

---

28 January 2021

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

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

- *Satisfied*

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

- *Somewhat agree*

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

*We are generally satisfied with AIFMD and recognise that significant progress has been made since its launch. Furthermore, we agree with the Commission report on AIFMD issued in June 2020 that the directive works fairly well even though there is still some room for improvement. As a result, we are very reluctant to support opening up AIFMD Level 1 for revision because, besides generally working well, investors globally are familiar with it and it is sufficiently robust to achieve the stated regulatory goals of protecting investors, increasing transparency, reducing systemic risk and the use of leverage, and enhancing market efficiency and integrity.*

*In addition, the requirements of AIFMD have been fully integrated into the European real estate fund management industry's structures and operations at a significant cost of time and effort and we believe that any potentially beneficial changes to Level 1 would not be outweighed by the cost required to implement them. Proposed regulatory changes would also likely cause investors to pause and take a wait-and-see approach before making further investments, just at a time when investment, especially in real assets such as real estate that make an important contribution to job creation and economic stimulation in Europe, are so badly needed to speed recovery from the Covid-related economic downturn.*

*Therefore, while a fine tuning of some the requirements of the directive would be helpful, we strongly believe measurable improvement could be achieved through Level 2 or Level 3 measures. We have pointed out a number of Level 2 and 3 changes throughout this consultation response that we believe could help.*

*We somewhat agree that AIFMD's effectiveness has to a degree been impaired by national legislation or existing market practice. However, the outcome of the ITS consultation on the cross-border marketing directive, which INREV filed comments in response to, will determine the degree to which we continue to agree that AIFMD's effectiveness is still impaired by national legislation or existing market practice.*

*There are other non-ITS-related issues in this regard, however, including the amount of time national regulators often take to process applications for passport authority and the associated fees. There are also often significant substance requirements related to cross-border management operations under*

passport authority, although these may in part be related to tax requirements that could also be harmonised.

### 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 disagree)	2 (somewhat disagree)	3 (neutral)	4 (somewhat agree)	5 (fully agree)	Don't know - No opinion - Not applicable
The scope of the AIFM license is clear and appropriate				X		
The AIFMD costs and benefits are balanced (in particular regarding the regulatory and administrative burden)			X			
The different components of the AIFMD legal framework operate well together to achieve the AIFMD objectives				X		
The AIFMD objectives correspond to the needs and problems in EU asset management and financial markets					X	

The AIFMD has provided EU AIFs and AIFMs added Value

X

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

*INREV only somewhat agree that AIFMD has been successful in achieving the objective of creating an internal market for AIFs as small AIFMs are often unable to comply with all the requirements of AIFMD and are therefore restricted in their ability to raise capital unless they can overcome significant barriers to market access. This is of course, only really an issue for those small AIFMs looking to access investors in one or more of the more restricted jurisdictions in relation to the National Private Placement Regime (NPPR). Otherwise, the small AIFM regime enables managers to benefit from a lighter touch form of regulation.*

*We only somewhat agree that AIFMD has been successful in achieving the objective of enabling monitoring risks to the financial stability because the information related to the use of leverage is not well tailored to real estate funds' structures. Regarding providing high level investor protection, we only somewhat agree because institutional investors in real estate funds are generally able to protect themselves quite well as a result of their relative leverage in negotiating terms with fund managers and the additional measures introduced by AIFMD have a marginal effect.*

*With regard to the statement that AIFMD costs and benefits are balanced (in particular regarding the regulatory and administrative burden), we are neutral given that we believe that while the benefits of AIFMD are considerable, in general the costs are still quite high. Similar to our comment in response to Question 2.1, the outcome of the ITS consultation on the cross-border marketing directive will have a significant influence on the degree to which we continue to assert that AIFMD's costs are too high in relation to its benefits.*

*Finally, we fully agree that the AIFMD objectives correspond to the needs and problems in EU asset management and financial markets especially regarding harmonised financial markets, the benefits of passporting authority and increased transparency. We also fully agree that AIFMD has provided EU AIFs and AIFMs added Value, although we note again the outcome of the ITS consultation on the cross-border marketing directive will have a significant influence on the degree to which we quantify the added value regarding cross-border marketing.*

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

- Yes

### **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:**

*INREV believes that the coverage of the AIFM licence is appropriate; however, if it could be accomplished through Level 2 or Level 3 measures, a minor improvement would be to broaden the scope of permissible MIFID II top-up services. For example, including the ability to service structures*

*that are outside the scope of AIFMD such as Joint Ventures, non-scope Club Deals, etc. as well servicing the GPs could be added. Indirect marketing could also be added to the scope of AIFMD functions to address the anomaly that an authorised AIFM cannot delegate marketing to a third-party under its AIFMD marketing passport authority.*

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

- Yes

### **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:**

*The ability of AIFMs to invest on own account creates benefits by enabling stronger alignment of fund managers' interests with the investors in the fund that is highly beneficial and should be retained. Any potential conflicts are adequately addressed contractually and industry best practice codes, while Article 18 sets out required safeguards and therefore INREV believes no new limitations need to be imposed.*

