principle set forth in article 6(3) of the CDR, could mislead the interpretation on the use of leverage (especially if some authorities were to blindly follow ESMA Q&A). Moreover, for affected non-private equity managers, this would lead to an increase in monitoring constraints on debt at the level of portfolio companies, which may have pre-existed the fund's investment and over which the fund has no control.

Consequences of such a change of approach, if interpreted as such by NCAs, could mean that debt that is not effectively increasing the exposure of the fund, for example the debt raised by a corporate the fund has invested in, would be deemed leverage of the fund, irrespective of the fact this debt is siloed and essentially equivalent, to a UCITS, to the debt of a company the UCITS has shares in. This cannot be a correct economic and legal analysis of what is leverage in an AIFMD context.

Overall, when calculating the (sub)threshold, a wrongful interpretation of what is leverage would largely outweigh an increase of threshold for many affected managers with funds between € 100 and € 500 million (as well as have an impact on larger fund managers), something the European Commission should be extremely aware of when considering how Member States implement EU leverage rules

Regulatory requirements of a fully authorized AIFMs compared with a sub-threshold EuVECA AIFM:

I. List of additional requirements

Capital & own funds requirements:

- Additional burden of €75k+0.02%*(AUM-€250m)
- Increased professional liability coverage

Organizational & governance requirements:

- Independent compliance function

- Independent risk management function
- Independent valuation function
- Independent depositary function
- Separate senior management for:
 - portfolio management
 - risk management & compliance
 - valuation
- Strict remuneration rules (no carry for risk management/compliance/valuation roles; regulated variable pay structure; disclosures etc.)
- Formalized risk management framework, incl. documentation, reviews, regular reporting to regulators etc.
- Increased documentation, regulatory reporting and disclosure requirements
- Any additional costs of launching an authorization application (which can be very significant in some countries)

Some Member States have imposed some of these requirements at national level – but none have imposed all of them. The amount of national requirements plays a role in the attractiveness of using a passport.

II. Additional costs

The additional external cost per annum of approx. 0,15% on AuM for the before mentioned additional roles and functions:

- 0,05% on AuM are for the **depositary bank services**
- 0,1% on AuM for an **external outsourced AIFM** (*given the fact that it is close to impossible for smaller funds to implement all of the before mentioned functions including the Chinese walls inhouse, managers will often choose an external outsourced AIFM in practice*)

This represents approx. **€ 750k** of additional cost per annum for AuMs of € 500million.

This comes on top of generally increased documentation and administrative burdens at the level of the manager, which you can easily calculate with one administrative FTE at the fully loaded cost of approx. **€100k** p.a. (if not more for smaller funds). It is more difficult to estimate the negative opportunity cost of highly qualified professionals that are spending

their time with very often frustrative documentation and additional administration matters.

Furthermore, external costs (lawyers, other consultants) for the authorization application can easily **exceed € 1million**, which is another barrier of entry.

The involvement of an external outsourced AIFM can make decision making much more complicated and lengthier in an industry that requires speed of execution since you are required to be faster than maybe your US-competitor that does not have these regulatory burdens.

In summary: Costs will be around € 2 million for a € 500 million fund. This would represent around **20% of the fund’s operating costs for a fund manager with a 2% management fee.**

Additional regulatory frameworks:

- Fully authorized AIFMs are subject to the **Digital Operational Resilience Act ("DORA")**, which does not apply to EuVECA sub-threshold AIFMs.
- There are also stricter national requirements for authorized AIFMs.

3. *Would you see a need for introducing greater proportionality in the rules applying to smaller fund managers under Alternative Investment Fund Managers Directive (AIFMD)? Please choose from 1 (strongly agree) to 5 (strongly disagree) or ‘no opinion’. If you agree, please explain and provide suggestion on what form it should take, indicating if possible estimates of the resulting cost savings.*

Strongly agree.

As mentioned in the question above, the AIFMD requirements can constitute a heavy burden for small managers. Teams managing funds worth a total of € 1 billion or less remain very small compared to equivalent teams in banks and very often delegate some of the compliance requirements, at a cost, to other providers/ managers. In fact, there is a clear industry trend for smaller managers to simply “hire” an above-threshold manager given the complexity of doing these tasks “in house”.

In that context, “proportionality” for small fund managers would naturally come from an **increase of the AIFMD threshold**, coupled with the ability for venture and growth managers to use a **slightly improved EuVECA** regime that should address the following: (i) asset classes eligibility potentially introducing a broader designation to include greater asset classes flexibility beyond SMEs (see Invest Europe’s suggested views on EuVECA for this extension to be appropriately framed), (ii) introduce a real cross-border management passport to explicitly permit EuVECA managers to manage funds across EU jurisdictions to avoid gold-plating and delays, (iii) streamline

registration process and reduce local regulatory gold plating and ban additional national registration fees and requirements, (iv) make the label more flexible and consider renaming to reflect broader asset coverage. It is also worth mentioning that the existing patchwork of national private placement regimes (NPPRs) frameworks across EU member states hinders not only non-EU managers, but also creates significant barriers for EU sub-threshold AIFMs. In several jurisdictions, NPPRs are either entirely unavailable or practically inaccessible to EU-based sub-threshold AIFMs, placing them at a competitive disadvantage compared to non-EU managers who can at least attempt registration under the NPPR regime. This fragmentation undermines the level playing field within the single market and discourages smaller EU managers from scaling or testing cross-border strategies. While we advocate for a recalibration of the AIFMD sub-threshold exemption, to reflect the growth and needs of modern asset managers, it is equally critical to ensure that all EU sub-threshold AIFMs can meaningfully access NPPR regimes where they do not qualify under the EuVECA framework. To ensure consistency and fairness, NPPR access should be expressly enabled at the EU level for sub-threshold EU AIFMs, subject to proportionate transparency and investor protection safeguards. This would align the regulatory ecosystem with the goals of market integration, innovation support, and SME access to capital markets.

On a separate note, the Commission should consider that some EU countries have imposed **strict requirements to any sub-threshold manager to be authorised in their country**, meaning there is *de facto* **no sub-threshold regime in these countries** (and therefore that proportionality will remain dependent on national law). While these regimes have not always prevented the development of venture capital and growth ecosystems, this has in our view most likely made the development of these ecosystems slower than it could have been.

We understand that many managers in sub-threshold countries face a very difficult time setting up first funds and that this has raised barriers to entry (first time managers typically must rely on other structures to create their first-time funds given the higher costs associated with their creation).

It is unclear whether it is possible to build a full Savings & Investments Union - as opposed to developing national markets separately - while keeping significant differences between national sub-threshold regimes, as divergences between markets logically create barriers for fund managers and their investors. The impact of the national sub-threshold regimes on cross-border fundraising should be further studied. Our data for example shows that in 2024 less than 5% of the identified capital raised by Italian funds came from outside Southern Europe (and likely from outside Italy).

Sub-threshold managers should be able to opt-in to the EuVECA regime. Complex national sub-threshold requirements should not be applicable to EuVECA managers, as they would already be regulated under EU law.

Separately, we would propose that, if a Member State permits a non-EU AIFM to market AIFs in its jurisdiction under a national private placement regime (NPPR), it should also be required to allow sub-threshold EU AIFMs to market in its jurisdiction on terms that are no less favourable than those available to the non-EU manager. Otherwise, there is a risk that smaller EU managers may be treated less favourably in terms of market access than non-EU managers, which is inconsistent with the basic principles of the EU single market.

4. Are there any barriers that could be addressed by turning (certain provisions of) the Alternative Investment Fund Managers Directive (AIFMD), Financial Collateral Directive (FCD), Markets in Financial Instruments Directive (MiFID), Undertakings for Collective Investment in Transferable Securities Directive (UCITS), Settlement Finality Directive (SFD) into a Regulation? Please choose from 1 (strongly agree) to 5 (strongly disagree) or 'no opinion'. If you agree, please explain which barriers and how a Regulation could remove the barrier

1 (strongly agree).

We refer to several of these barriers in the course of this response but they range from:

- simpler and more harmonised authorisation process
- the too narrow definition of a professional investor
- (much) simpler reporting regimes (Annex IV reporting rules are extremely long and complex)
- extension of depositary-lite requirements across all EU countries
- removal of complex pre-marketing rules, such as rules on material changes

We also use this opportunity for the Commission to remove new undue costs rules for professional-only AIFs in the Retail Investment Strategy and to make three specific examples below. However, the European Commission should be aware, as will appear clearly from the examples listed in this response, that in many cases barriers come from diverging implementation of rules by Member States and in some cases goldplating of these rules.

Here are three examples of rules that could be waived (other examples are listed within the paper):

Example 1 – Definition of professional investor (MIFID)

A particularly important structural barrier to the broader distribution of AIFs across the EU relates to the rigid definition of “professional investor” under the AIFMD, which is tied to the MiFID II Annex II categorisation. This standard, originally developed for liquid

markets and listed instruments, does not adequately reflect the profile of modern investors in illiquid and long-term private market strategies.

The current limitations restrict access for many capable investors, especially wealthy individuals, entrepreneurs, executives, and family offices, who are well-positioned to invest in long-term EU capital formation but are excluded by design. In the context of the Draghi Report on EU competitiveness, which calls for mobilising deeper pools of patient capital, the EU framework should evolve to enable more flexible access to professional investor status, as Invest Europe mentioned in several occasions in the context of RIS negotiations. Such adjustments would help ensure that the AIFMD regime better aligns with how private markets function, without undermining investor protection. They would also support the EU's strategic autonomy and capital markets union objectives by unlocking a broader base of qualified investors across Member States.

Overall, we invite the Commission to go in the exact opposite direction as the next mandate and to make a distinction between UCITS (and by definition mass-retail) rules and AIFMD professional-only rules whenever this is justified. We detail these points later in this paper,

Example 2 - Filings for fundraising (AIFMD)

The AIFMD introduced several formal steps which must be followed by the AIFM in order to raise a new fund, requiring numerous filings to be made with (usually) the home Member State competent authority. Being modelled on the UCITS Directives (which concern retail funds), the AIFMD requirements are not proportionate for funds which will be marketed principally (in most cases exclusively) to institutional investors.

In particular, the formalities do not reflect the iterative process of raising closed-ended funds in the private equity market, which has traditionally involved early-stage discussions with prospective investors to gauge their appetite. Over the many months in which fundraising then takes place the terms are subject to negotiation between potential investors and the fund manager prior to the final closing of the fund taking place. Often the final terms are not agreed until just before the final close. This is in marked contrast to the typical process for raising a retail fund (such as a UCITS fund), which involves the UCITS management company manufacturing the product for distribution to investors on non-negotiable terms.

In many respects, the AIFMD assumes that an institutional private equity or venture capital fund is a 'pre-baked' product (like a UCITS fund) and fails to recognise that for the private equity and venture capital industry marketing is a negotiated, iterative process. The formalities front-load the effort required to raise a fund (and also front-

load costs, when there may be no guarantee that the fundraise will be successful) and generally complicate and disrupt the process.

Significant documentation requirements related to the establishment of an AIF apply even where the investment terms in an AIF targeting large institutional investors (dedicated AIFs) are individually negotiated. At the same time, additional administrative obligations are imposed on the AIFM – for example (in Poland), the requirement to register fund units with the central securities depository.

Example 3 - Reporting timeframe (AIFMD)

The requirement to report to competent authorities within 30 days (as per Article 110 of the AIFMD Delegated Regulation) is impractical for private equity fund managers and is not well-tailored to the illiquid nature of private equity investments and to the practices of the private equity industry. Concretely:

- Private equity is an illiquid asset class, investing in the real economy. The underlying assets of the fund are unquoted, operating companies with their own directors, i.e. there is no ready-made price (as with financial instruments such as publicly quoted equities) nor a standard formula for calculating prices (as with OTC derivatives). Such a short timeframe leads to unnecessary costs being incurred and also the use of estimates and/or old data and further requirement to file amended reports when numbers are later finalised.
- Private equity AIFs typically do not calculate or report data on a monthly basis.
- Private equity funds and fund-of-funds typically report quarterly financials to their investors 90 and 120 days after the period has ended, respectively.

In fact, other regulators around the world have taken the approach that private equity funds' systemic risk is minimal enough to justify reporting once on an annual basis with a more relaxed submission timeline.

A relaxation of the 30-day timing requirement to 3-4 months would align supervisors with existing industry practice and the reporting schedule used with investors.

5. Are there areas that would benefit from simplification in the interplay between different EU regulatory frameworks (e.g. between asset management framework and MiFID)? Please choose from 1 (strongly agree) to 5 (strongly disagree) or 'no opinion'. If you agree, please explain and provide suggestions for simplification. Also if possible present estimates of the resulting cost savings.

Yes.

Please refer to our comments to Section 5.4 regarding EU Passporting for Management Companies that provide MiFID services.

We consider that the existing restriction in article 6(4) AIFMD on the additional activities that may be undertaken by an external AIFM is unduly restrictive and can result in an unnecessary and inefficient proliferation of separate legal entities within EU asset management groups. Whilst we welcome the additional flexibility introduced into article 6(4)(b)(iv) as a result of AIFMD 2, we do not believe that it goes far enough. We suggest that the restriction should be removed, as it is unclear why an AIFM should be unable to be authorised to carry on activities under (for example) MiFID or IDD in addition to its fund management activities.

In any case, it shall be ensured that full effect is given to the new article 6(4)(b)(iv) to meet the objectives of its introduction by AIFMD II and notably to enhance legal certainty for AIFMs regarding the services they can provide to third parties by clearly allowing them to perform for the benefit of third parties the same activities and services they already provide in relation to AIFs they manage and in so doing supporting the international competitiveness of European AIFMs by enabling economies of scale and help diversify revenue sources. It shall be clearly recognised that on the basis of this new article an AIFM can carry on notably the activities of placing, execution of client orders and dealing on own account.

6. *Would the key information documents for packaged retail and insurance-based investment products (PRIIPs KID) benefit from being streamlined and simplified? Please choose from 1 (strongly agree) to 5 (strongly disagree) or 'no opinion'. If you agree, please explain and provide suggestions for simplification. Also indicate what should be prioritised and if possible present estimates of the resulting cost savings.*

Strongly agree.

As a standardised document, the KID is notoriously **a tool that can end up giving investors information that is either misleading and in some cases meaningless for investors in non-daily traded assets.** In particular:

- Data on risk is largely based on daily-traded concepts, meaning that the risk of unlisted funds is nearly always by default of 6, irrespective of diversification benefits and effective risk profile of the fund
- Data on performance is virtually impossible to give for closed-ended products, unless for making a market wide comparison that is at best information of very general nature, at worse giving the investor a wrong sense of comfort
- Data on costs can be confusing as it does not allow the manager to disclose costs that are not necessarily anticipated

- Data on performance must be calculated based on a one-off payment at acquisition and an option to terminate the investment before the holding period expires which has not connection to the reality of a closed-end fund interests in which are neither redeemed nor publicly traded

Private equity funds, which are typically unlisted and closed-ended funds that invest for an average of 5 years in unlisted private companies, cannot easily be compared to products that have daily price quotes through simple quantitative indicators, irrespective of the methodology used. Certain typical private equity features, such as the use of carried interest as a pay-out mechanism, should not be presented in a standardised way, to avoid giving these investors inappropriate information.

Moreover, the KID does not give the investor very clear information on the illiquid nature of a product as some of the performance data scenarios leads the investor to believe that it could sell the product more easily than it could/should.

In other words, the KID is ultimately a document that is costly to produce and with limited added benefits to investors investing in specific types of asset classes, especially if these investors are sophisticated (see our comments on the issues with investor categorisation later in our response). Our understanding is that the KID is, irrespective of its costs, a product that does not provide meaningful and comparable statistics to investors for all products

For these reasons, we suggest that it would absolutely make sense for the KID to only be kept for certain types of comparable products. For different types of products (long-term), a more useful document would arguably be a simpler, more qualitative prospectus describing in priority:

- the types of investments made
- the illiquidity of the product
- the possibility or not of assessing performance (leading or forcing the investor to consult specific existing document guidance for more information)
- the nature of costs (again leading the investor to more detailed information contained in marketing documents already prescribed by EU law)

Such a practical approach could give much more of an incentive to invest in long-term products than standardised documents, as **the current framework tends to leave investors with the idea that liquid products are necessarily more suitable to them**. While this is true in many cases, an improved KID could very well help guide investors towards longer term assets, with a very positive impact on the EU economy given the role of these funds in financing EU innovation.

In that context, an amendment of the Level 2 PRIIPs Regulation could be considered with a **two-tiered system for funds that are not highly liquid, including closed-**

ended and semi-liquid funds. This would allow for an opportunity to reflect better both the nature of illiquid funds, their intrinsic value as a tool to finance the real economy and their illiquidity risk for small investors who are used to daily trading.

This modification could be done in the context of the ELTIF framework and could make the ELTIF a more interesting product for managers and investors alike. It could be accompanied by efforts, from a financial literacy perspective, to incentivise EU retail investors that putting a small part of their long-term savings in long-term products (as opposed to speculative, daily-traded assets).

The question of co-investments

We would also like to use the opportunity of this question to comment on the treatment of carried interest and co-investment arrangements, which we believe should be carved out more from marketing requirements as a whole and from KID rules in particular.

As a way of background, private equity funds commonly have in place arrangements which permit executives to invest alongside the funds they manage – typically also an investor requirement. Given these funds are predominantly designed for institutional and professional investors, these arrangements allow team members at the fund manager (or the fund’s sponsor and its affiliates) to be accorded interests in e.g. a limited partnership (the “carry vehicle”) which is, in turn, a limited partner in the main fund. Executives will then be entitled to carried interest based payments only if the investors first have received back their contributed capital and any “hurdle return” above a preferred rate agreed at the outset. Co-investment arrangements will operate in a similar manner, allowing the fund manager’s (and the sponsor’s and its affiliates’) staff to participate in e.g. a limited partnership which invests alongside the main fund in the underlying private equity investments.

We do not think that carried interest and co-investment arrangements either fall within the definition of a PRIIP nor in fact of a marketed product since:

- these arrangements are not “packaged” nor are they “manufactured” to provide investment opportunities to retail investors;
- they are solely open to management/ senior executives and employees of the firm respectively;

As the principal purpose of the KID is to ensure that retail investors are adequately notified of the characteristics of a PRIIP to enable them to make informed investment decisions, it indeed makes no sense for executives working with the fund to draft such a document for a legal vehicle which has been created for their own investment

- these arrangements form part of the private equity risk sharing model, which aligns the interests of the fund manager and investors and ensures that the investment team has "skin-in-the-game";
- these arrangements are expected, and often required, by investors in the fund; the typical producer–product–consumer relationship inherent to PRIIPs does not exist in this case; rather, it constitutes a purely internal, technical incentive arrangement within the team.

In other words, preparing a marketing document for these arrangements would essentially mean the manager would prepare it for itself, which seems counterintuitive. Similarly, requiring managers to be subject to marketing requirements for these vehicles would not be logical.

The revision of the ELTIF framework constitutes an interesting benchmark in that regard, as it clarified that “[ELTIF distribution and marketing rules] shall not apply where the retail investor is a member of senior staff, or a portfolio manager, director, officer, or an agent or employee of the manager of the ELTIF, or of an affiliate of the manager of the ELTIF, and has sufficient knowledge about the ELTIF” (Article 30, paragraph 3).

Such a distinction should be inserted in the KID as well and more broadly taking into consideration in EU law, potentially already in the context of the Retail Investment Strategy.

7. Do you have other recommendations on possible streamlining and simplification of EU law, national law or supervisory practices and going beyond cross-border provision?

See our multiple comments on the “Asset management and funds” section.

Divergences in implementation of AIFMD shall be looked at if we are to have a more performing venture capital, growth and small buy community, as per the objectives set in the Draghi and Letta reports.

From a supervisory perspective, there are fundamental differences between the way some NCAs are operating and the quality of the supervision. Much can for example be done to streamline many of the Member States’ authorisation processes, which are often complex and do not sufficiently acknowledge the specific features of certain types of fund structures.

8. Does the EU trade, post-trade, asset management or funds framework apply disproportionate burdens or restrictions on the use of new technologies and innovation in these sectors? Please choose from 1 (strongly agree) to 5 (strongly disagree) or ‘no opinion’. Please explain and provide examples.

Some NCAs have a relatively rigid approach towards the functions to be organised and the FTEs to be hired within an AIFM. We understand NCAs struggle with operating models where new technologies may be disruptive to the way business is being managed or done.

While there is currently limited operational market expertise, tech solutions are being rolled out more and more often with an uncertain assessment as to the compatibility with existing regulatory organisational and operational guidelines.

If we are to build a more competitive Europe, NCAs should have a duty to look beyond each organisational and operational business model which is pushing applicable boundaries and models.

