

# Public consultation on the review of the alternative investment fund managers directive (AIFMD)

Fields marked with \* are mandatory.

## Introduction

The **short version** of this consultation is now available in **23 European Union official languages**.

Please use the language selector at the top of this page to choose your language for this consultation.

In the European Union, alternative investment funds (AIFs) are collective investment funds that are not covered by [Directive 2009/65/EC on undertakings for collective investment in transferable securities \(UCITS\)](#). AIFs vary in terms of their investment strategies, markets, asset types and legal forms. Alternative investment fund managers (AIFMs) manage the AIFs, which are often established for saving or income generating purposes while supporting broader economic activity, and include venture capital and private equity funds, real estate funds, hedge funds and fund of funds. The activities of AIFMs are governed by the [alternative investment fund managers Directive 2011/61/EU \(AIFMD\)](#).

The AIFMD aims to facilitate greater AIF market integration, improve coherence in the actions taken by supervisory authorities to address potential risks posed to the financial system while ensuring appropriate levels of investor protection. To this end, an AIFM is required to obtain licence from its home supervisor and adhere to the operational requirements laid down in the AIFMD and its supplementing [AIFMR](#), including taking measures to manage risks and to ensure the requisite transparency regarding the activities of their managed AIFs.

On 10 June 2020, the European Commission submitted its [report to the European Parliament and the Council on the scope and the application of the AIFMD](#). The report concludes that while the AIFMD has contributed to the creation of the EU AIF market, provided a high-level protection to investors and facilitated monitoring of risks to financial stability, there are a number of areas where the legal framework could be improved. Given the European Commission's ongoing efforts to develop the capital markets union (CMU), this consultation seeks the views of stakeholders on how to achieve a more effective and efficient functioning of the EU AIF market as part of the overall financial system.

## Structure of the public consultation

First, this public consultation focuses on improving the utility of the AIFM passport and the overall competitiveness of the EU AIF industry. The analysed data indicates that the appropriate and balanced regulation of financial markets

benefits investors as well as the overall economy. The questions in the section on **authorisation/scope** seek views from stakeholders on the scope of the AIFM licence, its potential extension to smaller AIFMs and level playing field concerns in relation to the regulation of other financial intermediaries, like MiFID firms, credit institutions or UCITS managers that provide similar services.

The **investor protection** section raises questions on investor access that take into account the differences between retail and professional investors. The same consideration is raised in the questions on a potential EU law pre-calibration of an AIF that would be suitable for marketing to retail. Adequacy of disclosure requirements are covered including the specific requirements that could be added, changed or removed from the current rulebook. Other questions address the alleged ambiguities in the depositary regime and the lack of the depositary passport. Stakeholders are also invited to comment on potential improvements to the AIFMD rules on valuation.

The issue of a level playing field is also covered in the section dedicated to **international issues**. Views are sought on how best to achieve the equitable treatment of non-EU AIFs and securing a wider choice of AIFs for investors while at the same time ensuring that EU AIFMs are not exposed to unfair competition or are otherwise disadvantaged.

The section dedicated to **financial stability** seeks stakeholder views on how to ensure NCAs and AIFMs have the tools necessary to effectively mitigate and deal with systemic risks. Specific input regarding improvements to the supervisory reporting template provided in the AIFMR is requested with a particular focus on the increased activities of AIFs in the credit market. The consultation suggests the potential for more centralised supervisory reporting and improved information sharing among the relevant supervisors. A revised supervisory setup and cooperation measures among the competent authorities are another focus of this consultation.

The rules on **investment in private companies** are examined with a view to potential improvements and comments are sought on the effectiveness of the current rules and their potential enhancement.

The **sustainability** related section seeks input on how the alternative investment sector can participate effectively in the areas of responsible investing and the preservation of our planet.

Questions are posed as regards the treatment of **UCITS**, particularly where a more coherent approach may be warranted. This includes the question of a single licence for AIF and UCITS managers, harmonised metrics for leverage calculation and reporting on the use of liquidity management tools.

