**BVI[1] position on the review of the Alternative Investment Fund Managers Directive (AIFMD)**

In the EU, a total of EUR 10.7 trillion is invested in investment funds by private and institutional investors. With assets of EUR 3,000 billion, Germany is the largest market (source: ECB as of 30 June 2020) with a market share of 27 percent. With an annual growth rate of 7.0 percent, Germany is the second fastest growing market followed by Luxembourg (4.6 percent), Italy (3.9 percent), the Netherlands and France. In terms of funds issued in the EU (source: EFAMA as of 30 September 2020), the German AIF market accounts for EUR 2,002 billion out of EUR 6,325 billion in the EU, which corresponds to a share of 31.7 percent. France follows by a wide margin (EUR 1,143 billion or 18.1 percent). It is of utmost importance to understand that alternative investment funds (AIFs) are more than just hedge funds. In terms of assets, hedge funds make up only 6 percent of the EU AIF market (by end of 2018)[2]. Most institutional investors are highly regulated entities such as insurance companies, banks or institutions for retirement provision which invest in investment funds with low leverage.

In a context of continued inflows and growth of the asset management sector, financial stability bodies such as the European Systemic Risk Board (ESRB) and the European Central Bank (ECB) as well as ESMA have called for an impact assessment of the resilience of the current framework applying for asset managers. The Policy Recommendations[3] of January 2017 published by the Financial Stability Board (FSB) have rationalised the political debate significantly. Rather than speculatively insinuating systemic risks based on mere quantitative considerations, the FSB addresses potential structural weaknesses in the existing fund regulation in a targeted manner. Accompanied by additional discussions between the roles and tasks of supervisory authorities, the current work is focused on understanding potential implications from asset management activities such as liquidity mismatch of open-ended investment funds and leverage within funds. In this general debate, a distinction will need to be made between the impact on investors to protect their interests and the impact on the financial market to protect the financial stability.

**Functioning of the AIFMD regulatory framework, scope and authorisation requirements:** Both the UCITS Directive and the AIFMD fully cover the activities of asset managers and provide strict and appropriate rules on their authorisation, own funds requirements, operation conditions, organisational and transparency requirements, delegation of functions and reporting obligations to competent authorities. However, we suggest some amendments to improve the effectiveness of the AIFMD in avoiding divergent approaches used by national legislation or existing market practices such as leverage, the availability of liquidity management tools, reporting and investor protection. We also highlight that managing investment funds differs fundamentally from business models of banks or other types of financial entities such as insurance companies. Asset managers are neither banks nor insurance companies, but a separate pillar of the financial economy. They act as agents on behalf of their investors and are subject to fiduciary duties to act in the best interest of investors. Own capital is only needed to ensure that the operational and potential professional liability risks are appropriately covered. The own fund

[1] BVI represents the interests of the German fund industry at national and international level. The association promotes sensible regulation of the fund business as well as fair competition vis-à-vis policy makers and regulators. Asset Managers act as trustees in the sole interest of the investor and are subject to strict regulation. Funds match funding investors and the capital demands of companies and governments, thus fulfilling an important macro-economic function. BVI's 114 members manage assets more than 3,6 trillion euros for retail investors, insurance companies, pension and retirement schemes, banks, churches and foundations. With a share of 27%, Germany represents the largest fund market in the EU. BVI's ID number in the EU Transparency Register is 96816064173-47. For more information, please visit www.bvi.de/en.
[2] Cf. ESMA Annual Statistical Report, EU Alternative Investment Funds 2020, 10 January 2020, ESMA50-165-1032.
[3] https://www.fsb.org/wp-content/uploads/FSB-Policy-Recommendations-on-Asset-Management-Structural-Vulnerabilities.pdf.

requirements of the UCITS Directive and the AIFMD are already designed to cover such losses and do not need any amendments. According to our experience based on the BVI's Operational Risk Database statistics, operational risks materialising in our membership amount to about EUR 40,000 on average per year and company and over a period between 2005 and 2019. In this context, we strongly oppose extending authorisation of AIFMs to dealing on own account because this would change their entire business model and risk taking. This will be neither in the interest of the investors, nor of the AIF manager, let alone of financial stability.

**Investor protection:** The AIFMD sets a high level of investor protection for professional investors. However, we repeat our call for reducing information or using the option to waive the information which an AIFM should provide to professional investors. In that context, we advocate for the introduction of a new type of an AIF, the so called low-leverage AIF, that should be eligible for professional and a new type of semi-professional investors on the basis of a distribution passport. We do not consider an EU passport for the distribution of retail AIFs to be necessary. We also see no need for a depositary passport.

**International relations and competitiveness:** After a period of strong growth, the European fund industry is faced with the task of adapting to changing market conditions through increasing pressure on margins and technical developments. However, overregulation or double regulation by the EU (such as the challenging different reporting duties for asset managers) ties up enormous resources which asset managers could use more strategically. This hampers European asset managers in global competition. We therefore emphatically advocate a fundamental change in the EU's regulatory approach: In addition to the legitimate goals consumer protection and financial stability, EU legislators and supervisors must also consider the global competitiveness of European asset managers.

**International relations and delegation:** It is of utmost importance to highlight that the AIFMD imposes the most comprehensive and stringent supervisory regime on delegation as compared to other EU legislation in the financial sector. ESMA has already noted this in a letter[4] to the European Commission on the third-country regime under MiFID II and proposed that the rules on delegation of critical and essential functions be adopted across the board along the lines of the delegation rules under the AIFMD. The German delegation business models for UCITS and AIFs have proven themselves for many years and show different well-established practices which are in line with the existing delegation rules under the AIFMD, also with those on the designation of a letterbox entity. In order to increase operational efficiencies within and outside the group, to reduce costs and, above all, to use expertise in certain markets, sectors or regions, 22 percent of German mutual funds like UCITS and 60 percent of German AIFs with institutional investors have currently delegated portfolio management to third parties within Germany, the EU and to entities in third countries (measured in terms of fund assets in each case). In particular, the structure of white label funds as such is by no means different from 'regular' funds. We therefore do not see the need to complement the delegation rules with further clarifications on the maximum extent of delegation or with a list of core or critical functions that must always be performed internally and may not be delegated to third parties. Hence, we see interrelationship between the sector-specific delegation rules and the new proposals on digitalisation of operational resilience (DORA) to cover activities provided by critical third parties. In order to ensure legal certainty and supervision convergence, ESMA may issue guidelines to ensure a consistent assessment of delegation structures across the Union. We stand ready to support ESMA in finding practical and efficient solutions.

[4] Available under the following link: https://www.esma.europa.eu/press-news/esma-news/esma-letter-european-commission-mifid-iimifir-third-country-regimes.

**Financial stability and reporting:** One of the key elements of the AIFMD is the objective to enable supervisors to appreciate and mitigate potential systemic risk building up in financial markets from different sources. We welcome the latest ESMA analysis[5] of investment funds, confirming that the fund industry is resilient and able to absorb economic shocks. We also welcome that ESMA has already started establishing guidance to address risks and to identify the effect of macro-systemic shocks affecting the economy as a whole. However, financial stability supervisors need to operationalise their macro-prudential toolkit. We see the need for further improvements in information and data sharing between *all financial stability bodies* such as ESMA, ESRB, ECB, national central banks and national competent authorities. This requires a single regulatory reporting mechanism which will reduce operational effort and burden for asset managers as well as supervisory authorities. For a common understanding of financial stability risks and in order to avoid excessive burdens for cross border activities of asset managers, the main challenge is to agree at least on harmonised data reporting and exchange standards between the industry and supervisory bodies to enable better understanding and supervision. The AIFMD reporting as an aggregated and consolidated reporting standard is appropriate to fulfil its purpose of monitoring systemic risks of AIFs. Nevertheless, we see overlaps with other reports such as transaction reporting under EMIR, MIFIR and SFTR, central bank reporting for statistical purposes on funds as well as the regulatory fund reports for money market funds and the various national UCITS reports. A general overhaul of fund reporting towards mere raw data delivery can meet the demands of supervisors for more granular data to monitor systemic risks in the long run. However, this requires a fundamental overhaul of all fund reporting. For a short-term solution, this demand can be ensured through a new, yet to be defined data exchange between supervisory authorities that already have granular data (e.g. via central banks or EMIR/MiFIR transaction reporting) and maintaining the aggregated and consolidated data collection approach. We therefore propose only minimal changes in the short run to improve AIFMD reporting. In any case, we oppose to setting up a completely new UCITS reporting different from the AIFMD reporting because this will lead to further fragmentation of investment fund reports. The removal of regulatory obstacles which hinder the efficient functioning of the capital markets should be considered an overarching priority.

**Liquidity management tools (LMTs):** LMTs should be made available in all jurisdictions. Open-ended funds have at their disposal different tools for dealing with liquidity shortages, including the possibility to suspend redemptions. The wide variety of liquidity management tools across jurisdictions such as exit charges, gates, limited redemption restrictions, dilution levies, side letters which limit redemption rights or notice periods will help to reduce liquidity mismatches in open-ended funds and increase the likelihood that redemptions can be met even under stressed market conditions. However, legislators in various jurisdictions need to close the gap and make available all liquidity tools set out in IOSCO's report[6]to funds. That involves a need for a common understanding based on general principles on EU-level on how to use such tools. In any case, it must always remain at the discretion of the manager of the funds to decide which tools they want to use because of very different fund types and structures. Deployed appropriately, their use or possible use can create a sense of constructive ambiguity amongst market participants which can help to encourage better market discipline in stressed situations. As a last resort, redemption should be suspended under the precondition that no alternative is available under the fund rules or other potential liquidity management tools are considered inappropriate.

**Leverage:** There is a need for a common understanding on how to calculate leverage in investment funds. Leverage in investment funds means methods such as the use of derivatives, borrowing of cash

[5] ESMA, Report, Recommendation of the European Systemic Risk Board (ESRB) on liquidity risk in investment funds, 12.11.2020, ESMA 34-39-1119; Economic Report, Stress simulation for investment funds 2019, 5.9.2019, ESMA 50-164-2458.
[6] Available under the following link: https://www.iosco.org/library/pubdocs/pdf/IOSCOPD590.pdf.

or securities which might, but not necessarily increase the ratio of the fund's market exposure over its net asset value. There is a wide variety of funds and fund strategies in different jurisdictions and market structures which allow different methods to increase leverage. In this respect, the use of leverage is not a risk as such. According to the AIFMD, managers of AIFs are required to set leverage limits for the funds they manage, to monitor the leverage and to disclose information regarding the overall level of leverage employed vis-à-vis investors and competent authorities. UCITS are legally restricted in using leverage methods such as derivatives and borrowing agreements. In addition, national legal requirements limit the use of leverage methods in certain funds. Even if the acceptable methods by which the fund manager could increase the fund's exposure differ among investment funds in order to protect investors, the metric for the calculation of the market exposure should be based, in principle, on the same method for both UCITS and AIFs. Such an approach would efficiently ensure a sustainable and meaningful understanding and monitoring of leverage for financial stability purposes. However, it is important to highlight that the use of leverage by investment funds is limited within the European market, with the notable exception of hedge funds. According to a survey within our membership, the exposure of nearly all German AIFs relating to borrowing arrangements and derivative instruments (with hedging and netting) does not exceed leverage on a substantial basis (three times the fund's net asset value). Moreover, all German open-ended AIFs observe the UCITS limit on global exposure to derivative instruments.

**Sustainability/ESG:** The asset management industry as the linking piece between capital supply and capital demand has a key role to play in the field of responsible and sustainable investing. However, to help the EU meet its ambitious sustainability goals, asset managers need access to relevant, comparable and high quality ESG data for their stock selection, preferably from all companies worldwide. In view of this data challenge that will certainly persist in the next couple of years, we do not deem it feasible to require quantitative disclosures of sustainability risks from AIFMs. While methodologies evolve, and until the availability of non-financial information has improved, AIFMs should always have the option to provide qualitative disclosures to investors. Moreover, integration of principal adverse impacts (PAIs) and other non-financial considerations in the investment process should not be mandatory for all products but depend on the investment objectives and preferences of fund investors. As regards the EU Taxonomy, we fully support its underlying concept as a standard for assessing financial products in view of their environmental commitments. As a consequence of this approach, the use of the EU Taxonomy in the investment process must remain optional.

**Miscellaneous (competence of ESMA and single rule book):** Here, we stand by our previous position that ESMA should not be given additional powers for direct product supervision of EU funds. If at all, we could envisage a role for ESMA as a gateway for third-country providers and products or as the hub for the “European Single Access Point” proposed by the Commission in its new Capital Markets Union Action Plan. Furthermore, the coexistence of the UCITS and AIFM Directives, in addition to further pieces of EU legislation like EuVECA and EuSEF Regulations, has proven to be successful. We advise against an overhaul of the proven and tested regulatory framework for investment funds without any evidence of material shortcomings.

## I. FUNCTIONING OF THE AIFMD REGULATORY FRAMEWORK, SCOPE AND AUTHORISATION REQUIREMENTS

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

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

- ☐ Very satisfied
- ☐ Satisfied
- ☐ Neutral
- ☐ Unsatisfied
- ☐ Very unsatisfied
- ☐ Don’t know / no opinion / not relevant

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

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

**Question 2.1 Please explain your answer to question 2, providing concrete examples and data to substantiate it:**

In general, the AIFMD sets a high standard of harmonisation in the alternative investment fund management sector and ensures a consistent regulatory approach to potential risks for the financial system, better co-ordinated supervision, a high level of investor protection and improves the market integration of EU AIFs. However, we see the need for some amendments to improve the effectiveness of the AIFMD in avoiding divergent approaches used by national legislation or existing market practices in the following areas:

**Liquidity management tools (LMTs):** Open-ended funds have at their disposal different tools for dealing with liquidity shortages, including the possibility to suspend redemptions. The wide variety of liquidity management tools across jurisdictions such as exit charges, gates, redemption restrictions, dilution levies, side letters which limit redemption rights or notice periods will help to reduce liquidity mismatch in open-ended funds and increase the likelihood that redemptions can be met even under stressed market conditions. However, legislators have to close the gap to make all liquidity tools set out in IOSCO’s report available to funds in instances of stressed market conditions. This could be achieved for instance by amending Article 47(1)(e) AIFMR in the sense that LMTs should be made available in each EU member state. That involves a need for a common understanding based on general principles on EU level on how to use such tools. Therefore, it could be helpful to refer under this Article to a new Annex of the Delegated Regulation which provides a list of such LMTs with a broad definition. In any case, it must be at the discretion of the manager of the funds which tools they want to use because of very different fund types and structures. Deployed appropriately, their use or possible use can create a sense of constructive ambiguity amongst individual market participants which can help to encourage better market discipline in stressed situations. As a last resort, redemption should be suspended under the precondition that no alternative is available under the fund rules or other potential liquidity management tools are considered inappropriate.

**Leverage:** We refer to our answer to Q 79.1 where we propose some improvements of to the calculation methods.

**AIFMD reporting**: The reporting requirements for AIFs and their managers (AIFMs) are harmonised within the EU and similar in each EU member state. However, it was not helpful as ESMA published in October 2013 an opinion with additional reporting requirements (opinion on collection of information for the effective monitoring of systemic risk under Article 24(5), first sub-paragraph, of the AIFMD, ESMA/2013/1340). In this opinion ESMA requires a detailed set of additional information that National Competent Authorities (NCAs) could obtain from AIFMs to report on a periodic basis. This leads to the situation that some NCAs require AIFMs to report these additional data and others not. Regarding cross border activities of AIFMs, this leads to different standards and the need for internal control systems and check lists in which country such additional reports are not required to deliver. As the consequence, different reports provided by the AIFMs complicate the assessment of the data by ESMA.

**Investor protection**: We refer to our answers to Q 21/Q 36-38 and repeat our call for reducing information or providing the option for professional investors to waive the information which an AIFM is obliged to provide. In that context, we advocate for the introduction of a new investor category for the semi-professional investor in combination with a distribution passport for low-leverage AIFs.

