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28 February 2018

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

Response to the European Commission consultation document "Fitness check on supervisory reporting"

I. Section 1: Assessing whether the supervisory reporting requirements are fit-for-purpose

Question 1 - Taken together, to what extent have EU level supervisory reporting requirements contributed to improving the following:

i. financial stability (i.e. monitoring systemic risk)

Very significantly	
Significantly	
Moderately	
Marginally	
Not at all	X
Don't know	

Please elaborate and provide examples to justify your answer.

Invest Europe response:

We would like to note that as the European association for private equity and venture capital, we have responded to this consultation from a pure private equity perspective, approaching the questions from the point of view of the Alternative Investment Fund Managers Directive (AIFMD) – the main piece of legislation with a direct impact on private equity and venture capital fund managers. In addition, we would like to underline that we have interpreted supervisory "reporting" in the broadest sense of the word, encompassing *any* interaction with national competent authorities.

We do not believe that the AIFMD supervisory reporting requirements, in the particular case of private equity, have contributed to improving financial stability. This is mainly because:

(1) private equity does not pose a threat to financial stability and was not responsible either for the onset or the severity of the financial crisis; and

(2) there are several arguments demonstrating/showing that the private equity industry does not have strong links with systemic risk. These include *inter alia*: (i) in the private equity model fund

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managers are not involved in maturity or liquidity transformation in the way that banks and some other financial institutions are; and (ii) even the largest private equity fund managers in a given segment do not account for a dominant part of the market, i.e. the failure of even the most important fund manager would not materially impair the choice and scale of capital available for financing the real economy.

As such, the AIFMD has not made (even, could not make) any measurable difference in lowering the systemic risk associated with private equity.

ii. market integrity (i.e. surveillance of market abuse and orderly functioning of the markets)

Very significantly	
Significantly	
Moderately	
Marginally	X
Not at all	
Don't know	

Please elaborate and provide examples to justify your answer.

Invest Europe response:

We do not believe that the AIFMD supervisory reporting requirements contributed to improving market integrity in private equity, mainly because there was no issue to begin with. There are several reasons for this:

- The European private equity industry is a very established and professional one, based on an active investment and ownership model involving two key relationships: (1) the long-term partnership between fund managers and investors; and (2) the active and responsible ownership of portfolio companies by fund managers.

- Private equity is an illiquid asset class, investing in the real economy. The underlying investments/assets of the fund are mainly illiquid, i.e. operating companies with their own directors, not liquid financial instruments with volatile prices which require daily active management.

- Private equity is characterised by long holding periods and private equity funds tend to be closed-ended, i.e. investors cannot just withdraw from the fund (there are no redemption rights).

iii. investor protection (i.e. ensuring proper conduct by firms to ensure that investors are not disadvantaged/negatively impacted)

Very significantly	

Significantly	
Moderately	
Marginally	X
Not at all	
Don't know	

Please elaborate and provide examples to justify your answer.

Invest Europe response:

The AIFMD regulatory reporting requirements, especially in relation to Annex IV, constitute an area of particular concern for private equity fund managers. The technicalities of collating and submitting this data have added a significant layer of costs for alternative investment fund managers (AIFMs) and, more importantly, investors.

We understand that the AIFMD can be seen by some market participants as slightly improving investor protection by enhancing the level of disclosure and reporting to investors. However, we strongly believe that the amount of information required is not commensurate with the level of improvement in investor protection.

Question 2 - Are all of the existing supervisory reporting requirements relevant for maintaining financial stability and upholding market integrity and investor protection?

Yes, they are all relevant	
Most of them are relevant	
Some of them are relevant	
Very few are relevant	X
Don't know	

If you do not think that all of the requirements are relevant, please provide specific examples of any requirements which in your view are superfluous and explain why you believe they are not necessary.

Invest Europe response:

Please see our response to Question 1 above.

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Question 3 - Is there information that should be reported but which currently is not (i.e. there are reporting requirements that should be added)?

Yes	
No	X
Don't know	

If you answered 'Yes', please provide specific examples of reporting requirements which in your view should be added and explain why you believe they are needed.

Invest Europe response:

Not applicable.

Question 4 - To what extent are supervisory reporting requirements across different EU level reporting frameworks coherent (e.g. in terms of scope, content, methodology, timing/frequency of submission, etc.)?

Fully coherent	
Mostly coherent (a few or minor inconsistencies)	
Somewhat coherent (numerous inconsistencies)	
Not coherent (mostly or totally inconsistent)	
Don't know	X

Please provide specific examples of reporting requirements which in your view are inconsistent and explain why you believe they are inconsistent.