Finally, stakeholders are welcome to raise other AIFMD related issues and submit proposals on how to otherwise improve the AIFMD legal framework with regard to any issues not directly addressed in the consultation.

Given the broad nature of the questions, well-substantiated, evidence/data backed answers and proposals will be particularly instructive. Clearly linking responses to the contributions already received in the [public consultation reviewing MiFID II](#), informing digital strategy of the EU or any other relevant consultations would be particularly useful.

This public consultation aims to gather views from all interested parties, in particular collective investment fund managers and investment firms, AIF distributors, industry representatives, investors and investor protection associations. The questions 1, 2 and 3 as well as the section Investor protection, except for part (b) thereof, are available in all the EU official languages to gather citizens' views on these matters.

The consultation will be open for fourteen weeks.

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**Please note:** In order to ensure a fair and transparent consultation process **only responses received through our online questionnaire will be taken into account** and included in the report summarising the responses. Should you have a problem completing this questionnaire or if you require particular assistance, please contact [fisma-aifmd-public-consultation@ec.europa.eu](mailto:fisma-aifmd-public-consultation@ec.europa.eu).

More information on

- [this consultation](#)
- [the consultation document](#)
- [the consultation strategy](#)
- [the acronyms used in this consultation](#)
- [investment funds](#)
- [the protection of personal data regime for this consultation](#)

## About you

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### \* Language of my contribution

- Bulgarian
- Croatian
- Czech
- Danish
- Dutch
- English
- Estonian
- Finnish
- French
- Gaelic
- German
- Greek
- Hungarian
- Italian
- Latvian
- Lithuanian
- Maltese
- Polish
- Portuguese
- Romanian
- Slovak
- Slovenian

- Spanish
- Swedish

\* I am giving my contribution as

- Academic/research institution
- Business association
- Company/business organisation
- Consumer organisation
- EU citizen
- Environmental organisation
- Non-EU citizen
- Non-governmental organisation (NGO)
- Public authority
- Trade union
- Other

\* First name

Trine

\* Surname

Khalborg

\* Email (this won't be published)

tk@fida.dk

\* Organisation name

*255 character(s) maximum*

Finance Denmark

\* Organisation size

- Micro (1 to 9 employees)
- Small (10 to 49 employees)
- Medium (50 to 249 employees)
- Large (250 or more)

Transparency register number

255 character(s) maximum

Check if your organisation is on the [transparency register](#). It's a voluntary database for organisations seeking to influence EU decision-making.

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## \* Country of origin

Please add your country of origin, or that of your organisation.