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

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

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

Other statements:

| | 1 (fully | 2 (somewhat | 3 (neutral) | 4 (somewhat | 5 (fully | Don't know – No opinion |
|---|---|---|---|---|---|---|

| | disagree) | disagree) | | agree) | agree) | Not applicable |
|---|---|---|---|---|---|---|
| The scope of the AIFM license is clear and appropriate | | | | | X | |
| The AIFMD costs and benefits are balanced (in particular regarding the regulatory and administrative burden) | | | | | X | |
| The different components of the AIFMD legal framework operate well together to achieve the AIFMD objectives | | | | | X | |
| The AIFMD objectives correspond to the needs and problems in EU asset management and financial markets | | | | | X | |
| The AIFMD has provided EU AIFs and AIFMs added Value | | | | | X | |

**Question 3.1 Please explain your answer to question 3, providing quantitative and qualitative reasons to substantiate it:**

We agree with the findings of the European Commission in its report assessing the application and the scope of the AIFMD. In particular, the AIFMD plays an important role in creating an internal market for AIFs and reinforcing the regulatory and supervisory framework for AIFMs in the Union. Most of the requirements stated in the AIFMD were already standard for German asset managers managing open-ended AIFs non-UCITS funds because they already operated with great transparency for investors and supervisors. However, the AIFMD sets a high standard in harmonisation of these rules within the EU. This also applies for the strict rules on risk and liquidity management which provide high-level investor protection. The implementation of AIFMD in Germany has significantly reduced the so-called 'grey capital market'. Closed-ended funds and their providers have not been subject to regulation and supervision before AIFMD which has caused many problems in the past. The AIFMD implementation in Germany has triggered prudential regulation of this market sector.

Moreover, competent authorities already facilitate analysis of the risk impact of AIFs in the European Union. In particular, information of the risk profile of AIFs gathered by NCAs are shared with ESMA and the ESRB so as to facilitate a comprehensive analysis of the impact of the risk profile (including leverage and liquidity) of AIFs on the financial system in the Union as well as a common response to potential risks. These measures ensure that NCAs can quickly intervene on a case by case basis in the event of identified potential risks to financial stability or to the functioning of financial markets. We therefore welcome the publication of ESMA's reports on their analyses of the AIF market: As a main outcome, the fund industry is resilient and can absorb economic shocks. We also welcome that ESMA has already started establishing guidance to operationalising existing tools to address risks and to identify the effect of macro-systemic shocks affecting the economy. These tools need to be implemented by supervisory authorities to improve their capability to assess and monitor potential risks to the financial stability based on a common understanding. These assessments should be used by all financial stability bodies such as the ESRB and the ECB. That involves the need for country-by-country analyses and the need for further strengthening data exchange between supervisory authorities and financial stability bodies.

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

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

**Question 4.1 What other functions would you suggest adding to the AIFM license? Please explain your choice also considering related safeguards and requirements, such as protecting against potential conflicts of interest, where appropriate, disadvantages and benefits of the proposed approach:**

The activities and services covered by the AIFM licence are sufficient and do not need to be extended.

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

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

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

Asset managers act as trustees for the investors of the funds they manage. Dealing on own account means trading against proprietary capital resulting in the conclusion of transactions in one or more financial instruments (Article 4(1)(6) MiFID II). In other words, dealing on own account takes place when a firm puts its own books at risk (ESMA Consultation Paper Guidelines on transaction reporting, reference data, order record keeping & clock synchronisation, 23 December 2015, ESMA/2015/1909, p. 49). Allowing asset managers to deal on own accounts would change their entire business model and risk taking. This could also increase the risk of a management company becoming insolvent and thus losing its authority to manage the funds on behalf of its investors. This will be neither in the interest of the investors, in the interest of the AIF manager nor in the interest of the financial stability.

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

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

**Question 6.1. What elements would you suggest introducing into the AIFMD to exclude securitisation vehicles from the scope of the AIFMD more effectively and reducing regulatory arbitrage possibilities? Please explain:**

We are not aware of regulatory arbitrage possibilities regarding securitisation vehicles.

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

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

**Question 7.1 Please explain your answer to question 7:**

Employee participation or savings schemes have always been an important aspect of organisation and management in companies based on national, labour, social and tax law. Various European governments have historically developed their own legislative arrangements to promote the involvement of employees. The exemption of these participation or savings schemes from the scope of the AIFMD ensure precise alignment to the local conditions in the respective markets.

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

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

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

Rigorous capital requirements for investment management companies are already imposed by the AIFMD or UCITS Directive; these requirements reflect the specific risks of the special business models irrespective of whether they also conduct additional services such as services for which certain MiFID conduct rules apply. These requirements consider that asset managers do not have custody over the assets, as these are held – or more precisely, 'safe-kept' – by depositaries. Therefore, they do not hold the client's money. The assets in the fund portfolio are kept segregated and are thus never part of the asset manager's own balance sheet. Importantly, the investment proceeds – whether positive or negative – belong to the investor. Therefore, there is no direct link between the risk exposure of the managed assets and the solvency of the manager's balance sheet as they do not trade on the own books of the management company. Therefore, fundamental differences exist between the business models of asset managers and the banking sector.

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

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

**Question 9.1 Please explain your answer to question 9, detailing any suggestion of an alternative policy option, and presenting benefits and disadvantages of the entertained options as well as costs:**

**Existing capital requirements (including limit of EUR 10 million):** AIFMs are required to have an initial capital of at least EUR 300,000 (internally managed AIF) or EUR 125,000 (externally managed AIF). The limit of EUR 10 million only applies for additional volume-based capital requirements in the meaning of Article 9(3) AIFMD in covering operational risks. According to our experience based on the BVI's Operational Risk Database statistics, operational risks materialising in our membership amount to about EUR 40,000 on average per year and company and over a period between 2005 and 2019. This amount shows that the existing limit of EUR 10 million is appropriate to cover operational risks that could occur in providing asset management services. Other costs which are not linked to these risks are covered by the fixed overhead requirements which fully reflect fixed costs occurring on a regular basis. Therefore, if the fixed-cost-based capital amount is higher than the volume-based, the fixed-cost-based amount applies without a cap. Moreover, additional requirements of Article 9(7) AIFMD apply to cover potential professional liability risks. Such a capital calculation based on a mix of volume figures and fixed costs have proven successful in a simple and appropriate way.

**Fixed overheads requirements (FOR):** The FOR are an essential pillar of the capital requirements of asset managers. We support the approach that the FOR should remain as a main part of a capital regime. In particular, the amount of at least one quarter of the fixed overheads of the preceding year is appropriate.

However, there is no legal provision on how investment management companies shall calculate the minimum capital limit. The current reference in Article 7(1)(a)(iii) of the UCITS Directive and Article 9(5) of the AIFMD for the FOR only cover the amount of at least one quarter without clarifying the calculation method of the fixed overheads. In particular, the Delegated Regulation No 2015/488 which currently specifies the calculation of the fixed overheads under Article 97 CRR is limited in scope to investment firms. Therefore, we request the European Commission to add a clarification that ESMA shall develop draft regulatory technical standards under the AIFMD (and UCITS Directive) to supplement the calculation of the fixed overheads.

This is all the more important as the new references in Article 60 and 61 of the Directive (EU) 2019/2034 on the prudential supervision of investment firms (IFD) with amendments of the UCITS Directive and AIFMD to the new Article 13 of the Regulation (EU) 2019/2033 on the prudential supervision of investment firms (IFR) could be understood in such a way that all requirements of Article 13 IFR (including the mandate given to the EBA to develop draft regulatory standards to further specify the calculation of the FOR under Article 14(4) IFR) shall also cover activities of management companies authorised under the AIFMD or UCITS Directive. This is not our understanding, nor is it the understanding of the EBA, which just has made proposals for final draft technical standards on the prudential treatment of investment firms. The special business models of managers of AIFs or UCITS authorised under the AIFMD or UCITS Directive are not considered within that investment firm framework. Moreover, it will be more consistent to require all capital-based figures of managers of investment funds under their own rule books.

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

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

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

The requirements concerning AIFM authorisation to provide ancillary services under Article 6 of the AIFMD are appropriate. With respect to the provision of ancillary services, it is more pertinent to think about an obligation for service recipients to ensure that the relevant services can be obtained from other parties in emergency situations than to impose business continuity obligations on service providers. Pricing and valuation services, risk modelling services and other back office functions are being offered by portfolio managers, but more often provided by specialised firms not subject to specific regulation. Therefore, it seems more important from the systemic perspective that business continuity of asset managers and other regulated entities as recipients of such services is warranted by appropriate measures. This is already ensured by the fact that fund managers are required to ensure continuity and quality of delegated functions in case of termination of relevant contracts. In practice, this means that they need to establish emergency plans for situations in which the appointed delegate fails to provide its services, or the quality of services deteriorates below an acceptable level.

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

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

**Question 11.1 Please explain your answer to question 11, presenting benefits and disadvantages of your suggested approach as well as potential costs of the change, where possible:**

As described in our answer to Question 9.1, the current capital requirements of asset managers cover in a very strict way their risks that could occur in providing asset management activities. Changing calculation methods would not bring any added value because we are not aware that either higher or lower own capital requirements are needed to cover potential risks of ancillary services in a more risk sensitive. This is even more the case since Article 6(6) AIFMD requires that Article 12 of Directive 2004/39/EC (MiFID) shall apply to the provision of the services referred to in Article 6(4) AIFMD by AIFMs. This means that an AIFM shall have sufficient additional initial capital to cover these services.

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

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

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

There is no need to amend a very well running system. The new K-factor approach developed under the investment firm framework has not been tested in practice yet and will lead to an administrative burden in view of changing the calculation method, internal processes for calculation and monitoring. Moreover, the investment firm framework does not consider risk mitigating measures such as capital commitments given within a group by the parent company or coverage of risks through insurances and is still focusing on any risk-driving factors. Therefore, we are not convinced of adapting methods that work well to methods that have not yet been tested.

Moreover, changing the capital requirements of asset managers can only be based on compelling reasons. We are not aware of such reasons.

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

It is completely the wrong approach to strive for a level playing field between proven and well-established own funds requirements under the AIFMD and a new framework established for investment firms which has failed to achieve harmonisation with the AIFMD. The better approach would have been to regulate investment firms based on the AIFM rules. The IFD/IFR framework was designed as a separate new framework with targeted supervisory process focused on the risks arising from the activities of investment firms outside the banking requirements. This should lead to better regulation which simplifies the application and implementation of the prudential requirements for investment firms in comparison to banks and the current capital requirements based on the banking system. It should be noted that this has not been achieved for the German investment firms affected in providing MiFID services without a licence to deal on own account and to hold client's assets. The new approaches under the IFD/IFR framework including the K-factor approach are more complex and burdensome for these firms than the current approach under the CRD framework based on initial capital and fixed overheads requirements only. It remains to be seen whether the new IFD/IFR system will prove its worth.

Even if the activities are comparable, the capital requirements must still be geared to the specific business models of the respective companies. This applies even more as the own funds of AIFMs cover operational and potential professional liability risks that may arise from the respective internal processes. If the internal processes do not work for collective asset management, they will affect other services (such as discretionary portfolio management as a MiFID service) in the same manner. For example, it is a common practice that all services are provided jointly within an entity by specialised management teams. In these cases, operational risks are covered by only one process. **Therefore, we strongly suggest maintaining the current capital requirements of the AIFMD.**

The capital requirements of each company should be regulated in their own sector-specific requirements considering their respective business models. This means that the capital requirements are each conclusively regulated under the AIFMD (and UCITS Directive) for asset managers and the CRD/CRR framework for banks, whether they provide MiFID services or not. Otherwise, we would have to discuss about a completely new review of capital requirements for all companies providing MiFID services (including banks). If the result of such a review is comparable with the current capital requirements applicable for AIFMs the effect of such a review is questionable. However, any need for higher capital requirements could be easier fulfilled by increasing the initial capital thresholds or the EUR 10 million limit for volume-based capital figures as to change the calculation method in a very complicated way.

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

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

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

There is no need for drafting measures which under the CRD/CRR are required for credit institutions. This applies for the new rules to implement an internal capital adequacy assessment process (ICAAP) and the internal liquidity adequacy assessment process (ILAAP) which was established for banks under Basel III and which is specified by the ECB.

We are aware that the investment firm framework introduces internal risk processes for any material impact upon own funds under the treatment of risk (Article 29(1) IFD) which includes a check of the risk-bearing capacity. The Level 2 requirements for clarifying that approach are not drafted yet. We are aware that the operational risks should be part of the check of the risk-bearing capacity. However, investment firms shall give due consideration to any material impact upon own funds where such risks are not appropriately captured by the capital requirements calculated under Article 11 of IFR. In fact, this could increase the minimum capital and the investment firm will never have a long-term planning security. This approach is already established for banks, however, regarding the potential risks of asset managers (with no dealing on own account), we do not see a need for establishing the same level of high prudential requirements.

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

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

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

According to the AIFMR, an AIFM is already required to ensure that the potential professional liability risks resulting from its activities are appropriately covered either by way of additional own funds or by way of professional indemnity insurance. Professional indemnity insurances are an effective tool in their management of risks and a recognised instrument for reducing risk-based contributions to the investor compensation scheme.

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

☐ Yes
☐ No
☐ Don’t know / no opinion / not relevant

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

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

☐ Yes
☐ No
☐ Don’t know / no opinion / not relevant

**Question 17.1 Please further detail your answer to question 17, substantiating it, also with examples of the alleged barriers:**

This is not relevant for our members.

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

☐ Yes
☐ No
☐ Don’t know / no opinion / not relevant

**Question 18.1 If yes, should the regulation of the sub-threshold AIFM differ from the regulation of the full-scope AIFMs under the AIFMD and in which way? Please explain your proposition, including costs/benefits of the proposed approach**

**Question 18.1 Please explain your answer to question 18:**

Sub-threshold AIFMs benefit from a lighter supervisory regime than full-scope AIFM. It is adequate to differentiate also on the level of passporting.

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

No opinion.

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

☐ Yes
☐ No
☐ Don’t know / no opinion / not relevant

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

**Question 20.1 Please explain your answer to question 20:**

We consider the scope of the marketing passports in line with the degree of product regulation under AIFMD.

## II. INVESTOR PROTECTION

*The AIFMD aims to protect investors by requiring AIFMs to act with the requisite transparency before and after investors commit capital to a particular AIF. Conflicts of interest must be managed in the best interest of the investors in the AIF. AIFMs must also ensure that the AIF’s assets are valued in accordance with appropriate and consistent valuation procedures established for an each AIF. The AIF assets are then placed in safekeeping with an appointed depositary that also oversees AIF’s cash flows and ensures regulatory compliance.*
*Questions in this section cover the topic of investor categorisation referencing to MiFID II, stopping short of repeating the same questions that have been raised in its recent public consultation on MiFID II, rather inviting comments on the most appropriate way forward. Views are also sought on the conditions that would make it possible to open up the AIF universe to a larger pool of investors while considering their varying degrees of financial literacy and risk awareness. Examples of redundant or insufficient investor disclosures are invited.*
*Greater clarity on stakeholders’ views of the AIFMD rules on depositaries is sought in particular where such rules may require clarification or amending. The introduction of the depositary passport is desirable from an internal market point of view, but stakeholders are invited to propose other potential legal solutions, if any, that could address the issue of the short supply and concentration of depository services in smaller markets.*

### a) Investor classification and investor access

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

☐ Yes
☐ No
☐ Don’t know / no opinion / not relevant

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

Rather than just cross-referring to the current classification according to Annex II of MiFID II, we strongly advocate for the introduction of a further client category beyond professional and retail clients. This new category should be located between the retail client and the professional client and could be denoted as ‘semi-professional investors’.

Semi-professional investors would benefit from a dedicated EU AIF passport covering only AIFs with limited risk exposure for investors, which accounts for the specific risk tolerance and knowledge of this category. In line with the rationale of the AIFMD, these eligible AIFs should not be defined by product regulation. Instead, a set of universally applicable criteria is advisable which could be established and assessed in all AIFs. In our view, it is reasonable to distinguish AIFs on the basis of employed leverage. Leverage is of crucial relevance as a factor for assessing both the potential for systemic risk (macroeconomic dimension) and the risk of losses for investors (microeconomic dimension). Thus, it should represent a suitable foundation for distinguishing the level of risk inherent in AIFs. Even though the AIFMD regime does not provide for regulatory limits on leverage, it imposes upon all AIFs a consistent measurement approach (so-called commitment approach) and requires reporting of the employed leverage level to the authorities. Consequently, all AIFs already calculate leverage employed at the fund level according to the same methodology.