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

- Yes

### **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:**

*INREV believes that securitisation vehicles are effectively excluded from the scope of the AIFMD; however, we note that the existing exemption for securitisation vehicles defines "securitisation special purpose entities" (SSPE) by cross-referring to Regulation (EC) No 24/2009 of the European Central Bank of 19 December 2008, which has been recast as Regulation ECB/2013/40 of 18 October 2013 (the ECB Regulation).*

*Furthermore, while the SSPE exemption works in practice and has been updated in AIFMD through the ECB regulation itself, if it could be accomplished through AIFMD Level 2 or Level 3 measures, an update and an expansion of its scope in order to reflect changes in EU legislation since the AIFMD exemption was put in place would be helpful. In addition to updating the cross-reference to refer to the recast ECB Regulation, expanding the scope to include a cross-referencing the SSPE definition in Regulation (EU) 2017/2402, the EU Securitisation Regulation is required to reflect regulatory changes since the AIFMD framework was put in place, and specifically the introduction in 2019 of a robust regime of transparency and supervision for SSPEs and securitisations within the scope of the EU Securitisation Regulation.*

*Although we would not advocate replacing the reference to the SSPEs within the ECB Regulation with a reference to SSPEs within the EU Securitisation Regulation, we note that the two definitions are not*

*the same, and unintended consequences could arise if the scope of the exemption were changed in that way. We suggest an expansion of the exemption to refer to SSPEs whose sole purpose is to carry on a securitisation or securitisations within the meaning of the ECB Regulation and/or the EU Securitisation Regulation.*

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

- Yes

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

*Although the provision providing that AIFMD does not apply to employee participation schemes or employee savings schemes is mostly effective, INREV believes that it could be more effective. It would be useful to have more Level 2 or 3 clarification or guidance on the definition of “employees”, for example, specifically to clarify that employees of affiliate companies or members of investment committees fall within the scope of the definition.*

*In addition, guidance confirming that the definition of employees broadly includes personnel who work in the business of the undertaking concerned, contributing their skills and time, including partners, directors and consultants would be helpful. Employee participation schemes generally allow participation by former employees and spouses/close relatives and the definition should also clearly include such participants. Trustees of an employee's family trust should also be able to participate. While additional clarity in these and other areas would be helpful, in our view, it would not be necessary to revise Level 1 of AIFMD and could likely be accomplished through Level 2 or Level 3 measures; therefore, additional guidance from ESMA on the definition of “employees” would be welcome.*

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

- No

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

*INREV believes that, in general, the capital requirements of AIFMD are appropriate and therefore no significant changes are needed to make them more risk-sensitive and proportionate to the risk profile of managed AIFs. However, we are aware that one of the contributory factors to a dearth of internally-managed AIFs (e.g., REITs) is due to the onerous regulatory capital requirements.*

*In our view it would be preferable if the Article 9(3)-(6) additional own funds requirements applied only to external AIFMs on the basis that: (i) the €300k minimum base capital requirement for internally-managed AIFs is already higher than the €125k minimum base capital requirement for external AIFMs; (ii) the additional own funds requirement (being, in addition to the base own funds requirement, 0.02% of the amount by which the funds under management exceed €250m (subject to a cap of €10m)) seems more appropriate for external AIFMs only, in terms of regulatory risk and investor protection; and (iii) that this would encourage more full-scope internally-managed AIFs to become authorised. We believe this could be achieved via Level 3 clarification alone.*

**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

**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:**

*INREV believes that the own funds requirements of AIFMD are appropriate and therefore that no changes are needed.*

**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?**

- Neutral

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

*INREV believes that the ESMA Level 3 guidance in this area is sufficient and that if further clarification is desired, it would not need to be accomplished through amendments to the Level 1 of the directive.*

**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?**

- No

**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:**

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

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

- 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:**

*INREV has no opinion regarding whether the capital requirements established for AIFMs carrying out ancillary services under Article 6 of AIFMD should correspond to the capital requirements applicable to investment firms carrying out identical services. In general, however, we see no benefit of changing the current capital requirements for these AIFMs in AIFMD.*

**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:**

*INREV does not believe that any changes are necessarily needed to the AIFMD legal framework to ensure a level playing field between investment firms and AIFMs providing competing services, but that changes could be introduced in other EU directives and regulations to ensure that the entities and services they regulate are competing on a level playing field with AIFMs.*

*AIFMD is a relatively new directive and represents fairly recent policy regarding financial services and should be the new benchmark for other regulations. For example, in the area of delegation, the rules under AIFMD are quite clear and workable, while delegation rules under UCITS are much less clear. The UCITS delegation rules could therefore be updated to more closely resemble AIFMD delegation rules.*

**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?**

- No

**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:**

*INREV views AIFMs to be very different in many significant respects from credit institutions and that there would be no value in introducing a Supervisory Review and Evaluation Process (SREP) similar to that applicable to the credit institutions in AIFMD. The Member States' regulations already ensure adequate risk management oversight of AIFMs.*

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

- Yes

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

- Yes

**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:**

*INREV finds the current thresholds both workable and sufficient and does not believe that any changes to the current assets under management thresholds laid down in Article 3 are necessary.*