9. *Would more EU level supervision contribute to the aim of simplification and burden reduction? Please choose from 1 (strongly agree) to 5 (strongly disagree) or 'no opinion' and explain.*

From the perspective of private equity and venture capital managers, EU level supervision should not be seen as the panacea: more than a common supervisor, what is needed is:

- limited barriers to fundraising
- an efficient and capable home supervisor, able to understand the asset class and to rapidly authorise fund managers
- low or no supervisory fees – as multiple host Member States' fees act as a disincentive to European-wide strategies

EU supervision would only help in situations where:

- the presence of a single supervisor effectively limits barriers to fundraising, thanks to a single interpretation of common rules
- the EU supervisor is more efficient than the national one, either because it is better tooled or more experienced
- EU supervision means less costly supervision

These factors, rather than EU supervision as such, are the ones that need to be achieved. The industry itself is to a certain extent agnostic to the type of supervision, provided it best incentivises managers to fundraise easily across EU borders and to operate efficiently.

EU-level supervision may be the best option for certain types of managers and not others. For example, a German-headquartered manager sponsor group, which has established a Luxembourg AIFM, may consider that CSSF supervision gives it all the tools to operate a European-wide strategy; similarly, a small Polish venture capital manager will not necessarily feel that ESMA should be their interlocutor (unless it has a well-established

team in Warsaw). However, a Belgian growth fund using EuVECA may feel that ESMA would be a more appropriate supervisor, provided being ESMA authorised gives real fundraising advantages (due to less regulatory frictions coming with single supervision and the ability of ESMA to supersede views of national authorities) at a low cost (given the absence of additional national supervisory fees). This is, as mentioned below, considering that this Belgian manager will likely remain, irrespective of the presence of an EU supervisor, subject to a series of national requirements and may for that reason find EU supervision more burdensome.

Before introducing any level of EU supervision for fund managers, EU lawmakers should necessarily consider:

- whether having a single supervisor effectively simplify, from the manager's perspective, cross-border distribution and effectively tackles barriers to a well-functioning EU market (as we identified them in the rest of this paper)
- whether EU supervision forces managers to interact with two regulators (for example: one at the AIFM level and another at the AIF level) instead of one with national supervision
- whether the role of ESMA as a single supervisor AND as a supervisor of supervisor lead to conflicts of interest
- whether the role of ESMA as a direct supervisor among other supervisors and as rulemaker can legally but also practically ring-fenced
- whether ESMA is sufficiently tooled to perform its supervisory role as well as the most efficient supervisory authorities in the EU (i.e.: whether ESMA is staffed and has a level of expertise equivalent to supervisors with a high level of expertise)
- whether the entity supervised can keep a direct link to its supervisor (noting the importance of national hubs, in particular for smaller VC funds)

Irrespective of views on the relevance of centralised supervision, any situation where centralised supervision leads to worse outcomes in these areas would also lead to a less competitive Europe. These are therefore the factors the European Commission should consider if it decides to reinforce centralised supervision. At this stage, it is our firm view that ESMA does not have the capacity to become a centralised supervisor.

Most importantly, we strongly feel in this context that, to respect the diversity of EU markets, EU supervision should, at least in the case of fund management, always be a choice of the supervised entity, never a mandatory requirement.

One option could for example be to **allow EuVECA managers to choose between their own national supervisor and an EU supervisor**, making it easier for managers based in certain countries to develop without requiring each authority to hire a specific team of experts of the venture capital ecosystem.

Finally, we would like to flag that many of the barriers we identify in the course of this response, and which arise from national goldplating of EU rules or divergences of implementation, could be addressed would ESMA be sufficiently resourced to truly perform the role of a supervisor of supervisors, including with the tools it currently has.

Section 5: Asset management and funds

Despite Directive 2009/65/EU relating to undertakings for collective investment in transferrable securities (UCITS) and the Directive 2011/61/EU on alternative investment fund managers (AIFMD) enabling funds to be marketed across the EU through a relatively simple notification procedure, national barriers, divergent practices, and regulatory complexities often impede efficient and scalable operations, thereby impacting costs and accessibility for EU citizens. This section seeks to:

- (i) identify obstacles experienced by EU funds and asset managers to accessing the single market*
- (ii) gather stakeholder insights on barriers and experiences in managing cross-border investment funds*
- (iii) explore the effectiveness of existing authorisation and passport systems*
- (iv) and explore possibilities for simplifying current requirements*

Stakeholders input on operational challenges, passporting/marketing of investment funds, national supervisory practices and other barriers more generally are welcome. Stakeholders are encouraged to share quantitative data and practical evidence to support positions.

5.1. Operations of asset managers

These questions are more addressed at fund managers specifically.

- 1) What is your total amount of assets under management (AuM) in respect of UCITS funds and alternative investment funds (AIFs)?*
- 2) What is your total number of funds managed in the EU?*
- 3) In how many Member States do you provide the functions listed in Annex I of AIFMD or Annex II of UCITS and in which Member States?*
- 4) In what Member States are you authorised as an asset manager?*
- 5) In how many Member States do you have branches? Please list these Member States and provide examples of functions covered by these branches.*
- 6) In how many Member States do you have authorised subsidiaries? Please list these Member States and provide examples of key activities carried out by these subsidiaries.*
- 7) Do entities with your group have to maintain the same functions across different EU entities, for instance because these entities are supervised on a standalone basis, for commercial or other reasons? If yes, what functions are duplicated?*
- 9) Do you use the AIFMD passport to market your EU AIFs in other EU Member States? If yes, how many Member States and which ones? If you do not use the AIFMD management passport, please explain briefly why this is.*
 - Commercial reasons*
 - Administrative reasons*
 - Regulatory considerations*
 - Other*
- 10) Do you have to create different AIFs, or compartment of AIFs to be marketed in different Member States?*
- 11) What is the percentage (estimate) of your total AuM and percentage of total number of UCITS funds and AIFs that have been notified to be marketed in at least one other Member State?*
- 12) Please provide other information you consider relevant to describe your EU cross-border organisation and functions.*

We have collected anecdotal evidence from around 35 member firms from everywhere across the Union. In this section, we would like to share with the European Commission some insights on this evidence, allowing it to have an impression of how firms across Europe felt the burden of legislation.

Numbers below account for all costs related to legislation, whether internal or external (for example, if some of the requirements have been delegated to other firms or required the hiring of specific lawyers). For example, costs related to regulatory fees include not only the fees but also the FTE costs of hiring associates to follow-up on fee requests.

General observations

- Among the members who fed us some information, 40% had less than € 250 million of AuM, 20% between €250 and 500 million of AuM, 10% between €500 and € 1 billion and 30% over € 1 billion
- This anecdotally shows that the category with the least respondents (and likely the least number of fund managers) is typically the one just above the AIFMD threshold
- Within this population, 60% of the managers had at least 4 funds and less than 10% had only one fund
- Funds and their managers were mostly located in Luxembourg, The Netherlands and Germany, with unique respondents in Germany, Sweden, Belgium, Estonia, Norway, Poland, Spain, France, Italy and Portugal

We asked respondents to give insights on the costs of different requirements. Here is an outline of the estimated costs:

Risk management rules

- Costs related to risk management rules were estimated to range from less than € 50K to more than 500K depending largely on the fund size, with most funds suggesting the costs were around € 50 to 100K.
- Most firms estimated this cost to correspond to around 1 basis point of AuM, but with some suggesting that it could go up to 9 basis points.

Depositary-related costs

- Depositary costs vary widely depending on the size of the manager, with costs at around 50K for small managers with less than € 250 million of AuM (and potentially zero given there is no AIFMD obligation) and going up to more than 500K for larger firms.
- Depending on being subject to a depositary requirement, the cost can be inexistent to averaging from 3 to 6 basis points of AuM (irrespective of fund size)

Reporting requirements

- Managers of various sizes authorised under AIFMD typically estimate their reporting requirements at around € 100 to 200 K
- This cost is typically harder on small managers that have just been authorised, as larger managers are better able to cope with the complexity and length of Annex IV reporting. It however remains a significant burden and cost for most managers that have to report
- Many managers also complain reporting is often irrelevant and that there is no always coherence in requirements from one jurisdiction to another

Portfolio management rules

- These vary widely from manager to manager, also depending on the composition of their portfolio.
- As for other costs, for most managers this represent – on its own – around 1 basis point of AuM (or less if the fund is not AIFMD authorised and not subject to a national sub-threshold regime) but in some cases this can increase dramatically

Authorisation process

- Costs of authorisation process vary widely from fund to fund and largely depend on national situation. For example, a Polish manager reported that authorisation cost represented between 3 to 6 basis point.
- Please see our country by country evidence for more details

Marketing and material change filings

- These two similar but separate costs are equivalent, although marketing filings are generally felt to be slightly more burdensome
- More than half of the managers reported costs higher than 100k for these requirements
- Please read our detailed section on marketing requirements-related burden

Capital requirements

- Costs of capital requirements is naturally related to the formula designed to calculate these requirements

Other compliance and AML costs

- Importantly, many compliance costs affecting managers do not derive from AIFMD but from other related legislation, which sometimes apply depending on whether a manager is AIFMD authorised

- DORA and AML requirements are often quoted as the most complex of these requirements
- Combined requirements can cost more than € 1 million for largest fund structures but also represent a heavy cost for others.
- AML requirements are among the most burdensome ones from a cost perspective – with many managers reporting costs above 100K solely for these requirements

Conclusion

Costs of AIFMD-related obligations are very high when calculated as % of AUM and in overall amounts. It represents a real barrier to entry and forces managers to spend human and capital resources that could otherwise be spent on investments. While some of the costs are inherent to the running of a well-functioning company – and in fact required by investors irrespective of legal requirements, many other – often complex – costs are unrelated to their benefits. We detail these in this section.

5.2. 1. Authorisation procedures of management companies

13) Are the current authorisation / supervisory approval processes for management companies under AIFMD/UCITSD sufficiently clear and comprehensive to enable the smooth provision of asset management and supervision thereof?

No.

The authorisation and supervisory approval process for AIFMs under the AIFMD is not sufficiently clear or harmonised, particularly for private equity and venture capital managers. While the Directive sets out a common regulatory framework, in practice, it leaves too much room for national regulators to interpret and implement key requirements, resulting in divergence across Member States.

National authorities have broad discretion in several critical areas. For example, they interpret what constitutes "good repute and experience" for those conducting the business of the AIFM, as well as the suitability of shareholders and the adequacy of the AIFM's organisational structure. This means that the assessment of whether a particular individual is fit for a key function (e.g., for risk management) can vary considerably between Member States, making it more difficult for AIFMs – especially in the private equity and venture capital sectors – to recruit and retain suitable personnel for senior roles.

The same applies to the minimum personnel and organisational setup required: while AIFMD requires at least two persons to effectively conduct the business, national

regulators may set additional expectations regarding the number, qualifications, or presence of staff, leading to further uncertainty and complexity and unnecessary costs.

In Poland for example, when a company applies for a licence to manage an investment fund, the national regulator evaluates the members of the management board. The issue is that this assessment is based solely on the type of licence held (e.g., a licence for managing UCITS), without considering the actual scope of activities the person will perform.

As a result, someone who is only going to manage a private equity or venture capital fund – targeted at professional investors and operating under different principles than retail UCITS funds – is evaluated under the same standards as someone managing retail funds for individual clients.

This approach fails to recognise the fundamental differences between UCITS and AIFMD-regulated funds and leads to disproportionate requirements – especially for smaller managers or straightforward investment strategies. It makes the licensing process unnecessarily complex, burdensome, and poorly aligned with the actual risk profile of the fund's activities.

Other aspects - such as the required content and detail of business plans, the structure of remuneration policies, and the approach to delegation arrangements - are also subject to varying national standards, increasing the compliance burden for cross-border managers.

In the absence of clear rules at EU level on the transition from a sub-threshold to a fully-licensed status, asset managers rely upon the administrative practice of the respective NCA in terms of both the permissibility of their management and fundraising operations for existing and currently raised investment funds as well as the timing for the transformation of existing funds into regulated structures (as may be required under national laws). This not only creates significant legal uncertainty for asset managers in this critical transition phase but also leads to enormous pressure and deployment of resources for the re-structuring of existing investment funds while maintaining the daily operations.

Although Article 8(5) AIFMD foresees that authorisation should be granted within three months of a complete application, in practice, approval times differ significantly between Member States, adding another layer of unpredictability to the process. It is not rare to see approval processes, including for sub-threshold EuVEECAs, to last longer than a year. This lack of consistency and predictability can delay market entry and complicate business planning. For private equity and venture capital managers who want to operate across multiple jurisdictions, it creates a high barrier to entry.

In summary, the current authorisation and approval process under AIFMD leaves too much room for national interpretation, resulting in a fragmented regulatory landscape. This not only makes it more challenging for AIFMs to assemble and maintain the

required personnel and organisational structure, but also leads to significant uncertainty and inefficiency in the authorisation process itself and ultimately leads to market fragmentation.

14) Is the authorisation process proportionate in circumstances where not all requirements are relevant to the activity envisaged by the applicant?

No.

The authorisation process under the AIFMD is not proportionate in circumstances where not all requirements are relevant to the activity envisaged by the applicant.

While the Directive does allow for certain requirements to be disapplied or modified depending on the specific setup of the manager – for example, some rules may not apply if the manager does not engage in particular activities such as employing leverage – the overall process remains largely uniform and does not sufficiently reflect the diversity of business models within the alternative investment fund sector.

As a result, applicants such as private equity and venture capital managers are **often required to prepare documentation, establish policies, and demonstrate compliance with rules that are not meaningful or proportionate to their actual activities** (e.g. how to address ‘window dressing’, ‘churning’ or ‘best execution’).

This creates **unnecessary administrative and compliance burdens, particularly for managers whose risk profiles and operational structures differ significantly from those of other alternative investment fund managers** (typically VC managers being subject to rules that were thought of for UCITS in the first place and were transposed in AIFMD for other types of liquid AIFs).

In practice, national regulators tend to apply a **conservative interpretation of the rules**, requiring applicants to address the full spectrum of requirements **unless a clear exemption is specified**. This lack of flexibility, enshrined in AIFMD, reduces the proportionality of the process and can act as a barrier to entry and innovation in the sector.

Overall, despite certain rules not applying depending on the setup of the manager, the authorisation process under AIFMD is not sufficiently proportionate to the risks and activities of each applicant. Furthermore, it is frequent that national competent authorities impose **additional** requirements to managers that are unrelated to their main activities.

15) Does the current authorisation process for management companies under UCITSD/AIFMD act as a barrier to the functioning of the single market? If yes, please explain the main barriers, which may encompass EU law, national law, requirements imposed by national competent authorities (NCAs), and operations such as technology and communication channels.

Yes. The current authorisation process for management companies under the AIFMD acts as a barrier to the functioning of the single market.

While the AIFMD establishes a harmonised framework for authorising AIFMs, in practice, significant barriers arise due to divergent implementation and interpretation at the national level (see above).

National competent authorities have considerable discretion in how they interpret and apply the requirements of the Directive, including the assessment of the suitability and experience of key personnel, the adequacy of organisational structures, the transition from sub-threshold to fully-licensed status and the documentation required for authorisation. This leads to inconsistencies and additional requirements that go beyond the Directive's minimum standards. As a result, AIFMs seeking to operate cross-border face increased legal uncertainty, higher compliance costs, and delays in market entry, as they must adapt to different national rules and procedures. Furthermore, there are operational barriers, such as varying expectations for technology infrastructure and communication channels, which can further fragment the market. The actual duration for the authorisation process also varies significantly between Member States, adding another layer of unpredictability for applicants. These factors collectively hinder the smooth functioning of the single market for alternative investment fund managers under the AIFMD. For sub-threshold AIFMs operating under the EuVECA regime, the absence of a formal cross-border management passport and the imposition of de facto authorisation procedures by certain NCAs create practical delays and regulatory uncertainty. In several cases, registration timelines have exceeded six months, despite the EuVECA Regulation's intention of offering a simplified regime. These experiences highlight the broader need for procedural streamlining and harmonised interpretation of registration frameworks across Member States.

Here are a few examples of barriers in national law and of the level of divergence in the existing approaches between Member States:

Italy

Under current Italian regulation, an AIFM qualifying as a sub-threshold manager under the AIFMD is nonetheless required to undergo a full-fledged authorization process with the Bank of Italy, rather than benefiting from the simplified registration process provided by the Directive itself.

This approach results in substantial disparities in terms of compliance costs, administrative burdens, and timing required to obtain authorization compared to other Member States, thus indirectly representing a barrier for smaller AIFMs intending to operate within the Italian jurisdiction.

France

French regulation does not *per se* require full-authorization for every sub-threshold manager, but the French framework for every non-UCITS is so close to the AIFMD that most managers decide to opt-in to the AIFMD directly.

Luxembourg

In Luxembourg, sub-threshold AIFM applications will undergo a fast-track approval process in comparison to full-scope authorisations. Full-scope authorisations are asset class/strategy specific and license extensions require additional approval times.

Spain

The Spanish authorization process takes between 9 and 12 months and is a good example of how long and burdensome a process that can be seen as simple on the AIFMD law becoming a real hurdle to industry development.

Moreover, Spain applies an authorization process for sub-threshold managers that is similar to the one applicable to AIFMs. Additionally, Spain does not apply sub-threshold rules (such as the obligation to appoint a depositary) to entities managing funds addressed to retail investors.

The process also requires authorization from SEPBLAC (the AML unit), which may cause further delays, as SEPBLAC does not liaise directly with the sponsor.

To obtain authorization, Spanish managers are required to comply with the following requirements that are not included in the AIFMD:

- Appoint a non-executive director to oversee outsourced activities.
- Comply with MiFID rules during client onboarding and meet relevant training requirements.

Regarding the conditions for being granted authorization, Spanish AIFMs face significant limitations on borrowing and lending, which restricts their ability to finance employees and directors for their GP commitments.

Germany

An authorization process customarily requires between 12 and 18 months in Germany, whereas BaFin does not even give any feedback for as much as six months.

Denmark

Under Danish regulation, the Danish Financial Supervisory Authority (FSA) has 60 working days to process both AIFM authorisation and EuVECA registration applications. However, if the application is deemed incomplete or unsatisfactory, the 60-day review period is paused until a compliant application is submitted. In practice, this often leads to significantly extended processing times, which hinders fundraising efforts.

First-time sub-threshold managers, in particular, frequently lack the human and financial resources to complete a EuVECA registration (or obtain AIFM authorisation), due to the procedural complexity, demands for larger teams to ensure function separation and cost (both capital requirement and advisor fees). As a result, they must incur the financial risk without any certainty regarding investor interest.

Consequently, **very few first-time sub-threshold managers pursue a EuVECA registration.**

Poland

The authorisation and registration timeline for fund management entities in Poland remains a significant procedural hurdle:

- Registration of ZASI (Professional External Asset Management Company) with the Polish Financial Supervision Authority (KNF): ~3 to 4 months
- Licensing of ZASI by KNF: ~12 to 18 months
- Registration of ASI (Alternative Investment Company) in the National Court Register (KRS): Highly variable; ranges from 3 days to 3 months

It is important to note that individual ASIs are not registered directly with the KNF—instead, the sponsor must only fulfill an information obligation. However, the extended timeline for ZASI licensing, which applies to managers seeking to operate at scale or under more complex mandates, is seen as disproportionate to the operational risk profile of many private capital strategies, particularly VC and PE funds.

There is a lack of sufficient application of the principle of proportionality in the licensing process. Polish provisions implementing EU directives do not define the principle of proportionality, nor do they refer to the proportionality principle as set out in EU law. Instead, the Polish legislator effectively introduces additional, vague conditions based on general clauses, which grant the supervisory authority significant discretion in their interpretation and application.

The AIFM licensing process is lengthy and complex – often exceeding 12 months – with requirements imposed on members of AIFM governing bodies regardless of the planned business model or the type of products offered. Excessive expectations are also placed on the presentation of internal regulations, including technical or minor aspects, as part of the licensing procedure.

A simplification of the process would be advisable in the case of AIFMs providing services exclusively to professional clients or establishing “dedicated” and non-mass-market products.

Belgium

Supervision of management companies is different from other Member States in that Belgian law distinguishes three different types of AIFs depending on who funds the AIF, namely: (i) public AIFs, (ii) institutional AIFs, and (iii) private AIFs. These AIFs can have legal personality – in which case they are a BEVAK (in case of fixed capital) or BEVEK (in case of variable capital) – or take the shape of a common contractual fund (“*gemeenschappelijk beleggingsfonds*”). They can have variable participation rights/capital or fixed participation rights/capital. As such, the supervision (and regulation) of corresponding AIFMs will also depend on the type of AIF it manages (with differing degrees of scrutiny as the case may be, e.g. when dealing with public AIFs compared to institutional AIFs). Overall, the Belgian situation shows that authorisation (and supervision) can largely be affected by the set up of national fund structures.

Sweden

The industry in Sweden has highlighted that the Swedish Financial Supervisory Authority’s (the “**SFSA**”) approach and guidance are less effective than those of other members states such as Ireland and Luxembourg. One such barrier in Sweden is the internal practice of the SFSA regarding implicit requirements that are not shared with the management companies.