AIFs which employ leverage below a certain level only ("Low-Leverage AIFs") could then benefit from an extended passport for cross-border distribution also to semi-professional investors. This would be in line with the goals of the Capital Markets Union and would help utilise unemployed capital e.g. for the purpose of funding long-term projects.

The EU financial frameworks currently include no definition of 'semi-professional' investors. Given that several Member States, such as Germany, Austria or Luxembourg, have introduced such an additional investor category, it is obvious that a practical need for a more granular investor classification exists. Inspiration can be taken from the EuSEF/EuVECA Regulations which allow for investments by other than professional investors if these (1) commit to invest at least EUR 100 000 and (2) confirm in writing in a separate document that they are aware of the associated risk. Beyond such criteria, existing national regimes also consider certain legal entities as semi-professional investors, such as public corporations, associations, foundations, or local communities. We recommend introducing a new category of 'semi-professional' investors along the lines of such proven and tested criteria.

**Question 21.1 Please explain your answer to question 21:**

Consistency between correlated legal frameworks is important in order to avoid ambiguous requirements and frictions in application of the respective rules. Negative examples are the incompatible standards for product cost disclosure under MiFID and PRIIPs which lead to duplicate and confusing information to investors, thus corrupting the underlying objective of both pieces of legislation to increase investor protection. In general, cross-references between legal acts can help mitigating such problems.

Still, for purposes of investor classification under AIFMD, we consider the current cross-reference to the relevant provisions to MiFID unfavourable as long as the MiFID classification system remains as it is. The current binary classification system according to Annex I of MiFID II (professional vs. retail) lacks granularity in order to account for the different needs of different investor groups.

The term AIF covers an extremely broad variety of fund structures featuring very different risk profiles. It ranges from genuine hedge funds employing high amounts of leverage or short selling to long-only bond funds adjusted to the prudential needs of regulated investors such as insurance companies or banks. In fact, the vast majority of AIFs managed by German AIFMs are regulated investment funds observing investment and leverage limits based on the UCITS standards. Yet, under the AIFMD regime, such funds are reserved for professional investors unless Member States decide otherwise on national level. They are treated on a par with vehicles not subject to any product regulation or supervision which would limit the investment risk. This prompts defensive reactions from EU institutions and regulators who tend to adopt a 'one size fits all approach' when it comes to the regulatory treatment of AIFs.

In order to remedy this situation, we have recommended the introduction of a new category of investors also under MiFID (see our response to the EU Commission's public consultation on the review of the MiFID II/MiFIR regulatory framework). As soon as this proposal is implemented, also a cross-reference from AIFMD to the relevant MiFID client classification system would be desirable; under this precondition, we would answer Q 21 with "yes". In this context a revision for the criteria for the classification of professional clients 'on re-quest' under MiFID II Annex I could be considered additionally. However, it should be avoided to introduce different requirements in the AIFMD and the MiFID as this would create new procedural barriers instead of removing old ones.

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

We do not see the urgent need to improve access to AIFs for retail investors. In Germany, retail investors can purchase detailed retail AIFs without any problems. Foreign management companies can also distribute equivalent AIFs in Germany under a notification procedure.

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

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

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

**Question 23.1 Please explain your answer to question 23:**

As a matter of fact, the Regulations on ELTIFs, EuVECAs and EuSEFs already define types AIFs that may be marketed to certain retail investors with a passport under certain conditions. For the time being, we do not see any further AIF types that need to be defined under EU legislation.

Opening up AIFMD for dedicated retail products would be problematic since it would necessarily require product regulation, which is not foreseen in AIFMD. We welcome the current legal situation under which each member state can decide whether to allow the marketing of foreign AIFs. There are established procedures for this which, in our view, work well. Due to the fact that AIFs are often more complex than UCITS, we believe it is right to leave the decision on distribution with the national authorities.

**b) depositary regime**

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

We are not aware of any difficulties the depositaries face in exercising their functions in accordance with the AIFMD.

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

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

**Question 25.1 Please explain your answer to question 25:**

We are not aware of issues which should be clarified or defined in the AIFMD in the context of tri-party collateral management services. ESMA already provided guidance in its Q&A to the UCITS Directive and in its guidelines on ETFs and other UCITS issues. In Germany, these approaches also apply for AIF with retail investors.

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

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

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

We have no opinion on that topic.

**Question 27. Where AIFMs use tri-party collateral managers' services, which of the aspects should be explicitly regulated by the AIFMD?**
**Please select as many answers as you like**

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

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

**Please explain why you think the flow of information between the tri-party collateral manager and the depositary AIFMD.**
**Please present benefits and disadvantages of this approach as well as potential costs of the change, where possible:**

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

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

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

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

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

We are not aware of any problems regarding the rules on prime brokers.

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

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

**Question 29.1 Please explain your answer to question 29, providing concrete examples and suggesting improvements to the current rules and presenting benefits and disadvantages of the potential changes as well as costs:**

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

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

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

**Question 31.1 Please explain your answer to question 31:**

We do not observe any frictions or obstacles in practice.

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

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

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

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

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

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

## c) transparency and conflicts of interest

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

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

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

Professional investors, in particular those who are subject to prudential regulation (such as banks, insurance undertakings or pension funds), usually have very specific information needs vis-à-vis their asset managers. Given that they negotiate at eye level with their AIFMs, they have the power to make sure that the AIFM provides tailored data matching their demand. For them, the generic information requirements according to Article 23 AIFMD have hardly any added value for investors but create administrative costs for the AIFMs. In general, the quality of disclosure has improved: The information document under Article 23 AIFMD is generally of no value for professional investors who are interested in very specific type of information and often able to obtain it in the conceptual phase of the fund. Hence, we believe that the obligation to provide the information under Article 23 AIFMD to professional investors should be abolished. At least professional investors should be given the possibility to waive their information rights under this Article.

In addition, problems with competing EU rules occur: Publicly offered closed-ended funds must not only produce investor information under Article 23 AIFMD but are in addition subject to the Prospectus regime. This results in duplication of information and produces unnecessary costs which ultimately need to be borne by investors. In order to safeguard equal standards for all AIFs, we believe that closed-ended funds should be excluded from the scope of the prospectus regime. Such exclusion would warrant application of a consistent set of rules for all investment funds of the same type.

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

Please see our answer to Question 36.1.

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

☐ Yes
☐ No
☐ Don’t know / no opinion / not relevant

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

We do not see the need for other disclosures to investors than those required in the annual report in addition to the information required under Article 23 of the AIFMD. Because the investors are professional, the relationship between management company and investors is open with an ongoing communication. Moreover, as long as these professional investors are subject to supervisory requirements themselves (such as banks, insurance undertakings), the management company provides these investors with additional information (investor reporting) so that they can fulfil their own reporting obligations based on their supervisory reporting requirements.

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

☐ Yes
☐ No
☐ Don’t know / no opinion / not relevant

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

### d) valuation rules

**Question 40. Are the AIFMD rules on valuation appropriate?**

☐ Yes
☐ No
☐ Don’t know / no opinion / not relevant

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

BVI believes that the AIFMD rules on valuation are appropriate. We expressly oppose the idea that valuers should only be liable in cases of gross negligence.

Under current German law, notwithstanding the responsibility of the AIFM and notwithstanding any contractual provisions to the contrary, the valuator shall be liable to the AIFM for any loss suffered by the AIF and attributable to the negligent or intentional failure of the valuer to perform its duties. Any contractual exclusion or limitation of liability shall be ineffective. This means that the valuer is liable for errors even in the case of simple negligence. This liability regime is appropriate and has proven itself well in practice.

It is important to bear in mind that in many jurisdictions, like Germany, AIFMs are generally liable to investors for any fault, including simple negligence. This liability towards the investors may not be limited due to the fiduciary position of the AIFM. Any errors in the valuation are generally attributed to the AIFM, so that it must also be liable for such errors vis-à-vis the investors. The fault in an incorrect valuation would be attributed to the AIFM, since the valuers ultimately act in fulfilment of a duty of the AIFM towards the investors.

If the liability of the valuers were now limited to gross negligence and intent, a liability gap would arise at the expense of the AIFM: The AIFM would be liable to the investors for any negligence, whereas the AIFM could only take recourse against the valuers on the basis of gross negligence. For simple negligence, the AIFM itself would have to be liable and would have to bear any damage itself, i.e. compensate it and pay the damages to the investment fund concerned.

Only if the liability of the AIFM vis-à-vis the investors could also be limited, but this is subject to the respective national legislative jurisdiction, could the liability gap be avoided. However, this would then be at the expense of the investors.

Limiting liability to gross negligence could lead to valuers not taking the necessary care. There could be an incentive to only carry out a "justifiable" valuation, because only a valuation that really suffers from obvious defects would fulfil the accusation of gross negligence.

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

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

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

In our view, the COVID 19 crisis has demonstrated the effectiveness of the AIFMD legal framework and has not exposed any weaknesses that need to be remedied.

However, one aspect seems important to us and should be taken into consideration in the further discussions: The valuer's personal inspection of the property is an essential part of the market value assessment of developed and undeveloped properties. Due to the COVID 19 travel restrictions and requirements to limit personal contacts, on-site inspections of properties to be valued are currently often not possible at all or at best only to a limited extent, depending on the country/region/city. We therefore suggest that possibilities be provided which allow that, in such exceptional cases, a strictly personal inspection of the property by the valuer can be dispensed with. For this purpose, e.g. requirements for a sufficiently meaningful documentation would have to be established, the correctness of which would have to be confirmed by the relevant parties and, as far as travel restrictions allow, a subsequent inspection of the property by the valuer would have to be prescribed in order to verify the compliance of the property conditions with the documentation. A digital inspection of the property under the control of the valuer would also be conceivable, which must also be documented and, e.g. in cases of purchases, in which a flat-rate percentage deduction is made from the ascertained market value for remaining residual risks.

It must be ensured that AIFMs are not disadvantaged compared to non-regulated or less strictly regulated competitors and that they retain their full ability to act in the interest of their investors.

**Question 42. Are the AIFMD rules on valuation clear?**

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

**Question 42.1 Please explain your answer to question 42:**

We are not aware of any issues which needs to be clarified.

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

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

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

We are not aware of any issues which needs to be clarified.

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

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

**Question 44.1 Please substantiate your answer to question 44, also in terms of benefits, disadvantages and costs:**

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

Clear rules and standards exist for the valuation of properties held by real estate funds by external valuers. The application of these standards also ensures a high degree of consistency and thus reliability. In almost all EU Member States valuers are trained and certified. Strict adherence to these rules and standards by trained, professional valuers makes valuation errors very unlikely. Valuations that do not closely follow these professional standards are the most likely triggers of liability.

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

As already stated above, we consider the approach of unlimited liability of the valuers to be appropriate. We do not consider the argument of "non-insurability" to be valid, since ultimately every risk is insurable. However, it is in the valuation companies' own interest to keep premiums low in order to reduce costs. Insurances that also cover simple negligence are more premium-intensive and have a negative impact on their profits. In this respect, the initiative appears to be driven by the sole interest of certain valuation companies to be able to enter certain markets, but without having to comply with the strict liability regulations. This would be at the expense of the AIFM entirely.

## III. INTERNATIONAL RELATIONS

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

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

AIFMs are exposed to competition on various levels:

1. Competition among EU AIFMs
2. Competition with third country AIFMs
3. Competition with substitute investment products (e.g. securitisation vehicles, insurance-based investment products or even UCITS)

Competition as such can have economic benefits. It promotes fair market pricing, drives innovation and fosters adaptiveness to changing environments. To EU AIFMs, competition is no threat as long as there is a regulatory level playing field in place.

The AIFMD was launched under the impression of the financial crisis of 2008. Main legislative objectives were the resilience of the financial system and investor protection. Boosting the competitiveness of the alternative fund industry was not among these objectives. Still, some functions of the Directive indeed support the competitiveness of the EU AIF industry:

- The passporting mechanism for EU AIFMs sets the foundation for a level playing field within the internal market regarding distribution of EU AIFs. It has become difficult for Member States to wall off their local industry against competition from AIFMs domiciled in other Member States, at least as far as products for professional clients are concerned.

- The passporting rules require non-EU AIFMs wanting to access the EU market to adhere to regulatory standards similar to those for EU AIFMs and thus protect the latter from unfair third country competition.
- The "brand awareness" for AIFMD as a coherent set of rules for alternative investment fund managers is increasing on a global level. It has the potential to evolve into a quality standard in the fund sector for regulators worldwide.

Beyond these points, however, we see no noteworthy elements in AIFMD that support the competitiveness of the EU AIF industry.

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

On a global level, the European asset management industry is operating in an extremely competitive environment. EU AIFMs are contending with their peers from non-EU jurisdictions for investment opportunities as well as for investors. Apart from the provisions for third country AIFM access to the internal market (see our answer to Question 47), this challenge remains virtually unrecognised in current EU legislation which largely focuses on consumer protection and systemic risk. Neither the EU Commission nor the ESAs as representatives of the executive branch have a mandate to consider the competitiveness of the domestic industry as a factor in performing their duties. This has resulted in massive over-regulation for the European asset management industry which has to dedicate enormous resources to compliance with this regulation. In consequence, the affected industry lacks financial leeway to cut costs and to invest more money in forward looking aspects of business such as artificial intelligence, big data and other technological developments, which in turn strengthens their competitiveness at the global level.

A practical example in the context of AIFMD are the challenging reporting duties for AIFMs. Adjusting to these creates a huge operational overhead which has to be borne by all AIFMs licenced under the Directive. As a consequence, smaller AIFMs face relatively higher compliance costs than their larger peers.

One specific issue regarding the competition with substitute products is the fact that the AIFMD does not recognise the concept of public offering versus private placement. Consequently, AIFs have a competitive disadvantage compared to other types of securities. In jurisdictions like in Germany, where the AIFMD marketing definition is extended to all funds, private placements are possible neither for UCITS nor for AIFs, whereas other securities benefit from private placement. This denies retail investors a legitimate means of fund investment and might direct investments into the remaining vehicles of the grey capital market. In our view, a private placement regime for all types of funds should be allowed subject to conditions similar to those under the prospectus regime.

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

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

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

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

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

**Question 50.1 Please explain your answer to question 50:**

The AIFMD and the AIFMR lay down detailed and very strict requirements for delegation in general. Additional requirements apply to delegation of the investment management functions such as portfolio and risk management. In this context, we expressly share the assumption made by the European Commission in its staff working document supplementing its report on assessing the application and the scope of the AIFMD that the AIFMD rules regarding delegation arrangements are proportionate within the imposed limitations. In our view, this in particular applies to the rules to prevent creation of letter-box entities. Moreover, we understand the delegation and letter-box requirements in such a way that a management company should contain a requisite level of managerial 'substance'. This includes that the management company can only delegate tasks or functions, but not responsibilities.

The delegation of portfolio management is of great importance for the asset management industry. In order to increase operational efficiencies within and outside the group, to reduce costs and, above all, to use expertise in certain markets, sectors or regions, 22 percent of German mutual funds like UCITS and 60 percent of German AIFs with institutional investors have currently delegated portfolio management to third parties (measured in terms of fund assets in each case). The German delegation practices are based on different business models and customised structures which can basically be divided into the following three groups:

**Group-internal outsourcing structures**: In the global financial sector, group structures have established themselves in which certain services are provided in a concentrated manner from only one group entity due to the existence of special expertise and/or in order to keep costs low. If, for example, the unit specialising in European equities is in another country, the German AIFM regularly delegates portfolio management for all funds of this asset class to the group entity in that country. Such a group context is already addressed in Article 82(1)(vii) AIFMR.

**White label funds:** Under this concept, a management company launches an investment fund at the initiative of a business partner and typically delegates portfolio management to the initiator/business partner. It is of utmost importance to state that from a prudential perspective, the structure of white label funds as such is by no means different from "regular" funds and a practice provided under the strict delegation rules of AIFMD/UCITS Directive. We do not see the need for more specific requirements on white-label service providers as proposed by ESMA in its letter on the review of the AIFMD. In particular, we disagree with ESMA's assumption that the initiator/business partner may effectively be able to exercise significant influence over the authorised management company because the latter remains fully responsible for the selection of the outsourcing company, due diligence processes and outsourcing controlling according to the AIFMD rulebook. In Germany, for instance, the sole request of an investor/initiator that a certain asset manager shall manage the fund is not recognised as an objective reason to delegate portfolio management. The initiator cannot therefore threaten to switch to another management company, because the latter must comply with the same standards. Therefore, we do not see the risk of losing the business partner as a client of the management company described by ESMA in its letter. We do not ignore the fact that there could be potential conflicts of interests inherent in such a constellation. However, the management company is required to deal with such (potential) conflicts of interests in the best interest of the investors (cf. Article 14 of the AIFMD and Articles 30 to 37 and Article 80 of the AIFMR). Therefore, providing white label business is more a question of fulfilling the already existing delegation requirements of the AIFMD. In our view, this is at least a task of strict supervision but does not lead to the need to amend the delegation rules of the AIFMD or UCITS Directive which are sufficient and proportionate also for these cases.