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

- Yes

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

*While the lack of an EU passport for the sub-threshold AIFMs clearly impedes capital raising in other Member States, INREV notes that sub-threshold AIFMs can opt-in to AIFMD if they desire. In each case, for small fund managers wishing to market their funds on a cross-border basis, the costs and benefits must be weighed between opt-in, on one hand, and other marketing solutions such as NPPRs (in Member States where they are allowed), which is also very costly, or restricting marketing to their home Member States, on the other.*

*We note in this regard that taking steps to reduce the cost of AIFMD regulatory compliance may ultimately be a much more effective way to encourage opt-in by small fund managers, which would give them access to an AIFMD marketing passport.*

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

- Don't know / no opinion / not relevant

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

*INREV takes no position on this issue. As we noted in response to Question 17.1, sub-threshold AIFMs can opt-in to AIFMD if they desire. In each case, these small fund managers must weigh the costs and benefits between opt-in on one hand, and remaining sub-threshold on the other.*

*We note again in this regard that taking steps to reduce the cost of AIFMD regulatory compliance may ultimately be a much more effective way to encourage opt-in by small fund managers, which would subject them to full-scope AIFMD regulation.*



## **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:**

*This question is not relevant for INREV, as it concerns private equity funds more than real estate funds.*

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

- Yes

### **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:**

*As INREV noted in its response to the ESMA consultation on implementing technical standards under the regulation on cross-border distribution of funds in June 2020 (<https://www.inrev.org/news/inrev-news/inrev-files-response-aifmd-marketing-consultation>), many practical measures can be adopted that would significantly improve cross-border marketing and investor access under an AIFMD passport without having to make changes to Level 1 of AIFMD.*

*The main areas INREV identified for improvement include suggestions that NCAs should publish and maintain, on their websites, up-to-date and complete information on the applicable national laws, regulations and administrative provisions governing marketing requirements for AIFs (and UCITS), and the summaries thereof in, as a minimum, a language customary in the sphere of international finance. The information to be published should concern not only requirements applicable specifically to the marketing of investment funds but should also encompass a general statement relating to the potential application of other bodies of law applicable within the concerned jurisdiction, such as rules on the protection of consumers in general.*

*This information will help ensure transparency on the legal and regulatory framework applicable in each Member State as regard the conditions for marketing AIFs. The publication of marketing requirements on NCAs' websites will help fund managers in their decision-making to engage in marketing activities in host Member States and will enhance investor protection by making information on these marketing requirements more easily accessible.*

*The requirements should be clearly stated and should include practical steps and links to further information, e.g.:*

- *when payment must be made,*
- *to whom it must be made, including clear payment details giving account detail information*
- *the acceptable form(s) of confirmation of payment*
- *events that trigger a payment obligation, for example a change of AIFM*
- *a non-exhaustive list of events considered to be a 'material change' requiring notification*
- *required document naming conventions*
- *whether notification can be achieved by the fund manager filing a single form or whether separate forms for each Member State where notification authority is sought, etc.*

*In fact, given the wide divergence across the EU Member States and the excessive burden created, we believe that ESMA should consider adopting standard requirements regarding these last two points regarding naming conventions and notification applications.*

*An area where additional information and regulatory requirements should also be included relates to each Member State's rules regarding the types of investors that can invest in AIFs. Some jurisdictions allow a wider group of investors (who are not professional investors) to invest in AIFs if they comply with certain rules, for example, if individual investors are certified as high net worth individuals or are sophisticated investors. It would be helpful if the NCAs could publish on their websites (where applicable) a summary of the rules and procedures for allowing a wider group of investors to invest in AIFs.*

*As with other technical marketing rules, given the wide divergence across the EU Member States and the burden this creates, we believe that ESMA should consider adopting standard rules determining the ability to market to these other types of investors and the applicable rules.*

*Some practical issues that would be helpful to provide information on include specific regulations regarding what specific activities constitute pre-marketing or marketing activity, and specifically regulations regarding:*

- *sending a teaser/ presentation to investors*
- *sending offer documents to investors*
- *meeting with investors*
- *investors signing subscription documents*
- *fund manager chaperoning restrictions*

*Finally, information contained in an ESMA central database listing AIFs marketed on a cross-border basis and indicating the Member States in which those funds are able to be marketed under passport authority would be very helpful for market participants, including investors looking to invest in funds or fund managers considering whether to develop funds for investors in certain markets. As a result, retaining historic information, including funds no longer being marketed and noting when marketing authority was withdrawn would be helpful.*

## II. Investor protection

### 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)?**

- No

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

*While INREV agrees that it is important that the relevant financial services directives, as amended from time to time, have aligned definitions or classifications of investors, we do not believe that this would require a modification of AIFMD Level 1. The alignment could be achieved by Level 2 or Level 3 measures.*

## **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:**

*Access to retail investors can be improved through amendments to other directives, notably the ELTIF, which could serve as a suitable vehicle to channel retail investment into both long-term and sustainable investments in furtherance of the Capital Markets Union's objectives. The ELTIF passport would then allow AIFMs to effectively and efficiently market to retail investors throughout the EU. (See: [https://www.inrev.org/system/files/2021-01/ELTIF%20Review%20consultation%20INREV%20response\\_18%20Jan.pdf](https://www.inrev.org/system/files/2021-01/ELTIF%20Review%20consultation%20INREV%20response_18%20Jan.pdf))*