Legal certainty and the efficiency of handling authorisation processes would increase if the Swedish Financial Supervisory Authority were more transparent and published its internal practices.

Czech Republic

The authorisation process is very rigid in the Czech Republic. Although no major additional requirements are required to those introduced at the EU level, the regulator (the Czech National Bank (“**CNB**”)), is quite strict when it comes to formalities and formal requirements. The major barrier is, however, the length of the process for obtaining authorisation from the CNB (the “clock-stop” tactics), where necessary. It is not unusual that it takes **over a year** (even though the law states 3 months).

National additional requirements include:

- Obligation to have at least two senior persons with real decision-making power (Art. 25 of the IIFS);
- Language - submissions and communication in Czech, exceptions only in exceptional cases;
- Detailed business plan and description of outsourced activities beyond UCITS/AIFMD requirements.

16) Are the current authorisation processes / supervision for management companies under AIFMD/UCITSD applied in a consistent way across Member States? If no, please present these divergences and explain if these divergences created challenges for operating in the single market?

No, please see the answers above.

There are notable inconsistencies across Member States in both the application of authorisation processes and the supervisory expectations under AIFMD and UCITSD frameworks.

- **Scope of authorisation:** Member States differ in how broadly they define the permitted strategies under an AIFM license. For example:
 - Malta tends to issue broad AIFM authorisations covering all investment strategies upon initial approval.
 - In contrast, Luxembourg, Sweden, France and Germany typically issue strategy-specific authorisations, tied to the qualifications, experience, and staffing profile of the AIFM at the time of application. The AIFM will have to undergo a formal scope extension procedure when seeking to manage new strategies.
 - In Poland, the supervisory authority intervenes to a significant extent in the content of the investment strategy, including going so far as to prohibit certain strategies altogether (e.g. an explicit refusal to approve strategies based on cryptocurrencies).
- **Timeline and procedural divergence:** As mentioned above, the duration and complexity of the authorisation process also vary. While some regulators offer relatively swift procedures (e.g., within 3–4 months), others may take significantly longer (more than a year) due to more extensive document reviews, pre-submission meetings, or iterative feedback loops. The degree of interaction, level of prescriptiveness, and reliance on standard templates also differ.
- **Supervisory practices and follow-up:** Ongoing supervisory expectations (e.g., reporting frequency, thematic inspections, and AML/CFT governance reviews) diverge widely. For instance, Luxembourg adopts substance- and risk-based supervisory models that include ongoing assessment of staffing and delegation structures, while others may have lighter-touch engagement post-authorisation.
- **Regulatory fees:** There is no harmonised fee model across the EU. Examples include:
 - **Netherlands (AFM):** Charges approximately EUR 6,500 for AIFM authorisation.
 - **Luxembourg (CSSF):** Charges EUR 18,000 for AIFM authorisation.
 - Some jurisdictions charge lower ongoing supervisory fees, while others also impose annual lump sums and on-site inspection charges.

These disparities create uneven entry conditions, can disincentivize cross-border operations, and contribute to forum shopping or regulatory arbitrage. As such, greater harmonisation or at least clearer EU-level guidance (without however creating additional regulatory burden) could be helpful to ensure a more level playing field for management companies operating across the Single Market.

Specific issues in specific countries include:

Spain

Spanish authorities are providing interpretations limiting certain “core” activities carried out by PE managers, in particular, the following topics are being addressed and specific restrictive rules are provided:

- Fund raising periods
- Rebalancing of assets among Parallel Funds
- Equalization fees
- Continuation Funds
- Services provided by manager/adviser related entities.
- In kind distributions
- Warehousing

Italy

The marketing passport notification process in Italy is considerably lengthier compared to the timeline envisaged by AIFMD.

Specifically, while Article 32 of AIFMD prescribes a maximum timeframe of 20 working days for passport notification approvals, the actual process in Italy often takes approximately 8 weeks. This extended timeline arises from the fact that the marketing passport is subject to prior approval by both Italian supervisory authorities, the Bank of Italy and CONSOB. Each authority independently reviews and must provide its favourable opinion on the marketing notification, resulting in additional administrative burdens, increased procedural complexity, and substantially longer approval times compared to other Member States, which typically involve a single competent authority and adhere strictly to the AIFMD’s stipulated deadlines.

Consequently, this dual-level authorisation process represents a clear practical divergence in implementation, resulting in higher costs, operational inefficiencies, and potential competitive disadvantages for asset managers intending to passport their investment funds into Italy.

Sweden

The AIFMD and the UCITS Directive stipulate that management companies must have a remuneration policy. Among other things, variable remuneration must be deferred for a number of years, with a significant portion consisting of certain instruments. The provisions must also be applied proportionately, i.e. in a manner and to the extent appropriate to the company's size, internal organisation, and the nature, scope, and complexity of its activities. There are corresponding remuneration rules under CRD and IFD (applying to credit institutions and investment firms). Following the amendment of the CRD and the introduction of the IFD, the principle of proportionality has been clarified by introducing explicit exemptions from the deferred payment and payment in instruments rules in certain cases. These exemptions mean that the rules do not apply to individuals whose annual variable remuneration does not exceed EUR 50,000 and constitutes less than a certain proportion of their total annual remuneration. Even before the remuneration rules were amended to include these exemptions, many member states had introduced similar exemptions into national law when implementing the CRD, the UCITS Directive and the AIFM Directive. The principle of proportionality should be specified in a similar manner for management companies. Currently, Swedish Financial Supervisory Authority's regulations places an excessive burden on Swedish management companies, creating an uneven playing field.

For AIFMs applying for a MiFID top-up licence to provide discretionary portfolio management services, the SFSA's policy is that, in order to obtain such top-up licence, the AIFM must implement ethical walls between the fund management business and the portfolio management business, which we believe differs from other jurisdictions. As mentioned above, this is an implicit requirement from the SFSA and it is in our view not clear on what grounds the SFSA maintains a strict requirement on separation of fund management and portfolio management, as this is not required by the AIFMD/MIFID, nor the national transpositions of the directives.

Denmark

The Danish FSA's unofficial interpretation of the employee participation scheme exemption under the AIFMD appears to deviate from the interpretation in most other member states. The Danish FSA's view is that the exemption only covers employees of an AIFM, i.e. that the exemption is limited in scope to employees of a certain type of company (fund managers), which we believe is not consistent with the purpose of the exemption which is also intended to exempt employee participation schemes for ordinary (commercial/industrial) businesses.

Poland

Authorisation procedures are excessively lengthy, typically exceeding one year. During the process, it is often difficult to determine the supervisory authority's expectations with regard to the proposed activities. There is also a lack of consistency in the

application of relevant rules. In the case of supplementary licences—such as for investment advice or portfolio management—the supervisory authority requires the implementation of disproportionate and inappropriate organisational changes, including the establishment of “Chinese walls”, even where there is no actual conflict of interest. This leads to unnecessary organisational disruptions, such as the need to split job functions. Moreover, the authority’s requirements are not aligned with the actual activities carried out, but rather with the formal scope of the licence. For example, an AIFM managing only AIFs but holding a UCITS licence must still meet all requirements applicable to UCITS management.

17) Are you supportive of further harmonising and streamlining authorisation requirements and procedures for management companies to increase simplification and reduce fragmentation in the EU's asset management sector? If no, please explain how aspects of the framework could be improved. For example, would you agree that there is scope for further standardisation of the treatment of service providers, including depositaries as part of the authorisation framework?

Yes, we are supportive of further harmonising to the extent it would lead to streamlining authorisation requirements and procedures for management companies under the AIFMD to increase simplification and reduce fragmentation in the EU’s asset management sector.

As highlighted in our previous comments, the current authorisation process leaves significant room for national interpretation and additional requirements by national competent authorities. This results in divergent standards for, among other things, assessing key personnel, organisational setup, the transition phase and documentation, as well as inconsistent approval timelines across Member States. These variations create legal uncertainty, increase compliance costs, and delay market entry for AIFMs, ultimately acting as a barrier to the functioning of the single market.

Streamlining the authorisation process would also reduce costs for management companies, as the process would become more predictable and transparent. Furthermore, introducing a legally anchored principle of proportionality would be highly beneficial, ensuring that smaller full-scope AIFMs, in particular those with a limited range of asset classes under management, are not subject to the same compliance and regulatory burden as larger full-scope AIFMs managing a wide range of asset classes, which would foster a more balanced and competitive environment within the sector.

This could be done through amendments to the EuVECA regime, allowing EuVECA funds to waive national requirements in line of their status as an EuVECA fund. However, the European Commission should be extremely careful and ensure that Member States do not use the authorisation process to deter managers to use an EU passport (a practice

that some NCAs may well already be using, given the complexity of EuVECA authorisations). We understand one of the key barriers to the setting up of EuVECA is the complexity of the authorisation process.

As stated above, establishing an EU-wide authorization form/procedure could lower the costs of authorisation by a significant margin.

5.2.3. Treatment of service providers and Depositaries during the authorisation process

5.2.3. Treatment of service providers and Depositaries during the authorisation process

22) Where the fund authorisation process involves an assessment by the NCA of the fund service providers appointed to a fund, in particular the depositary, is the current framework (requirements and procedures) sufficient and proportionate? If no, please explain how aspects of the framework could be improved. For example, would you agree that there is scope for further standardisation of the treatment of service providers, including depositaries as part of the authorisation framework?

Whilst there is some variation in approach between Member States, our member firms do not currently find the process for assessing service providers and Depositaries during the authorisation process to be a material issue.

23) Should an authorisation process be introduced at the entity level for depositaries, with the understanding that such authorisation would allow them to offer their services across the EU?

Given the requirements under Article 21(3) AIFMD, most depositaries appointed pursuant to AIFMD are likely to be already authorised (e.g. as a credit institution etc.) and Article 21(3) AIFMD already provides that a PE depositary must be subject to appropriate professional supervision. We would not, therefore, prioritise an entity-level authorisation process for depositaries.

We believe the most impactful change for our member firms would be to extend the “PE depositary” framework set out in the last sub-paragraph of Article 21(3) AIFMD to all Member States (noting that it is currently optional for Member States to implement this regime). This framework provides a tailored regime that allows private equity, venture capital and certain other types of closed-ended funds to engage the services of specialist depositaries, whose service offerings are specifically designed to address the needs and requirements of funds investing in these asset classes.

In those Member States where the “PE depositary” regime is available, notably those with a well-established funds industry such as Luxembourg and Ireland, a significant number of non-bank service providers such as fund administrators are permitted to offer “PE depositary” services. This has the benefit of enabling private equity and venture capital funds to appoint service providers with a deep understanding of the industry and the expertise to undertake the verification of title to private assets effectively. It has also improved access to depositary services for private equity and venture capital firms, as traditional custodian banks have shown relatively limited commercial appetite for serving this sector of the market.

In Member States where the “PE depositary” regime is not available, closed-ended private equity and venture capital funds must appoint a full-scope, full-service depositary that meets the eligibility criteria at Article 21(3)(a)-(c) AIFMD. This limits choice and competition in those Member States, as full-scope depositaries often do not have the same level of tailored service offering or asset class expertise as a specialist “PE depositary”.

The lack of specialist “PE depositaries” in Member States that have not implemented the “PE depositary” regime therefore:

1. may act as a barrier to establishment of private equity and venture capital funds in those Member States;
2. creates an unlevel playing field across the EU; and
3. may increase costs for managers in those Member States.

We request that Article 21(3) AIFMD be amended to make the “PE depositary” regime mandatory across all Member States. The extension of the regime to all Member States would support the development of private equity and venture capital industries in Member States where they are currently under-developed, and create a more harmonized and efficient investment ecosystem in these asset classes across the EU, aligned with the goals of the Savings and Investments Union. This is especially true since some countries, such as Spain and Italy, also implement depositary requirements for sub-threshold fund managers.

24) With the entry into application of Directive (EU) 2024/927, to what extent are barriers still expected to persist for investment funds in accessing competitive, good-quality depositary services for AIFs? Please provide a ranking of the importance of the issues having regard to their impact as high, medium or low priority.

Specialist Depositaries for Private Equity and Venture Capital Funds (“PE depositaries”) – High Priority

Please see response to Q22 above.

Other Issues: Depository Arrangements where Custody Assets are Infrequently Held

Whilst private equity and venture capital funds do not usually invest in or hold securities that are capable of being held in custody under AIFMD, there are limited scenarios where they may do so. It can be challenging for private equity and venture capital firms to establish appropriate custody arrangements to cover these limited scenarios.

For example, a private equity fund may hold listed securities for a period following an initial public offering (IPO) of a portfolio company, which therefore need to be held in custody by its depository or a sub-custodian. In this context, the investment bank acting on the IPO is typically the best-placed party to hold the newly-listed securities in custody on behalf of the fund. Under the current AIFMD rules, the investment bank needs to be appointed as a sub-custodian of the AIF's existing depository in order to do so. The AIFM is not permitted to appoint the investment bank directly to act as custodian for the listed securities in question as this would breach the requirement to appoint a single depository.

This will typically require the AIF's depository to undertake due diligence on the investment bank and enter into a delegation arrangement, which adds complexity, time and cost to the process.

26) What are the main barriers for AIFs to access competitive and good-quality depository services? Please provide a ranking of the importance of the issues having regard to their impact as high, medium or low priority.

The main barriers to accessing competitive and good-quality depository services have been articulated in the responses to Q22 and Q24 above. In addition, we would note the cost of depository services can be significant and is typically borne indirectly by investors as an operating cost of the AIF.

5.3. EU Passport for Marketing of Investment Funds

27) In the context of the EU framework, are the current passporting provisions on marketing sufficiently simple and proportionate to enable the smooth marketing of investment funds in the single market? If no, please explain and suggest areas for improvement.

No.

The pre-marketing regime introduced under the CBDF was a welcome step toward improving market access and transparency. However, in practice, several elements of the framework still create friction in cross-border fundraising and capital deployment. These limitations are especially relevant to closed-ended AIFs, where timing, investor engagement, and parallel fund structures require greater flexibility.

The problem of fees and charges

The CBDF legislation recognizes that competent authorities of host Member States may impose “**regulatory fees or charges**”, on a one-off or ongoing basis, for the authorisation/notification and monitoring of non-domestic funds. Several Member States impose additional fees and charges on AIFMD-authorized EU AIFMs not based in their country, thereby reducing access to market in a significant part of Europe, including larger markets such as Germany, France, Spain and Italy. Austria, Belgium, Croatia, Czech Republic, Denmark, Estonia, Finland, Latvia, Luxembourg, Malta and Poland also charge host fees. The amount and the basis for calculating such fees varies between Member States, and include initial entry fees and/or ongoing annual fees.

Although the costs of such fees are relatively low compared to overall marketing costs, they can be substantial when a manager markets more than one fund (e.g. via a parallel structure or different fund strategies or vintages) throughout the EU. The necessity to retain **local advisors to understand and evaluate the costs of marketing the fund in such particular jurisdiction and to provide advice on the fees** adds to this bill.

In practice, AIFMs will often avoid some countries because of the (level of) fees charged, including larger countries, but also Member States where the anticipated investor demand is relatively low and/or the investor base is comparatively small (the additional regulatory costs would be deemed disproportionate to the perceived fundraising potential). The impact of such charges is particularly acute where annual fees are levied. It is also not always clear whether jurisdictions expect a fee to be paid: (a) only during each year that marketing takes place; or (b) after marketing has ceased but where there are still investors in the fund in that jurisdiction. Some Member State regulators have indicated that fees would cease to be due if the AIFM no longer exercises its marketing passport, but the position remains unclear and there are divergent approaches.

Where an AIFM has been granted a marketing passport by its home Member State regulator, we consider there to be **no legal justification under the AIFMD for any additional restrictions and/or requirements to be imposed on the AIFM by the host Member State regulator**. Not only are we concerned about the legality of such practice, but we are also concerned about the long-term and potentially significant adverse impacts that this may have on market participants’ behaviour and the operation of the single market.

Irrespective of whether a fee affects the marketing strategy of a fund manager, in a Union a fund manager that is fully compliant with the relevant EU law and that is in possession of a valid passport should be free to market across the EU without any further administrative requirements being imposed by the ‘host’ jurisdiction, including fees and charges. Such charges, even minimal, undermine the concept of a Union and remain an unwarranted barrier to the single market and to cross-border marketing, not only for their cost per se but also for the administrative burden they create. It should be made explicit that there are **no circumstances under which national competent authorities retain the right to impose additional obligations.**

Separately, we are aware that certain Member States also impose other obligations, such as full translations of certain notification/registration materials or local agents or representatives. In terms of costs, this can easily add up to tens of thousands of euros. A large majority of investors into PE/VC funds (in particular when they qualify as professional investors) consider that English is sufficient.

Also, it should be clarified in Level 2 measures or guidance from ESMA that the home regulator has sole jurisdiction to regulate the AIFM. Certain host regulators comment on the documents provided to them for information only, whereas it should be clear for the AIFM that only its national regulator has authority of it. Differences between regulators should be dealt with at ESMA level.

28) In the context of the EU framework, are the current passporting provisions on marketing for investment funds applied in a consistent way in domestic legislation by Member States? If divergences exist, please explain, describing the impact and suggested areas for improvement.

No.

There are still local requirements leading to a, *de facto*, non-existing fully EU-wide marketing passport, whose costs should not be underestimated.

Problems are numerous and range from divergent interpretations as to **what effectively constitutes marketing** (and by opposition pre-marketing), **requirements to appoint local agents to be in a position to market, limitations to pre-market** unless a manager has already marketed a fund nationally (a problem prevalent in many Nordic countries) and the **need to prepare documentation that is either specific to the local market or to the local fund structures.**

Despite the CBDF rules, we are still far from a common market when it comes to marketing rules, largely due to diverging supervisory practices. Further EU-level convergence in supervisory timelines, notification content requirements, and digital procedures would help streamline cross-border marketing and reduce residual friction.

On a separate note, it is frequent for fund managers to market through the support of MiFID entities or with MiFID top-ups (“**MiFID affiliates**”). In that context, there are wide divergences across Europe regarding **which MiFID activity the affiliate is performing** (reception and transmission of orders (RTO), placing) **and who is the client of the MiFID entity** (the manager or the end client). For example, Germany applies a rather broad interpretation of what constitutes “investment brokerage” as it includes any activity aiming at inducing a person’s willingness to acquire a fund unit requiring a license for providing investment services, and not only the receipt and transmission of orders in financial instruments. Similarly, Belgium’s interpretation of this concept also goes beyond the mere receipt and transmission of orders and encompasses i.a. asset management and investment advice. These divergences create serious barriers to entry and lead to inconsistent treatment of managers across Europe, **sometimes leading to situations where the affiliate is unable to provide an effective service.**

Finally, when it comes to **EuVECA**, sub-threshold AIFMs relying on the EuVECA framework have reported several inconsistencies in its application across Member States. In some jurisdictions, the label is not fully recognised or additional conditions are imposed, undermining the ability of EuVECA managers to benefit from the intended ease of pan-European fundraising. These obstacles reduce the practical effectiveness of the passport and create an uneven playing field for smaller managers.

Overall, here are a few examples

Poland

In Poland, there are no major obstacles to the marketing of EU AIFs; however, legal uncertainties persist with regard to the offering of units through intermediaries. Due to the amendments to the relevant EU directives (including MiFID), Poland has introduced an additional investment service—offering of financial instruments—which may only be performed by licensed MiFID investment firms. Without such a licence, an intermediary is not permitted to actively offer AIF units to its clients. This gives rise, in particular, to doubts as to whether foreign investment firms operating under a MiFID passport, but not holding a Polish licence for the offering of financial instruments, are permitted to participate in the distribution of AIF units in Poland at all.

Luxembourg

In Luxembourg, the transposition and application of the EU passporting framework under AIFMD, UCITS, and CBDF have been largely consistent with EU law.

Luxembourg does not require the appointment of local agents or impose additional formalities for EU AIFs or UCITS exercising passporting rights. However, certain procedural expectations or document standards (e.g., translations, confirmation

letters, investor disclosures) or timelines may vary slightly depending on fund type or distribution channel.

In summary, Luxembourg has implemented the EU passporting provisions faithfully, in a technically consistent manner and without creating material domestic barriers to access.

Germany

The national regulator BaFin requires the submission of **locally tailored marketing materials** including specific disclaimers and risk warnings, even when these have already been approved in the home Member State. This leads to duplicative work.

Spain

In Spain, it is required to appoint a **local agent** which should act as local representative to the national regulator CNMV, leading to additional costs (see further questions). The Spanish local agent interpretation is widely seen in the market as one of the main barriers to entry to a specific market – and discourages investments in Spain.

Denmark

“Marketing” is defined broadly under the Danish AIFM and the Danish FSA interprets “marketing” very broadly as well, thus almost any active or unsolicited communication with a potential investor, even at an early or informal stage, is treated as marketing. For the same reason, reversed solicitation is in theory not possible.