- |   |  |  |  |
|---|--|--|--|
| <input type="radio"/> Afghanistan         | <input type="radio"/> Djibouti           | <input type="radio"/> Libya            | <input type="radio"/> Saint Martin                     |
| <input type="radio"/> Åland Islands       | <input type="radio"/> Dominica           | <input type="radio"/> Liechtenstein    | <input type="radio"/> Saint Pierre and Miquelon        |
| <input type="radio"/> Albania             | <input type="radio"/> Dominican Republic | <input type="radio"/> Lithuania        | <input type="radio"/> Saint Vincent and the Grenadines |
| <input type="radio"/> Algeria             | <input type="radio"/> Ecuador            | <input type="radio"/> Luxembourg       | <input type="radio"/> Samoa                            |
| <input type="radio"/> American Samoa      | <input type="radio"/> Egypt              | <input type="radio"/> Macau            | <input type="radio"/> San Marino                       |
| <input type="radio"/> Andorra             | <input type="radio"/> El Salvador        | <input type="radio"/> Madagascar       | <input type="radio"/> São Tomé and Príncipe            |
| <input type="radio"/> Angola              | <input type="radio"/> Equatorial Guinea  | <input type="radio"/> Malawi           | <input type="radio"/> Saudi Arabia                     |
| <input type="radio"/> Anguilla            | <input type="radio"/> Eritrea            | <input type="radio"/> Malaysia         | <input type="radio"/> Senegal                          |
| <input type="radio"/> Antarctica          | <input type="radio"/> Estonia            | <input type="radio"/> Maldives         | <input type="radio"/> Serbia                           |
| <input type="radio"/> Antigua and Barbuda | <input type="radio"/> Eswatini           | <input type="radio"/> Mali             | <input type="radio"/> Seychelles                       |
| <input type="radio"/> Argentina           | <input type="radio"/> Ethiopia           | <input type="radio"/> Malta            | <input type="radio"/> Sierra Leone                     |
| <input type="radio"/> Armenia             | <input type="radio"/> Falkland Islands   | <input type="radio"/> Marshall Islands | <input type="radio"/> Singapore                        |
| <input type="radio"/> Aruba               | <input type="radio"/> Faroe Islands      | <input type="radio"/> Martinique       | <input type="radio"/> Sint Maarten                     |
| <input type="radio"/> Australia           | <input type="radio"/> Fiji               | <input type="radio"/> Mauritania       | <input type="radio"/> Slovakia                         |
| <input type="radio"/> Austria             | <input type="radio"/> Finland            | <input type="radio"/> Mauritius        | <input type="radio"/> Slovenia                         |
| <input type="radio"/> Azerbaijan          | <input type="radio"/> France             | <input type="radio"/> Mayotte          | <input type="radio"/> Solomon Islands                  |
| <input type="radio"/> Bahamas             | <input type="radio"/> French Guiana      | <input type="radio"/> Mexico           | <input type="radio"/> Somalia                          |
| <input type="radio"/> Bahrain             | <input type="radio"/> French Polynesia   | <input type="radio"/> Micronesia       | <input type="radio"/> South Africa                     |

- Bangladesh
- Barbados
- Belarus
- Belgium
- Belize
- Benin
- Bermuda
- Bhutan
- Bolivia
- Bonaire Saint Eustatius and Saba
- Bosnia and Herzegovina
- Botswana
- Bouvet Island
- Brazil
- British Indian Ocean Territory
- British Virgin Islands
- Brunei
- Bulgaria
- Burkina Faso
- Burundi
- Cambodia
- French Southern and Antarctic Lands
- Gabon
- Georgia
- Germany
- Ghana
- Gibraltar
- Greece
- Greenland
- Grenada
- Guadeloupe
- Guam
- Guatemala
- Guernsey
- Guinea
- Guinea-Bissau
- Guyana
- Haiti
- Heard Island and McDonald Islands
- Honduras
- Hong Kong
- Hungary
- Moldova
- Monaco
- Mongolia
- Montenegro
- Montserrat
- Morocco
- Mozambique
- Myanmar /Burma
- Namibia
- Nauru
- Nepal
- Netherlands
- New Caledonia
- New Zealand
- Nicaragua
- Niger
- Nigeria
- Niue
- Norfolk Island
- Northern Mariana Islands
- North Korea
- South Georgia and the South Sandwich Islands
- South Korea
- South Sudan
- Spain
- Sri Lanka
- Sudan
- Suriname
- Svalbard and Jan Mayen
- Sweden
- Switzerland
- Syria
- Taiwan
- Tajikistan
- Tanzania
- Thailand
- The Gambia
- Timor-Leste
- Togo
- Tokelau
- Tonga
- Trinidad and Tobago