**Multi-manager concepts:** These concepts are mainly used for institutional investors (e.g. insurance companies, banks, etc.), but also in retail funds. The so-called segment funds, in which the investor invests in one fund, the so-called ‘master segment fund’, are practically significant here. Its assets are divided into several segments for accounting purposes. The management of these individual segments is usually not carried out by the management company, but by third parties. They therefore do not manage the entire investment fund, but only the respective segments of the master fund by way of delegation of portfolio management. Such concepts are fully covered by the delegation and letter box rules.

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

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

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

We would like to highlight that the risk management function is not only a control function as stated by ESMA in its letter on the AIFMD review. The risk management function has undergone an upgrade under the AIFMD because the management of AIFs means providing at least investment management services which are defined in Annex I of the AIFMD as portfolio and risk management. Risk management therefore is a key function of the management company. This includes strict requirements on functional and hierarchical separation of the risk management function from the operating units as well as safeguards of conflict of interests. The risk management function is not exclusively responsible for the ongoing measurement and monitoring of risks and is therefore not a sub-organisational unit. Rather, the risk management function is to be involved in the run-up to the investment activities of the fund management. It plays an essential role in determining the risk profile and the fundamental investment strategy of the investment fund (cf. recital 51 of the AIFMR). The portfolio management makes investment decisions within the framework of this strategy. In the case of investment decisions with a significant impact on the risk profile of the investment fund, the risk management function must also be involved in advance. This has led to a better communication culture within the management companies.

In cases where portfolio management is delegated, the portfolio manager's scope of functions does not include the areas of qualitative risk management (such as establishing a risk management policy, setting risk limits, decisions regarding the minimisation and/or control of risk limits). In practice these activities generally remain with the management company in order to ensure an adequate risk management system. The portfolio manager's scope of functions may therefore comprise only supportive functions for ongoing risk measurement by the management company, such as compiling statistics or providing information available to the portfolio manager for risk measurement. The management company has sole responsibility for the ongoing measurement and monitoring of the risk limits and for adherence to them.

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

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

**Question 52.1 Should the delegation rules be complemented with:**
**Please select as many answers as you like**

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

**Please explain why you think the AIFMD/AIFMR delegation rules should be Complemented with quantitative criteria, presenting benefits and disadvantages of the potential changes as well as costs:**

We strongly disagree with ESMA's consideration to complement the delegation rules with further legal clarifications on the maximum extent of delegation, in particular, to add quantitative criteria in Article 82 of the AIFMR. ESMA argues that the current delegation practice may result in a situation where most human and technical resources (e. g. IT systems) needed for the day-to-day operations are maintained by several third parties or even a single third party, potentially outside of the EU. ESMA is concerned that a large amount of the management fees generated by the authorised AIFMD or UCITS management company are paid to delegates and these delegation arrangements may increase inefficiencies and operational an supervisory risks and raise questions as to whether those AIFs and UCITS can still be effectively managed by the licenced AIFM or UCITS management companies.

From a macroeconomic perspective, we can understand the general approach that risks can bundle with individual external (critical) providers. However, this must not lead to a general or limited restriction of the possibilities to make use of external expertise by way of delegation. Hence, this is a question of supervising these external (critical) provider risks which is already addressed within the risk management requirements of the AIFMD and the new EU proposals on digital operational resilience. The use of external expertise is a legally recognised objective reason for the delegation of tasks (cf. Art. 76 (1)(c) AIFMR). The transfer of tasks to a third party does not necessarily reduce the company's internal knowledge. In particular, the management company continues to bear the overall responsibility for these tasks. This implies that it must have the expertise and resources necessary to supervise the delegated tasks. Otherwise it will be become a letter box entity (cf. Article 82(1)(a) AIFMR). Therefore, the licenced management company must be an entity that not only monitors the performance of various third parties that operate under delegation. It must also be an entity that engages in the actual provision of investment management services and, by actually performing portfolio and risk management functions, is capable of providing to its relevant regulator that the conditions for obtaining the management authorisation remain valid on an on-going basis. The supervisory practice should therefore focus on these aspects before considering a restriction of the delegation of functions.

Moreover, efficient management is one of the key tasks of a management company which acts as a trustee in the best interests of its investors and which is also responsible for its own staff. Therefore, a management company is only as successful as investors are willing to pay for products and services. Strategies, concepts and processes are the order of the day and undoubtedly form an important business basis. For these purposes the diversity of the investment management industry based on their size, structures, business models, investment strategies etc. must be considered. Any quantitative thresholds are therefore not suitable for these heterogeneous structures.

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

We strongly disagree with ESMA's considerations to complement the delegation rules with a list of core or critical functions that must always be performed internally and may not be delegated to third parties. Such an approach would completely contradict the current and well-functioning delegation and asset management practices. In particular, this applies to the delegation of portfolio and risk management as the key functions of an authorised management company. An investment fund should obtain the best possible managerial expertise that is available in the financial market and that, in pursuing this aim, portfolio and risk management functions should be delegated to the most competent managers that are available on the market.

As stated in our answer to Question 50.1, we understand the delegation and letter-box requirements in such a way that a management company should contain a requisite level of managerial 'substance'. This includes that the management company can only delegate tasks or functions, but not responsibilities.

However, we understand ESMA's concerns in the sense that delegation of portfolio management as such should not be prohibited. Instead, in absence of clear legal definitions or an exhaustive list of collective portfolio management functions, ESMA describes difficulties for NCAs to assess whether the 'supporting tasks' provided by the group entities are subject to the delegation rules set out in AIFMD or not. In our view, Annex I of the AIFMD and Recital 82 of the AIFMR clearly describe the tasks of a management company which allow a differentiated view and delimitation of the individual activities. According to the general understanding in the asset management sector, portfolio management means taking investment decisions within the legal or contractual investment and risk limits. Any supporting task such as (quantitative) risk data analyses or calculations are not part of the risk management function. In particular, Recital 82 of the AIFMR mentions as supporting tasks: administrative or technical functions assisting the management tasks such as logistical support in the form of cleaning, catering and procurement of basic services or products, buying standard software 'off-the-shelf' and relying on software providers for *ad hoc* operational assistance in relation to off-the-shelf systems or providing human resources support such as sourcing of temporary employees or processing of payroll. That approach is also in line with the general principle-based approach established under the AIFMD in ensuring that the tasks could be provided in a proportionate manner based on the size, business structures and investment strategies of the managed funds.

Therefore, we do not see the need for further legal clarification. In particular, we disagree with ESMAs request for more specific and granular requirements in order to ensure legal certainty and supervision convergence. This could be achieved by the tools already addressed in Article 82(3) of the AIFMR according to which ESMA may issue guidelines to ensure a consistent assessment of delegation structures across the Union. In our view, such guidelines – which would be subject to a public consultation process – would be more transparent as any Q&As currently provided by ESMA (cf. Section VIII of ESMA Q&As on the application of the AIFMD (ESMA34-32-352)). In this context, we would like to highlight that the approach taken by ESMA to identify a letter box based on an assessment at the level of each individual AIF makes no sense for a management company which manages several AIFs and provides a risk management system for all AIFs on a company level (cf. Question 1 of Section VIII of ESMA's Q&A). Therefore, the clarification provided by ESMA should be part of public discussion and consultations and should be not transferred into legal requirements without a public discussion. We stay ready to support ESMA in finding practical and efficient solutions.

**Please explain with what other requirements the AIFMD/AIFMR delegation rules should be complemented, presenting benefits and disadvantages of the potential changes as well as costs:**

We do not see the need to complement the delegation rules with other requirements. However, we would like to highlight the following interrelationship between the sector-specific delegation rules and the new proposals on digitalisation of operational resilience (DORA) as follows:

Recital 82 of the AIFMR states that supporting tasks like administrative or technical functions assisting the management tasks such as buying standard software 'off-the-shelf' and relying on software providers for *ad hoc* operational assistance in relation to off-the-shelf systems should not be deemed to constitute delegation of AIFM functions. This means that the AIFMD delegation rules should not apply to these tasks. However, the upcoming DORA Regulation also addresses the issue of ICT services. In particular, the draft DORA Regulation currently uniformly regulates the minimum content of the contract for the commissioning of ICT service providers. Nevertheless, the legislative DORA proposal addresses the topic of outsourcing and refers in the recitals to the existing EBA guidelines on outsourcing of cloud services, which are to (continue to) be authoritative in the relationship between supervised financial entities and ICT service providers. We do not consider this approach to be compatible with the aim to establish uniform rules in the EU about ICT governance. In maintaining a guideline-based approach only, we see the danger that the previous guidelines of the ESAs are not (any longer) consistent with the new requirements of the new EU Regulation. This may also lead to the continued existence of different supervisory approaches to assessing the commissioning of an ICT service as outsourcing or third-party procurement of services in the areas of securities, banking or insurance supervision. This risk is increased by the fact that according to the legislative DORA proposal, the ICT service providers commissioned by the financial undertakings are to be obliged to lay down contractual rules on the commissioning of further third parties. If the ICT service provider is a critical provider, the responsible lead supervisor (i.e. EBA, EIOPA or ESMA) should then have certain rights, e.g. to issue uniform recommendations to review these agreements or sub-outsourcing. In our view, this will lead to further fragmentation of the existing supervisory rules in the area of ICT outsourcing.

**Therefore, we suggest that clear distinction criteria for the relationship between outsourcing and mere commissioning (external procurement) of ICT service providers should be defined in the new DORA Regulation for all supervised entities to achieve a broad common understanding**

**and practice in the European financial market. However, the application of the delegation rules should then be part of the sector-specific rules such as the AIFMD.**

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

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

**Question 53.1 Please explain your answer to question 53:**

The AIFMD standards on delegation already provide a high investor protection regardless of the location of a third party to which AIFM has delegated the collective portfolio management functions. These standards are based on an approach that the management company is required to select the third party itself in fulfilling strict due diligence processes and to require the delegate with tasks and duties based on its own rule book. This is comparable with the circumstances of Article 42 of the MiFID where a (retail or professional) client (here: the management company) established in the EU initiates at its own exclusive initiative a service by a third-country firm. MiFID II (amended by the IFD and IFR framework in view of the Brexit) requires no additional measures in these cases. In comparison, the AIFMD requirements – which are the strictest legal requirements in the area of outsourcing within the EU as part of legal prudential requirements of supervised entities – call for due diligence processes for selecting an entity as delegate, the given content of written outsourcing agreements including requirements for an ongoing outsourcing controlling, the need of objective reasons for delegation, the need of experience, knowledge and reputation of the delegate, the notification of each (sub-)delegation to the NCA, additional requirements for the delegation of portfolio and risk management (also for delegations in third countries), special provisions on dealing with conflicts of interests in the case of delegation (in addition to the general conflict of interest policy) and requirements in ensuring efficient supervision.

Moreover, effective supervision is in place because the AIFM, its auditors and the competent authorities must have effective access to data related to the delegated functions and to the business premises of the delegate, or the competent authorities must be able to exercise those rights of access (cf. Article 79(a) of the AIFMR). The delegate is required to cooperate with the competent authorities of the AIFM in connection with the delegated functions (cf. Article 79(b) of the AIFMR). The AIFM is required to make available on request to the competent authorities all information necessary to enable authorities to supervise the compliance of the performance of the delegated functions with the requirements of the AIFMD and its implementing measures (cf. Article 79(c) of the AIFMR).

Any change to such an open approach of delegation would have a major impact on the current practices. According to an internal BVI survey in 2018, securities portfolios for open-ended funds amounting to almost 150 billion euros are outsourced to companies in the UK. Of this, AIFs for institutional investors account for a total of EUR 113 billion, which represents a share of seven percent of the total fund volume of German special funds. For mutual funds, a total of EUR 35 billion is managed by fund managers in the UK, which corresponds to three percent of the volume of mutual funds launched in Germany. Based on the current delegation structures (as described under Q50.1), this would lead to the following impacts:

**Group-internal outsourcing structures:** A sustainable adoption of the portfolio management function for these funds by the management company itself would require a radical reorganisation of the group structures. In the process, functions would have to be duplicated at several locations, which would lead to considerable additional costs that would have to be passed on to the investors. A short-term and – possibly only temporary – adoption of the portfolio management function by the management company's own portfolio managers may be possible as an emergency measure, but would by no means meet the expectations of investors and would naturally lead to structural quality losses to their disadvantage. It is needless to say that outsourcing portfolio management to a competitor would be contrary to all rules of commercial reason and therefore cannot be considered from the outset.

**White label funds:** A transfer of the portfolio manager's tasks to another manager or even the performance of the tasks by the management company itself would be technically conceivable but are incompatible with the business model. For the investor, the management of the fund by the known external manager is the decisive criterion for the investment decision. It cannot be assumed that in this case the third country-based manager will move to a Member State of the EU or a third country with which its supervisory authority has concluded an MoU with the NCA. The consequence would rather be that the investment fund in question would have to be wound up. From a local perspective, there is a risk of migrating business, as institutional investors could switch from investment fund to direct investment in order to directly mandate the third country asset manager of their choice by way of the passive freedom to provide services.

**Multi-manager concepts**: In this way it is possible to combine the most diverse investment strategies independently from each other in one fund. Here it depends essentially on the individual case whether and, if so, which segments are managed by a portfolio manager in the UK. In any case, a takeover of the tasks by the management company itself or a transfer to a third party will encounter considerable administrative hurdles (e.g. the dismantling and establishment of interfaces, termination of existing contracts and negotiation of new contracts, possibly consultation with investors) and entail high costs at the expense of the investors.

What all three business models have in common is that although it is technically possible to terminate the outsourcing arrangements in accordance with the legal requirements, even in the best case scenario this would lead to considerable costs and often even more or less completely counteract the underlying business model.

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

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

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

We support a consistent enforcement of the delegation rules throughout the EU. However, as mentioned in our reply to Question 51.1, the already existent tools are not used in providing such standards. As ESMA highlights in its letter to the Commission, there are different interpretations of NCAs in supervision of the duties of delegation already provided by the AIFMD in place. This could be avoided by providing guidelines (after public consultation) to ensure a consistent assessment of delegation structures across the Union.

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

In Germany, Articles 75 to 82 of the AFMR already apply to UCITS management companies *mutatis mutandis* with regard to the conditions for complying with the requirements laid down in Article 13 of the UCITS Directive and the circumstances in which the UCITS management company is deemed to have delegated its functions to such an extent that it becomes a letter-box entity, so that it can no longer be considered to be the manager of the UCITS.

The benefit of this regulation is that a management company which manages both AIFs and UCITS can deal with the same rules and internal processes. This simplifies the determination of the terms and conditions for and negotiations on the outsourcing contracts as well as the due diligence and outsourcing processes. This advantage exists in particular for securities funds with a UCITS-like investment strategy. Differences are possible where an AIF with alternative investments such as property funds delegate functions of portfolio and risk management because additional requirements apply, for instance for due diligence processes where an AIF invests in inherent illiquid assets (cf. Article 19 of the AIFMR). For these exceptional cases additional terms and conditions are needed for an outsourcing contract or due diligence process based on the nature of each alternative investments.