Further, (i) Danish sub-threshold managers are not allowed under the AIFM Act to fundraise for an EU Fund without an EuVECA registration, (ii) registered EU Managers are not allowed to fundraise for a DK, EU or non-EU fund in Denmark without an EuVECA registration (iii) AIFM authorized DK managers cannot fundraise for a non-EU fund without a separate authorisation obtained by the Danish FSA and (iv) non-EU managers fundraising for a DK fund is not allowed.

Finally, **foreign sub-threshold managers are not allowed to neither pre-market nor market in Denmark without an EuVECA passport or Danish marketing passport**, just as pre-marketing activities by an authorized AIFM aimed at semi-professional investors are no longer permitted under the Danish AIFM Act, unless you have an EuVECA registration. This means that for the many Danish authorized AIFMs who target semi-professional investors will need to obtain an EuVECA registration to pre-market towards such individuals but many authorized AIFMs do not have an investment scope that fulfills the EuVECA requirements.

The marketing restrictions and broad interpretation of “marketing” means that the geographical scope of investors is limited and that AIFMs need to submit a full marketing notification before initiating even very limited investor outreach activities. The

time, resources and especially costs (for capital requirement fulfilment, advisor costs etc.) related to applying for both an AIFM authorization and EuVECA registration makes it unattractive for especially first-time managers.

Denmark does not require pre-approval of marketing materials by the Danish FSA. Nevertheless, the Danish FSA retains the authority to review marketing communications and impose injunctions if non-compliance is identified. In practice, marketing materials must include a comprehensive set of information, must be clear, not misleading, and shall independently set out information on investment strategies risks and costs. The Danish FSA has an increased focus on this, and compliant marketing is a strategic responsibility, not a mere box-ticking exercise. We expect this to increase disclosure obligations and operational burdens for AIFMs marketing into Denmark.

As mentioned above, issues listed above are not exhaustive and some of the problems raised here will also apply in other countries.

Czech Republic

In the Czech Republic, passporting provisions on marketing for investment funds are mostly applied in a consistent and non-restrictive way in accordance with the UCITSD/AIFMD Directives.

Non-Czech above-threshold EEA AIFMs can market AIFs to qualified investors in the Czech Republic by exercising passport rights for marketing. This requires notification to their home state authority, which then informs the CNB, leading to the later registration of the AIF to the special investment fund's list maintained by the CNB. Investments may be offered to the public as soon as the relevant foreign supervisory authority notifies the manager that it has sent a notification to the CNB.

A mere notification of the home state authority to the CNB is a sufficient condition for a private placement to professional customers. However, offering to persons other than professional customers in this case is possible only if:

- (i) such an investment into an AIF may be offered publicly, or
- (ii) there is a maximum of 20 addressees.

This is because the rules for private offering fall within the competence of local law.

For public offering to non-qualified Investors, besides the passporting requirements (manager's licence, notification to the CNB and CNB registration on the list), the EEA AIF:

- (i) Must be deemed comparable to a local special fund by the CNB in the special administrative proceedings and
- (ii) The AIF must ensure distribution of information, service for investors and a contact point (electronic form is sufficient).

These requirements are made within the national local discretion and potentially add a higher barrier for public offerings to non-qualified investors compared to the purely harmonised approach.

In case of the public offering to the qualified investors, the following conditions must be met:

- (i) The foreign AIFM is authorised under the AIFMD (confirmation by the competent supervisory authority of the AIFM's home country of the scope of the authorisation is a mandatory attachment to the notification).
- (ii) CNB has to be notified by the relevant supervisory authority.
- (iii) The foreign AIF is registered in the relevant list maintained by the CNB.

Pre-marketing

The Czech Republic has adopted pre-marketing provisions consistent with the EU regulation (CBDF Directive). EEA AIFMs can pre-market AIFs to potential qualified investors after notifying their home authority within two weeks of starting the activity, which then transmits the pre-marketing notification letter to the CNB. The rules regarding the content of the pre-marketing materials (not enabling commitment or amounting to a subscription form) and the 18-month no reverse solicitation period after pre-marketing are also included.

29) In the context of national frameworks, where divergences for passporting (marketing notification regime, review of the marketing documents by the host Member States, IT or additional administrative requirements) exist, please elaborate on them, using practical examples.

See our answer to Question 28 for EU issues, as national frameworks are in most cases implementing the AIFMD. We do see significant divergences arising from national goldplating.

We would like to use the example of Luxembourg and Czech Republic to demonstrate that, even where the transposition and application of the AIFMD and UCITS marketing passport regimes has been broadly aligned with EU law, there will be a few procedural and administrative areas where divergences may arise or create friction.

Luxembourg

Luxembourg offers a pragmatic and efficient marketing notification process, supported by tools like eDesk and flexible language rules that accommodate international practice. Its post-notification approach to non-substantive changes, streamlined handling of documentation, and clear expectations around distributor disclosures

provide a strong model for cross-border consistency that other Member States could emulate to enhance operational efficiency and investor access.

Czech Republic

The overall passporting regulation in the Czech Republic does not provide for major divergencies from the European law. Some minor differences however may be found.

Regarding the overall screening of marketing materials, the CNB does not pre-authorise any marketing communication materials (promotional or advertising) before a fund's distribution commences. This means there is no ex-ante verification of marketing communications by the CNB.

AIFMD in the Czech Republic: National Specifics

The Czech legal framework introduces certain national specificities concerning the marketing of Alternative Investment Funds (AIFs), particularly differentiating between private and public offerings.

Private Offering (Private Placement):

While Czech law stipulates that foreign AIFs for private placement should be registered in a list maintained by the CNB, this requirement is generally not enforceable in practice. Imposing such an obligation on AIFs would go beyond the scope of the AIFMD (Alternative Investment Fund Managers Directive) and would constitute unnecessary additional requirements, which the Directive prohibits. Consequently, a mere notification to the CNB via the home Member State authority is usually sufficient for private placement to professional customers (the need to register the entity into the list should be a full responsibility of the CNB).

Public Offering (Retail Marketing):

In contrast, for publicly offered AIFs (marketed to retail investors), national authorities are permitted to impose higher requirements than those mandated by the AIFMD itself, given the retail nature of the offering. In the Czech Republic, additional requirements are currently in place for such funds:

- (i) The CNB must issue a decision on comparability, confirming that the foreign AIF is comparable to a local "special fund" (i.e., a non-UCITS fund in the Czech Republic). This assessment is conducted by the CNB upon application.
- (ii) There must be a point of contact facility established in the Czech Republic for investors of the fund. While a physical presence is not strictly required, this facility ensures communication with investors and public administration can be facilitated, often through remote means.

Furthermore, in the case of public offerings, the ability to market the fund may also be contingent upon its registration in the CNB's list of foreign AIFs. This registration

requirement, too, represents a stricter condition than generally set forth by the AIFMD for cross-border marketing to qualified investors.

Administrative Fees for Public Offering:

When marketing a foreign Alternative Investment Fund (AIF) to the public (retail investors), the CNB levies an administrative fee of CZK 5,000 for accepting an application to assess the comparability of the foreign investment fund with a special fund.

The impact on EuVECA

As we have mentioned in several sections of our response, marketing barriers are particularly affecting EuVECA managers. Despite the intention of the EuVECA Regulation to facilitate simple registration processes, several Member States apply gold-plating or interpretive barriers that resemble full AIFM authorisation procedures. This increases setup costs and delays time to market, particularly for smaller managers with limited resources. Streamlined, uniform registration practices across jurisdictions, including use of simplified templates and digital channels, would enhance the usability of the EuVECA label and better align with the Savings & Investments Union goals.

30) Are there barriers linked to different national requirements on marketing documents? If yes, please explain the key differences, impact and suggestions for improvement.

Yes.

The European Commission should consider divergences between national implementation in terms of marketing documents as a key cross-border barrier.

Some of these de facto barriers are linked to Member States having introduced more restrictive requirements. For example, the AMF's Position-Recommendation 2020-03 in France imposes additional content rules on marketing communications, which may act as a barrier for UCITS and AIFs seeking to distribute in France.

Others are simply related to diverging implementations, both in terms of actual documentation required but also in terms of the conditions under which it is required.

Improvements at EU level could help reduce residual friction across the single market:

- Further harmonisation of marketing content rules, disclaimers, and approval requirements across Member States;
- Development of a centralised ESMA repository or passport for marketing materials;
- Clearer ESMA guidance on the distinction between marketing communications and investor information, particularly in the context of digital distribution channels.

31) Do national frameworks require the appointment of local physical presence in host Member States to access the same rights as domestic UCITS or AIFs (e.g. as regards taxation, simpler administrative procedures)? If yes, please explain impact.

Yes.

A local physical presence always represents a hassle for manager and can often deter them from adopting a European strategy. In some cases, Spain and Italy in particular, these requirements resemble more a historic, protectionist barrier to entry for “foreign” managers than it is an effective supervisory tool.

Moreover, having a local presence could create a taxable permanent establishment risk for tax purposes in the jurisdiction where the fund is distributed as the Local tax authorities in that jurisdiction could argue that the representative qualifies as a “dependent agent” of any of the fund vehicles, the vehicles and structures through which funds invest, or even of investors themselves.

There can in some cases also be the risk that any such local presence of the fund creates a fixed VAT establishment of the fund for VAT purposes in that jurisdiction, which can again create unwelcome complexity.

The requirement for a local physical presence in certain host Member States to access the same rights as domestic UCITS or AIFs may result in forms of discrimination that are incompatible with Article 65(3) TFEU. Such requirements may also amount to a disguised restriction on the free movement of capital and payments according of Article 63 TFEU. Indeed, such barriers may deter non-resident UCITS and AIFs from marketing their funds in certain jurisdictions.

The Commission should therefore seriously consider calling for the complete removal of these barriers, potentially by inserting in the AIFMD text provisions similar to those introduced in EuVECA – and beyond by giving ESMA the tools and the independence to target Member States that impose these requirements.

Here are a few examples of national situations, which show that barriers can vary from “built-in” AIFMD goldplating to obligations stemming from other EU proposals (for example AML). Obligations can also range from real physical presence (Italy, Spain) to language requirements (Sweden).

Luxembourg

Luxembourg does not require UCITS or AIFs managed by EU-based management companies to appoint a local physical presence purely for marketing or administrative purposes.

However, in the case of a Luxembourg branch of an AIFM authorised in another Member State, certain substance-related obligations apply in relation to anti-money laundering and counter-terrorist financing (AML/CFT) compliance.

Spain

Spain imposes more formalised local representation obligations for foreign AIFs wishing to market to Spanish investors:

- A representative must be appointed for the payment of CNMV fees. While the form suggests a Spanish domicile, following a 2021 amendment, this entity may be foreign.
- A representative must also be designated to report distributor-related data to the CNMV (e.g., appointments and removals of Spanish distributors), and to ensure compliance with the CNMV's statistical reporting procedures (e.g., the A01 XML form).

These obligations, while administrative in nature, create additional compliance layers and coordination requirements for fund managers seeking to distribute in Spain, and may in practice incentivize the use of local service providers.

Italy

Italy, historically, required the appointment of local paying agents/facilities when marketing foreign funds to retail investors. While recent regulatory updates following EU Directive 2019/1160 have somewhat alleviated these obligations by removing strict requirements for a physical presence, practical implementation and acceptance by local distributors still often necessitate a local presence or representative to meet investor needs efficiently.

Sweden

Following the CBDF directive, an AIFM (marketing to retail investors) and UCITS management company must provide local facilities in Sweden.

The Swedish implementation does not, however, require a physical establishment here, as long as the local facilities are provided in the local language (e.g. that the customer can submit complaints in Swedish).

Czech Republic

EU UCITS and EU AIFs are not required to establish a local physical presence in the Czech Republic. Although the national framework provides that UCITS and AIFs marketed to retail investors shall maintain a "point of contact" for communication with local authorities, this requirement can be satisfied through remote communication. Note that we do not comment on taxation.

Belgium

Non-Belgian management companies which provide services for public AIFs governed by Belgian law must establish a branch in Belgium pursuant to art. 334 of the AIFM Law.

France

Many private equity firms have reported situations where they have de facto been unable, as managers, to run French funds eligible to life insurance/offered to French retail without having to appoint a AIFM in France, and this despite French law not preventing this.

32) Are there any aspects of the cross-border distribution of funds framework (Directive (EU) 2019/1160 and Regulation (EU) 2019/1156) that have created obstacles to the marketing of investment funds? If yes, please elaborate and explain impact.

Yes.

We would like to highlight four issues that could be addressed:

- **pre-marketing ban following a denotification**

The rule preventing subscription to an EU AIF within 18 months following the start of pre-marketing - unless the AIF is covered by a marketing notification - can hinder legitimate fund development. This lockout is particularly rigid when pre-marketing is exploratory and does not result in a fund launch. Introducing flexibility, such as allowing earlier subscriptions in cases where the fundraising did not result from pre-marketing, would help align the regime with market realities.

- **the rules on “material change”**

The requirement to give notice of a “material change” is applied differently across Europe, with consequences on fund managers’ ability to operate cross-border.

- **questions around who is the initiator of the pre-marketing:**

The scope of entities permitted to engage in pre-marketing on behalf of an EU AIFM, and that are listed in Art. 30a(3) AIFMD, is more restricted than the scope of entities permitted to engage in fund marketing on behalf of an EU AIFM. That is because firms operating under the national optional exemption from MiFID pursuant to Art. 3 MiFID are not listed in Art. 30a(3) AIFMD. However, a stricter license requirement for third-party pre-marketing than for fund marketing does not seem appropriate, given that investors are not even permitted to subscribe to an investment fund on the basis of pre-marketing. Firms operating under a national exemption from MiFID pursuant to Art. 3 MiFID should therefore be included in Art. 30a(3) AIFMD.

Moreover, only AIFMs are allowed to submit the pre-marketing notifications. It could be envisaged to enable all firms listed in Art. 30a(3) AIFMD to do so without involving an EU AIFM. This could simplify the process while preserving regulatory transparency

- **clarification on reverse solicitation and non-EU structures**

There is ambiguity around how pre-marketing relates to reverse solicitation, especially in cases where investors express unsolicited interest in a non-EU, parallel vehicle following a pre-marketing exercise. Clearer regulatory guidance would be welcomed to distinguish between genuine reverse solicitation and situations where pre-marketing could be seen as a de facto trigger for full-scope marketing rules. This would help managers navigate compliance without discouraging cross-border investor engagement.

More broadly, **divergent implementation of pre-marketing rules across Member States**, particularly regarding interpretation of what constitutes pre-marketing (and pre-pre-marketing), creates legal uncertainty and uneven playing fields. Harmonized guidance or regulatory Q&A at the EU level would reduce compliance risk, especially for managers operating across multiple jurisdictions.

We would like to describe the first two issues in more details:

1° Pre-marketing ban following a denotification

1.1° Background

The EU's package of measures ("**CBDF**") introduced specific rules for "de-notification" of marketing in the EU. Notably, where an alternative investment fund ("**AIF**") manager ("**AIFM**") ceases marketing and de-notifies an AIF in a Member State, these rules prohibit the AIFM from engaging in pre-marketing activities in that Member State for 36 months after de-notification (the "**pre-marketing Ban**").

This prohibition applies in respect of the AIF or "*similar investment strategies or investment ideas*". It does not however prohibit the AIFM from registering the AIF (or a similar strategy AIF) for *marketing* in that Member State.

Essentially, the pre-marketing ban forces a manager who has recently de-notified to apply to the full regime instead of being able to "test the waters" as any other EU fund when having preliminary discussions with investors.

This de-notification process is particularly relevant in the closed-ended world context, where funds typically stopped being marketed after a few years, once all capital needed to be invested in portfolio companies, such as start-ups and scale-ups, has been raised.

1.2° Problems that can be solved through simplification

Penalising AIFMs from testing investor appetite in similar strategy products as a result of de-notification can have serious consequences on the ability of fund managers to raise funds across border, in particular if Member States take a broad interpretation of the rule (see below).

Fragmented interpretation

Despite the original objectives of the CBDF proposal to lower barriers, the pre-marketing ban has effectively created significant market fragmentation due to the differences in Member States' interpretation and enforcement of the ban.

While a broad interpretation of the ban prevents many AIFMs from pre-marketing funds that are successor funds or those that share a sufficiently similar investment strategy, a narrower interpretation only catches copycat AIFs.

Inconsistencies across the EU have created a **distortion of investment opportunities for investors**.

Case study

Fund manager X has two funds, Fund A, about to close, and Fund B, recently set up. Fund A is officially marketed and notified, while Fund B is currently only pre-marketed.

For the purpose of this case study, the competent authority of Fund Manager X considers that Fund A and B have “similar investment strategies” as they both are VC biotech funds (the “broad” interpretation).

Fund Manager X is faced with three potential choices:

1. De-notify Fund A and directly market Fund B (without the opportunity to pre-market)
2. De-notify Fund A and no longer market Fund B
3. Keep Fund A notified and pre-market Fund B

All three choices have negative consequences on the funds' ability to fundraise and therefore on the availability of capital to their portfolio companies.

1. De-notify Fund A and market Fund B (without the opportunity to pre-market)

The need to market (as opposed to pre-market) Fund B is not without consequences as it represents additional cost to investors and **lowers as a result the amount of capital that can be invested in EU companies**. Fund registration, as opposed to pre-marketing, indeed entails a series of complex costs. The essence of pre-marketing to test investors' appetite is to avoid these costs until the moment it can be sure the fund will be marketed.

2. De-notify Fund A and no longer market Fund B cross-border

EU AIFMs can be disincentivised from exercising the marketing passport in jurisdictions where they may only attract a relatively small number of investors who may not contribute significant funds, particularly if they are considering testing investor appetite for a similar (possibly larger) fund in the near future. Again, this has increased fragmentation as it reduced the appetite of managers to set-up funds with a cross-border approach.

3. Keep Fund A notified and pre-market Fund B

In practice, AIFMs often choose **not to de-register AIFs to avoid the pre-marketing ban**, particularly if they intend on marketing other similar (and possibly larger) funds in the relevant jurisdiction in close succession.

This results in AIFs continuing to pay regulatory costs associated with fund registration, even where there are no investors subscribed from that jurisdiction, passing on such costs to other fund investors and again **lowering the amount of capital available to be invested**.

Such registrations are also unhelpful for NCAs from a data collection and investor protection perspective, as it is not clear to NCAs whether there are any investors from their jurisdiction who have committed capital to the relevant product.

1.3° Conclusion

The current pre-marketing ban after a de-notification can have unintended consequences and its interpretation by Member States effectively cause a strain on fundraising, and ultimately on investments in EU businesses.

This is all the more problematic since the ban does not appear to solve a particular issue, as is demonstrated by the fact many competent authorities restrict it to very narrow situations

We suggest reconsidering the current approach to denotification and marketing to give more flexibility to managers and to avoid fragmentation that are currently making the life of fund managers quite difficult.

The solution would be to remove the ban (which was added without an impact assessment at the end of negotiations), or, as an alternative solution, to clarify with absolute clarity in the Level 1 text that the ban only applies when the manager seeks to recreate the exact same fund.

2° Rules on material change

2.1° Background

Full-scope EU AIFMs that wish to market funds to professional investors in their home Member State or another Member State must submit a notification to the competent authorities of their home Member State in respect of each EU AIF that they intend to

market. This notification must cover the documents and information set out in Annex III to AIFMD (in the case of marketing in the AIFM's home Member State) or Annex IV to AIFMD (in the case of marketing in other Member States with a passport).

In the event of a “material change” to any of the information communicated in the relevant notification, **the AIFM is required to give written notice of that change** to the competent authorities of its home Member State at least one month before implementing a planned change, or immediately after an unplanned change has occurred (Article 31(4) AIFMD, where the AIF is being marketed in the home member state; Article 32(7) AIFMD, where the AIF is being marketed in other Member States with a passport). In the latter instance, the Home Member State must “without delay” inform the competent authorities of the host Member State(s) of the relevant changes.

Whilst the term “material change” is used in the marketing context (as well as in the context of changes to initial authorization information), it is defined only in the context of an AIF's annual report and this definition is not expressly imported into the provisions relating to marketing notifications. Article 106(1) of the AIFMD Level 2 Regulation provides that,

*“Any changes in information shall be deemed material within the meaning of [Article 22(2)(d) of the Level 1 Directive] if there is a substantial likelihood that a reasonable investor, becoming aware of such information, would reconsider its investment in the AIF, including because such information could impact an investor's ability to exercise its rights in relation to its investment, or otherwise prejudice the interests of one or more investors in the AIF” (the “**Article 106 test**”).*

2.2° Issues with current rules

Invest Europe members, which include both managers and investors in various EU jurisdictions, have encountered issues with the implementation of the material change requirement across Member States.

Two issues in particular should be highlighted:

1. in light of the lack of clarity in the Directive and the Level 2 Regulation, the interpretation of the concept of a marketing material change varies between regulators.
 - several Member States take a very broad interpretation of the concept and this low threshold requires managers to notify too frequently, with the notifications leading to administrative and operational burdens and costs without offering regulators any supervisory benefits
 - in addition, the divergent interpretations across Member States lead to a lack of consistency - and sometimes conflicts - between regulators. This has an impact on the ability of sponsors to market funds on cross-border basis under the National Private Placement Regimes.