*INREV considers the existing AIFMD provisions that allow marketing to professional investors (as defined by cross-reference to the current MIFID II investor classification) to be adequate, in particular given that MIFID II does envisage that certain retail investors can elect to be treated as professional investors. Given the cross-linkage in AIFMD to the MIFID II investor classification, INREV considers that any changes around widening the scope of "professional investors", for example by including so called "semi-professional investors" (to the extent not already in scope of a possible opt-up under the MIFID II rules for elective professional investors), should be considered as part of any future MIFID II review rather than in the context of this review.*

*AIFMD is well designed to serve as a way for AIFMs to access institutional investors and we believe that it does not need to be amended to serve as a means for AIFMs to access retail investors.*

## **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

### **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:**

*As noted in response to Question 22, with some adjustments, the ELTIF could serve well as a suitable EU AIF that could be marketed to retail investors with a passport. These funds would increase long-term investment and therefore further the EU CMU; however significant barrier to use of ELTIFs has been the lack of clarity around how the requirement that investments contribute to achieving an economic or social benefit under the Union's energy, regional and cohesion policies, which is very uncertain in the case of real estate investments.*

*We believe that if the requirement that funds support a social goal of the EU were satisfied by those funds complying with all the requirements of the Sustainable Finance Disclosure Regulation or being classified as sustainable under the EU taxonomy for sustainable activities, it would be much more certain how a fund could fulfil this requirement while ELTIFs would further EU sustainable finance*

goals and the Green Deal. (see: [https://www.inrev.org/system/files/2021-01/ELTIF%20Review%20consultation%20INREV%20response\\_18%20Jan.pdf](https://www.inrev.org/system/files/2021-01/ELTIF%20Review%20consultation%20INREV%20response_18%20Jan.pdf))

## b) Depositary regime

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

- No

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

*In INREV's view, AIFMD tri-party collateral management services seem to work efficiently and change, including an explicit definition of those services in Level 1 of AIFMD, is not necessary.*

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

- 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:**

*This is not a relevant issue for real estate funds.*

**Question 27. Where AIFMs use tri-party collateral managers' services, which of the aspects should be explicitly regulated by the AIFMD?**

- no additional rules are necessary, the current regulation is appropriate

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

- 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?**

- Don't know / no opinion / not relevant

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

- No

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

*When AIFMD was first introduced, there were not a sufficient number of depositary service providers available to support AIFMs in some Member States and the temporary exception allowing provision of cross-border depositary services was very welcome. This problem has to a large extent been resolved*

*and, while a depositary passport could be helpful for some property AIFMs, INREV does not believe that the lack of the depositary passport any longer inhibits efficient functioning of the EU AIF market.*

*Further, we believe that the AIFMD's light touch depositary services requirements are adequate and no additional regulations in this area are needed.*

### **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:**

*INREV sees two risks associated with the introduction of a depositary passport. The first is that because it would require a Level 1 change to AIFMD, it would create risk of other changes being introduced at the same time that could result in increased cost and effort required to implement those changes. The second risk it would create is that the lack of adequate co-operation between supervisory authorities in different Member States could create gaps in regulatory oversight that could lead to abuse.*

### **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:**

*We do not see any barriers that would preclude introducing a depositary passport other than the risks noted above.*

### **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:**

*INREV does not agree that there is a lack of supply of depositary services in smaller markets.*

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

- *Don't know / no opinion / not relevant*

#### **c) Transparency and conflicts of interest**

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

- Yes

**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:**

*Disclosures to investors required under AIFMD are already extensive and burdensome. Institutional investors can and do require managers to provide all the information that they consider relevant and appropriate to keep them adequately informed, and widely adopted industry standards specifically tailored to real estate's unique characteristics, such as the INREV Reporting Guidelines, ensure this information is reported in a meaningful, consistent and comparable way.*

*The AIFMD disclosure requirements should remain focused on the needs on institutional investors. Where Member States have decided to opt-in retail funds to the AIFMD regime, they are able to require additional disclosures appropriate for retail investors, and generally do so.*

**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?**

- No

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

*As noted in response to Question 37, institutional investors are able to require managers to provide all the information that they consider relevant and appropriate to keep them adequately informed, which is normally done at least quarterly and more frequently in special circumstances.*

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

- Yes

d) Valuation rules

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

- No

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

*INREV believes that the AIFMD rules on valuation are appropriate, except for the single issue of external valuer liability in Article 19(10). Under this article, an external valuer has unlimited liability to the AIFM for any losses suffered by the AIFM as a result of the external valuer's negligence or intentional failure to perform its tasks. Unfortunately, as a result of differing interpretations of what actions constitute "negligence", there is no harmonised standard across the EU interpreting the threshold for potential unlimited liability.*

*In several Member States, “negligence” (sometimes also called “simple negligence”) is interpreted to mean relatively minor mistakes, and is distinguished from “gross negligence” (often used as market parlance and meaning “serious error”), which is used to mean relatively more serious mistakes. As a result, in the UK, France and Spain, among other Member States, many real estate valuers - adopting professional guidelines from their industry body, the Royal Institution of Chartered Surveyors (RICS) - are unwilling to accept unlimited liability for “simple negligence”.*