- Cameroon
- Canada
- Cape Verde
- Cayman Islands
- Central African Republic
- Chad
- Chile
- China
- Christmas Island
- Clipperton
- Cocos (Keeling) Islands
- Colombia
- Comoros
- Congo
- Cook Islands
- Costa Rica
- Côte d'Ivoire
- Croatia
- Cuba
- Curaçao
- Cyprus
- Iceland
- India
- Indonesia
- Iran
- Iraq
- Ireland
- Isle of Man
- Israel
- Italy
- Jamaica
- Japan
- Jersey
- Jordan
- Kazakhstan
- Kenya
- Kiribati
- Kosovo
- Kuwait
- Kyrgyzstan
- Laos
- Latvia
- North Macedonia
- Norway
- Oman
- Pakistan
- Palau
- Palestine
- Panama
- Papua New Guinea
- Paraguay
- Peru
- Philippines
- Pitcairn Islands
- Poland
- Portugal
- Puerto Rico
- Qatar
- Réunion
- Romania
- Russia
- Rwanda
- Saint Barthélemy
- Tunisia
- Turkey
- Turkmenistan
- Turks and Caicos Islands
- Tuvalu
- Uganda
- Ukraine
- United Arab Emirates
- United Kingdom
- United States
- United States Minor Outlying Islands
- Uruguay
- US Virgin Islands
- Uzbekistan
- Vanuatu
- Vatican City
- Venezuela
- Vietnam
- Wallis and Futuna
- Western Sahara
- Yemen

- Czechia
- Lebanon
- Saint Helena  
Ascension and  
Tristan da  
Cunha
- Zambia
- Democratic  
Republic of the  
Congo
- Lesotho
- Saint Kitts and  
Nevis
- Zimbabwe
- Denmark
- Liberia
- Saint Lucia

\* Field of activity or sector (if applicable):

*at least 1 choice(s)*

- Accounting
- Auditing
- Banking
- Credit rating agencies
- Insurance
- Pension provision
- Investment management (e.g. hedge funds, private equity funds, venture capital funds, money market funds, securities)
- Market infrastructure operation (e.g. CCPs, CSDs, Stock exchanges)
- Social entrepreneurship
- Other
- Not applicable

\* Please specify your activity field(s) or sector(s):

Finance Denmark is a business association for banks, mortgage institutions, asset management, securities trading and investment funds in Denmark.

\* Publication privacy settings

The Commission will publish the responses to this public consultation. You can choose whether you would like your details to be made public or to remain anonymous.

**Anonymous**

Only your type of respondent, country of origin and contribution will be published. All other personal details (name, organisation name and size, transparency register number) will not be published.



**Public**

Your personal details (name, organisation name and size, transparency register number, country of origin) will be published with your contribution.

I agree with the [personal data protection provisions](#)

## Choose your questionnaire

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Please indicate whether you wish to respond to the citizens' version (3 general questions and 14 investor protection questions) or full version (102 questions) of the questionnaire.

The short version only covers the general aspects of the AIFMD regime and investor protection matters under the AIFMD.

The full version contains 85 additional questions addressing more technical features of the AIFMD regulatory regime.

Note that only the questions that are part of the short version are also available in all EU languages.

- I want to respond only to the **short version of the questionnaire** (3 + 14 questions)
- I want to respond to the **full version of the questionnaire** (102 questions)

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

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

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

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

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

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

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

*5000 character(s) maximum*

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

Different national requirements in regards of certain fund types are adding restrictions to the market, e.g. requirements for investors to invest in SICAV SIF from Luxembourg and ICAV from Ireland

**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	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
enabling monitoring risks to the financial stability	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
providing high level investor protection	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

**Other statements:**

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

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

*5000 character(s) maximum*

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

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

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

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

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

**Question 5.1 Please explain your answer to question 5:**

*5000 character(s) maximum*

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

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

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

**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 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 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 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:**

*5000 character(s) maximum*

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

**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 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:**

*5000 character(s) maximum*

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

**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:**

*5000 character(s) maximum*

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

**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:**

*5000 character(s) maximum*



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

**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:**

*5000 character(s) maximum*

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

**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 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:**

*5000 character(s) maximum*

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

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

*5000 character(s) maximum*

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

**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:**

*5000 character(s) maximum*

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

**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:**

*5000 character(s) maximum*

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

Uniform rules for retail investors and no or a few national rules. Focus on level playing field.

## II. Investor protection

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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 depositary services in smaller markets.