2. the requirement to provide one month's advance notice before implementing a material change can also serve to impact the fundraising process.

Closed-ended funds generally hold a series of closings, which involve negotiation with the incoming investors and often changes to terms previously disclosed to or agreed with investors. Existing and incoming investors will agree to changes to terms (and may, indeed, be pushing for them), yet this may necessitate a material change filing under the current AIFMD regime, delaying the closing until the expiry of the one-month notice period.

2.3° Suggested changes

Changes to AIFMD “CBDF” rules provide an opportunity to make the framework more agile by adopting a facilitative interpretation at EU level (this could mirror the existing flexible approach taken by some jurisdictions) and providing practical guidance on the relevant standard.

Given that the aim of the requirement to notify material changes is to ensure investor protection, a cornerstone principle of the future rules should be that material changes notifications should not be required if (i) the fund is closed to subscriptions; and (ii) existing fund investors have consented to the proposed change.

In order to achieve this objective, we suggest to:

1) Narrow and clarify the concept of material change at EU level

A material change should only be required under specific conditions. The European supervisory authorities could provide practical guidance on how this interpretation should be applied. In the UK, for example, it is understood that there is no exhaustive list of notifiable material changes, and that UK AIFMs must therefore exercise their own judgement in determining whether a given change should be deemed material and therefore notified to the FCA. However, the FCA has provided guidance on what constitutes a material change. It would be helpful for Member States to adopt a similar approach.

2) Remove the obligation for closed-ended funds:

Closed-ended funds which are no longer open for subscription should be exempt from the obligation to make material change notifications if those material changes have been consented to by a certain proportion of investors.

3) Introduce a shortened notification window

The existing one-month notice period required for material change notifications will indeed not be feasible during the fundraising period, as it could significantly delay the closing process. During fundraising, timely communication is critical to maintaining momentum and meeting key deadlines. A lengthy notice period may potentially affect investor confidence, negotiations, and the overall timeline. As a result, the requirement for a one-month notice period serves to introduce unnecessary delays and disrupt the

fundraising schedule, making it difficult to meet the expected closing date. A shorter notice period, say of 10 days, should be considered.

4) Allow post-implementation notification or a shorter notice period in certain circumstances

In certain exceptional circumstances, AIFMs should be permitted to implement the required changes first and only then notify regulator or be subject to a shorter notice period (e.g. 5 business days) than the general requirement. Such relief from the general requirement could be available where: (i) AIFMs can justify the urgency or need for immediate action (e.g. where market conditions or external factors require quick adaptation); and/or (ii) changes to the rules or instruments of incorporation have been approved by a certain proportion of investors. Notifications made in reliance on these provisions would in each case need to be accompanied by a formal explanation of the reason for the expedited change, in order to ensure that the relief was being used appropriately and not to the detriment of investors.

3° Other issues

With respect to non-EU AIFMs, Member States apply different approaches to the pre-marketing concept. Whereas some Member States allow pre-marketing by non-EU AIFMs in general (for example, Belgium), other Member States require a prior pre-marketing notification (for example, Finland, Germany, Luxembourg and the Netherlands). A third group of Member States do not apply the pre-marketing rules to non-EU AIFMs (for example, Denmark and Ireland, but also those jurisdictions which do not provide for a national private placement regime in accordance with Article 42 of the AIFMD).

Such inconsistency not only have an impact on the non-EU AIFMs which cannot apply a streamlined approach with respect to offering funds in the EU but also for EU investors who may not have the opportunity to invest in such fund products as non-EU AIFMs have no chance to test investor appetite.

33) Could the central database published by ESMA pursuant to Article 6 of Regulation (EU) 2019/1156 be improved to support compliance with Member State marketing requirements?

Yes.

ESMA database should be updated more frequently (as some links often direct to missing pages).

34) Are fees/charges, currently levied by some host NCAs, a significant barrier to the distribution of investment funds in the single market? Please explain.

Yes. As explained above, they are a significant barrier and, even if they were not, should be removed as they are against the very principle of a passport.

An important message we want to give to the European Commission that fee amounts by fund, which are detailed below, may sometimes appear as immaterial, but very quickly lead to significant costs when taking into account the administration burden of keeping track with all annual fees and the time they are due. **A large fund manager can easily end up paying more than 200.000€ per annum per jurisdiction for fees**, for the costs listed below.

Several host Member States still apply charges or procedural hurdles that do not appear to align with the principles of the Regulation. Some jurisdictions impose fees or conditions for cross-border marketing that go beyond transparency obligations, creating indirect cost burdens for sub-threshold managers. Limiting or prohibiting such fees (as the Commission has proposed for EuVECA) would be a welcome move toward reducing friction for smaller managers.

Here are a few examples of fees required by authorities:

Spain

While the fee amounts are not very high (i.e. 2.5k for registration and 3k for maintenance), for small sponsors it might pose a certain barrier

Moreover, under Spanish law, the AIFM must appoint a local paying agent in order to facilitate the payment of the initial and annual fees charged by the Spanish NCA for AIFMs using the AIFMD marketing passport. The requirement to appoint a paying agent creates unnecessary administrative burden and costs for the managers marketing their funds in Spain.

Austria

A fee of €1,100 is payable to the FMA for processing documents relating to an AIFM which has been approved for marketing under the EEA passport by its home regulator. In case of several sub-funds it will cost €220 for each additional fund. Additionally, it is also subject to annual fees of €600 which may be increased by €200 for each additional fund.

Germany

BaFin charges a one-time registration fee of €466 for each AIF (or in case of an umbrella fund for each sub-fund) from EU AIFMs for marketing under the EEA passport. In addition, BaFin charges €952 for change notifications

BaFin in Germany has been seen as making substantive comments on an incoming passporting notification that has already been approved by the manager's home competent authority, which is not in line with the principle of mutual recognition.

Sweden

The SFSA does not charge fees as a host country for processing incoming passport notifications from EU-managers, nor annual fees for EU managers marketing in Sweden under the EU passport (which we understand that NCAs do in many other jurisdictions). The SFSA charges fees for domestic authorisations/licences, e.g. when a Swedish manager intends to market a fund in Sweden, or if a foreign manager markets a fund under the NPPR (e.g. for marketing AIFs to Swedish retail investors).

We understand that regulators in certain jurisdictions, including in Liechtenstein, require that the manager pays a registration fee upfront to the FMA and that the manager must submit a proof of payment upfront in order for the FMA to process an incoming passport notification, which is not consistent with the EU passporting rules.

Liechtenstein

We understand that regulators in certain jurisdictions, including in Liechtenstein (NB: while we are aware Liechtenstein is only an EEA member, this is an issue that may occur in EU countries), require that the manager pays a registration fee upfront to the FMA and that the manager must submit a proof of payment upfront in order for the FMA to process an incoming passport notification, which is not consistent with the EU passporting rules.

Czech Republic

Registrations of EU UCITS and AIFs marketed to professional investors are exempt from administrative fees/charges. EU AIFs marketed to retail investors are subject to an administrative fee of CZK 5,000 (approx. EUR 200).

Other issues linked to fees

- **Variability:** Although the CBDF Regulation is directly applicable, the extent and clarity of fee disclosure still vary across jurisdictions. Some NCAs provide clear, comprehensive schedules, while others offer only limited or outdated information.
- **Structuration:** Differences in how fees are defined, structured, and presented make it difficult for fund managers to compare costs across Member States. Some NCAs aggregate multiple services into a single fee, others itemize extensively, complicating cost transparency.
- **Accessibility:** Fee information is not always easy to find or available in English, which can hinder access for non-domestic managers.

- **Timing:** it is frequent authorities continue to request fee payments even after fees have been paid and marketing has been closed.

Further harmonisation of fee disclosure and structure would be welcomed to promote efficiency and support a more integrated single market. The possible improvements include:

- A centralized EU-wide fee database maintained by ESMA;
- Standardized fee categories and terminology;
- Mandatory translation of fee information in English;
- Regular audits to ensure compliance with disclosure requirements.

Poland

Poland is one of several EU Member States that imposes **host-state fees** on AIFMD-authorized EU AIFMs marketing into its jurisdiction. The fees applicable to foreign AIFs are relatively low—generally amounting to EUR 300 as a one-off fee per fund (or sub-fund), and EUR 300 as an annual fee (increased by EUR 200 for each additional sub-fund).

These fees—while modest individually—act as a cumulative disincentive to cross-border marketing when combined with other compliance costs. As mentioned above, the situation is especially problematic for fund managers considering entry into smaller or less mature investor markets, where anticipated investor demand is relatively limited. Furthermore, there is a lack of clarity regarding the duration and conditions of ongoing fee obligations, especially when marketing activities have ceased but legacy investors remain. This regulatory uncertainty introduces compliance risks and administrative burdens, and may discourage continuous or repeated fundraising efforts in Poland.

35) Do you think the fees/charges are consistent with the overall cost relating to the performance of the functions of the NCAs in question?

No.

It is worth flagging that the lack of consistency is less related to the actual size of the fee, which is generally limited, than to all elements listed above, i.e.: the significant cost of having to deal with fees across nearly every EU Member State, with different payment models from country to country.

Irrespective of the perspective of a single NCA – which could consider that a few thousands euros should do not represent a significant cost for a manager – the

manager's reality is that the multiplicity of fee models effectively makes it extremely burdensome for small and mid-sized managers to adopt a European strategy and ends up costing large managers hundreds of thousands a year. This is not a sustainable situation irrespective of any debate on the performance of the functions of the NCA.

This is **not a sustainable situation** irrespective of any debate on the performance of the functions of the NCA. The "better" question may be whether in a Single Market any kind of "host" supervision should effectively be required for fund managers - especially if those are solely marketing solely to professional investors - given the manager is already supervised for its activities on the whole by its home authority.

In other words, the entire supervisory model should change if we want to make it less costly for small managers to adopt a European strategy and to establish a truly integrated European investment union.

38) Is the notification requirement for pre-marketing of investment funds creating barriers to the marketing of investment funds in the Union? Please explain.

Yes. Please see our response on Question 32

39) Please use this field to describe any operational issues that you would like to report as a de facto barrier to the distribution of investment funds in the single market. For example, the need to follow a specific procedure to submit documents to a NCA or to use a dedicated platform for communication with a NCA

In some countries, data collection remains non-digitised which is causing efficiency concerns. For example, in Czech Republic, reporting via the CNB portal still requires XML/XBRL manual upload.

5.4. EU Passporting for Management Companies

40) In the context of the EU framework, are the current passporting provisions sufficiently clear, comprehensive and proportionate to enable the smooth operation of fund management companies in the single market?

Our members have not relayed any specific concerns regarding the EU management passport, beyond the difficulties in the authorisation process referred to in the relevant section and concerns over fees that have been described in the marketing section.

However, we would like to use the opportunity of this question to mention concerns with the **use of tied agents** and the relevance of **aligning the provisions on passporting of MiFID services**.

An AIFM may be licensed to provide certain MiFID services in accordance with Article 6(4) AIFMD (“**MiFID Services**”). However, the AIFMD does not refer to the notion of the MiFID tied agent as defined in Article 4(1) no. 29 MiFID. Considering that an AIFM conducting MiFID Services in accordance with Article 6(4) AIFMD becomes subject to the MiFID rules of conduct, there is no apparent reason why such AIFM should be deprived from the benefit of using a tied agent in accordance with the MiFID rules on tied agents.

A reference to the concept of the MiFID tied agent should therefore be included in Article 6 AIFMD (“**AIFMD-Tied Agent**”). The MiFID provisions governing MiFID firms providing services through a tied agent should apply accordingly to an AIFM providing MiFID Services through an AIFMD-Tied Agent.

Furthermore, the **provisions governing the passporting of MiFID services by an AIFM under AIFMD** (Article 33(1)(b) AIFMD) should be aligned with the provisions governing the passporting of services under MiFID (Article 34 and 35 MiFID). Currently, Article 33(1)(b) AIFMD permits an AIFM to conduct the MiFID Services for which it has been authorized in other member states either on a cross-border basis or through a branch, under the conditions set out therein. An AIFM should be granted **the additional option to conduct the MiFID Services for which it has been authorized in other member states through an AIFMD-Tied Agent**. This option should include both the use of a tied agent established in the AIFM’s home member state for providing services on a cross-border basis (in alignment with Article 34 MiFID (freedom to provide services)) as well as the use of a tied agent established in another member state than the AIFM’s home member state (in alignment with Article 35 MiFID (right of establishment)).

Experience shows that AIFMs wishing to expand their MiFID services to other member states ***do not always consider the establishment of a branch office as the best alternative in terms of costs or other structural considerations.***

Efforts are already underway at national level to introduce the concept of an AIFMD-Tied Agent (cf. Article 18a of the Luxembourg Law of 21 July 2023). Introducing the concept at European level would provide for mutual recognition and legal certainty.

Finally, the concept of an AIFMD-Tied Agent should also be considered for the AIFM’s activity of marketing own funds pursuant to no. 2 lit. b) of Annex 1 of AIFMD and the passporting of this activity into other member states pursuant to Article 33(1)(a) AIFMD.

Finally, an AIFM established in one Member State (State A) should be able to exercise the management passport into another EU Member State (State B) to manage an AIF in such Member State B through a branch that is established in a third Member State (State C) without being required to manage an AIF established in that Member State C. Prohibiting such cross border provision of services would be unnecessarily restrictive and interferes with the free flow of establishment across the EU, thereby creating

unnecessary discrimination of AIFM vis-à-vis credit institutions (see [IP 97 580 EN.pdf](#)). The management passport should permit an AIFM to manage an AIF from anywhere in the EU, such that the AIFM established in State A could establish a branch in State B to manage an AIF established in a third Member State. This would allow more flexibility about where an AIFM can operate permanent establishments across the EU, allowing more flexibility about where to place staff and is consistent with the intention behind a standardised EU-wide framework.

41) In the context of the EU framework, are the current passporting provisions for management companies reflected in a consistent way in domestic legislation by Member States?

As for the rest of the framework, there are some inconsistencies, which mirror often the ones highlighted in the context of the authorisation processes – as they typically relate to the general approach taken by the authorities when it comes to supervision.

Here are a few examples of national situations collected from our members – they may not be exhaustive to cover every problematic situation.

Poland

In the case of Polish investment funds, it is not possible for their management to be taken over and merged by an AIFM from another Member State. In all cases, a Polish investment fund must have a Polish management company (TFI). The incomplete transposition of the AIFMD into Polish law was formally justified by the specific legal structure of Polish investment funds; however, the real underlying purpose may have been to protect the domestic investment fund market – a practice that is inconsistent with the objectives of the Directive.

Italy

Practical implementation presents certain frictions. Italian legislation and supervisory practice require additional formalities and a more stringent approach compared to other jurisdictions.

For example, while the passport regime is designed to enable streamlined cross-border operations, in practice Italian implementation may involve additional documentation requirements or procedural steps that are not uniformly applied across the EU.

These differences, though not formal legal barriers, can act as practical obstacles for management companies seeking to exercise their passporting rights efficiently in the Italian market.

Sweden

Under Swedish law, it is not possible for a non-EEA manager to manage a Swedish AIF.

Belgium

Domestic legislation in Belgium substantially implements the passporting provisions in ways consistent with, for instance, the implementation of these provisions in Germany.

For the sake of completeness, there may nevertheless be friction as regards the practical implementation of these provisions in Belgium, e.g. due to the requirement for EEA management companies proposing to market an EEA UCITS to offer facilities to investors for the payment of distributions, sale of units, and consultation of relevant documentation.

Czech Republic

The Czech Republic's regulatory framework for the cross-border management of both AIFs and UCITS funds by foreign managing companies is well-aligned with the respective EU Directives.

A foreign management company from an EEA Member state may begin managing a special fund or a qualified investor fund (AIF) or UCITS in the Czech Republic without the necessity of establishing a local branch. This occurs upon receiving confirmation from the home state supervisory authority that it has transmitted the relevant data concerning the management of the fund to the CNB, or upon the expiry of one month from the date such information was received by the home state authority.

This process signifies that the Czech supervisory authority does not conduct an ex-ante review of the foreign management company itself. Such a procedure is fully consistent with the relevant provisions of the EU Directives.

Despite this streamlined passporting, the foreign manager is still required to publish and provide in the Czech Republic the documents and information that it is obligated to publish and provide under the laws adopted pursuant to the Directive in its home state. Furthermore, the manager must notify the CNB of any potential changes and adhere to the principles of Czech law when offering further investment services in the Czech Republic.

Moreover, the Czech Republic has specific regulations of EU passport relating to the provision by management companies of MiFID services of individual portfolio management, safekeeping and administration of financial instruments, reception and transmission of orders in relation to one or more financial instruments and investment advice. Under Czech law, EU management companies are allowed to provide these services using the EU cross-border passport (freedom to provide services) to retail clients only if the services are temporary or incidental. Otherwise, the EU management company is required to provide the services using the EU branch passport (freedom of establishment). As there is no definition or clear interpretation of the terms temporary and incidental, this limitation creates uncertainty about what extent the services can be

provided to retail clients under the freedom to provide services using the EU cross-border passport.

The passporting mechanisms are designed to be straightforward, requiring notification rather than a full re-authorisation process. While certain national specificities exist regarding ongoing reporting and compliance with Czech law for offering further investment services, these do not introduce significant barriers or radical deviations from the established European principles for managing investment funds. Particular attention should be paid to the provision of certain MiFID services that may require the establishment of a local branch.

42) In the context of the EU framework, where divergences for passporting of management companies exist, please elaborate on them, using practical examples.

See question above.

43) Is the current notification procedure for management companies, which is derived from the EU framework, applied in a consistent way by NCAs? Where barriers and/or divergences in NCA regimes exist, please elaborate on them, using practical examples, including reference to impact, such as on costs and resources. Where barriers and/or divergences in the notification procedure derive from NCA regimes, how could they be best addressed?

Here are a few examples of national situations, which demonstrate that the procedure is not always applied in a fully consistent way.

Luxembourg

With respect to cross-border management of AIFs, the experience from Luxembourg suggests that the framework generally works well when operating on a freedom of services (FoS) basis.

For example, when a Luxembourg-authorized AIFM manages an Italian AIF under FoS (i.e., without establishing a physical presence/ branch in Italy), the CSSF follows the standard AIFMD notification procedure without imposing additional requirements, in line with the directive and with no gold-plating.

However, when the Luxembourg AIFM seeks to manage an AIF through a branch established in Italy, additional requirements are imposed by the Italian NCA (e.g., local governance or operational presence obligations), which go beyond the baseline EU requirements and may create operational and regulatory complexity, impacting the efficiency of cross-border fund management via the branch route in Italy.

Sweden

The following may be noted from a Swedish perspective.

- The Swedish incorporation of the AIFMD's portfolio company disclosure rules (Art. 26-29) is unclear and suggest that the SME / SPV exemption in Art. 26(2) only applies to notifications of control under Swedish law (instead of both notifications of control and major holdings notifications). In addition, the Swedish rules on the aggregation of voting rights on the basis of an agreement aimed at acquiring control are broader than the corresponding provision in Art. 26(1)(a), as the Swedish law provides that voting rights shall be aggregated if there is an agreement regarding control and not only if there is an agreement aimed at acquiring control, as is the case in the AIFMD.
- Swedish law does not provide for a “change-of-AIFM” procedure, which we understand is possible in many other member states. This means that the change of AIFM entails two separate notifications: a de-registration of the existing AIFM, and an application for a new marketing licence for the incoming AIFM. Especially in cases where AIFMs market the fund under the Swedish NPPR, this often results in timing issues compared to other jurisdictions as the SFSA's processing time of a de-registration / application for marketing under the NPPR is 60 days, respectively.
- The SFSA's processing time for AIFMD/UCITS notifications (e.g. marketing/passport notifications) is in line with the statutory processing times set out in the AIFMD/UCITS Directive. However, according to the SFSA's administrative procedures, the processing time does not start until the SFSA has provided the manager with payment instructions and received the application fee. The SFSA often takes a week (or sometimes longer) to revert with such payment instructions, which means that the processing time in practice, from submission to the SFSA's decision/non-objection letter, is longer than the statutory processing times. Although this is not a divergence in the national regime, but rather a result of the SFSA's procedures, it does create barriers in practice if it takes longer for managers to access the market.
- Under Swedish law, an authorised AIFM that takes a new fund under management must submit a material change notification to the SFSA (the processing time being one month), which we understand deviates from the position in other member states. This creates unnecessary delays in the fundraising process as the SFSA does not make a material review of the fund documentation under this material change notification. The SFSA will receive (and review) the relevant fund documentation as part of the marketing notification/application and we therefore believe that when an AIFM takes a new fund under management, this should not be handled within the scope of a material change (which cannot be implemented until the SFSA has

acknowledged the change) but rather as information submitted to the SFSA for informational purposes.