*They therefore refuse to accept the external valuer role for the buildings in real estate fund portfolios. This is unfortunate, as external valuers of real estate investments have long been a recognised and well-established means of ensuring that the valuation of property in funds is conducted according to industry standards by qualified, licensed independent third-parties.*

*Professional indemnity insurance in these Member States is not available for unlimited liability related to actions deemed less than a serious error. As a result of AIFMD Article 19(10), many AIFMs across Europe have been forced to perform the valuation function in-house i.e., operate with internal valuations – rather than independent external valuations. This runs counter to long-established investor protection and good corporate governance practices and adds unnecessary costs.*

*INREV welcomes ESMA’s acknowledgement of the problem in Chairman Maijor’s letter to Commission Executive Vice President Dombrovskis and their support of finding a solution to the external valuer liability issue for real estate funds. Although Chairman Maijor recommended a change to Level 1 text of AIFMD to raise the standard in Article 19(10) to “gross negligence”, we are very reluctant to recommend opening up the Level 1 text of AIFMD for this single issue and believe it is actually not necessary.*

*We believe issuing a Level 2 or Level 3 interpretation of Article 19(10) to establish a harmonised scope of coverage of the article across the EU would be equally effective. This could be accomplished by noting that, under Article 19(10): “the external valuer is subject to unlimited liability to the AIFM for any losses suffered by the AIFM only from the external valuer’s serious error or intentional failure to perform its tasks.”*

*The solution proposed would signal that unlimited liability of external valuers arises only in case of serious error and not merely simple negligence. It would therefore allow independent external real estate valuers to perform valuations without fear of unlimited liability for simple mistakes while increasing investor protection and good corporate governance. In addition, it could create a more harmonised application of the external valuer liability provisions by de-linking the trigger of unlimited liability to each Member States’ tort law definitions or legal precedent regarding what actions constitute “negligence”, which vary quite widely across the EU.*

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

- No

**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 recent pandemic has demonstrated the effectiveness of the AIFMD legal framework and has not exposed any weaknesses that need to be remedied.*

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

- Yes

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

- Yes

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

- Yes

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

*The co-ordination and information sharing between valuers, both internal and external, is very helpful in the valuation process.*

**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:**

*Real estate asset valuations performed for AIFMs are quite standardised and professional, which is understandable considering that the infrequent trading of commercial property makes institutional investors keen to closely monitor the value of their investment portfolios through professionally conducted independent third-party valuations applying industry-wide standards whenever possible.*

*In almost all EU countries, valuers are trained and certified, for example by RICS, and follow valuation guidelines consistent with the International Valuation Standards Council (IVSC) standards. The wide application of these standards across Europe by trained, professional valuers makes missing physical characteristics of any property highly unlikely. Applying these standards also provides a great deal of consistency and, as a result, reliability. Valuations that do not closely adhere to 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:**



*Valuations are done internally by the AIFM in countries where external valuers are not willing to act in such a capacity.*

### 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:**

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

*Fund managers both in and outside the EU are particularly attracted by the benefits of the passport for marketing and managing EU funds in Europe, which allows them to efficiently access the European market after setting up and obtaining authorisation of an EU domiciled entity that manages and markets EU funds. At the same time, the marketing passport allows European institutional investors to access a broader universe of investment funds, which enables them to achieve the returns they need to meet their obligations to pensioners and policyholders while increasing the diversification, and thereby lowering the risk, of their portfolios.*

#### **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:**

*Although very good progress has already been made in this regard, the competitiveness of the EU AIF industry could be further enhanced by eliminating remaining gold plating of AIFMD requirements by Member States. As noted in response to question 20.1, INREV identified a number of areas for improvement in our response to the consultation on the cross-border marketing regulation and we await the measures that will be adopted final regulation.*

*In addition, we strongly believe that national private placement regimes in the EU should not be eliminated and should be allowed to continue, which would enhance the competitiveness of the EU AIF industry.*

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

- No

**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:**

*We do not believe that NPPRs create an uneven playing field between EU and non-EU AIFMs and, on balance, we believe they are a workable marketing route for funds and managers that are not able to qualify for the AIFMD marketing passport. The AIFMD marketing passport is still the only way to market alternative investment funds to institutional investors across Europe based on a single authorisation and the cross-border marketing rules have significantly improved the efficiency of marketing funds under the passport.*

*National private placement regimes, on the other hand, only allow marketing in a single Member State and were seen as a temporary means for institutional investors in Europe to access these funds. We believe that they do not competitively disadvantage EU AIFMs marketing EU funds or create an uneven playing field. If anything, the current marketing options to use the AIFMD passport or NPPRs favour EU AIFMs and EU AIFs. As we noted in response to Question 48, however, we strongly believe that national private placement regimes in the EU should continue in their present form.*

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

- Yes

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

*INREV strongly believes that the current Level 1 delegation rules, which have been supplemented by Level 2 and Level 3 measures, are sufficiently clear to prevent the creation of letter-box entities in the EU. Combined with clear rules on delegation, NCAs unquestionably have authority necessary to enforce these rules. Many Member States have taken the additional step of promulgating supplemental national regulations or clarifying definitions that are helpful for the local funds industry.*