## IV. FINANCIAL STABILITY

*One of the main objectives of the AIFMD is to enable supervisors to appreciate and mitigate systemic risks building up in financial markets from different sources. To this end, AIFMs are subject to periodic reporting obligations and supervisors are equipped with certain market intervention powers to mitigate negative effects to the financial stability that may arise from the activities on the AIF market.*
*The section below invites opinions whether the intervention powers and a tool-kit available to the relevant supervisors are sufficient in times of severe market disruptions. Shared views on the adequacy of the AIFMR supervisory reporting template will be important in rethinking the AIFM supervisory reporting obligations. According to the FSB report, markets for leveraged loans and CLOs have grown significantly in recent years exceeding pre-crisis levels (FSB, Vulnerabilities associated with leveraged loans and collateralised loan obligations (CLOs), PLEN/2019/91-REV, 22 November 2019). While most leveraged loans are originated and held by banks, investment funds are also exposed to the leveraged loan and CLO markets. In order to assess risks to the financial stability and regulatory implications associated with leveraged loans and CLOs it would be commendable to continue collecting the relevant data and monitoring the market. The stakeholders are invited to cast their views on the matter.*
*With particular regard to the loan originating AIFs, suggestions on the optimal harmonisation of the rules that could apply to these collective investment vehicles are welcome. Finally, questions are raised whether leverage calculation methods could benefit from further standardisation of metrics across the AIF market and potentially also across the UCITS for the supervisors to have a complete picture of the level of leverage engaged by the collective investment funds.*

### a) macroprudential tools

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

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

**Question 56.1 If yes, which of the following amendments to the AIFMD legal framework would you suggest?**
**Please select as many answers as you like**

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

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

In general, the AIFMD reporting requirements are appropriate and provide the authorities with a good overview of the manager of AIFs and the risk profile of the respective investment funds (please also see our answer to Q 61). However, the AIFMD reporting is not the only reporting required to inform supervisory authorities. The regulatory reports on positions and risks of investment funds required under the AIFMD, the UCITS Directive and the MMF Regulation as well as under the ECB statistics display considerable differences in terms of reporting details, reporting channels, reporting intervals, data repositories and applicable IT standards. In addition, reporting is often insufficiently standardised which causes significant problems in the collection of data. This jumble of different data standards and formats presents a huge burden for the asset management industry in both operational and financial terms and impedes efficient supervision concerning systemic risks.

Enhancing consistency of regulatory reporting is therefore badly needed in order to enable the regulators to use the data obtained for the purpose of detecting systemic risk and to keep the administrative burden for market participants at a reasonable level. **As a long-term vision, investment funds such as UCITS or AIFs (including MMFs) could simply provide a basic set of raw data to all supervisors in uniform scope and format. Any authority could use the data it needs from that package and could calculate individual metrics based on their own macro-prudential tools due to fulfil their supervisory tasks. This would also be in line with the goal of obtaining more granular data to assess potential vulnerabilities stemming from the asset management industry.**

**However, such an approach would lead to the situation where the AIFMD reporting would have to be revised in its entirety and aligned with all the other existing supervisory reports.** We support such an approach for a long-term vision for all investment funds (AIFs, UCITS, MMFs). The key obstacle to achieving this vision is that different supervisory reporting requirements based on detailed frameworks across the EU are already in place in a very detailed manner on Level 2 and Level 3. Moreover, many reporting requirements differ between EU Member States or must be complied with in one country but not in the other. Therefore, any amendments to the proven and tested AIFMD reporting standards should be carefully analysed in terms of their effort/benefit ratio. This is particularly the case if a shift from the current (aggregated and consolidated) reporting to an asset by asset reporting is considered. **For the time being, we suggest an approach which maintains the actual AIFMD reporting and gives the supervisory bodies such as NCAs, ESMA, ESRB, ECB, NCB the power to share already available data from other reports for deeper analyses.**

The impact of fundamental amendments would be not limited to asset managers because supervised entities such as banks or insurance companies often invest in investment funds. Both CRR and Solvency II Directive require banks and insurance undertakings which invest in investment funds to 'look through' into the risks and assets of investment funds for the purposes of their own capital requirements and internal risk assessments. These Directives require delivery of data and further support services by management companies about risk assessments and asset data of investment funds in completely different ways and which are also not consistent with the reports which must be provided by the assets managers to their own authorities. Therefore, there is a need for analysis in order to understand and report the risks of investment funds in the same way, irrespective of who is invested in the investment fund.

In this context, there is also an urgent need for stronger integration in technological terms. The use of common reporting channels and standardised IT formats would enable regulators to better utilise the loads of submitted information for supervisory purposes, especially for the prompt detection of systemic risk, and might entail cost savings for market participants such as management companies which may run into millions of Euros. Overall, we believe that ISO 20022 offers the best potential for cost-effective and future-proof implementation. It has a strong methodology and model for defining and structuring financial data, and an open governance process that ensures a level playing field for standardisers and users. It also offers expert international scrutiny of submitted content. ISO 20022 is now being implemented in a growing number of markets, which results in increasing opportunities for automation and interoperability.

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

We suggest harmonising minimum requirements on liquidity management tools (LMTs). It is important that all LMTs set out in IOSCO's report are made available to funds. General guidance on EU-level with a short description of such tools could be helpful for management companies. However, there is a need for a principle-based approach, and, in every case, it should be at the discretion of the manager of the funds which tools they want to use because of very different fund types and structures. It is important to state that liquidity management depends on the types of assets, investors, investment strategies, markets, and possible national legal or contractual restrictions under the investment funds' rules for changing investment strategies. The use of LMTs should be made dependent on concrete circumstances and should vary according to the nature, scale and investment strategy of the investment fund. As a last resort, redemptions should be suspended under the precondition that no alternative measure is available under the fund rules or other potential liquidity management tools are inappropriate.

As explained under Q1, this could be achieved for instance by amending Article 16 AIFMD in adding a sentence that LMTs should be made available in each EU member state. That involves a need for a common understanding based on general principles on EU-level on how to use such tools. Therefore, it could be helpful to refer under Article 47(1)(e) AIFMR to a new Annex of the Delegated Regulation which provides a list of such LMTs with a broad definition.

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

./.

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

./.

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

./.

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

./.

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

./.

**Question 56.1 Please explain your answer to question 56:**

**Detailing cooperation of the NCAs in case of activating liquidity risk management tools**: Activating of LMTs is firstly a question of the individual risk situation of each investment fund. This can, but need not, be an indicator of a potential risk for the EU financial market. Moreover, some LMTs such as swing pricing or notice periods must be agreed in the fund rules (without an additional activating mechanism) and – for retail funds such as UCITS – are subject to approval by the NCAs. Therefore, it will be more helpful to make all LMTs available to fund managers and – as it is already required under the AIFMD reporting – to report to the NCAs which tool is or could be used in times of stressed market conditions.

**Supervisory intervention when applying macroprudential tools**: We do not see the need for further clarifying grounds for supervisory interventions. Article 25 of the AIFMD already provides appropriate and enough guidance for macroprudential tools. Competent authorities already facilitate analysis of the risk impact of investment funds in the European Union. In particular, information of the risk profile of alternative investment funds gathered by competent authorities are shared with ESMA and the ESRB so as to facilitate a collective analysis of the impact of the risk profile (including leverage and liquidity) of investment funds on the financial system in the Union as well as a common response to potential risks. These measures ensure that competent authorities can quickly intervene on a case by case basis in case of identified potential risks to financial stability or to the functioning of financial markets. We therefore welcome the latest of ESMA's insights about their analyses of investment funds: As a main outcome, the fund industry is resilient and can absorb economic shocks. We also welcome that ESMA has already established guidance on operationalising existing tools to address risks and to identify the effect of macro-systemic shocks affecting the economy. These figures should be used by all financial stability bodies such as the ESRB and the ECB.

**Defining an inherently liquid/illiquid asset**: There is no need for additional requirements related to open-ended AIF which hold a large proportion of their investments in inherently less liquid assets. The AIFMD already requires a strict and efficient liquidity management process. Hence, common requirements in managing liquidity risks of investment funds and in using LMTs (generally) are much more important. As an example, the German legislator has responded to the crisis of 2008 by implementing new legal liquidity management tools for open-ended property investment funds so that these funds were able to deal with the COVID crisis in 2020. We also see no need for an abstract classification of the liquidity of inherently less liquid assets or asset categories. In particular, it should be avoided that a new ESMA list (as proposed by the ESRB) sets too strict binding requirements on liquidity analysis of assets. Otherwise we see the danger that the management company might not be able to react to changes in the market and they could make decisions based on some evidence of 'herd behaviour" with further impact to new (systemic) risk. Such requirements would also pose administrative burdens for the management companies. Therefore, it is important that liquidity management should be based on a case by case assessment.

**Granting ESMA strong and binding coordination powers in market stress situations**: Against the backdrop of progressing financial integration in the EU, which is further facilitated by the ongoing CMU initiative, effective supervisory coordination is needed. By promoting supervisory convergence and providing solutions to cross-border issues, ESMA is at the heart of further endeavours to deepen integration of the financial markets. In order to facilitate this, we do see merit in increasing ESMA's access to national supervisory practices of NCAs (please see our answer to Q96). However, providing ESMA with direct supervisory (coordination) powers in market stress situations would entail additional complexity due to the interaction with national legislation and duplication of supervisory scrutiny leading to inefficiencies and higher costs for investors. Authorisation and supervision of EU investment funds and any other investment products should remain with the NCAs which can take due regard of the specificities of the local investment markets.

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

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

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

In general, there is a no need to clarify in the AIFMD framework that NCAs have the right to require the suspension of the issue, repurchase, or redemption of units for financial stability reasons. In the alternative (because it is already required in Germany), it could be the right of the EU member state to allow the competent authorities to require the suspension of repurchase or redemption of units if this is necessary in the interests of public (cf. Art. 84(2)b) of the UCITS Directive). However, we are not aware that NCAs have used such tools because management companies work closely together with their supervisory authorities in situations of financial crises.

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

We do not see merit in establishing a (new) template for NCAs to report relevant and timely data to ESMA during the period of the stressed market conditions. Stressed market conditions are not foreseeable and are therefore not included in supervisory reporting. Data provided during the previous crisis would be not relevant for the next crisis. Standard reporting would bring less value than a reporting that is tailored to the actual event. In an exceptional situation it would be up to NCAs to ask for more information that would be relevant for assessing the situation in their individual markets.

In our view, that question is also linked with the question about a more granular reporting. If supervisory authorities are informed about each investment and risks involved of an investment fund, they would be able to better understand possible contagion risk in crisis scenarios. But such a granular report would fundamentally change the current well-working and appropriate AFMD reporting and should not be established in addition to the AIFMD reporting. Otherwise this will lead to a more fragmented reporting structure of investment funds with more cost and implementation burden for the industry and authorities.

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

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

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

The activating mechanism of an LMT depends the type of the LMT. For instance, swing pricing and notice periods apply by agreement in the fund rules on an ongoing basis without additional activating mechanism during periods of market stressed situations. Other tools like gates or suspension of redemption need to be activated in stressed market situations. In Germany it is required by law that the manager must inform the NCA about an activation of an LMT (where it is needed), or as part of the fund rules it is already subject to approval by the NCA (for retail funds). Because such an information can be provided in a not standardised way (for instance by email), no expenses are incurred. Such information would allow NCAs to better understand the use of LMTs.

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

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

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

De minimis thresholds make sense for institutions like banks which deal on their own balance sheet. The banking approach is not designed to properly consider the specificities of the different business model of asset managers and the characteristic risk associated to their categories of staff and pay structures. Other than banks, management companies commonly have different risk profiles, based on differing investor bases, risk appetites and risk horizons. Similarly, business models and structures typically vary from those in banks, and correspondingly management companies can have different pay structures. Particularly since the management company is not dealing on its own balance sheet, the criteria must be formulated differently and be based on the already applied principle-based requirements of the AIFMD and UCITS Directive specified by ESMA in its remuneration guidelines for asset managers. Moreover, such sector-specific remuneration requirements are already recognised by the banking government rules in the context of group consolidation (cf. Article 109(2), (4) and (5) CRD V). In particular, CRD V states that the banking remuneration requirements (including de minimis thresholds) set out in Directive 2013/36/EU (CRD) should not apply on a consolidated basis to subsidiaries which are not institutions (such as asset managers).

**b) supervisory reporting requirements**

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

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

**Question 61.1 Please explain your answer to question 61:**

In general, AIFM reporting is appropriate and provides authorities with valuable and unique information with a good overview about the risk profile of the AIFM and the AIF managed such as:

- principal information (name, size, NAV, total exposure)
- main instruments traded
- geographical focus (assets break down by region)
- principal exposures (asset break down by asset type)
- most important concentrations (by market, by asset type, by investor)
- asset type exposures and turnover
- risk profile (VaR, sensitivities for yield and equity)
- counterparty risk profile (clearing, exposure to and from counterparties)
- liquidity risk profile (fund and investor)
- operational risk profile (number of assets, performance, subscriptions, redemptions, usage of liquidity tools etc.)
- net and gross leverage
- results of stress tests

The AIFMD reporting is a good basis to consolidate reporting. If authorities want to 'look through' into each position, this can be discussed and would change the current approach fundamentally. Such a big change would only make sense if all reporting requirements to authorities would be consolidated in one file. The disadvantage of such (new) approach is that the statistics would have to be added from the authorities themselves what could be a challenge; this was the reason why AIFMD reporting is consolidated on risk factors like markets, asset type etc. Moreover, a harmonised framework of reporting positions in securities holdings in funds is feasible but would require investment by all parties. Such investment, however, would make sense commercially too, as nearly the same portfolio positions/holdings reports need to be provided as a contractual service to institutional bank and insurance investors who need the data to calculate their own risk based on the capital requirements under Solvency II and CRD IV, respectively.

The AIFMD reporting is a suitable tool for authorities which provides a full picture about the respective risk profile of the fund. A full portfolio breakdown (as requested under Q62) is a change in the approach and would lead to lots of effort for the management company and the authorities (e.g. statics for OTC, private placements). A breakdown by region (on market value and exposure) is already covered by the AIFMD reporting, this also applies to counterparties, liquidity and investors.

Another problem with a portfolio breakdown is the risk assessment for alternative investments such as real estate. Reporting entities (e.g. investment fund management companies) must pay a lot of money to data providers in order to obtain the relevant information without a guarantee for complete or high-quality data. Therefore, it is not easy to fulfil the expectations of the authorities to analyse the relevant risks of these assets for the purposes of risk-bearing capacity concepts of institutional investors in such real estate investment funds based on long time series data. If such a breakdown would be required, a harmonised data reporting and data collecting scheme which incorporates such risk assessments of alternative investments (e.g. real estate) would have to be developed beforehand.

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

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

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

In the aftermath of the financial crisis 2008 several new or enhanced reporting requirements have been imposed upon asset managers and the broader financial sector. These pertain to individual transaction data on the one hand and to positions and their inherent risks on the other hand. In this regard, the multiple and inconsistent reporting requirements emerging from different pieces of legislation present a nuisance for the reporting entities as well as the competent authorities as the collectors of the data. For example, we currently see the following overlaps other EU legislation:

- **Transaction-level reporting:** The reporting requirements under EMIR, MiFID II/MiFIR and SFTR display considerable differences in terms of reporting details, reporting channels, data repositories and applicable IT standards. Double sided reporting has increased the reconciliation process of the reporting parties and has led to a high number of unpaired and unmatched reporting transactions to a Trade Repository (TR). This complicates supervisory authorities' supervision, analysis and aggregation of these data in order to identify systemic risk in the OTC derivative market. Therefore, the market should switch to a single-sided reporting. Asset managers must report collateral positions for OTC derivatives under both EMIR and AIFMD in different pre-defined formats and on different aggregation levels. It would be preferable if the regulator could utilise one collateral report to satisfy the information required in relation to both regulations. The SFTR provides enhanced disclosure/reporting obligations on UCITS managers and AIFMs. Asset managers are required to give transparency of the use they make of SFTs and total return swaps both in periodic reporting and pre-contractual documents to investors. The information required for transparency to investors are very detailed and do not match with the data required to provide to authorities. The reporting and disclosure obligations for total return swaps differ under the SFTR, EMIR and the ESMA guidelines on ETFs and other UCITS issues.

- **MMFR reporting**: ESMA was interested in using the same reporting standards for MMFs as those established under the AIFMD. However, the final reporting requirements for MMFs differ fundamentally from the AIFMD reporting because they are based on ISIN-detail data. Moreover, a MMF (issued as an AIF) needs to be reported twice: (1) with a harmonised reporting template under the AIFMD (in the alternative: with a reporting template established by different national authorities under the UCITS Directive) and (2) with a separate MMF reporting template with in part completely different and in part identical or similar data which are already provided by the AIFMD template.