### **a) Investor classification and investor access**

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

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

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

*5000 character(s) maximum*

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

The AIFMD should cross-refer to the client categories as defined in MiFID II. If AIFMD was to have its own client categories it would lead to a more complex financial legislation as investment firms, managers and others would have to work with two different set of definitions depending on the directive. It would be an unnecessary burden to develop two different set of client categories.

Instead, the definitions in MiFID II should be adjusted. It should be easier to opt up to be a professional investor if certain criteria on knowledge and experience are fulfilled. Some investors, who are categorized as retail investors, do not need, or want the information which they by law are required to receive.

**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:**

*5000 character(s) maximum*

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

One way to improve the AIFM access to retail investors would be to adjust the definition of complex financial instruments in MiFID II. The definition should be adjusted in a way that allows a differentiated view of AIFs so that AIFs which are in fact non-complex financial instruments can be viewed as such and treated in such a way.

According to the definition in MiFID II all AIFs are complex financial instruments per definition.

Being a complex financial instrument means e.g., that AIFs cannot be sold execution only to retail investors. MiFID I introduced the fundamental principle that financial instruments can have such a complexity that it might be difficult for retail investors to fully understand the underlying investments. Therefore, it is necessary that retail investors receive financial advice to make the right investment decision.

However, the AIF universe consists of a large range of different financial instruments from complex and leveraged hedge funds to non-complex UCITS-like funds. To view all AIFs in the same way, reflect a simplistic view on AIFs.

As consequence of the current definition retail investors are unnecessarily cut off from being able to invest in a number AIFs which in fact should not be considered as complex financial instruments.

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

*5000 character(s) maximum*

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

It would be better to introduce different requirements that different types of AIF's should fulfil to obtain a passport.

**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.**

*5000 character(s) maximum*

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

**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:**

*5000 character(s) maximum*

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

**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:**

*5000 character(s) maximum*

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

**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

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

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

**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 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:**

*5000 character(s) maximum*

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

**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:**

*5000 character(s) maximum*

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



**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:**

*5000 character(s) maximum*

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

**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:**

*5000 character(s) maximum*

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

---

**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:**

*5000 character(s) maximum*

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

**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:**

*5000 character(s) maximum*

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

### 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 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:**

*5000 character(s) maximum*

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

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

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

**d) valuation rules**

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

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

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

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

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

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

**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:**

*5000 character(s) maximum*

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

**Question 45. In your experience, which specific aspect(s) trigger liability of a v a l u e r ?**

**Please provide concrete examples, presenting costs linked to the described occurrence:**

*5000 character(s) maximum*

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

**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:**

*5000 character(s) maximum*

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

### III. International relations

---

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

**Question 47. Which elements of the AIFMD regulatory framework support the competitiveness of the EU AIF industry?**

**Please explain providing concrete examples and referring to data where available:**

*5000 character(s) maximum*

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

**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:**

*5000 character(s) maximum*

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

**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 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 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 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 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:**

*5000 character(s) maximum*

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

**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 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:**

*5000 character(s) maximum*

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

## IV. Financial stability

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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 Please explain your answer to question 56:**

*5000 character(s) maximum*

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

**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:**

*5000 character(s) maximum*

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

**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:**

*5000 character(s) maximum*

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

**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:**

*5000 character(s) maximum*

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

The reporting requirements are already comprehensive. Instead of adding further reporting requirements, KOM should assess whether the data that the AIFMs are providing today is useful

**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

**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 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:**

*5000 character(s) maximum*

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

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

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

**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:**

*5000 character(s) maximum*

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

**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:**

*5000 character(s) maximum*

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

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

- Yes
- No
- 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:**

*5000 character(s) maximum*

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

**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:**

*5000 character(s) maximum*

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

**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:**

*5000 character(s) maximum*

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

**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:**

*5000 character(s) maximum*

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

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

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

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

*5000 character(s) maximum*

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



**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

**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:**

*5000 character(s) maximum*

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

The reporting requirements are already comprehensive. Instead of adding further reporting requirements, KOM should assess whether the data that the AIFMs are providing today is useful.