*Under AIFM Regulation Article 82(3), ESMA already has the authority to issue guidelines in this regard and should be encouraged to do so if any gaps or lack of clarity are identified. Improving co-ordination regarding how delegation rules are interpreted and enforced could provide additional benefits to both AIFMs and their investors.*

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

- Yes

**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:**

*INREV believes that the delegation rules under the AIFMD/AIFMR work well and are appropriate to ensure effective risk management. And as we noted in response to Question 50.1, NCAs have the authority necessary to enforce these rules. Therefore, we believe that no further rules regarding delegation are needed. In the event of a lapse in effective risk management by the AIFM under the rules or otherwise, the investor would in any case always have legal recourse to the AIFM for subsequent damages.*

*As we noted above in response to Question 50.1, ESMA should be encouraged to enforce current guidelines under AIFMR Article 82(3). Improving co-ordination between Member States regarding how delegation rules are interpreted and enforced could provide additional benefits to both AIFMs and their investors and level the playing field between Member States resulting from inconsistent interpretation and enforcement.*

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

- No

**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?**

- No

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

*AIFMD standards apply to authorised AIFMs regardless of the location of a third party to which they delegated collective portfolio management or other functions, Furthermore, the AIFM is liable to ensure they are carried out in a manner that is consistent with its obligations under AIFMD, which ensures investor protection. Through the AIFMD Level 2 Regulation, the AIFMD framework already imposes a detailed set of specific obligations that govern any delegation of collective portfolio management functions; the same detailed standards apply to AIFMs that have delegated the collective portfolio management functions to EU entities and AIFMs that have delegated the collective portfolio management functions to non-EU entities. Currently, AIFMs that have delegated collective portfolio management functions to a US or other non-EU entity apply these standards and no problems appear to have resulted from the fact that the entity delegated the collective portfolio management functions is not domiciled in the EU.*

*Delegation is an extremely important and widely used tool for EU AIFMs to create centres of excellence and specialisation, achieve economies of scale and operate more efficiently, noting in particular that many EU AIFMs are part of global asset management businesses that have touchpoints not only with the EU's regulatory regime but also well-respected regulatory regimes in the US and Asia. The decision to delegate functions, whether to an EU or a non-EU entity, is nearly entirely commercially based and dependent on ensuring that the functions are fulfilled by the most capable and competent entity; certainly, it has not led to a diminution of investor protection or regulatory arbitrage.*

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

- No

**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 believe that current delegation rules per se do not need to be revisited to achieve more consistent enforcement, as the current rules are workable and effective; however, as we noted in response to Q50.1, under AIFM Regulation Article 82(3), ESMA already has the authority to issue guidelines regarding delegation and should be encouraged to do so if any gaps or lack of clarity are identified. Improving harmonisation regarding how delegation rules are interpreted and enforced could provide additional benefits to both AIFMs and their investors.*

**Question 55. Which elements of the AIFMR delegation rules could be applied to UCITS?**

**Please explain your position, presenting benefits and disadvantages of the potential changes as well as costs:**

*INREV has no opinion on this issue.*

## IV. Financial stability

### a) macroprudential tools

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

- No

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

*INREV believes that macroprudential concerns are already sufficiently addressed in the AIFMD legal framework and therefore do not need to be further enhanced.*

**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?**

- No

**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:**

*INREV believes that NCAs already have sufficient legal authority to address macroprudential concerns in the public interest and therefore that no clarification in AIFMD is necessary.*

*However, to the extent that concerns regarding recent closures of open end real estate funds in the UK may be driving awareness of how stressed market conditions can impact fund investments, we note that the suspension of redemptions of these funds earlier this year was not caused by a lack of liquidity, but instead was caused by a lack of valuation certainty that did not allow fund managers to accurately price the participations investors wanted to redeem.*

*The suspension not only ensured fairness to both remaining and redeeming investors, but in all situations where funds have suspended redemptions, the suspensions have worked to prevent a market crisis and emphatically are not a crisis themselves so long as investors have been adequately informed in advance and therefore were aware that suspensions may occur in certain market situations before deciding to invest.*

**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:**

*INREV believes that the current template for AIFMs provides sufficient information to enable NCAs to report relevant and timely data to ESMA during periods of the stressed market conditions but defer to NCAs regarding what data fields they believe are necessary.*

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

- No

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

*INREV notes that through the regular reporting obligations under article 24 of the AIFMD, AIFMs must already report to NCAs on any new arrangements for managing liquidity and any special arrangements arising from illiquidity of assets held by an AIF. The AIFMD reporting template in the Level 2 AIFMD Regulation makes it clear that this includes reporting on the "suspension of dealings" and "any other arrangements for managing illiquid assets". INREV considers that the reporting intervals in the AIFMD Level 2 Regulation are adequate and notes that under article 110 of the Level 2 AIFMD Regulation, it is already open to NCAs to request such information more frequently (see article 110, para 4).*

*In light of the existing provisions referred to and the fact that liquidity risk management tools are part of ordinary and day-to-day fund management, INREV considers that no changes are required.*