- **UCITS reporting:** According to Article 45 of the UCITS Implementing Directive 2010/43/EU, management companies are required to deliver to the competent authorities, at least on an annual basis, reports containing information which reflects a true and fair view of the types of derivative instruments used for each managed UCITS, the underlying risks, the quantitative limits and the methods which are chosen to estimate the risks associated with the derivative transactions. There is a lack of a common European standards such as what kind of portfolio and risk data, in which frequency and in which format should be reported, and there is apparently no regular exchange of the information collected by the NCA and other authorities in the Union, with ESMA and with the ESRB. Consequently, completely different UCITS reports are in place in Germany, Luxemburg and Ireland which are also distinguish fundamentally from the AIFMD reporting.

- **ECB/Central bank reporting**: The reporting under common AIFMD standards and different national UCITS standards needs to be done in parallel to ECB statistics for investment funds (Regulation(EU) No 1073/2013 of the European Central Bank of 18 October 2013 concerning statistics on the assets and liabilities of investment funds, ECB/2013/38, available under https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R1073&from=de).There is no alignment in frequency and content of data.

- **Supervised entities - investor reporting**: Both Solvency II Directive and CRR require banks and insurance undertakings which invest in investment funds to look through into the risks and assets of the investment funds for the purposes of their own capital requirements and internal risk-assessments. These Directives require delivery of data and further support services by management companies/asset managers about risk assessments and asset data of investment funds in completely different ways and which are also not consistent with the reports which must be provided by the asset managers to their own authorities. Therefore, there is a need for analysis in order to understand and report the risks of investment funds in the same way, irrespective of who is invested in the investment fund.

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

./.

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

./.

**Please specify for what other reason the supervisory reporting requirements as provided in the AIFMD and AIFMR's Annex IV are not appropriate.**
**Please detail as much as possible your answer providing examples of the superfluous reporting coverage.**
**Where possible, please provide concrete examples and where relevant information on costs and benefits in changing the currently applicable reporting requirements:**

**ESMA opinion:** As described under Q61, the reporting requirements for AIFs and their managers (AIFMs) are harmonised within the EU and hence similar in each EU member state. However, it was not helpful when ESMA published in October 2013 an opinion with additional reporting requirements (opinion on collection of information for the effective monitoring of systemic risk under Article 24(5), first sub-paragraph, of the AIFMD, ESMA/2013/1340). In this opinion ESMA requires a detailed set of additional information that NCAs could obtain from AIFMs to be reported on a periodic basis. This leads to the situation that some NCAs do require AIFMs to report these additional data and others do not. Regarding cross border activities of AIFMs, this leads to different standards and the need for internal control systems and check lists in which country such additional reports are not required to deliver. As the consequence, different reports provided by the AIFMs complicate the assessment of the data by ESMA.

**Country-by-country analysis**: We would like to suggest that ESMA should be required under the AIFMD to assess the outcome of the AIFMD reporting on a country-by-country basis.

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

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

**Question 62.1 If yes, the more detailed portfolio reporting should be achieved by:**
**Please select as many answers as you like**

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

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

./.

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

./.

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

./.

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

./.

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

./.

**Please explain by what other ways you think the more detailed portfolio reporting should be achieved.**

**Please include concrete examples and, where possible, provide information on the benefits, disadvantages and costs of implementing this proposition:**

./.

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

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

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

The identification of an AIF with a LEI identifier is already mandatory and standard procedure in the AIFMD reporting in Germany. Following issues with data quality and lack of comparability of data resulting thereof, the regulatory authorities are increasingly engaged in the standardisation of certain data (e.g. Identifiers (ISIN, LEI)) and reporting messages. This regulatory “nudging” towards the use of ISO based standards may also help the industry to standardise other flows of other reference and market data the exchange of which is currently often inhibited by proprietary standards and licence requirements.

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

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

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

The identification of an AIFM with a LEI identifier is already mandatory and standard procedure in the AIFMD reporting in Germany.

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

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

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

BVI supports the aim to extend the LEI system by wider adoption in both the financial and non-financial sectors. There are numerous use cases in all kinds of sectors that take the adoption of the LEI way beyond the financial sector for the benefit of the public and the private sector. A McKinsey and GLEIF

(Global Legal Entity Identifier Foundation) joint white paper estimates that broader, global adoption of LEIs could yield annual savings of over USD 150 million within the investment banking industry and up to USD 500 million for banks in the issuance of letters of credit (the white paper is available for download at: https://www.gleif.org/en/lei-solutions/mckinsey-company-and-gleif-creating-business-value-with-the-lei/). Widespread acceptance in both private and public sectors will also help to address the current issues of data quality and lapsed LEIs within the Global LEI System (GLEIS).

The current GLEIS is a self-registration system. As a result, the registrants bear the total cost of the GLEIS. Our members which register LEIs for hundreds of investment funds face considerable cost compared to single LEI carrying corporations. We hope that by expanding the coverage as well as by enabling new ways of registration the cost of registration can be reduced or ultimately avoided, e.g. by providing the LEI in the context of a first-time business registry entry as we proposed in the context of the recent review of the EU business registry regulation. We therefore support the recent GLEIF 'LEI-V2' initiative to enable trusted parties in a regulated client identification process to issue LEIs under guidelines from GLEIF which should enable the system to achieve very low or no costs in the medium term. We also encourage registrants to use Local Operation Units (LOUs) which offer LEI registration at the lowest price.

**Moreover, if the LEI identifier would be mandatory for the purposes of identifying the counterparties and issuers of securities in an AIF's portfolio, a technical solution must be found for cases where the LEI is (currently) not available (such as for non-listed papers, real estate companies, third-country entities). The reporting must not fail because the LEI is not available. Furthermore, a missing LEI identifier of counterparties and issuers of securities in an AIF's portfolio must not lead to the question whether an asset is eligible or not for the account of the fund. We believe that is a reasonable proposal as the few missing LEIs are limited usually to third country corporations based in the Americas, Asia or Africa, as Europe has a LEI coverage of 99%.**

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

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

**Question 66.1 Please explain your answer to question 66:**

In its latest annual statistical report 2020 on EU AIFs, ESMA concludes that AIFs' exposures to leveraged loans and CLOs have increased, but exposures remain limited and most AIFs investing in leveraged loans and CLOs make limited use of leverage and do not face significant liquidity mismatch. However, ESMA sees the need to active monitor AIF exposures in the context of deterioration of underwriting standards and lower credit quality of leveraged loans. This can be achieved by the current reporting requirements because the structure of the AIFMD reporting is in general suitable to cover the principal information of a loan (e. g. issuer, notional, yield, price, maturity). ESMA is already able to use two main sources of data under the AIFMD to assess AIFs' exposures to specific asset classes:

- Under Article 24(2) of the AIFMD, AIFs must report detailed data on their exposures (long and short), including specifically on some asset classes. AIFs report exposures on leveraged loans and on CDO/CLOs, where both securitised products are grouped together.

- Under Article 3(3)(d) of the AIFMD, funds must report at security-level the top five instruments in which they are trading.

In this context, we suggest considering a harmonised European product standard for loan originating AIFs before we talk about new uniform reporting standards. In any case, the AIFMD is not the right Directive to deal with such product regulation because the status of a mere manager directive should be maintained. For details, see our answer to Q85.1.

Moreover, requesting more detailed information on loans (e. g. covenants, rating, downgrade) would fundamentally change the structure of the aggregated and consolidated AIFMD reporting to an asset-by-asset reporting which is not required (also not for e. g. OTC derivatives). If the financial stability bodies are interested in such information, these are already available in the ECB/NCB reporting. In particular, the ECB reporting differentiates between asset categories like deposits and loan claims or loans and deposits received (cf. Table A of the Regulation (EU) No 1073/2013). Allowing to use these data by ESMA or other supervisory authorities by amending a reference in Article 50 of the AIFMD to the ECB and its Regulation concerning statistics on the assets and liabilities of investment funds will be associated with considerably less effort than establishing and implementing a new (double) report for management companies.

**Question 66.1. If not, what data fields should be added to the supervisory reporting template: Please select as many answers as you like**

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

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

./.

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

./.

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

./.

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

- ☐ Yes
- ☐ No

☐ Don't know / no opinion / not relevant

**Question 67.1 Please explain your answer to question 67:**

It is important that each NCA has a full overview of risks related to investment funds which could affect the national financial market. To assess the systemic risk out of investment funds it makes sense to consolidate all UCITS, MMF and AIF reports at a single national authority which also is responsible to supervise these products and managers of these investment funds. This enables the NCA to react with direct measures or sanctions where needed. NCAs should pass over to EU institutions which could assess the impact on the EU financial market. The current procedure has proven its worth in this regard.

**Question 67.1 If yes, which one:**

☐ ESMA
☐ Other options

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

./.

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

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

**Question 68.1 Please explain your answer to question 68:**

For a common understanding of financial stability risks and in order to avoid excessive burdens for cross border activities of asset managers, the main challenge is to agree at least on harmonised data reporting and exchange standards with the industry and supervisory bodies to enable better understanding and supervision. This important task should not be left solely to national authorities as it is currently required e.g. under the UCITS Directive. In any case, it is important that all managers of funds report such data in a uniform way. **For financial stability purposes it is necessary to define at least on EU level which kind of data, in which frequency and in which format NCAs should collect data e.g. on leverage and liquidity risks. These data should be used by all relevant supervisory authorities and financial stability bodies such as the ESRB and the ECB. That involves the need for country-by-country analyses and for further strengthening data exchange between supervisory authorities and financial stability bodies.**

Moreover, apparently individual data available at NCAs / national Central Banks is not regularly shared in full with the ECB/ESRB or other NCAs. Rules on full exchangeability of granular instrument master file, transaction, portfolio holdings and associated risk/return data between the relevant supervisory, regulatory and Central Bank bodies within the EU are a prerequisite to avoid duplicative and non-harmonised regulatory reporting going forward.

**Question 68.1 If yes, please specify which one?**

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

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

./.

**Question 68.2 Please explain your answer to question 68.1:**

We refer to our answer to Q68 and Q68.1

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

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

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

./.

**Question 69.1 Please explain your answer to question 69:**

In our view, information on types of investors, counterparties and issuers of instruments is already provided by the AIFMD reporting. There is no need for further information on funds’ interconnectedness within the AIFMD reporting. The information the ESRB is asking for in its letter to the Commission regarding the AIFMD refers to a portfolio breakdown and an asset-by-asset reporting (please see our answers to Q56.1 and Q61.1) which are already available in the ECB statistical investment fund reports.

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

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

**Question 70.1 If yes, the AIF classification could be improved by:**
**Please select as many answers as you like**

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

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

./.

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

The effort required to add new strategies of AIFs in the AIFMR supervisory template is very low. We support to add the following strategies (non-exhaustive):

- ESG strategies according to Articles 8 and 9 of the SFRD
- mixed funds strategies (equity and bond funds)
- UCITS-like strategies (most of German AIFs which qualify as other strategies (other funds) are invested like a UCITS but are issued as AIFs for institutional investors only)
- renewable energies strategies
- loan originating strategies
- Money market funds (MMF)

**Please explain why you think the AIF classification could be improved, providing information, where available, on the costs, benefits and disadvantages of this option:**

./.

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

./.

**Question 70.1 Please explain your answer to question 70:**

We support the ESRB proposal to improve the classification of AIF strategies provided in the AIFMR supervisory template to better reflect their strategies and potential risks involved. Around 60 % of investment funds' net asset value is classified as 'other' which reflects most of the German AIF market. Deeper insights in the investment strategies will improve the outcome of (systemic) analyses of the European AIF market.

**Question 71. What additional data fields should be added to the AIFMR supervisory reporting template to improve capturing risks to financial stability:**
**Please select as many answers as you like**

- ☐ value at Risk (VaR)
- ☐ additional details used for calculating leverage
- ☐ additional details on the liquidity profile of the fund's portfolio
- ☐ details on initial margin and variation margin
- ☐ the geographical focus expressed in monetary values
- ☐ the extent of hedging through long/short positions by an AIFM/AIF expressed as a percentage
- ☐ liquidity risk management tools that are available to AIFMs
- ☐ data on non-EU master AIFs that are not marketed into the EU, but which have an EU feeder AIF, or a non-EU feeder marketed into the EU if managed by the same AIFM
- ☐ the role of external credit ratings in investment mandates
- ☐ LEIs of all counterparties to provide detail on exposures
- ☐ sustainability-related data, in particular on exposure to climate and environmental risks, including physical and transition risks (e.g. shares of assets for which sustainability risks are assessed; types and magnitudes of risks; forward-looking, scenario-based data)
- ☐ other

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

The Value at Risk (VaR) is already part of the AIFMD reporting, but only as additional information that NCAs could require AIFMs to report on a periodic basis pursuant to the Opinion published by ESMA on 'Collection of information for the effective monitoring of systemic risk under Article 24(5), first sub-paragraph, of the AIFMD'. This information becomes mandatory if it is required by the NCA to which the AIF reports. In our view, it could be added as a mandatory field for AIFs which calculate the VaR.

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

The calculation of leverage is fully required and explained in Articles 6 to 11 of the AIFMR. There is no need for further reports on how the manager is calculating the leverage figures.

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

The liquidity profile of an AIF (investor and asset level) is sufficiently covered by the AIFMD reporting.

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

Such detailed information is already covered by the EMIR reporting.

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

Such information on a country-by-country level as well as based on derivatives and counterparties is very complex and burdensome to collect. We refer to our answers to Q56.1, Q61.1 and Q69.

**Please explain why the extent of hedging through long/short positions by an AIFM/AIF expressed as a percentage should be added to the AIFMR supervisory reporting template, providing as much detail as possible and relevant examples as well as the costs, benefits and disadvantages of this option:**

./.

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

Not relevant for our members.

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

The AIFMD reporting does not covers ‘investment mandates’ in the meaning of discretionary portfolio management. However, we interpret the question in such a way if and to what extent external credit ratings should be added for the assets held by the portfolio of an AIF. We strongly disagree with introducing an obligation to provide such data because that will increase the costs for management companies significantly. Speaking from experience, we expect that credit rating agencies (CRAs) will increase their licencing fees when management companies will be obliged to use these data in order to meet their supervisory reporting duties. While we highly appreciate ESMA´s effort to protect rating data users from excessive licencing fees, we see a strong case for regulatory intervention by the EU Commission to achieve this aim.

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

We refer to our answer to Q65.1.

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

./.

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

We suggest adding another type of investors like ‘semi-professional’ investors to the AIFMD reporting. This was the outcome of the AIFMD reporting quality check organised by ESMA. Many institutional investors such as churches, family offices or foundations do not qualify as professional investors and are categorised as retail investors under AIFMD even though they would be qualified to invest at least in some AIFs which are issued for institutional investors. We believe that in this context there is a case for introducing a regulatory distinction of AIFs. Such distinction could in our view be based on the level of risk associated with AIF investments, i.e. on the level of employed leverage. Following the logic of the UCITS Directive, the relevant funds could be characterised by abstaining from employing leverage on a substantial basis. Such ‘Low Leverage AIFs’ should have an EU-wide access also to semi-professional investors on the basis of an extended EU passport.

The EU financial frameworks currently include no definition of “semi-professional investors”. However, inspiration can be taken from the EuSEF/EuVECA Regulations which allow for investments by other than professional investors if these (1) commit to invest at least EUR 100 000 and (2) confirm in writing in a separate document that they are aware of the associated risk. We refer to our answer to Q21.

**Question 72. What additional data fields should be added to the AIFMR supervisory reporting template to better capture AIF’s exposure to leveraged loans and CLO market?**
**Please explain your answer providing as much detail as possible and relevant examples as well as the costs, benefits and disadvantages:**

We refer to our answer to Q66.1

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

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

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

The AIFMR supervisory reporting is well implemented and the annual reports with analyses of the European AIF market published by ESMA provide a very good overview of the market and (potential) risks involved.

However, if there is a urgent call for more granular data on an asset-by-asset breakdown at the current stage, all individual asset related data could be deleted and supervisory authorities can use the ISIN-detailed data provided to the ECB statistical reporting of investment funds and make their own assessments based on these reports. We also refer to our answer to Q56.1 where we suggest (as a long-term vision) that investment funds such as UCITS or AIFs (including MMFs) could simply provide a basic set of raw data to all supervisors in uniform format and content. Any authority could use the data it needs from that package and could calculate different scenarios based on their own macro-prudential tools due to fulfil their supervisory tasks. This would also be in line with the goal of obtaining more granular data to assess potential vulnerabilities stemming from the asset management industry.