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

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

**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 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:**

*5000 character(s) maximum*

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

**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:**

*5000 character(s) maximum*

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

**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:**

*5000 character(s) maximum*

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

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

- 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:**

*5000 character(s) maximum*

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

**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:**

*5000 character(s) maximum*

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

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

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

**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:**

*5000 character(s) maximum*

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

**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:**

*5000 character(s) maximum*

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

**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:**

*5000 character(s) maximum*

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

**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 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:**

*5000 character(s) maximum*

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

## V. Investing in private companies

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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:**

*5000 character(s) maximum*

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

**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:**

*5000 character(s) maximum*

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

**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:**

*5000 character(s) maximum*

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

**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:**

*5000 character(s) maximum*

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

## VI. Sustainability/ESG

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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:**

*5000 character(s) maximum*

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

One of the main challenges implementing the new requirements in the disclosure regulation is the lack of available and reliable sustainability data. Although we see some value in quantitative assessments of sustainability risks, such assessments are only possible and usable, if enough reliable sustainability data is available. This is not the case for the time being. For this reason, flexibility in terms of quantitative and qualitative assessments of sustainability risks is needed and should be maintained.

**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:**

*5000 character(s) maximum*

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

The disclosure regulation prescribes a comply-or-explain approach to the integration of the assessment of non-financial materiality in the investment decision process for those financial market participants with less

than 500 employees. This reflects a proportionality approach that should be maintained to avoid excessive costs for smaller AIFMs.

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

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

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

*5000 character(s) maximum*

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

The disclosure regulation defines sustainability risk as any environmental, social or governance event or condition that is financially material, i.e. has an impact on the value of the investment. Principal adverse impacts on the other hand relate to those ESG factors that are non-financial material. ESG factors that may affect the performance and risk profile of a product will be considered given the already existing integration requirements. However, ESG factors that do not, should not be included, as this would contradict the notion of what constitutes a sustainability risk.

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

*5000 character(s) maximum*

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

We believe it is premature to expand the requirement to consider sustainability-related impacts other than those required by EU law today, given that several important regulations are still to be finalized and implemented.

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

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

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

*5000 character(s) maximum*

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

The Taxonomy could play a role, when AIFMs are making investment decisions, but it should not be a requirement for every investment decision. It is also dependent on the clients sustainability preferences.

**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:**

*5000 character(s) maximum*

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

## VII. Miscellaneous

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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 AIFMs 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 AIFM and AIFs
- no, there is no need to change competences and powers of ESMA
- other

**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 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:**

*5000 character(s) maximum*

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

**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:**

*5000 character(s) maximum*

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

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

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

**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 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:**

*5000 character(s) maximum*

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



## Additional information

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Should you wish to provide additional information (e.g. a position paper, report) or raise specific points not covered by the questionnaire, you can upload your additional document(s) here:

The maximum file size is 1 MB.

You can upload several files.

Only files of the type pdf,txt,doc,docx,odt,rtf are allowed

### Useful links

[More on this consultation \(https://ec.europa.eu/info/publications/finance-consultations-2020-aifmd-review\\_en\)](https://ec.europa.eu/info/publications/finance-consultations-2020-aifmd-review_en)

[Consultation document \(https://ec.europa.eu/info/files/2020-aifmd-review-consultation-document\\_en\)](https://ec.europa.eu/info/files/2020-aifmd-review-consultation-document_en)

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[Specific privacy statement \(https://ec.europa.eu/info/law/better-regulation/specific-privacy-statement\\_en\)](https://ec.europa.eu/info/law/better-regulation/specific-privacy-statement_en)

[More on the Transparency register \(http://ec.europa.eu/transparencyregister/public/homePage.do?locale=en\)](http://ec.europa.eu/transparencyregister/public/homePage.do?locale=en)

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