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

- No

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

*INREV believes that the current proportionality principles are sufficient in this regard and therefore that AIFMD remuneration rules do not need to be adjusted to provide for the de minimis thresholds.*

## b) Supervisory reporting requirements

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

- Somewhat agree

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

*Although the supervisory reporting requirements as provided in AIFMD and AIFMR's Annex IV are quite extensive and burdensome to implement, we believe that on balance they are appropriate and provide adequate, relevant and timely data to enable NCAs to perform their supervisory functions.*

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

- No

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

- No

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

*Under other regulations, many AIFs are already required to have an LEI identifier. We believe that requiring AIFs to adopt LEI identifiers under AIFMD would add an administrative burden and costs without adding significant value. In addition, we are not in favour of adding product-level regulations in AIFMD and strongly urge that AIFMD continue to regulate AIFMs, not AIFs.*

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

- No

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

*Under other regulations, many AIFMs are already required to have an LEI identifier. We believe that requiring AIFMs to adopt LEI identifiers under AIFMD would add an administrative burden and costs without adding significant value.*

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

- No

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

*Under other regulations, many counterparties and issuers of securities in an AIF's portfolio are already required to have an LEI identifier. We believe that requiring the use of an LEI identifier for the purposes of identifying the counterparties and issuers of securities in an AIF's portfolio would add an administrative burden and costs without adding significant value.*

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

- Yes

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

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

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

- No

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

*We believe that reporting required data to the relevant NCAs, which are the fund-level supervisory authorities, is sufficient to effectively supervise the activities of loan-originating AIFs and therefore that submitting that reporting to a single central authority is not necessary.*

*NCAs already forward the reported information to ESMA. However, we note that because of some minor variances in the reporting formats and processes used in different Member States, a harmonised reporting process would be an improvement. It would be more efficient, particularly for AIFMS with AIFs that report in different Member States using different formats and processes, and would likely yield more comparable data being forwarded to ESMA.*

**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?**

- No

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

- *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

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

**Please select as many answers as you like**

- *adding additional investment strategies*
- *other*

**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:***

*We believe that the AIF classification could be improved by adding debt funds in AIFMR Annex IV. Supplemental information fields relevant to these strategies could be added to indicate whether the debt fund is principally a real estate or private equity debt fund.*

**Please explain by what *other ways* the AIF classification could be improved, providing information, where available, on the costs, benefits and disadvantages of this option:**

*For the fund of funds strategy, adding an indication whether the fund of funds is principally invested in real estate would be very useful.*



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

- No

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

*We believe that the current data fields in the AIFMR supervisory reporting template are adequate and therefore that none need to be deleted.*

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

- Yes

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

*We believe that the current reporting frequency of the data required under Annex IV of the AIFMR is appropriate.*

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

- 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:**

*We believe that UCITS and AIFs are distinct products and that if supervisory reporting requirements for UCITS are introduced, they should reflect UCITS' unique characteristics following input from relevant stakeholders.*

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

- No

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

*As mentioned above, we believe that UCITS and AIFs are distinct products and that if supervisory reporting requirements for UCITS are introduced, they should reflect UCITS' unique characteristics as a retail product following input from relevant stakeholders.*

**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)?

- *Don't know / no opinion / not relevant*

## c) Leverage

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

- *Somewhat agree*

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

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

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

- *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:**

*We believe that the two-step approach to leverage assessment suggested by IOSCO based on the gross and net methods is in many ways an improvement over the AIFMD's gross and commitment methodology. In particular, we see value in the IOSCO approach's differentiation of leverage assessments between different fund strategies.*

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

- *No*

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

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

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

- Yes

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

*We believe that the current AIFMD rules permitting NCAs to cap the use of leverage are appropriate and therefore that no further rules in this area are needed. In addition, we note that ESMA has recently issued its final guidelines to NCAs in relation to article 25 and therefore do not see a need for any further rule making at this time.*

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

- No

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

*We believe that the Member State rules setting the requirements for loan originating AIFs are adequate and workable and that they do not need to be harmonised at the EU level. Furthermore, as we have indicated in responses to other questions, we object to adding product-level regulations in AIFMD and strongly urge that AIFMD continue to regulate AIFMs, not AIFs. Having said that, closer co-ordination of Member States' loan origination rules would be helpful for allowing loan originating AIFs to operate more efficiently and with lower costs within the EU.*

## V. Investing in private companies

**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?**

- Don't know / no opinion / not relevant

**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?

- *Don't know / no opinion / not relevant*

**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?**

- *Don't know / no opinion / not relevant*

## VI. Sustainability/ESG

**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?**

- *No*

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

*We believe that quantification of sustainability risks as currently defined in SFDR is difficult or too speculative for real estate funds in some circumstances, as we indicated in our filing in response to European Supervisory Authorities' (ESA) consultation on the draft Regulatory Technical Standards (RTS) relating to certain disclosure requirements under the Sustainable Finance Disclosure Regulation (SFDR). Therefore, we believe that AIFMs should have the option to disclose their sustainability risks in either quantitative or qualitative terms.*

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

- *No*

**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:**

*INREV has long been a strong supporter of ESG and real estate funds and institutional investors are leading the move to sustainable investment and has provided sustainability best practice guidelines to institutional investors and fund managers in this area that are tailored to the unique characteristics of real estate (see: <https://www.inrev.org/guidelines/module/sustainability#inrev-guidelines>). However,*