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

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

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

The current reporting frequency is appropriate. This applies even more as these reports also provide data on a monthly basis. Changing the reporting frequency to e.g. a monthly basis could lead to IT problems because each AIF report must be uploaded to the reporting platform of the NCA. This takes a lot of time and resources and – if the upload fails (because of the current quality revision) – it must be repeated several times. This is particularly critical because any information/report not provided, not provided correctly, not provided in full or not provided on time qualifies as reason for strict and severe sanctions.

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

We refer to our answer to Q58. We do not see merit in establishing a (new) template for NCAs to report relevant and timely data to ESMA during a period of stressed market conditions. Stressed market conditions are not foreseeable and are therefore not included in supervisory reporting. Data provided during the previous crisis would be not relevant for the next crisis. Standard reporting would bring less value than a reporting that is tailored to the actual event. In an exceptional situation it would be up to NCAs to ask for more information that would be relevant for assessing the situation in their individual markets.

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

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

**Question 76.1 Please explain your answer to question 78, also in terms of costs, benefits and disadvantages:**

See our answer to Q77.1.

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

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

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

We welcome the proposal to establish a harmonised UCITS reporting framework across the Union. For a common understanding of financial stability risks and in order to avoid excessive burdens for cross border activities of asset managers, the main challenge is to agree at least on harmonised data reporting and exchange standards between the industry and supervisory bodies to enable better understanding and supervision. This important task should not be left solely to national authorities as it is currently required under the UCITS Directive. In any case, it is important that all managers of funds report such data in a uniform way.

Proposals for a new harmonised reporting such as a UCITS reporting need to be analysed carefully in avoiding of double reports and in closing data gaps. In particular, we see overlaps with other reports such as transaction reporting under EMIR, MIFIR and SFTR, central bank reporting for statistical purposes on funds as well as the regulatory fund reports for money market funds and the various national UCITS reports (such as established by BaFin or CSSF). Here we point out that a general overhaul of fund reporting towards mere raw data delivery can significantly improve the demands of supervisors for more granular data to monitor systemic risks in the long run. However, this requires a fundamental overhaul of all fund reporting.

For a short-term solution, this demand can be ensured through a new data exchange to be regulated between supervisory authorities that already have granular data (e.g. via central bank or EMIR/MiFIR transaction reporting). The removal of regulatory obstacles which hinder the efficient functioning of the capital markets should be considered an overarching priority. For financial stability purposes it is necessary to define at least on EU level which kind of data and in which frequency national competent authorities should collect data such as data on leverage and liquidity risks. However, the way we understand ESRB's approach, ESRB recommends considering the reporting requirements under the MMFR as a blueprint for a new UCITS reporting. **We strongly disagree with using the MMFR reporting for a harmonised UCITS reporting because this will lead to another fragmentation of investment fund reports. In establishing a new UCITS reporting, it is of utmost importance to use the same reporting standards as those established under the AIFMD.** Such an approach would have the following benefits:

**Avoid a technical in-depth discussion on data fields:** The current AIFMD reporting is already very comprehensive. This applies even more as the vast majority of AIFs in Germany which invest in securities are UCITS like investment funds with a comparable investment strategy and risks. The implementing work for an AIF or AIFM reporting is already done and the standards are well known by the management companies. In Germany, all UCITS management companies (safe one) also issue AIFs and have already implemented the AIFMD reporting template. In this context, it is worth noting that well-founded complaints from regulators stating that the current reporting was insufficient have been extremely rare.

**Support the idea of a harmonised UCITS reporting**: In the absence of a harmonised UCITS reporting, the industry is currently facing a broad range of uncoordinated and (partially) ad-hoc data requests from various NCAs. Today, complying with these diverse requests is burdensome and costly, particularly as they involve extensive manual work. A pan-European UCITS reporting which replaces the different types of national reporting would hence be an important step forward.

**As a first step, we suggest basing the UCITS reporting on the existing AIFMD template:** The industry's position on the content of a future UCITS reporting is driven by considerations of cost and efficiency. While the AIFMD reporting is already up and running, a completely new and totally different UCITS reporting would incur significant implementation, IT development and project costs and tie up specialist resources. Using the existing, well established AIFMD template (perhaps with minor adjustments) for UCITS reporting is therefore, from our perspective, the most efficient option. It would then be up to ESMA and the NCAs to determine, and properly justify, which additional data fields, if any, they deem necessary for the UCITS reporting.

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

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

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

This question relates to the call of the ESRB and ESMA to provide more granular information on the assets in which an AIF is invested. As already stated, such a granular reporting would fundamentally change the structure of the aggregated and consolidated AIFMD reporting to an asset-by-asset reporting which is not required (also not for e. g. OTC derivatives). For a short-term solution in maintaining the aggregated approach of the AIFMD, we see no need to amend the well-implemented reporting formats and definitions. If the financial stability bodies are interested in such information, these are already available in the ECB/NCB reporting.

However, for a long-term vision with a single regulatory reporting mechanism for investment funds, a harmonisation of the data architecture is of the utmost importance. This will reduce operational effort and burden for asset managers as well as supervisory authorities. In spite of EU wide ISO 20022 based reporting standardisation efforts by regulators (e.g. ESMA EMIR and MIFIR messages, ECB Money Market Statistical Reporting (MMSR) and Bank of England SMMDC reports by banks) there remain large national differences in reporting requirements, IT standards and interfaces used by reporting entities, intermediaries (e.g. Trade Repositories), and report receivers, e.g. ESAs, ECB, NCAs, and NCBs. Funds and /or their asset managers, like other market participants, report certain transactions in derivatives (EMIR), securities (MiFID/MIFIR), and securities finance transactions (SFTR) as well as under the Transparency and Market Abuse Directives already today or in the future for the purpose of assessing systemic risk directly or indirectly through different reporting mechanisms to NCAs or the European Authorities (EBA, ESMA, EIOPA) and National Central Banks or the ECB. Following issues with data quality and lack of comparability of data resulting thereof, the regulatory authorities are increasingly engaged in the standardisation of certain data (e.g. Identifiers (ISIN, LEI)) and reporting messages. This regulatory 'nudging' towards the use of ISO based standards may also help the industry to standardise other flows of other reference and market data the exchange of which is currently often inhibited by proprietary standards and licence requirements.

BVI

## c) leverage

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

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

**Question 79.1 Please explain your answer to question 79 in terms of the costs, benefits and disadvantages:**

In general, the leverage calculation methods (gross and commitment) as provided in AIFMR work very well and are appropriate in practice. In this context, we do not agree with the ESRB statement in its letter on considerations regarding the AIFMD that NCAs cannot readily reconstruct a fund manager's computation of leverage based on the current reporting of the leverage figures. Precisely because there are concrete specifications for the calculation of leverage based on the two methods, comparison of these figures across funds and data quality assessments should be possible and give an exact overview of the degree of leverage of an AIF. However, we would like to propose the following improvements to the AIFMR:

- **Commitment Method**: Coming from former developments of the UCITS commitment approach in the CESR's guidelines on risk measurement and the calculation of global exposure and counterparty risks for UCITS (Ref.: CESR/10-788), Article 8 AIFMR only covers the use of derivatives and does not consider how to deal with cash (or cash equivalents), cash loans, reinvestments of cash loans or positions of securities financing transactions. We therefore propose to clarify that these positions should be considered in the same way as required under the gross method (cf. Article 7 AIFMR). Otherwise the outcome of the commitment leverage value of an AIF (such as a property fund) which does not use derivatives or securities financing transactions will vary from the gross method. As we understand the two methods, they only vary in applying netting and hedging arrangements for derivatives and must lead to the same outcome for the other recognition of exposures.

- **Gross method:** The calculation of gross leverage involves that derivative instruments should be converted into the market value of the equivalent underlying position. We share the approach of IOSCO in its report on Leverage to set forth a non-exhaustive table of definitions of the method according to which a fund might determine the notional amount for certain simple or standard derivatives. However, the examples provided by IOSCO are not equal to the gross method of the AIFMR (cf. Annex II of the Delegated Regulation (EU)231/2013) and of the CESR Guidelines for UCITS. The European legislator correctly concluded that options should be delta adjusted because price movements of the underlying are not 1:1 correlated with the price movement of the options. Including the notional value of the option would hence not be the 'equivalent position'. This effect must be maintained under the AIFMD by avoiding overstating the leverage.

- **Conversion methods for derivatives instruments:** In addition to the conversion methodologies listed in Annex II of the Delegated Regulation (EU) 231/2013 (as well as under the CESR Guidelines for UCITS), we have the following suggestions regarding certain conversion formulas:

    - **For swaps:** The definitions used in Appendix A of the IOSCO report on leverage and in Annex II of the Delegated Regulation (EU) 231/2013 as well as in CESR Guidelines for UCITS vary. There should be a consistent approach and understanding.

    - **For interest rate futures**: Annex II (1)a) of the AIFMR (Interest rate future: Number of contracts * notional contract size) should be replaced by the wording "Interest rate future: Number of contracts * ***contract amount***".

    - **For bond futures:** According to the formula explained in Annex II (1)(a)(first indent) of the AIFMR ('number of contracts * notional contract size * market price of the cheapest-to-deliver reference bond'), it is not easy to identify the 'market price of the cheapest-to-deliver reference bond' because such bond could be subject to variation. Therefore, we would like to propose to take the future price into account that would simplify the conversion formula for futures as follows: 'Bond future: number of contracts * notional contract size * ***future price'***. Moreover, the formula presented by IOSCO in its report on leverage leads to a severe underestimation of the gross method. For example, Euro bond futures (fixed income futures on long-term debt instruments issued by the Federal Republic of Germany) are priced currently about 165, whereas the CTD is quoted at 104. Therefore, the gross method would be too low by a factor of 0.63.

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

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

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

The main difference between AIFs and UCITS is the opportunity to use methods by which the fund manager could increase the exposure of a fund. In principle, the AIF manager can use methods in an unlimited manner, where allowed under national law, such as borrowing of cash or securities, or leverage embedded in derivative positions or by any other means. In contrast, the manager of a UCITS is limited in using such methods, in particular:

- A UCITS may borrow cash only on a temporary basis and with a limit of 10 percent of the value of the fund.
- In each case, the UCITS manager is obliged to ensure that the UCITS' global exposure does not exceed the total net value of its portfolio (the so called '200 percent threshold').
- EU Member States may authorise UCITS to employ techniques and instruments relating to transferable securities and money market instruments (such as repo transactions) under strict conditions and within the limits which they lay down in the fund rules provided that such techniques and instruments are used for purposes of efficient portfolio management. UCITS cannot however act as borrowers of securities.

Even if the methods by which the fund manager may increase the fund's exposure differ for AIF and UCITS, the calculation of leverage should be based, in principle, on the same method. **Therefore, we propose the following approach:**

- The calculation of the leverage of UCITS using the **commitment approach** should be aligned with the AIFMD commitment approach under Article 8 of the AIFMR (please also see our suggestions for improvements under Q79.1).
- UCITS using the **value at risk approach** are required by CESR's guidelines to disclose the expected level of (gross) leverage (cf. Box 24(2) of the CESR guidelines). That gross leverage calculation should be based on the AIFMD calculation method under Article 7 of the AIFMR.
- It is of utmost importance to clarify that the value at risk is just a risk measurement and not a leverage figure. Therefore, the calculation of the value at risk established under the UCITS Directive (and the CESR guidelines) should be maintained and – if necessary – reviewed. Improvements could be suggested, for instance, for the calculation of the absolute VaR where high market volatility in stressed situations have lead to inconsistencies or limit breaches.

**Question 80.1 Please explain your answer to question 80:**

Leverage in investment funds means methods such as the use of derivatives, borrowing of cash or securities which might, but not necessarily have to increase the ratio of the fund's market exposure over its net asset value. There is a wide variety of funds and fund strategies in different jurisdictions and market structures which allow for different methods to increase leverage. In this respect, the leverage is not a risk as such. According to the AIFMD, managers of AIFs are required to set leverage limits for the funds they manage, to monitor the leverage and to disclose information regarding the overall level of leverage employed vis-à-vis investors and competent authorities. UCITS are legally restricted in using leverage methods such as use of derivatives and borrowing agreements. In addition, national legal requirements might limit the use of leverage in certain funds. Even if the acceptable methods by which the fund manager may increase the fund's exposure differ among investment funds in order to protect investors, the calculation of the market exposure should be based, in principle, on the same method for both UCITS and AIFs. Such an approach would ensure a sustainable and meaningful understanding and monitoring of leverage for financial stability purposes. However, it is important to highlight that the use of leverage by investment funds is limited within the European market, with the notable exception of hedge funds. According to a survey among our membership, the exposure of nearly all German AIFs relating to borrowing arrangements and derivative instruments (with hedging and netting) does not exceed leverage on a substantial basis (three times the fund's net asset value). Moreover, all German AIFs observe the UCITS limit on global exposure to derivative instruments.

**Question 81. What is your assessment of the two-step approach as suggested by International Organisation of Securities Commissions ('IOSCO') in the Framework Assessing Leverage in Investment Funds published in December 2019 to collect data on the asset by asset class to assess leverage in AIFs?**
**Please provide it, presenting costs, benefits and disadvantages of implementing the IOSCO approach:**

We welcome the proposed two-step approach of IOSCO: Identifying and analysing funds that may pose a risk to financial stability as a first step and further analysis of this subset of funds as a second step. This approach appropriately considers that not all investment funds could pose financial stability risks. This applies for small-sized funds. In this context, it is essential to highlight that because of the financial crisis, very strict legal requirements in the asset management sector have already been implemented in the European Union. These requirements are intended to enhance the prudential resilience of asset managers and their funds under management, thereby materially excluding or reducing the possibility of any of them posing risks to financial stability, as well as protecting investors of funds.

Moreover, we do not see that the leverage methods and the AIFMD reporting do not differentiate between exposures to different asset classes. The aim of the metric is to identify funds which might pose a risk to financial stability as a first step on a macro level. The degree of leverage is not a risk figure; it is merely a technique that allows to assess whether there could be a risk. Therefore, the gross leverage method is designed to calculate a simple metric that allows competent authorities to analyse whether there is a need to look through to the potential risks of the individual fund. Analysing the risks of certain asset classes could be an outcome of step 2, where appropriate and required. Therefore, we do not see the need to compare the leverage amount by types of funds or asset classes in step 1.

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

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

**Question 82.1 Please explain your answer to question 82, presenting the costs, benefits and disadvantages of your chosen approach?**

We refer to our answer to Q80. Even if the acceptable methods by which the fund manager may increase the fund's exposure differ among investment funds in order to protect investors, the calculation of the market exposure should be based, in principle, on the same method for both UCITS and AIFs. Such an approach would ensure a sustainable and meaningful understanding and monitoring of leverage for financial stability purposes.

**Question 83. What additional measures may be required given the reported increase in CLO and leveraged loans in the financial system and the risks those may present to macro-prudential stability?**
**Please provide your suggestion(s) including information, where available, on the costs and benefits, advantages and disadvantages of the proposed measures:**

We do not see the need for additional measures to cover special risks based on investments in CLOs or leveraged loans. In its latest annual statistical report 2020 on EU AIFs, ESMA concludes that AIFs' exposures to leveraged loans and CLOs have increased, but exposures remain limited and most AIFs investing in leveraged loans and CLOs make limited use of leverage and do not face significant liquidity mismatch. We refer to our answer to Q66.1

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

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

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

The already implemented AIFMD reporting is designed to provide adequate findings on possible systemic risks of AIF within the EU. Therefore, as a first step, ESMA should be called upon to analyse the already reported data of AIFs. Only in the case that there is a need for more action, macroprudential leverage limits could be an instrument to overview systemic risks. However, we disagree with the general ESRB statement that the instruments given in Article 25 of the AIFMD are not used by NCAs and ESMA. This does not apply for Germany where the use of leverage is limited by legal requirements (such as legal limits for the use of derivatives and borrowing agreements). The exposure of nearly all German AIFs relating to borrowing arrangements and derivative instruments (with hedging and netting) does not exceed leverage on a substantial basis (three times the fund's net asset value). Moreover, all German open-ended AIFs observe the UCITS limit on global exposure to derivative instruments. The studies of the ECB and DNB, OeNB and the UK cited by the ESRB in Annex II (pages 46-48) do not represent the German AIF market and its inherent risks. Therefore, it must be avoided to set new leverage limits or risk indicators for reasons of macroprudential supervision but with an effect that NCAs would be required to set these limits/indicators in their own supervision for individual funds.