- Swedish law requires that changes in the management of qualified owners of an AIFM be notified to the SFSA on an ongoing basis, which we understand differs from the procedures in other Member States. In addition, the fit and proper assessment of the management of qualified owners is treated as a material change in the business of the AIFM under Swedish law, meaning that the AIFM is required to submit a fit and proper assessment on behalf of its owner companies. In practice, this means that the qualified owner of an AIFM cannot change BoD / senior management until the SFSA has approved the AIFM's material change notification (which often takes one month). This procedure imposes costs on the AIFM and an obligation on the AIFM to keep track of changes in the board of directors/senior management in its ownership structure, whereas this obligation should rather be imposed on the qualified owner.

Belgium

- The FSMA expects key notification documents, or summaries thereof, to be provided in one of Belgium's official languages (Dutch, French, or German) or in English, depending on the target audience within Belgium. While some NCAs may be even more flexible, it can be expected that the FSMA is not an outlier and is consistent with other NCAs in this regard.
- Like most other NCAs the FSMA also uses an online portal for submitting notifications and adheres to harmonised notification templates at EU level, such as Commission Implementing Regulation 2024/910.

5.5. Group operations - Eliminating Inefficiencies and Duplication

In your view, what are the key obstacles to consolidating functions across entities within the same asset management group, and to reducing duplication and operational inefficiencies across these entities? Please provide an answer on the following topics : legal barriers in AIFMD, in other EU law, in national law ; supervisory barriers, market practices; other barriers)

Existing EU requirements apply disproportionately to private equity and venture capital groups. Even relatively simple groups are subject to a myriad of rules, in particular under AIFMD and MiFID, which do not take into account the regulated status of one or possibly several entities in the group but treat each legal entity as distinct and separate. This creates legal barriers, particularly for EU AIFMs and MiFID firms, when relying on the expertise of other members of their group (i.e. intra-group delegations).

The primary challenge is that EU requirements do not sufficiently account that such private equity and venture capital groups often operate with shared functions, common

operating model, investment strategy, and group-wide policies and procedures. The fact that such operations are divided between different entities across the group – frequently due to staff expertise, location and proximity to relevant assets – should not detract from this.

For example, it is common for group staff to carry out (or support) more than one function across different group entities (e.g. portfolio or risk management, marketing, transactions, compliance or AML function, investor relations and reporting, valuations, etc).

This oversight in legislation and guidance results in a disproportionate application of AIFMD which creates operational inefficiencies, duplication and additional costs for such groups.

The key issues relate to (i) delegation, (ii) marketing, (iii) inducements and (iv) outsourcing/ group functions.

(i) Intra-group delegation:

AIFMD has detailed requirements on delegation including oversight of AIFM delegates. AIFMD II has brought additional delegation requirements.

AIFMs also have to provide additional information to regulators on delegations when applying for authorisation, including a detailed description of the human and technical resources and due diligence measures used by the AIFM to monitor the delegated activity.

These requirements are disproportionate in an intra-group delegation context particularly as group staff are often subject to group wide (including AIFMD compliant) policies and procedures. Typically, such groups do not have strict parameters between entities and staff (i.e. AIFM functions versus delegate functions, etc) or formal information barriers. Group staff who assist with key EU AIFM functions (e.g. portfolio management) operate as effectively an extension of the AIFM and should be treated as such.

On this basis, it is disproportionate and duplicative to bring delegates, particularly delegates who are authorised in their own right (e.g. MiFID firms or US registered advisers providing portfolio management services to the AIFM) in scope of AIFMD on an entity-basis, where the EU AIFM is already subject to AIFMD and ultimately responsible for any portfolio/ risk management staff/ delegates.

Where the group delegate is non-EU (e.g. in the US), the delegation requirements on the AIFM should be proportionate to the group context in the same way as if the delegate was in the EU and an extension of the AIFM. The location of such staff/ delegates should not detract from this and bring any other entity in scope of duplicative requirements.

(ii) Marketing:

Subject to AIFM oversight, group staff who assist an EU AIFM with other key functions (e.g. marketing) should also be treated as an extension of the AIFM on the same basis as above irrespective of location (i.e. EU or non-EU).

Despite group expertise, currently, group staff cannot assist EU AIFMs with marketing from non-EU locations due to licencing issues. This is a legal barrier that results in duplicative functions within groups and additional cost. Some EU AIFMs also have to find other workarounds such as appointed third-party EU distributors with the appropriate MiFID licence which needlessly adds significant cost.

As above, group staff assisting EU AIFMs in this way should be treated as an extension of the AIFM provided the AIFM remains ultimately responsible for oversight and AIFMD compliance.

(iii) Conflicts/ inducements:

There are also legal barriers to group staff assisting EU AIFMs with Annex I AIFMD activities as a result of the inducement prohibition and requirements in the Level 2 legislation.

It is typical for private equity and venture capital groups to charge group entities a fee on a cost-plus basis to primarily recoup operational expenses for providing key functions to group members (e.g. marketing, distribution – see (ii) above).

However, the AIFMD inducements prohibition may be interpreted by certain NCAs as to capture such scenarios even where a group member may be in the optimal position to provide the relevant service - in comparison to a third party. This therefore creates a barrier for AIFMs from relying on group expertise, resulting in higher operational costs, duplicative functions and group inefficiencies to the detriment of investors. Therefore the inducements rule should be amended to take into account legitimate intra-group fee payments.

Also, conflicts of interest (related for e.g. to a specific deal or to allocation of a deal across different funds of a sponsor), are generally dealt with at group level. Allowing EU AIFM's compliance teams to rely on their compliance counterparts at group level for identifying and approving such conflicts would be seen as an acknowledgment of the reality on the ground without removing any protections on investor side.

(iv) Outsourcing/ group level functions:

As above, it is common for group staff to carry out more than one function for the group (e.g. compliance, AML, etc) for operational efficiency.

There is operational efficiency for private equity and venture capital groups to perform key functions (e.g. risk management, compliance, AML, valuation, etc) on a group level, subject to EU AIFM oversight and responsibility for AIFMD compliance.

National competent authority supervision, EU substance requirements and some specific provisions under AIFMD (e.g. the requirement that where valuations are not carried by the AIFM itself, they must be carried out by an independent external valuer under Article 19(4) AIFMD) are some of the roadblocks to such functions being performed outside the EU and on a group level. As a result, some groups are pushed into outsourcing such arrangements as opposed to keeping the functions intra-group for operational efficiency.

As above, group level functions should be treated as an extension of the AIFM particularly as such staff are often subject to group level policies and procedures including AIFMD compliance.

Do you consider that there is scope to streamline authorisation and supervision of asset managers operating in groups by reducing duplication, lowering operational costs, and save resources across entities within a group?

Group authorisation and supervision

Private equity and venture capital groups would benefit from a more streamlined authorisation and supervision process at a group level, particularly those considering expanding their EU presence and increasing European capital.

Broadly, when assessing applications, the authorisation process ought not to treat entity applications in isolation from their group, particularly other existing or future EU establishments (e.g. Luxembourg AIFM, Dutch MiFID portfolio manager) effecting one operating model and investment strategy.

The same should be reflected in the supervision of such groups. Supervision should be proportionate to private equity and venture capital groups effectively operating as one across multiple jurisdictions, including the EU, which may come in the form of one EU supervisory body (e.g. ESMA).

For example, where a Lux AIFM is subject to AIFMD (as implemented in Luxembourg) and group staff based in the Netherlands assist with portfolio management subject to MiFID (as implemented in the Netherlands), supervision in respect of both AIFMD and MiFID requirements should be proportionate to the fact that the group is effectively operating as one entity and therefore should not be subject to double supervision and regulation.

One option for the Commission would be to ensure that the general principle of delegation—specifically, a risk-based approach and proportionate oversight model—

also apply to intra-group delegation scenarios. This would allow for a more flexible and practical assessment of delegation arrangements where functions are shared within the group, and would help avoid unnecessary and burdensome oversight requirements. For instance, in the context of intra-group delegation, rather than applying the same procedures and criteria as those required for third-party delegations (such as providing a detailed description of human and technical resources and due diligence measures used by the AIFM to monitor the delegated activity), the asset manager (AIFM) should be permitted to adopt a more proportionate and practical approach when delegating to an affiliate. Additionally, for “ancillary functions” such as administrative support, asset managers may be subject to lighter oversight arrangements, given their limited impact on the firm’s regulatory or fiduciary obligations. This approach would better reflect the practical realities of how functions are shared and managed within private equity and venture capital groups.

Would such an approach not be workable in the long term, another, more controversial and more complex solution to the duplication, could be to create a mechanism at the EU level for authorised firms to nominate a "lead" NCA as supervisor in one EU Member State, which will be responsible for authorisation and reporting of the group on a pan-EU basis. The lead NCA would be responsible for sharing information and reporting data with other NCA in Member States where the group is operating. Such group authorisation and supervision should, however, only be on a "opt-in" basis to take into account that some groups may operate distinct parts of their business in different Member States and therefore direct supervision in each Member State is appropriate for their business model.

However, such a solution - or any other solution solving the real problems identified above through a more integrated approach to supervision - should be considered extremely carefully in light of the additional requirements and duplication these could create.

Supervision - Duplicative reporting

Due to differences in national implementation of AIFMD, some AIFMs are currently facing various reporting obligations through which information on one and the same topic or on identical or very comparable issues is obtained from different regulators (for regulated vs non regulated AIFs).

As a first step, we suggest that ESMA consider how reporting duplication could be avoided and how this could be processed across Member States, prior to resorting to solutions such as the ones we have laid out above.

Please provide potential solutions and rank the solutions in terms of preference. Suggestions for solutions can include, but are not limited to:

- **legislative changes (specifying which changes are being suggested)**
- **supervisory convergence (specifying which tools are being suggested)**
- **other**

To reduce duplication in respect of group functions, regulation and EU supervisory efforts, legislative exemptions in respect of (a) intra-group delegations and (b) group functions should be available both from a licencing and compliance perspective, provided the EU AIFM retains responsibility for regulatory compliance. See Q44 above.

We also advocate for group authorisations to become an elective option if AIFMs and MiFID firms. ESMA should be mandated to issue guidance to national competent authorities to avoid duplicative supervisory practices.

Please provide data on the potential costs and benefits of the suggested solutions with a breakdown for different stakeholders.

Many private equity and venture capital groups operate on a pan-European/ global basis and incur disproportionate costs and resources on compliance to the risk of operating one model and investment strategy (see above questions). Therefore, the proposals above are targeted at reducing such costs and operational inefficiencies.

What conditions and safeguards would be necessary to allow for the assessment of certain functions at the group level rather than at the level of individual entities?

As per Q44 and Q45, subject to removing the roadblocks to group-level functions and operations:

- a. Group business plan including investment strategy, any group-level functions and other key intra-group delegations or supporting functions (e.g. marketing)
- b. Group staff organisation charts including responsibilities
- c. Group policies and procedures
- d. Evidence of EU AIFM compliance with relevant requirements (e.g. AIFMD as implemented in Lux), including compliance monitoring framework
- e. Evidence of EU AIFM oversight of group-level functions, intra-group delegations and supporting functions (e.g. periodic check-ins, monitoring procedures, etc.)

How should the group be defined for the purposes outlined above?

To ensure group operations effecting one operating model can be accurately captured, the definition of "group" should be wider than the Accounting Directive (2013/34/EU) (i.e. parent undertaking and all its subsidiary undertakings, as defined in Article 2(11)) (Group A).

It should include parallel groups (Group B) where such groups are effecting the same operating model and investment strategy as Group A.

This is in the interest of capturing groups that may be divided for fund structuring, tax or other reasons which may result in a break in chains between parent undertakings and subsidiary undertakings, and division from sister companies.

Do you consider that group-level authorisation and supervision would improve supervision?

Yes, provided group level authorisation and supervision is (i) voluntary, on an opt-in basis; and (ii) implemented in a way that minimises duplicative supervision and regulation that group entities are currently subject to. Please see our general comments on centralised supervision in the first part of this response.

See Q45.

5.6. Other Barriers to Cross-border Operations

Have you encountered other specific barriers than those discussed above when marketing and providing asset management functions across Member States? If yes, how have these barriers impacted your operations including: EU financial regulation; national financial regulation; supervisory practices; corporate law; tax law

Yes. Here are a few examples of national and EU barriers we have identified (again these examples are non-exhaustive):

1) Overall issues with reporting requirements (EU)

As mentioned in other responses and in the description of costs, reporting requirements constitute a heavy burden for fund managers, which can become rapidly disproportionate, given their usual limited size on the venture end of the market. There are also specific national barriers.

Frequency of reporting is seen as an issue by the private equity industry, which despite its illiquidity, sometimes is faced with quarterly reporting requirements with limited

benefits to investors and the public alike. Adapting the AIFMD to reflect real needs in terms of reporting frequency would help alleviate burden.

2) Definitions

- **of Financial Instruments (in Germany)**

The definition of “financial instruments” in the relevant German legislative acts (Banking Act (*Kreditwesengesetz*), Securities Trading Act (*Wertpapierhandelsgesetz*), and investment fund act (*Kapitalanlagegesetzbuch*) is much broader than the definition envisaged by Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (recast) (MiFID). This has the effect that in Germany the nationally implemented MiFiD requirements apply to a much broader range of transactions than intended by MiFiD and as it is the case in other EU jurisdictions.

Namely, since non-listed shares in partnerships and LLCs (*GmbH*) qualify as financial instruments, investment services relating to (non-listed) shares in partnerships or LLCs (*GmbH*) are subject to the full suite of MiFiD requirements. This is an unnecessary burden in the context of equity M&A and other alternative asset transactions, and it puts non-German advisers providing investment advice or brokerage services in such transactions at a disadvantage compared to advisers domiciled in other EU jurisdictions. Such gold plating violates general EU principles and contradicts the EU legislator’s objective to create a level playing field. MiFID should ***not*** be unilaterally extended in its scope by national legislation.

3) Possibility of asserting influence by an investor in an AIF (Germany)

The German regulator applies an overly restrictive approach with regard to the extent of influence that an investor in an AIF may assert on an AIFM. According to the German regulator, it is not compatible with the general principle of collective portfolio management that Investors issue instructions that concern individual assets or retain consent rights with regard to the investment in individual assets. Moreover, the German regulator regards continued unilateral initiatives and high number of recommendations of Investors as an indication for a breach of this general principle. This approach is far stricter than what ESMA published in its Q&A with respect to allowed investor activity.

This restriction is particularly problematic given that supervised investors like insurance companies or banks are under their own supervisory regimes required to assert influence and maintain control over their investments. In our opinion EU law, more specifically the AIFMD does not provide for such restrictions in selective influential measures by the investors, provided that the investor does not factually take investment decisions and thereby exerts day-to-day discretion and control in respect of the AIF’s entire portfolio in which case in the opinion of ESMA an AIF does not qualify as

investment fund anymore. But selective measures with respect to certain financial instruments or fund segments should in our opinion be allowed.

4) Capital requirements-related issues (EU)

There are fundamental differences between investment firms and AIFMs carrying out ancillary services, including in relation to risk exposure. AIFMs managing only closed-ended unleveraged funds are not exposed to investor redemptions, unlike managers of open-ended funds. Similarly, they are not exposed to the risk of fund insolvency due to inability to repay leverage, unlike leveraged funds.

Many AIFMs which provide ancillary services in addition to managing exclusively closed-ended unleveraged funds, have similar certainty of fee income over the medium term arising from their ancillary services. That is to say, the firms performing these ancillary services typically invest in private companies on a medium to long-term capital investment basis. The effect of this is that the AIFM typically has certainty of investment management fees over a longer period than would be the case for the manager of frequently traded securities.

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

Capital requirements can be an important cost for managers, with more than half a million to set aside for larger fund managers.

There are fundamental differences between investment firms and AIFMs carrying out ancillary services, including in relation to risk exposure. AIFMs managing only closed-ended unleveraged funds are not exposed to investor redemptions, unlike managers of open-ended funds. Similarly, they are not exposed to the risk of fund insolvency due to inability to repay leverage, unlike leveraged funds.

We take the view that article 9(8) AIFMD which requires an AIFM to invest the entirety of their own funds in liquid assets is disproportionate in light of the equivalent requirement for MiFID firms under IFR. 43(1) IFR requires MiFID firms to invest only one third of its fixed overheads requirement in liquid assets. We do not see an objective reason why an AIFM should hold the entirety of their own funds in liquid assets, while a MiFID investment firm is only required to hold one third of its overhead requirement in liquid assets. The requirement for AIFM to maintain significant levels of liquid assets prevents those amounts from being deployed for productive purposes to help grow the AIFM's business. To the extent that capital requirements for AIFMs are retained, we consider that only a limited proportion of the relevant amounts should be required to be held in liquid assets (and certainly at a level that is no higher than that required under IFR for MiFID firms).

5) Remuneration-related issues (Italy and Sweden)

An additional barrier encountered in relates to the implementation of remuneration policy requirements under the AIFMD. As a reminder, the use of the proportionality principle in AIFMD Guidelines is absolutely necessary for fund managers to be in a position to offer carried interest – an important long-term employee incentivisation feature of private equity funds.

In Italy and Sweden for example, the domestic application of these rules is more stringent compared to other Member States. Specifically, the regulator’s regulatory approach tends to apply the AIFMD remuneration provisions in a stricter and more formalistic manner, often with limited application of the proportionality principle. As a result, local AIFMs may be subject to detailed and burdensome governance requirements regarding variable remuneration, retention, deferral, and performance measurement. This contrasts with other EU jurisdictions, where more flexible or risk-based approaches are commonly adopted, particularly for smaller managers.

6) National fund structures-related issues (EU, Czech Republic)

The legal form of fund structures in some countries is not necessarily adapted to private equity. For example, Czech law does not allow SICAVs to create multi-compartment structures - a disadvantage of the private-equity scenario.

7) Market abuse issues

MAR was intended to support market integrity, through the establishment of a framework for regulators to better prevent market abuse and thereby protecting the integrity of financial markets and confidence in publicly traded securities and derivatives. It is an objective which we fully support. However, some aspects of MAR have had an unintended and unhelpful impact on the investment process to the detriment of private equity investors (who are primarily pension funds, large financial institutions and sovereign wealth funds).

The root cause of the difficulty is that MAR widened the number of financial instruments that are covered by the market abuse regime capturing behaviour in respect of financial instruments traded on any EU trading venue – being an EU regulated market, multilateral trading facility (“MTF”) and organised trading facility (“OTF”) (a category of trading venue for fixed income and derivative products).

The “need to know” exception in Article 10 of MAR mandated regulators to require investment firms limit confidential information to deal execution alone, rather than balancing appropriate safeguards with the benefit of deepening the firm’s understanding of current markets. There is clearly a balance to be struck between the prevention of misuse of inside information and the need to enable, with appropriate safeguards, investment firms to operate as efficiently as possible. The disproportionate

burden in applying the “need to know” principle is particularly acute for alternative asset management firms engaged in private equity in contrast to firms primarily engaged in trading public securities. This lack of proportionality is exacerbated with respect to debt securities.

MAR in Practice

With debt admitted for trading in the EU issued by target companies (or their group entities), as well as companies with listed equity securities within MAR’s scope, the volume of target companies or portfolio companies that are subject to MAR is extensive. Private equity firms have to consider which employees have access to inside information on new deals and portfolio companies, and implement procedures that demonstrate they comply with the insider dealing and unlawful disclosure provisions of MAR, as well as, in London, the explicit expectations of the FCA as set out in the regulator’s Thematic Reviews of February and December 2015.

This can mean that information on a target company cannot be reviewed by many of those with specialist expertise in the relevant industrial sector so diminishing the investment appraisal process as it is limited only to the specific deal team and other specified employees. Investment professionals working on specific geographical or industry sectors are also restricted from sharing deal “know-how” with their colleagues, where it would be inside information in respect of a MAR deal.

This restricts, for example, market-based pricing information which can help to strengthen the investment skills of professionals. Indeed, the inability of investment professionals within a business area to share intellectual capital sits awkwardly with fiduciary duties to investors to ensure that the most rigorous analysis and use of the firm’s expertise are being deployed for each investment decision. In addition, today’s young professionals, who will lead the industry tomorrow, can be better trained to serve clients where senior professionals, subject to appropriate internal information walls, have a broader platform of deals to utilise in teaching “how it’s done.”

One further unforeseen impact of MAR is the impact that the requirements have on the level of information that can be provided to investors. As you would expect, investors have stringent confidentiality undertakings and accordingly are provided with appropriate information allowing them to monitor, evaluate and ultimately manage their investment portfolios. Since their capital is not discretionary and is committed without the ability to redeem in customary private capital structures, such investors are not able to benefit from the “need to know” principle. Instead, restrictions on the level of information to which they have access can lead to tensions as to how such investors manage their fiduciary duties to underlying stakeholders (i.e., the pensioners in the case of pension funds).

Phantom Listings

The volume of deals that fall into scope of MAR can be sizeable, particularly if they fall within MAR due to a “phantom listing” (see below). These types of listings also present a materially lower risk of insider dealing as trading is minuscule. Private equity firms currently need to identify whether target companies with a non-EU primary listing (e.g., in the US) have any other financial instruments traded on an EU trading venue (including where these are of a group entity).