*we believe that AIFMD should not include a requirement for managers to compulsorily take into account principal adverse impacts in the due diligence process underlying the investment decision. This goes beyond the manager-led considerations and disclosure obligations set out in the Sustainable Finance Disclosure Regulation (SFDR).*

*We also believe that sustainability-related requirements should not be included only in AIFMD, but should be adopted in SFDR, which is applicable to all financial sector product managers. Such a sector-wide approach would avoid different regulations for managers of different financial products, which would be highly undesirable, and would ensure a level playing field among different types of investment products.*

*We believe that there are many cases where an AIFM will want to assess non-financial materiality risks in investment decisions, but that should be left to the AIFM's discretion and agreement with professional investors, may vary depending on the stated investment strategy, objectives and sector-specific issues of a particular AIF. Institutional investors have enough influence with the fund managers to be able to compel this information if deemed necessary for their investment decision.*

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

- *Somewhat disagree*

**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 see our answers to Q90 and Q91. We advocate an approach that is consistent with SFDR and maintains a proportionate and flexible approach by the AIFM. In addition, any such requirements should be adopted in SFDR, which is applicable to all financial sector product managers, to avoid different regulations for managers of different financial products, which would be highly undesirable.*

**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?**

- *No*

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

*Please see our answers to Q90 and Q91. INREV has long been a strong supporter of ESG and real estate funds and for some time already, most institutional investors have taken account of the long-*

term sustainability and social impacts of their investment decisions. Building on these practices, INREV developed sustainability best practice guidelines to institutional investors and fund managers in this area that are tailored to the unique characteristics of real estate (see: <https://www.inrev.org/guidelines/module/sustainability#inrev-guidelines>).

As leaders in this area, we advocate an approach that is consistent with SFDR and maintains a proportionate and flexible approach by the AIFM. In addition, any such requirements should be adopted in SFDR, which is applicable to all financial sector product managers, to avoid different regulations for managers of different financial products, which would be highly undesirable.

**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?**

- No

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

*The Taxonomy Regulation does not impact on an AIFM's investment decisions and in our view can be distinguished from the SFDR provisions in this regard. We note further that we identified several issues in our response to the recent European Commission consultation on a draft delegated act under the Taxonomy Regulation, particularly regarding the importance of achieving further harmonisation among different sustainability-related regulations. (see <https://www.inrev.org/system/files/2020-12/INREV-Sustainable-finance-EU-classification-system-for-green-investments.pdf>).*

**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

**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:**

*We believe that it may be appropriate for other sustainability-related requirements or international principles beyond those laid down in Regulation (EU) 2020/852 be considered by AIFMs when making investment decisions; however, as we have noted in our responses to other questions in this section, we believe the SFDR should contain all the relevant sustainability-related requirements for AIFMs and*

*other financial sector product managers. This approach would avoid different regulations for managers of different financial products, which would be highly undesirable.*

## VII. Miscellaneous

### **Question 96. Should ESMA be granted additional competences and powers beyond those already granted to them under the AIFMD?**

- *no, there is no need to change competences and powers of ESMA*

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

- *No*

#### **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:**

*As we noted in response to several different questions, including those related to the enforcement of delegation rules, risk management and macroprudential concerns, we believe that powers and competences of NCAs granted to them under AIFMD are adequate and therefore that no additional powers or competences are needed.*

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

- *Fully agree*

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

*We generally agree that the AIFMD provisions for the supervision of intra-EU cross-border entities under the directive are effective; however, we believe that some improvements to intra-EU cross-border supervisory co-operation could be made in the areas of practical co-ordination and enforcement.*

### **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:**

*We believe that intra-EU cross-border supervisory co-operation could be improved through better information sharing such as the information publicly disclosed regarding marketing passport-related requirements and specifically through more transparent disclosures by Member States of any additional provisions tacked onto AIFMD, which could help minimise gold plating of AIFMD and harmonise managing and marketing of AIFs by authorised AIFMs.*

*INREV highlighted some of these points in more detail in its response to the 2020 ESMA consultation on draft implementing technical standards under the regulation on cross-border distribution of funds (see: <https://www.inrev.org/system/files/2020-06/INREV%20response%20to%20ESMA%20consultation%20on%20draft%20implementing%20technical%20standards%20under%20the%20regulation%20on%20cross-border%20distribution%20of%20funds.pdf>).*

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

- No

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

*While we do not believe that the sanctioning regime under the AIFMD should be changed; however, we agree with the conclusions reached by ESMA in its report on AIFMD sanctions that implementation could be better harmonised across EU Member States.*

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

- No

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

*We believe that UCITS and AIFs are distinct products and that the regulatory frameworks for each should reflect their unique characteristics, particularly the focus of AIFMD on rules appropriate and necessary for institutional investors and institutional investment fund managers. Further, we note that while UCITS is a product-level regulation, AIFMD regulates fund managers and should not be changed to regulate fund products.*

**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:**

*INREV does not note any further regulatory issues related to the proportionality, efficiency and effectiveness of the AIFMD legal framework that need to be addressed.*