Invest Europe response:

While it may be useful to ensure a minimum level of consistency between different EU level reporting frameworks, it would not be appropriate to move towards full coherence, bearing in mind that the respective target audiences of the different EU supervisory reporting frameworks are not the same and will have their own characteristics, strategies and business models. Any further moves towards coherence should be tailored taking into account the specific profiles of affected practitioners.

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Question 5 - To what extent is supervisory reporting in its current form efficient?

Very efficient	
Quite efficient	
Rather inefficient	
Very inefficient	X
Don't know	

If you think that supervisory reporting is not fully efficient, please provide specific examples and explain why you believe it is not efficient.

Invest Europe response:

The AIFMD supervisory reporting requirements (in the broadest sense of the word) are not very efficient. Invest Europe members are facing a variety of difficulties with the registration, notification and reporting processes set out in the AIFMD, in particular the notification requirements in Annex IV and the periodic regulatory reports flowing from that.

Example 1 - Filings for fundraising

The AIFMD introduced several formal steps which must be followed by the AIFM in order to raise a new fund, requiring numerous filings to be made with (usually) the home Member State competent authority. More concretely:

- In order to obtain permission to manage and market a new fund, an in-scope AIFM must make filings with its home Member State competent authority. These requirements derive from Articles 7, 10, 23, 31, 32 and 36 AIFMD Level 1.
- Because of the uncertainty and lack of consensus about the definition of "marketing" and the point at which marketing (as distinct from pre-marketing) begins, it is often necessary to make these filings early in the process of raising a new fund.
- In summary, the filing must contain:
    - a complete list of all AIFs which will together constitute the fund;
    - a fully-developed private placement memorandum (PPM) including, or appending, pre-investment transparency disclosures required by Article 23 AIFMD;
    - a final or near-final form of the fund constitutional document (typically a limited partnership agreement (LPA)); and
    - a number of regulatory forms (the precise number and detail of the forms differs between Member States).

- Following submission, the AIFM may receive questions from the regulator. The firm must wait one month (or up to two months in exceptional circumstances) for the regulator to approve marketing of the fund.

Being modelled on the UCITS Directives (which concern retail funds), these requirements are not proportionate for funds which will be marketed principally (in most cases exclusively) to institutional investors.

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

As such, private equity fund managers are facing a number of issues with the filing requirements.

- The filing requirements have the effect of forcing the AIFM to prepare elaborate offering documents at a point earlier in the fundraising process than they would otherwise expect. This means that, in some cases, documents might be prepared in respect of a fund which will never successfully reach first close. In the majority of cases, it means that revisions must be made to the documents later, to reflect the outcome of negotiations with investors, at additional cost to the investors.

- It is difficult, and not always possible, to anticipate at the beginning of a fundraising process precisely how many different parallel limited partnerships will be required. This depends on which prospective investors of which types and which jurisdictions wish to commit to the fund. Adding a new AIF parallel limited partnership at the request of an investor (to meet their specific needs and in which they may be the only investor) requires an additional filing and (typically) up to a one-month wait period.

- The act of filing the required documentation with the AIFM's home Member State competent authority in practice precludes pre-marketing discussions from continuing in a number of Member States. This is because regulators in those Member States take the view that there cannot be "marketing" (offering or placing of fund interests) until after the limited partnerships are formed but there is a material risk that discussions with investors which take place after such formation do constitute marketing. It is a pre-condition to filing with the home Member State competent authority that the relevant limited partnerships have been formed.

- If, during the fundraising, investors negotiate changes to the LPA (as is very likely), a decision must be made as to whether these changes are "material" (within the meaning of Article 10(1) AIFMD). There is some uncertainty and lack of consensus between Member State competent authorities about what constitutes a "material" change. The better view is that it is a change of such significance that a reasonable investor would reconsider whether to invest on the changed terms. If changes are material – and often they are – a further filing must be made with a further one-month wait period before any subsequent closing can be held.

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- Article 23(1)(j) AIFMD says that any preferential treatment given to one investor must be disclosed to all others before they invest. It is impossible to disclose to an investor at the time of the first close the terms of any preferential treatment agreed in side letters which might be negotiated with investors on a second or subsequent close.

- Similar issues arise for non-EU AIFMs marketing under some (but not all) national private placement regimes (NPPRs).

In all of these respects, the law assumes that an institutional private equity or venture capital fund is a 'pre-baked' product (like a UCITS fund) and fails to recognise that for the private equity and venture capital industry marketing is a negotiated, iterative process. The formalities front-load the effort required to raise a fund (and also front-load costs, when there may be no guarantee that the fundraise will be successful) and generally complicate and disrupt the process.

Example 2 - Annex IV

Annex IV sets out the documentation and information that needs to be provided in the case of *intended marketing in Member States other than the home Member State of the AIFM*. This is relevant in several scenarios, including when EU fund managers are marketing units or shares of EU AIFs in Member States other than in their home Member State through the passport (Article 32 AIFMD).