However, identifying these other listings is often very difficult, as local market participants in an EU Member State can list financial instruments without the knowledge of the primary issuer - the so called MAR “phantom listings” (i.e., the issuer does not list the security). Where a potential deal is deemed to be a MAR deal, the fact that the securities are traded in the EU due to a phantom listing is not a risk-based analysis, as the wording of MAR refers to “traded” rather than “listed.”

There is no reliable source to identify listed financial instruments. Under MAR, ESMA is mandated to maintain on its website information on all notifications of listings operators of EU trading venues have received. Whilst this can be used by firms to identify phantom listings, it is sometimes not up-to-date and can be incorrect. Nevertheless, firms have to implement MAR controls on inside information as a result of such phantom listings. In addition, one cannot identify, on Bloomberg for example, if listed debt instruments are or have been traded. Firms therefore have to research other resources such as company filings or even contact the target company. Unfortunately, the result too often defaults into MAR coverage given the absence of definitive information.

Our suggestion

To address this, we would advocate a legislative amendment to MAR providing that, if 5% or less of the weighted average trading volume of equity of a non-European domiciled issuer is traded in the EU on the basis of a “phantom listing”, then investment firms are permitted to share all information in respect of such issuer within their own firm, subject to appropriate internal information walls and regulatory oversight.

In addition, we suggest that the Commission mandates ESMA to maintain a reliable and timely record of MAR issuers against “phantom listed” issuers on its website to enable firms to determine accurately the scope of applicability of MAR at any given time.

8) Tax-related issues

While most of the concerns we highlight in this response are regulatory, some are largely influenced by the tax treatment of funds.

A. Tax residency of AIFs (body corporates)

Generally, the legal form of an AIFs is either a body corporate or a limited partnership (re limited partnerships – see under B, below). If the AIF is set-up as a body corporate, it is generally considered to be in principle resident for tax purposes in the jurisdiction under the law of which the AIF is formed (although it may in practice benefit from a full or partial tax exemption regime in such jurisdiction). If the asset management of the AIF is wholly or partly exercised in another jurisdiction, the AIF risks being considered a tax resident of the other jurisdiction, or to have a taxable permanent establishment in such jurisdiction, as such other jurisdiction may establish the tax residency of body corporates by means of the concept of ‘place of effective management’.

Certain EU member states have adopted rules in their domestic tax laws that a body corporate that is authorized or registered as AIF in one of the EU member states will be considered a tax resident of that EU member state, irrespective of the ‘place of effective management’ of such AIF. Such a rule enhances the flexibility of AIFMs to form and register AIFs across the EU without triggering discussions on the tax residency of AIFs. Some EU member states lack such rule at all, whereas in the Netherlands, the scope of this rule is limited to AIFs that are – for Dutch tax purposes – not engaged in the conduct of a trade or business, which effectively means that most AIFs cannot rely on the Dutch rule since AIFs are generally considered to be engaged in a business undertaking for Dutch tax purposes.

It is recommended to align the tax residency rules applicable to (body corporate) AIFs across the EU member states.

A similar issue applies as regards the place of establishment for VAT purposes for funds of all types (eg corporates or partnerships), and whether a fund has a fixed establishment in a jurisdiction outside its place of business establishment. It is therefore recommended to expand these rules to also cover the place of establishment of funds for VAT purposes.

B. Tax classification of AIFs (partnerships)

If the AIF is raised in the legal form of a limited partnership, generally two tax issues could arise due to mismatches in the tax laws of the EU member states:

- I. Under the entity tax classification rules of most EU member states, a limited partnership is considered transparent (‘flow-through’) for tax purposes. However, some EU member states consider a limited partnership non-transparent (‘opaque’) under their domestic entity tax classification rules. This

'hybrid' tax classification of an AIF may lead to situations of double taxation, double non-taxation and other complicated tax issues.

Furthermore, under ATAD 2, the reverse hybrid rules state that they do not apply to collective investment vehicles (CIV). However, rather than referring explicitly to UCITS and/or AIFs, the Directive provides a separate definition that, in the absence of further clarification, creates ambiguity and requires a case-by-case and jurisdiction by jurisdiction assessment. This lack of clarity results in uncertainty for both fund managers and investors, as it remains unclear whether UCITS and AIFs are categorically excluded from the scope of the reverse hybrid rules.

It is recommended to align the tax classification rules for (limited partnership) AIFs across the EU member States, whereby a limited partnership AIF must be considered tax transparent under the tax laws of all EU member States and to clarify that all UCITS and AIFs can benefit from the CIV exemption under ATAD 2.

- II. Under the domestic tax rules of most EU member States, a limited partner of a (limited partnership) AIF is not subject to tax in the home jurisdiction of the AIF solely by reason of being a limited partner in such AIF. However, under the tax laws of some EU member states an AIF is considered to be engaged in a business undertaking for tax purposes by reason of certain features of the AIF and/or the management activities exercised by the AIFM on behalf of the AIF. In such a situation, the foreign limited partners of the AIF may become subject to tax in the home jurisdiction of the AIF solely by reason of being a limited partner in the AIF because (i) the AIF is tax transparent and (ii) the business undertaking is attributed to the foreign limited partners (a so-called 'permanent establishment'). This situation may create double taxation for limited partners in an AIF and, moreover, may also trigger extra layers of tax compliance obligations.

It is recommended to align the tax position of limited partnership AIFs across the EU in such a way that in any event double taxation is avoided in the above situations, preferably by providing that limited partners in limited partnership AIFs registered in the EU are not considered to carry out a business undertaking for tax purposes in the home jurisdiction of the AIF solely by reason of being a limited partner in such AIF.

The same points and recommendations are also relevant to contractual funds, such as FPCIs in France, or FCPs in Luxembourg.

52) Where barriers have been identified, how could they be best addressed? Please provide a ranking having regard to the impact of proposed solutions as high, medium or low priority.

While the way to address issues largely depend on the barrier, we see three main ways to address the different barriers so far identified:

- Certain issues require more harmonisation at EU level and/or stronger action against gold-plating (for example, the complexity and length of authorisation processes ; or marketing fees)
- Others require a better acknowledgment of the features of certain fund structures within EU law, an acknowledgement that would result in a lowering of the regulatory burden on managers for which some requirements may not be useful/appropriate (for example, there is not necessarily a need to impose complex depositary requirements on funds that do not daily-trade assets)
- Finally, in specific cases, simplification of the existing framework should make the EU industry more competitive (for example, reporting requirements are so extensive they become very onerous for their benefits)

5.7. Barriers for Investments in Funds

The below questions are addressed specifically to investors, in relation to their investments in funds both nationally and on a cross-border basis.

Have you encountered any specific issues or barriers to accessing investments in EU funds, directly, or a cross-border basis? EU financial regulation; restrictions or differential treatment based on the national framework where a fund is domiciled; supervisory practices; corporate law; tax law

Overall principles

Three types of barriers prevent institutional investors from committing capital to private funds:

- **national and EU regulatory barriers**

To this day, many EU Member States have set up regulatory technical requirements that make it difficult for public and private pension funds to commit capital to long-term funds, ironically often leaving the brunt of that financing to government agencies. This is particularly true in less developed European markets, where there remains a tendency to consider that long-term investors should not invest in perceivably riskier assets, despite the potential benefits these assets can have.

- **prudential rules (dis)advantaging long-term investments** and making them costlier than they are

EU prudential models are often based on the overall principle that risk is calculated based on the sale of assets at the worst possible time (i.e.: a market risk) with no regard to diversification benefits at fund level. This does not fit at all with the business model of investing in projects that can effectively promote long-term competitiveness, where the main concern is for the investor to have a sufficiently diversified portfolio and sufficiently liquid assets on the side to make part of their investments into long-term assets.

- **the overall (limited) level of knowledge of investors**, especially in certain corners of Europe, **on the benefits that certain asset classes can have**

As the Tibi initiative in France has shown, there is much value for Member States to proactively promote certain types of asset classes to their national institutional investors. One of the main concerns with long-term asset classes is less the returns, which have shown to be much higher than public markets², but the difficulty for certain institutional investors to set themselves up in a way that makes it possible for them to invest capital in these funds – and governments have the power to correct such market failures. Another concern is the lack of knowledge of certain EU labels, such as EuVECA, at international level, despite the better opportunities offered by EU start-ups and scale-ups compared even to their US counterparts.

- **fragmented foreign direct investment (FDI) screening landscape** across Member States creating challenges for PE/VC investors, particularly in cases where no control is exerted

Today, more foreign capital flows to EU venture funds than EU capital flows to non-EU funds, demonstrating both the value of European businesses and a gap in domestic capital. Around 40% of capital in private markets originates outside the EU. Current FDI regimes, which should be designed to prevent foreign [control](#) of strategic assets, are less applicable to PE/VC structures. In fact, the current rules that most countries have are entirely unsuitable for the PE/VC industry. Investors in our industry’s funds do not exercise any control over target companies; instead, they invest in the fund manager’s capacity to identify businesses with the best growth potential and strategically support these businesses.

How have these barriers impacted your investment decisions in funds specifically?

² See Invest Europe’s “The Performance of European Private Equity Benchmark Report 2023”

We understand barriers identified above have largely prevented investors to commit capital to private equity and venture capital. As we describe in detail in Question 55, investors only allocate a very small proportion of their assets to long-term funds.

Where barriers have been identified, how could they be best addressed? Please provide a ranking having regard to the impact of proposed solutions as high, medium or low priority.

We have divided the issues below by type of investor. All issues should be seen as high priority given the significant delta between the EU and major competitors on private finance.

Insurers

For insurers, the concern related to the shape of prudential rules was arguably addressed by **the creation of the long-term equity (LTE) category in Solvency II.**

Yet, for all its benefits, the Solvency II LTE category has so far been rarely used by insurers, meaning that **most long-term investments remain subject to extremely high capital charges compared to their actual risk.**

Currently less than 2% of insurers' capital is allocated to private equity, venture capital, or infrastructure investors located in the EU27. Bringing that number up to a conservative 5% would increase investment into the European economy, in current values, by €277 billion.

Every step must therefore be taken for the category to be set up by all insurers in a capacity to do so, as well as making sure that venture capital and growth funds can be eligible funds within the LTE portfolios.

While the recent review meets most of the [industry concerns](#), it is important to get the Delegated Acts right on the LTE category, in particular by ensuring that **liquidity criteria are easy to meet** and that no look-through should be required for exposures to **non-substantially leveraged** funds.

Banks

The **Capital Requirements Directive and Regulation (CRD/CRR)** framework discourages banks from making equity investments in long-term funds. The recent regulatory review exacerbated this issue by treating such investments as speculative.

Banks represent less than 6% of the overall investment in private equity, with the notable exception of the CEE region (where fundraising amounts are very low and other investors than government agencies are virtually absent). In DACH and Nordics, banks are effectively investing **nothing in these long-term funds.**

UK & Ireland	DACH	Nordics	France & Benelux	Southern Europe	CEE
4%	1%	0%	6%	6%	17%

% of funds raised by banks of overall private equity fundraising by region³

The Union should find ways to mobilise some of the banks’ massive savings - which are the equivalent of capital markets savings in the US due to the relative importance of both in each continent - to finance EU innovation.

As noted by Mario Draghi, banks are not tooled to be investment innovators and debt is not an efficient way to finance start-ups and scale-ups. Yet, **even if banks were only devoting a very small part of their assets more to EU private equity and venture capital funds (moving from less than 0,01% of their assets to any higher number)**, this could still represent a fundamental change for start-ups and scale-ups, given the relative size of banks and venture/growth funds respectively.

Setting up a “long-term equity” category for the banking system – or a similar regime - could smartly drive a relevant part of banks’ assets into the EU innovation ecosystem, instead of these solely consisting of bonds and shares of well-established companies.

Pension funds

Pension funds are the perfect vehicles to invest long-term given their liabilities – and yet they are “missing out”, as exemplified in [this study](#), on funds investing in innovation.

The IORP Directive currently states that investments of IORPs shall primarily be made in regulated markets – although it specifies that Member States cannot prevent them from making long-term investments outside these markets (Art 19)

We suggest that Article 19 should be modified to **fully promote** – as opposed to “avoid preventing” - **investments in long-term asset classes** and investments in ELTIF and EuVECA funds.

Yet, from the perspective of Invest Europe members, **the main issue with pension fund investments remains the national barriers** which often inadvertently, by imposing specific conditions of investments, prevent pension products to be opened to asset classes such as venture and growth capital. This is because restrictions usually seek to promote investments in short-term, liquid and low costs products.

We suggest for the European Commission to launch **general guidelines to promote pension fund rules that strike a more appropriate balance between prudence and investment needs.**

³ Invest Europe Activity Data, 2023

Finally, it is worth pointing out that **the more pension funds develop long-term products for their clients that allow access to long-term asset classes, the more capital allocated to pension plans can effectively be invested in innovative asset classes by EU individuals**. This should be taken into consideration when developing long-term savings products at EU level.

Foreign investors in general

Foreign investors should not be discouraged from committing capital to European businesses through PE/VC funds. The EU can redefine **foreign investment (FDI) rules** to acknowledge characteristics of private equity fund structures – and ensure **passive structures are not unduly covered** by these rules. Instead of restricting capital based on origin alone, the focus should be on whether foreign investors **can exert influence or control**. Capturing investments at the fund level where no foreign control exists imposes unnecessary administrative and financial burdens and risks reducing capital flows into Italian businesses.

We suggest **excluding future passive fund structures** from scope of FDI control: the Regulation should explicitly exclude investments made through EU based GPs managing collective investment undertakings, where LPs hold **no control or governance rights**. Screening should target cases where a non-EU entity has direct or indirect control over the EU target, not where capital is passively committed.

Moreover, **27 national** FDI regimes create unnecessary **complexity** and **uncertainty** for investors. If full harmonisation is not feasible, further aligning rules, processes, timelines, and documentation across Member States would enhance transparency, reduce administrative burdens, and support the functioning of cross-border investment ecosystems. Creating a **Centralised Screening System** for FDI would mitigate the inefficiencies and costs stemming from divergences in scope, requirements, timelines, and effects.

Our clear preference would be to have a **pan-European FDI regime** that entirely excluded VC-, PE and infrastructure investments made through blind pools of capital. However, we would welcome if individual Member States should choose to be the **pioneers** in this area and take pioneer advantages from being the first EU countries to **simplify** FDI control processes in ways that would attract capital to their domestic VC-, PE- and infrastructure-backed businesses.

Do you consider that some investor protection rules should be waved for qualified investors?

Yes.

It is absolutely urgent to harmonise at EU level the many different regime for qualified investors that already exist and to depart from the existing framework, where a qualified investor can only be classified as professional under EU law by passing the “professional upon request” test under MiFID.

We **call for the introduction in EU law of an “accredited investor” test** that could allow a natural person to invest in a fund under certain conditions without having to be classified as a “MiFID professional”. More broadly, such categorisation should waive for that individual and the firm that markets to him/her, typical retail obligations, such as the preparation of a KID or relevant customer protection laws designed for typical retail clients.

Benefits of a broader approach to EU investor categorisation

As recognised by the European Commission in its SIU Communication, it is **essential to make it easier for private market funds to attract capital from high-net-worth individuals**, which is otherwise flowing to non-EU jurisdictions and/or to other types of investments (for example, in cryptocurrencies).

Benefits could be significant: \$ 27 trillion is held globally by investors with investable assets between 250K and 1 million dollars⁴. As only **€22 billion** was invested over the past five years by private individuals in European private equity, this means that around **only 0.1% of the available “sophisticated” capital** is used to finance long-term projects through private funds.

A way forward: an EU fund investor framework

In light of the above, we suggest (1) to modify the MiFID definition of an investor (as currently suggested in the context of the Retail Investment Strategy) and (2) to **harmonise the national “semi-professional” frameworks into a single AIF investor regime**.

The simple concept, taken from the EuVECA and many existing national regimes (see in Annex II), would allow fund managers to consider that any investor committing more than 100K in an EU alternative investment fund can be deemed a “knowledgeable investor” provided the manager ensures a series of specific conditions (detailed below).

A general framework...

Fund managers – or the MiFID firms acting on their behalf - would be allowed to market to any of these knowledgeable investors across the EU without any further restriction than those imposed in EU law (including national retail requirements directly at retail marketing, such as the obligation to set up a specific type of fund structure)

Moreover, fund managers marketing would:

⁴ Capgemini, Wealth Management Top Trends, 2024

- not have to prepare a Key Information Document
- not be subject to any of the MiFID or other EU retail requirements

unless they offer their funds to more than 100 investors (a concept directly taken from the Prospectus regime)

...under restricted conditions

In order to be in a position to market to a knowledgeable investor, a fund manager would have to prove that it:

- **is either regulated under the EuVECA or the AIFMD management regimes**

It is to be noted that turning the EuVECA into a management passport would be an important change to introduce.

- **is able to prove that it is raising and channelling of capital towards long-term investments in the real economy in line with Union objectives**

Such a restriction, directly taken from the ELTIF framework, would ensure that the commitments made by high-net-worth individuals effectively benefit the EU economy, without introducing narrow EU investment restrictions (which can create a real geographic diversification risk for the investor)

- **has received from the investor a letter, separate from other marketing documents, stating that it is aware of the risks of investing in a fund [and that it is not committing more than 10% of its portfolio in the fund]**

The additional “10% of portfolio” would ensure that investors cannot spend their last savings in the fund.

Importantly, this document would be additional to the already existing marketing documents that would detail the costs of the fund (as a reminder, it is largely illusory to suppose that it is possible to assess the past and future performance of recently created closed-ended funds beyond general market indicators)

The combination of complex EU and national laws has historically made it difficult for venture, growth, infrastructure and private equity managers to market their funds to high-net-worth individuals.

The introduction of a unified European regime, based on parameters already defined in various EU laws, can represent a significant improvement for such a marketing and avoid many of the problems managers have faced with national regulators.

Such a change would not represent any loss of investor protection as it would only apply to a narrow number of individuals with a portfolio larger than €1 million (arguably – it may give these investors more appropriate information than the one offered in the KID, which is in practice largely unread at the moment).

Coupled with targeted tax incentives, it would however be of significant benefit to the growth of cross-border EU fundraising and may constitute a replacement to the less significant role in Europe of university endowments and foundations, which represent a crucial part of the VC ecosystem in the United States.

Section 6: Supervision

1) Do you have ideas how EU-level supervision of financial markets could be structured (for example the whole or part of the sector should be supervised at EU level, supervisory decisions could be taken at EU level or national etc.)? What broad changes would that involve in terms of

- **supervisory architecture and supervisors' responsibilities,**
- **supervisors' approach to exercise their mandates and processes,**
- **improved cooperation among supervisors?**

As we pointed out in our response to Question 9 of the first section of this paper, what matters from an industry perspective is that supervision does not lead to barriers to fundraising and that managers are able to work with efficient and capable home supervisor, able to understand the asset class and to rapidly authorise fund managers. Finally, lowering the cost of supervisory fees – as multiple host Member States' fees however small act as a disincentive to European-wide strategies – is also paramount.

In that context, the choice between EU or national supervision – and the changes it involves – should primarily be based on an assessment whether the supervisory exercise is of relevance to the entity supervised.

A key role of ESMA should be to create a harmonised scope of rules, ensure a harmonised interpretation and application across the EU, to go after gold-plating situations and to address conflicting interpretations or conflicts between NCA views.

For example, a small VC manager should remain supervised by national regulators; while larger managers may “opt-in” to EU supervision.

As we mentioned in the beginning of this response, whatever the supervisory architecture, it will be essential for ESMA to be properly tooled to act as an EU regulator with an expertise of a wide variety of market players, including within the asset management space. As we have shown in this response, our members' experience is that only large authorities such as the AMF or the CSSF have such expertise that managers are comfortable with the quality of their supervisory role and the speed of authorisation process. Would ESMA be imposed as a single supervisor without the right capacities, this could seriously undermine the functioning of the EU markets.

2) Some national competent authorities (NCAs) have developed advanced expertise or specialisation in supervising certain sectors. What is your view on

building on these NCAs and creating EU centres of supervisory expertise by sectors?

Lack of expertise in a sector is something that can seriously affect the quality of supervision, either because it leads to too complex authorisation processes (due to the regulator's cautiousness in the absence of knowledge) or because regulators impose harmonised rules on sectors they know best (typically mass retail products or liquid markets) on sectors they know less (typically long-term, unlisted products).

This is not necessarily because of a specific intent to supervise managers such as private equity ones in a certain way, but often because certain types of AIFs features are either disregarded or forgotten at the time of creating general rules.

Yet, one should consider that supervision remains by and large a local phenomenon for smaller structures, which venture capital firms are in most cases (and should in many cases remain, given the importance of investing in small scale-ups). Beyond creating centres of expertise, it would be as logical to also develop national expertise through knowledge sharing and best practices.