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

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

**Question 85.1 Please explain your answer to question 85?**

In principle, we are in favour of harmonisation of rules applying for special types of investment funds (such as UCITS, MMFs, EuVECAs etc.) and their managers. However, we strongly disagree with using the AIFMD to provide rules for special types of AIF. The AIFMD should remain limited to a mere manager regulation and not be extended as a product regulation. Therefore, if there is a need for a harmonisation of a product regulation for loan originating AIF (which we could support in general), this should be made in a separate Regulation according to the model of already existing Regulations for investment fund types. In this context, we suggest starting with a uniform European standard for a loan originating AIF before we talk about new uniform reporting standards.

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

- ☐ limit interconnectedness with other financial intermediaries
- ☐ impose leverage limits
- ☐ impose additional organisational requirements for AIFMs
- ☐ allow only closed-ended AIFs to originate loans
- ☐ provide for certain safeguards to borrowers
- ☐ permit marketing only to professional investors
- ☐ impose diversification requirements
- ☐ impose concentration requirements
- ☐ other

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

./.

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

./.

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

./.

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

./.

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

./.

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

./.

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

./.

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

./.

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

In its latest annual statistical report 2020 on EU AIFs, ESMA concludes that AIFs' exposures to leveraged loans and CLOs have increased, but exposures remain limited and most AIFs investing in leveraged loans and CLOs make limited use of leverage and do not face significant liquidity mismatch. We therefore refer to our answers to Q66.1 and Q70.1 where we suggest adding a new AIF strategy for loan originating AIFs in the AIFMR supervisory template.

## V. INVESTING IN PRIVATE COMPANIES

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

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

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

**Question 86.1 Please explain your answer to question 86, providing concrete examples and data, where available:**

./.

**Question 87. Are the AIFMD rules provided in Section 2 of Chapter 5 of the AIFMD whereby the AIFM of an AIF, which acquires control over a non-listed company, is required to provide the**

**NCA of its home Member State with information on the financing of the acquisition necessary, adequate and proportionate?**

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

**Question 87.1 Please explain your answer to question 87, providing concrete examples and data, where available:**

./.

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

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

**Question 88.1 Please explain your answer to question 88, providing concrete examples and data, where available:**

./.

**Question 89. How can the AIFMD provisions against asset stripping in the case of an acquired control over a non-listed company or an issuer be improved?**
**Please provide your suggestion(s) including information, where available, on the costs and benefits, advantages and disadvantages of the proposed measures:**

./.

## VI. SUSTAINABILITY/ESG

*Integrating sustainability factors in the portfolio selection and management has a double materiality perspective, in line with the non-financial reporting directive (2014/95) and the European Commission's 2017 non-binding guidelines on non-financial. Financial materiality refers in a broad sense to the financial value and performance of an investment. In this context, sustainability risks refer to potential environmental, social or governance events or conditions that if occurring could cause a negative material impact on the value of the investment. For example, physical risks from the consequences of climate change may concern a single investment/company, e.g. due to potential supply chain disruptions or scarcity of raw materials, and may concern welfare losses for the economy as a whole. Non-financial materiality, also known as environmental and social materiality, refers to the impacts of an investment/corporate activity on the environment and society (i.e. negative externalities). Still, there is also a financial*

*dimension to non-financial materiality. Notably, so-called transition risks arise from an insufficient consideration for environmental materiality, for instance due to potential policy changes for mitigating climate change (e.g. to regulatory frameworks, incentive structures, carbon pricing), shifts of supply chains and end-demand, as well as stakeholder actions for mitigating climate change.*
*The disclosure regulation 2019/2088 requires a significant part of the financial services market, including AIFMs, to integrate in their processes, including in their due diligence processes, assessment of all relevant sustainability risks that might have a material negative impact on the financial return of an investment or advice. However, at the moment AIFMs are not required to integrate the quantification of sustainability risks. Regulatory technical standards under the disclosure regulation 2019/2088 will specify principal adverse impacts to be quantified or described. This section seeks to gather input permitting better understand and assess the appropriateness of the AIFMD rules in assessing the sustainability risks.*

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

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

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

The practice of assessing sustainability risks by fund managers and supervisors is still at early stages. In fact, there are several challenges for the integration of sustainability risks in the internal processes of AIFM. Those relate in particular to:

- **The level of uncertainty:** Depending on the economic policies and regulatory interventions to contain e.g. deterioration of environmental conditions, and the impact of such measures, a range of scenarios with very different economic and social implications is conceivable. AIFM need to monitor those developments around the globe, or at least with a view to an international dimension corresponding with their investment universe.

- **Insufficient data coverage:** The scarcity of relevant, comparable and reliable data represents a key challenge for identifying and measuring ESG risks. It is meanwhile universally acknowledged that the necessary data cannot currently be obtained from issuers. The valid disclosure requirements under NFDR do not require publication of specific indicators or other key figures and allow for the use of different standards and metrics. Therefore, the disclosures provided by companies so far are not comparable, in many cases lack essential information and overall cannot be used as the basis for assessing sustainability risks and opportunities. The availability of data is even worse with regard to non-EU companies that are not bound by regulatory reporting requirements. This means that in the current situation fund managers need to purchase ESG data, often of inferior quality, from commercial data vendors.

- **Methodological constraints:** But even where data, e.g. relating to carbon emissions, are available, it remains a challenge to understand the potential impacts of ESG factors on the performance of financial assets. This is due to methodological constrains since most risk management models are based on the use of historical data (i.e. historical experience) to estimate current or future risks. Another difficulty is the time-horizon mismatch. Especially the environmental factors often develop their full impact over decades and thus, are difficult to grasp by "traditional" risk management tools.

These challenges have been fully acknowledged by the EBA in its discussion paper on management and supervision of ESG risks for credit institutions and investment firms that is currently under consultation (EBA/DP/2020/03). **In view of these difficulties that will certainly persist in the next couple of years, we do not deem it feasible to require quantitative disclosures of sustainability risks from AIFM. While methodologies evolve, and until the availability of non-financial information has improved, AIFMs should always have the option to provide qualitative disclosures to investors.**

In any case, a discussion about the quantification of sustainability risk disclosure should pertain to all financial market participants and be led in relation to the SFDR framework. In order to provide added value for investors, disclosure of quantitative information on sustainability risk must be based on easily available, comparable and reliable data from companies and at least a common set of methodological principles.

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

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

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

We assume that the Commission aims at clarifying as to whether any AIFM, i.e. regardless of its size, should be required to consider principal adverse impacts in its investment process. Such requirement would go beyond the provisions of Art. 4 SFDR that apply not only to AIFM, but to all financial market participants offering financial products. There is no identifiable cause for tightening up standards for integration of principal adverse impacts only for AIFM or for initiating such discussion before the effects of the SFDR rules to be still implemented by financial market participants could have been assessed.

Moreover, **integration of principal adverse impacts (PAIs) and other non-financial considerations in the investment process should always depend on the investment objectives and preferences of fund investors**. This has been acknowledged under Art. 7 (1)(a) SFDR by requiring specific disclosures on "whether and if so, how" PAIs are being considered at the product level. Extending this obligation to any AIFM and potentially any product independently of its investment features may cause the manager to act against its fiduciary duties towards the investors. It would also narrow down the investment opportunities and confine the AIFM's ability to respond to the investment needs and preferences of especially professional investors. It should be clear that professional investors might then turn to third-country providers who would be able to offer them tailor-made investment solutions without being constrained by PAI considerations. This outcome would be clearly detrimental to the competitive position of the EU asset management industry. It would also go against the principles of the EU Action Plan that is about reorienting capital flows and mobilizing private capital for sustainable projects, not about forcing investors into sustainable investments.

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

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

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

**Question 92.1 Please explain your answer to question 92:**

As explained in our reply to Q90 above, we consider it far too premature to require quantification of sustainability risk. In view of the difficulties relating to the level of uncertainty in terms of implications of environmental or social factors for the financial performance and the lack of reliable and comparable data, it is not feasible to require quantitative disclosures of sustainability risks from AIFM. While methodologies evolve, and until the availability of non-financial information has improved, AIFMs should always have the option to provide qualitative disclosures to investors.

More importantly, however, **there is a clear conceptual difference between sustainability risk and PAIs**. While sustainability risk is defined under Art. 2 (22) SFDR as a subtype of financial risks, i.e. the risk of actual or potential material negative impact on the value of the investment resulting from an environmental, social or governance event, principal adverse impacts shall capture negative implications of investment decisions on especially environmental, social and employee matters (cf. recital 20, last sentence, of SFDR). In our view, these two risk perspectives – internal and external portfolio risk – are very much aligned with the double materiality concept relevant to the non-financial reporting by companies.

Moreover, it is clear that the PAIs as external risks arising from the investment decisions in a portfolio for sustainability issues may in some cases also become financially material. For instance, an investment in a company from an GHG-intense manufacturing sector has an adverse impact in terms of GHG emissions in the first place. This adverse impact could also materialize as a risk for the financial performance in case of introduction of carbon-pricing mechanisms that would penalize highly emitting activities. In such case, the adverse impact of GHG emissions would become relevant for the assessment of sustainability risk in line with the SFDR definition referred to above.

Consequently, PAIs and sustainability risks should be treated as two overlapping circles, but kept conceptually separate. Consideration of PAIs in case they become financially relevant is already ensured by the sustainability risk definition under SFDR.

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

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

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

**Question 93.1 Please explain your answer to question 93:**

In our view, it is absolutely essential to acknowledge that AIFM and asset managers in general are being appointed as fiduciaries of their investors' interests and while operating in a regulated environment, are accountable for fulfilling their contractual obligations based on their investors' preferences and needs. This means that while investors become increasingly cognizant of ESG considerations and the number of investors interested in sustainable investment strategies is growing, **AIFMs cannot, and should not, be required to take into account sustainability factors beyond those requested by investors**.
The Commission should be aware that a **mandatory consideration of PAIs regardless of the needs and preferences of investors would significantly change the very nature of asset managem**ent. AIFM would be inevitably exposed to conflicting duties, i.e. the fiduciary duty to act in the best interest of their investors and to generate financial returns in line with the investment contract on the one hand and the potential duty to refrain from certain investments due to the identified PAIs on the other. Based on the understanding of PAIs as external risks, this conflict cannot be properly resolved. While integration of sustainability risks is being considered as consistent with the asset manager's fiduciary duty given that it ensures long-term value creation (cf. the findings of the UNEP FI Report on fiduciary responsibility from July 2009), this argument does not apply to PAIs due to the lack of financial materiality inherent in this concept.

Such a paradigm shift in the approach to asset management would be very problematic for globally active AIFMs with operations in jurisdictions outside the EU where the sole commitment to investors' interests is being required. It would very likely create competitive disadvantages for AIFMs based in the EU. Moreover, European professional investors not interested in sustainability might turn to third-country providers who would be able to offer them investment solutions tailored to their specific preferences without being constrained by PAI considerations.

More broadly, an obligation upon AIFM to take account of sustainability-related impacts of investment decisions would place a **disproportionate responsibility upon fund managers.** Identification and mitigation of adverse impacts on the environment or on social and employee matters should be required from the originators of such impacts, i.e. companies operating in the real economy, in the first place. In this regard, we welcome the EU initiative for sustainable corporate governance that aims at defining the respective directors' duties and corporate responsibilities, but is unfortunately lagging behind the discussion about the involvement of investors. A significant role should be also assigned to the institutional asset owners, i.e. insurance companies and pension funds, that decide about investment strategies for assets underlying their obligations towards beneficiaries. AIFMs and other asset managers are clearly willing to play their role in contributing to a more sustainable economy. As fiduciaries of their investors' interests, they are however the weakest part in the value chain and should therefore not be placed at the heart of the EU policy measures for combating negative impacts.

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

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

**Question 94.1 Please explain your answer to question 94:**

In our understanding, the EU Taxonomy has been conceived as a gold standard of environmental sustainability against which investments need to be measured and reported. Under the Taxonomy Regulation, such reporting requirements apply consequently to funds with ESG characteristics in the sense of Art. 8 SFDR or with environmental objectives in the sense of Art. 9 SFDR. Such funds shall be assessed against the Taxonomy criteria for environmental sustainability given that they make explicit commitments to invest in line with certain environmental considerations. Starting from 1 January 2022, AIFM will also need to report about the alignment with the Taxonomy for any AIF that meets these criteria.

We fully support this underlying concept of the EU Taxonomy as a standard for assessing financial products in view of their environmental commitments. As a consequence of this approach, a mandatory use of the EU Taxonomy in the investment process should not be required. Indeed, a **compulsory reference to the Taxonomy criteria in terms of sustainability factors** that are considered especially as part of sustainable investment strategies **would be quite problematic** for the following reasons:

- The EU Taxonomy will provide for a common understanding of environmentally sustainable investments at the level of economic activities. However, AIFM and other fund managers usually do not invest directly in economic activities, but in companies providing such activities, alongside other business lines.

- The Taxonomy focuses on economic activities that can make significant contributions to the EU environmental objectives. Hence, it is clear that the Taxonomy will not cover all economic sectors and cannot apply as a tool for construing diversified portfolios other than those committed to investing in "green" activities. But even here, given its nascent status of development, the Taxonomy is not suitable as a basis for a systematic investment analysis.

- Moreover, due to its focus on environmental issues and the limitations outlined above, the Taxonomy cannot be used as a basis for broad ESG strategies. Such strategies are based on an evaluation of environmental, social and governance aspects in a holistic manner by considering a range of ESG indicators relevant to an investment.

- Due to their granularity that involves definitions of specific thresholds, e.g. in terms of GHG emissions, the Taxonomy criteria cannot be applied by AIFM or other market participants without the corresponding disclosures by investee companies. While such disclosures shall be provided by large issuers that fall under the scope of NFRD under Art. 8 Taxonomy Regulation, it is clear that this will only partially solve the data problem. Non-listed EU companies are currently not subject to NFDR even if they issue bonds that are traded on regulated markets. Most importantly, however, the **data gap with regard to non-EU issuers will probably remain despite the NFRD reform** planned for 2021, since those issuers are generally outside of the scope of EU regulation. In view of the fact that AIF invest globally on behalf of their investors (in German Spezialfonds focusing on equities, non-EU investments represent on average more than 50% of AuM), this poses a nearly insurmountable problem with regard to the application of the EU Taxonomy to AIF portfolios.

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

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

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

AIFM will be required to integrate sustainability risks in their internal governance and the investment process. In the market practice, this is often done in line with the UN Principles for Responsible Investment. In Germany, the UN PRI are relevant to more than 96 percent of securities funds managed by BVI members. On this basis, it can certainly be claimed that UN PRI became the market standards for sustainably managed funds.

In general, however, we would caution against anticipating consideration of specific market standards for responsible investments. The EU rules for sustainable finance are evolving very fast and are likely to replace many relevant market standards in the near future. On a more general note, the EU legislators should not require or promote implementation of market standards they are not able to influence. Lastly, when it comes to the choice of sustainability standards to be taken account of in an ESG investment strategy, the ultimate decision must remain with the investor.

## VII. MISCELLANEOUS

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

**Question 96. Should ESMA be granted additional competences and powers beyond those already granted to them under the AIFMD:**
**Please select as many answers as you like**

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

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

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

Entrusting ESMA with the authorisation and supervision of 3rd country AIFMs and AIFs would safeguard a uniform standard for the access of 3rd country firms and products to the internal market.

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

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

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

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

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

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

We are not aware of deficits regarding the powers granted to NCAs under AIFMD.

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

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

**Question 98.1 Please explain your answer to question 98, providing concrete examples:**

We are not aware of deficits regarding the supervision of intra-EU cross-border entities under AIFMD.

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

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

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

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

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

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

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

The coexistence of the UCITS and AIFM Directives, in addition to further pieces of EU legislation like EuVECA and EuSEF Regulations, has proven to be successful. During the 35 years of its existence, the UCITS framework in particular has evolved into a global brand known in virtually all regions of the world. It is unforeseeable what will happen to the perception of this brand if the legislative foundation were to be substantially altered.

We advise against an overhaul of the proven and tested regulatory framework for investment funds without any evidence of material shortcomings. In any case, if a merger were to be envisaged, we recommend extending the scope of the AIFMD to UCITS managers while leaving the product rules on UCITS as a separate piece of legislation.

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

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