Feedback from industry players has shown that EuVECA had a positive impact as it helped regulators of countries with a less developed venture capital system to better understand what venture capital was. Knowledge sharing may help break a vicious circle where the lack of development of a VC market leads to limited expertise within relevant NCAs and that limited expertise reinforce barriers to entry, as regulators fail to regulate fund managers based on their specific characteristics.

3) Do you think supervision of EU financial markets would benefit from pooling together resources and expertise of individual NCAs in regional hubs?

This should not be done at the expense of local proximity, which is paramount for smaller managers.

Similarly, experience is that disparities exist between regions rather than between countries when it comes to level of expertise of the VC and private equity market. As mentioned in the previous question, knowledge sharing would therefore be likely more helpful than regional hubs.

4) What is your view on setting up regional hubs of ESMA to ensure closer interaction with market participants? Please explain your reply highlighting benefits and downsides

Would ESMA become an EU supervisor for certain types of funds, with the caveats we made in Question 9 of Section 1, local hubs (or the case may be national expertise of specific markets within ESMA) would be an essential component of the regime.

Close interaction with market participants should remain an essential feature of home supervision – and is a clear request from most of the managers we have consulted.

1. Fund management questions

40) How would you rate the convergence of supervisory practices across Member States in the area of the supervision of funds and asset managers?

Please rate from 1 to 5 (1 very convergent, 5 very divergent)

Please provide examples of divergent outcomes of supervisory practices for funds and asset managers in different Member States.

Please estimate the regulatory compliance costs⁵ (including the applicable fees) for UCITS funds, their fund managers and AIFMs that arise from engagement with your current supervisor(s). Please separate any details on costs into fees and compliance, one-off cost and on-going costs and per supervisor.

5

Please see our answers to specific questions on authorisation and marketing fees in the Asset Management section of this response, as well as our Annex describing examples of fees in some countries.

It is extremely difficult to give a defined number of overall compliance costs as it depends both on the size of the fund, its authorisation as a full-AIFM and the marketing strategy (i.e.: whether the manager is marketing across Europe or only in a few jurisdictions).

Here are however some indications based on a survey we conducted with our members – while the results of this survey are anecdotal, they give some insights on the realities faced by managers in a fragmented supervisory ecosystem

- Costs of risk management rules can range from 1 basis point to 6 basis point (of AuM)
- Reporting requirements, marketing filings and material change filings typically **each** cost around 1 basis point (but can go up to 4-5 basis point for small managers)
- Portfolio companies related requirements and capital requirement typically cost from 1 to 3 basis point (but can go up to 4-5 basis point for small managers)
- Depositary costs typically cost 3 to 6 basis points

⁵ Including administrative costs (staff costs, facilities costs, travel, IT technology costs), professional fees (e.g. legal, accounting, consulting, etc), and supervisory fees

- AML requirements can widely vary (again depending on the status of the manager) but can cost up to 9 basis point

Regarding host fees, please see our answer to the specific question in the Asset Management section and in the Annex. Please note however that for a relatively large manager with a European strategy, host fees alone may account for € 500.000 a year (when accounting for the time and effort to comply with all different fee structures).

41) Please explain your answer providing, where possible, quantitative evidence and examples. In particular, please provide, where possible, details on the cost of the following elements:

a) Applications for the initial authorisation as UCITS funds, their fund managers and AIFMs;

b) Applications for approvals of UCITS sub-funds;

c) Notifications or applications for the extension of services of an asset manager (e.g. to extend the scope of services or products offered or activities performed in the EU);

d) Notifications to home Member State NCAs to market UCITS funds and AIFs in host Member States;

e) Notifications to Member State NCAs relating to UCITS funds' and AIFs' marketing material;

f) Notifications to Member State NCAs where changes are made to UCITS and AIF fund documentation, e.g. the KIID;

g) Supervisory approvals for fund managers, e.g. with regard to outsourcing;

h) Involvement and consultations of different bodies (e.g. colleges), supervisors, central banks, and further authorities in supervisory decisions;

i) Lack of consistent processes (e.g. different actors involved) across different supervisory procedures;

j) Legal uncertainties arising from different implementation or interpretations of the EU regulatory framework in different Member States or between Member State authorities and ESMA;

k) Duplicative or conflicting instructions from NCAs and ESMA;

l) Other

See responses in Annex for various EU countries.

43) Please indicate whether you consider that more centralised EU supervision could also produce negative side-effects.

Yes, as we mentioned previously, EU supervision could have two main negative side effects

- if ESMA is not properly tooled, there is a risk supervision could be of a lower quality in more developed ecosystems (length of response, understanding of industry specificities,...)
- if there are no real local hubs allowing small managers to have a local interlocutor, this could lower the level of interaction between authorities

2. Funding

Do you consider the provisions on financing and resources for the tasks and responsibilities of the ESAs appropriate?

The ESAs do need appropriate levels and types of resource and expertise to be able to properly perform their functions and to cope with the increasing number of their duties, such as drafting significant numbers of technical standards, providing technical input to the Commission, or monitoring and ensuring both consistency in implementation and enforcement across the EU.

ESAs face pressure to fulfil a growing number of mandates while staying within the ceilings of the multi-annual financial framework (MFF). Taking into account the limitations of public financing, should ESAs be fully funded by the financial sector?

Irrespective of the number of mandates, in the absence of a direct supervision by the ESAs, we do not see any reason to change the funding arrangement to a direct contribution from the industry.

Indeed, direct part- or full-funding of the ESAs by the industry would put into question the impartiality, objectivity and autonomy of the ESAs and raise conflict of interest issues. Also, the development of a contribution key would be difficult to determine and could create significant distortions between entities and sectors.

If not fully funded by the financial sector, would you be in favour of targeted indirect industry funding for certain convergence work (indirect fees), e.g. for specific tasks, like voluntary colleges, opinions, etc.?

No. The lack of convergence, which is largely due to unneeded competition between Member States, should not end up being a cost to market participants. That would be the exact opposite of the idea of a Savings & Investments Union.

Do you think the current framework includes sufficient checks and balances to ensure that ESAs make efficient and effective use of their budgets?

Yes.

Annex: Costs per country

1. Luxembourg

Please provide, where possible, details on the cost of the following elements:

See last grand ducal regulation on the CSSF fees.

a) Applications for the initial authorisation as UCITS funds, their fund managers and AIFMs;

EUR 4,650 for UCITS fund

EUR 18,000 for UCITS management company

EUR 18,000 for AIFM

EUR 9,250 for Umbrella UCITS and UCIs; umbrella SIFs and SIF-AIFs; umbrella SICARs and SICAR-AIF

EUR 17,500 for Traditional or umbrella SIAGs; internally managed, traditional or umbrella UCIs; internally managed, traditional or umbrella SIF-AIFs; internally managed, traditional or umbrella SICAR-AIFs

b) Applications for approvals of UCITS sub-funds;

EUR 1,100

c) Notifications or applications for the extension of services of an asset manager (e.g. to extend the scope of services or products offered or activities performed in the EU);

EUR 15,000

d) Notifications to home Member State NCAs to market UCITS funds and AIFs in host Member States;

EUR 3,000 / 5,500 and annual fee similar.

e) Notifications to Member State NCAs relating to UCITS funds' and AIFs' marketing material;

Currently, the CSSF does not require UCITS or AIFMs to submit marketing materials for prior approval. However, the CSSF reserves the right to request and verify such materials on a case-by-case basis.

f) Notifications to Member State NCAs where changes are made to UCITS and AIF fund documentation, e.g. the KIID;

There are no specific fees mentioned for notifications related to changes in fund documentation, such as the Key Investor Information Document (KIID). However, any material changes must be notified to the CSSF in accordance with the applicable laws and regulations.

g) Supervisory approvals for fund managers, e.g. with regard to outsourcing;

The Grand-Ducal Regulation does not specify fees for supervisory approvals related to outsourcing arrangements. Such approvals are typically part of the ongoing supervisory process and may not incur separate fee.

h) Involvement and consultations of different bodies (e.g. colleges), supervisors, central banks, and further authorities in supervisory decisions;

The regulation does not detail specific fees for the involvement of different bodies (e.g., colleges, supervisors, central banks) in supervisory decisions. These are generally encompassed within the overall supervisory framework.

i) Lack of consistent processes (e.g. different actors involved) across different supervisory procedures;

/

j) Legal uncertainties arising from different implementation or interpretations of the EU regulatory framework in different Member States or between Member State authorities and ESMA;

/

k) Duplicative or conflicting instructions from NCAs and ESMA;

/

l) Other

Annual Fees: UCITS management companies and AIFMs are subject to annual fees.

On-Site Inspections: A lump sum of EUR 10,000 is charged for each on-site inspection conducted.

2. Spain

a) Applications for the initial authorisation as UCITS funds, their fund managers and AIFMs;

b) Applications for approvals of UCITS sub-funds;

c) Notifications or applications for the extension of services of an asset manager (e.g. to extend the scope of services or products offered or activities performed in the EU);

3k

d) Notifications to home Member State NCAs to market UCITS funds and AIFs in host Member States;

2.5k

e) Notifications to Member State NCAs relating to UCITS funds' and AIFs' marketing material;

f) Notifications to Member State NCAs where changes are made to UCITS and AIF fund documentation, e.g. the KIID;

g) Supervisory approvals for fund managers, e.g. with regard to outsourcing;

h) Involvement and consultations of different bodies (e.g. colleges), supervisors, central banks, and further authorities in supervisory decisions;

See comment on SEPBLAC intervention

i) Lack of consistent processes (e.g. different actors involved) across different supervisory procedures;

j) Legal uncertainties arising from different implementation or interpretations of the EU regulatory framework in different Member States or between Member State authorities and ESMA;

Spanish CNMV is very active in providing soft law, through Q&A in which provides with criteria going beyond pure interpretation. In this sense, limits on fund raising periods or strict rules for continuation funds or rebalancing process among parallel funds are examples of such type of interpretation guidance.

k) Duplicative or conflicting instructions from NCAs and ESMA;

l) Other

3. Italy

Please provide, where possible, details on the cost of the following elements:

a) Applications for the initial authorisation as UCITS funds, their fund managers and AIFMs;

In Italy, no one-off application or filing fee is levied for the initial authorisation of UCITS funds or their fund managers or for alternative investment fund managers (AIFMs). However, once authorised, such entities (i.e. asset managers) are required to pay annual supervisory contributions to CONSOB, the Italian financial markets authority. These contributions are updated annually by way of formal resolution.

Foreign asset management companies are subject to supervisory contributions only where they establish a branch in Italy. Furthermore, contributions are due in connection with the marketing of financial instruments in Italy.

Pursuant to CONSOB Resolution No. 23352 of 10 December 2024, the applicable supervisory contributions for 2025 are as follows:

UCITS and AIF management companies with branches in Italy: the amount due is based on the number of investment services/activities authorised: (a) one investment service/activity: €4,800.00; (b) two investment services/activities: €17,530.00; (c) three investment services/activities: €31,760.00;

UCITS and ELTIFs offered to the public and for which a prospectus is filed and the offering is ongoing: €2,390.00 per fund or sub-fund. Not applicable if the product is listed;

UCITS and ELTIFs for which the public offering has closed, but which still have Italian resident investors: €1,690.00 per fund or sub-fund;

UCITS and reserved AIFs marketed exclusively to professional investors: €1,110.00 per fund or sub-fund;

Non-reserved AIFs offered to the public: €2,180.00 one-off contribution per fund or sub-fund.

b) Applications for approvals of UCITS sub-funds;

The institution of new UCITS sub-funds entails a notification to CONSOB but does not attract a specific fee. Nonetheless, each sub-fund is subject to the annual supervisory contributions referred to in point a) above.

c) Notifications or applications for the extension of services of an asset manager (e.g. to extend the scope of services or products offered or activities performed in the EU);

Extensions of the scope of services or activities by Italian asset managers (e.g. to include new investment services or to manage additional types of funds) require a formal authorisation by the Bank of Italy. No specific regulatory fee is charged for such applications; however, any extension affects the annual supervisory contributions due to Consob referred to in point a) above, as these are calculated based on the number of activities authorised.

d) Notifications to home Member State NCAs to market UCITS funds and AIFs in host Member States;

CONSOB does not charge any fee in relation to outbound passporting notifications for the marketing of UCITS or AIFs in other EU Member States. However, entities marketing funds in Italy — whether under the freedom to provide services or through local intermediaries — are subject to the annual supervisory contributions referred to in point a) above.

e) Notifications to Member State NCAs relating to UCITS funds' and AIFs' marketing material;

There is no fee for submitting marketing materials to CONSOB. No separate supervisory contribution is imposed for this activity.

f) Notifications to Member State NCAs where changes are made to UCITS and AIF fund documentation, e.g. the KIID;

PRIPs manufacturers are required to pay a contribution of €270.00 for each newly acquired KID. This fee does not apply to subsequent updates of a previously submitted KID.

A cap of €102,000.00 annually per manufacturer applies.

g) Supervisory approvals for fund managers, e.g. with regard to outsourcing;

Material outsourcing arrangements executed by management companies must be notified in advance to Bank of Italy. There is no fee associated with such notifications or their review.

h) Involvement and consultations of different bodies (e.g. colleges), supervisors, central banks, and further authorities in supervisory decisions;

In Italy, CONSOB coordinates its supervisory actions with the Bank of Italy. No additional fee is charged to fund managers or financial institutions due to such institutional coordination.

i) Lack of consistent processes (e.g. different actors involved) across different supervisory procedures;

See above

j) Legal uncertainties arising from different implementation or interpretations of the EU regulatory framework in different Member States or between Member State authorities and ESMA;

See above

k) Duplicative or conflicting instructions from NCAs and ESMA;

l) Other

An additional point to highlight concerns the supervisory contribution applicable to foreign issuers (EU and non-EU) of collective investment undertakings listed or admitted to trading in Italy. Pursuant to CONSOB Resolution No. 23352 of 10 December 2024, for 2025, such issuers are required to pay an annual contribution of €3,555.00 per fund class listed or admitted to trading.

For issuers offering shares of funds or sub-funds, two listed fund classes are excluded from the calculation of contribution. A cap of €795,600.00 per issuer applies.

4. Denmark

Danish AIFMs with authorization

Annual payment of 10.5 per mille of their expenses for salary, commission, and bonuses, but always a minimum of DKK 20,000 (approx. EUR 2,680).

Additionally, a payment of 4.4% of the difference between the Danish FSA's expenses and the fee paid above. The fee is distributed as follows:

- a) a) DKK 10,000 (approx. EUR 1,340) per AIF managed by the AIFM (with an addition of DKK 2,000 (approx.. EUR 268) per department in each AIF).
- b) b) The remaining fee is distributed in proportion to the AIFM's share of the total balance for all businesses covered by the Danish Financial Businesses Act, section 367, subsection 1.

Danish sub-threshold managers

No fees are charged.

Danish EuVECA managers

Annual payment of 10.5 per mille of their expenses for salary, commission, and bonuses, but always a minimum of DKK 5,000 (approx. EUR 670).

Foreign AIFM's

The fee for an AIFM in another MS marketing shares in an AIF in Denmark is an annual payment of DKK 5,000 (approx. EUR 670).

The fee for an AIFM in a third country marketing shares in a third country AIF in Denmark is an annual payment of DKK 8,000 (approx.. EUR 1,070)

All the above amounts must be adjusted with an index of 1.7043 as of 2024.

5. Sweden

Please provide, where possible, details on the cost of the following elements:

a) Applications for the initial authorisation as UCITS funds, their fund managers and AIFMs;

SFSA processing fees for initial authorisations:

- Authorisation as UCITS ManCo and AIFMs: Currently SEK 525,000 (approx. EUR 48,000). The SFSA has proposed that the fee be increased to SEK 690,000 (approx. EUR 63,000) from July 2025.

- Registered (sub-threshold) AIFM: SEK 33,000 (approx. EUR 3,000).

- New UCITS fund SEK 52,500 (approx. EUR 4,800)

b) Applications for approvals of UCITS sub-funds;

Same as for new UCITS funds under a) above.

c) Notifications or applications for the extension of services of an asset manager (e.g. to extend the scope of services or products offered or activities performed in the EU);

- UCITS ManCo authorisation to manage AIFs / AIFM authorisation to manage UCITS funds: SEK 172,000 (approx. EUR 15,700)

- New investment strategy for authorised AIFMs: SEK 25,500 (approx. EUR 2,300)

- MiFid top-up licence for authorised AIFMs and/or UCITS ManCos SEK 172,000 (approx. EUR 15,700)

d) Notifications to home Member State NCAs to market UCITS funds and AIFs in host Member States;

- AIF: SEK 7,500 (approx. EUR 680)

- UCITS: SEK 4,500 (approx. EUR 410)

e) Notifications to Member State NCAs relating to UCITS funds' and AIFs' marketing material;

No separate notification, but marketing materials, i.e., prospectus (if any), art. 23 disclosure and the fund rules (LPA, AoA or similar) should be submitted as part of the marketing/passport notification (described under d) above).

f) Notifications to Member State NCAs where changes are made to UCITS and AIF fund documentation, e.g. the KIID;

AIFM

See above under e). No separate notification but changes to fund documentation could sometimes constitute a material change of the marketing/passporting notification, SEK 18,000 (approx. EUR 1,600) (for domestic marketing license) and SEK 4,500 (approx. EUR 410) (for passporting).

UCITS

Changes to fund rules: SEK 25,500 (approx. EUR 2,300)

g) Supervisory approvals for fund managers, e.g. with regard to outsourcing;

Outsourcing notification: SEK 25,500 (approx. EUR 2,300)

h) Involvement and consultations of different bodies (e.g. colleges), supervisors, central banks, and further authorities in supervisory decisions;

-

i) Lack of consistent processes (e.g. different actors involved) across different supervisory procedures;

-

j) Legal uncertainties arising from different implementation or interpretations of the EU regulatory framework in different Member States or between Member State authorities and ESMA;

Pre-marketing. As mentioned above, the interpretation of the pre-marketing rules which does not allow for new managers to pre-market first time funds (before obtaining AIFM authorisation/EuVECA registration), creates issues for new managers to be able to test the water and provide preliminary information of its upcoming fund before being authorised under the AIFMD/registered under the EuVECA regulation.

Material changes. There is very little guidance on what constitutes a material change under the AIFMD, resulting in different interpretations across different member states.

Blackout period for pre-marketing (AIFMD art. 32a(3)). There is an uncertainty as regards the scope of the blackout period for pre-marketing following a de-notification of marketing (in accordance with AIFMD art. 32a). Further guidance should be provided on what constitutes “similar investment strategies or investment ideas”, and, in particular, whether the blackout period is an anti-avoidance rule or whether it also covers the pre-marketing of successor funds.

ESMA’s guidelines on marketing communication. We believe that there is still an unclarity on the scope of the ESMA guidelines on marketing communication, where our understanding is that the application of these guidelines varies across different member states. The guidelines are largely tailored to the marketing of open-ended funds to retail investors, and it would in our view be proportionate to introduce an

option to opt out (in whole or in part) of the guidelines for closed-ended funds aimed exclusively at professional investors.

k) Duplicative or conflicting instructions from NCAs and ESMA;

l) Other

6. Belgium

The Belgian FSMA mainly charges annual maintenance fees as well as some ad hoc fees in specific circumstances. These fees are typically indexed annually.

In relation to cross-border management, the FSMA does not charge any fees for the notification of documents, amendments to documents, passports or management. However, for management companies wishing to register a Belgian branch there is a fee of EUR 505,00 – doubled if the management company wishes to provide services for both AIFs and UCITS. In addition, there is an annual maintenance fee of at least EUR 5.040,00 for management companies which engage in incoming cross-border activities via a Belgian branch – doubled if the management company wishes to provide services for both AIFs and UCITS.

In relation to cross-border distributions, the FSMA does not charge any fees for pre-marketing, notification of and later amendments to documents, passports, and the withdrawal of notifications.

As from 2025 the FSMA charges the following types of fees:

1. UCITS
 - a. Initial notification fee per sub-fund of EUR 505,00.
 - b. Annual maintenance fee per sub-fund of EUR 3.452,00.
2. AIFs
 - a. Initial notification fee per sub-fund of EUR 505,00 for AIFs distributed to retail investors (there being no such fee for AIFs distributed to professional investors only).
 - b. Annual maintenance fee of EUR 628,00 for self-managed licensed third country AIF distributed to professional investors only.
 - c. Basic annual maintenance fee of EUR 21.562,00 for all AIFs distributed to retail investors.
 - i. Additional maintenance fee of EUR 628,00 for self-managed licensed EEA-AIFs distributed to retail investors.
 - ii. Additional maintenance fee for self-managed licensed third country AIF distributed to retail investors where the amount of fees depends on the amount of assets under

management during the preceding year as communicated in the financial reports to the FSMA:

1. AuM > EUR 500 million: EUR 5.040,00.
2. AuM > EUR 100 million and < EUR 500 million: EUR 3.024,00.
3. AuM < EUR 100 million: EUR 1.009,00.