Our main concerns about the Annex IV reporting process are: (1) lack of clarity; (2) lack of tailoring to private equity; and (3) inconsistency in forms (see also our response to Questions 6 and 8).

(1) There is a lack of clarity around

    a. frequency of reporting for AIFs and AIFMs (it should be clearer that AIFMs of closed-ended non-leveraged AIFs are only required to do annual reporting); and

    b. when an AIFM subject to annual reporting should file its first report (one view was that they should file for the period ended 31 December despite their authorisation date, but there has been some confusion over this).

    More guidance is also needed around the limited scope reporting for sub-threshold, as well as non-EU (and non-leveraged) managers.

(2) There is a lack of tailoring for private equity and as such, reporting forms may not always be suited to the specificities of private equity and venture capital fund managers. Some concrete examples include:

    a. inaccurate classifications regarding positions, instruments and exposures: there is no definition of what each of these terms mean in a private equity context and they can be interpreted as referring to a Portfolio Company as a whole, separating debt and equity in investments, or separating out all instruments leading to a list of Equity, PECs, CPECs, IFL etc. As a result, there will be some incomparable fund reporting information. This is a significant issue and leads to many assumptions being required to be made by firms to deal with the lack of clarity.

    b. the Risk Management information table is not applicable for private equity in general and has been a meaningless exercise. Private equity and venture capital employ a wide range of risk management techniques that includes both qualitative and quantitative analysis; the current reporting does not appreciate this.

    c. the information on Fund Turnover is unclear for private equity as this is a relatively meaningless statistic for the fund. Investments are typically held for a long period of time, but on acquisition

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and disposal there are a number of capital movements which may present an unrealistic position.

d. the requirement to provide monthly IRR is meaningless in a private equity fund context. Closed-ended private equity funds will monitor the IRR over a longer term as the investor returns are considered *over the life of the fund* rather than measuring it on a monthly basis. In addition, it is important to note that IRR does not drive fees or profit.

Because of inadequate tailoring, in some countries a large portion of the form is not relevant and appropriate for the investment strategy of private equity fund managers. Given there is limited possibility to only respond to the relevant questions, fund managers often have to leave much of the form blank. This may be confusing for the competent authority which is unable to know for certain if the investor has decided not to answer the question or if the question does not apply to the fund manager.

In addition, also the requirement to report to competent authorities within 30 days (as per Article 110 of the AIFMD Delegated Regulation) is not well-tailored to the nature and practices of the private equity industry. The assets in question are unquoted companies, i.e. there is no ready-made price (as with financial instruments such as publicly quoted equities) nor a standard formula for calculating prices (as with OTC derivatives). (The 30-day requirement is much more appropriate in the case of hedge funds). This leads to unnecessary costs being incurred and also the use of estimates and/or old data.

Question 6 - How well are the supervisory reporting requirements adapted to developments in the fields of modern information and communication technologies (ICT) and digital processes?

Very well	
Fairly well	
Not very well	X
Not at all	
Don't know	

Please elaborate and provide specific examples.

Invest Europe response:

An important, though perhaps more technical, issue that our members are facing as regards supervisory reporting under the AIFMD in accordance with Annex IV relates to the complexity and number of fields.

Set out below is a selection of the more practical feedback Invest Europe has received from its members:

1. In certain countries, there is no guidance on some of the reference numbers that should be used regarding fund types.

2. Inability to print the completed form - In some countries the current system only allows printing of individual screens which is cumbersome given the form is split over multiple pages/screens.

3. Rounding/netting off issues were experienced in several sections. Returns were rejected multiple times before being accepted.

4. The Validate and Save option within the data input screen did not work in many instances.

5. When completing the initial filing, the frequency was not automatically set up based on the AIF or AIFM reporting code.

6. Templates in certain Member States have questions in a different order to the ESMA template which can have an impact on how assumptions are made.

Question 7 - To what extent has the adoption of supervisory reporting requirements at EU level facilitated supervisory reporting in areas where previously only national requirements existed?

Very significantly	
Significantly	
Moderately	
Marginally	
Not at all	
It has made supervisory reporting more complicated	
Don't know	X

Please elaborate and provide specific examples.

Invest Europe response:

Not applicable.

Question 8 - To what extent have options left to Member States in terms of implementing EU level supervisory reporting requirements (e.g. due to their adoption as Directives rather than Regulations) increased the compliance cost?

Very significantly	
Significantly	X
Moderately	
Marginally	
Not at all	

Don’t know	

If you think divergent Member State implementation has increased the compliance cost, please provide specific examples of reporting frameworks or requirements where you believe this to be the case and explain your suggestions.

Invest Europe response:

Private equity fund managers that are subject to the AIFMD have found the regulatory reporting requirements to be very difficult in practice, and certainly more difficult than the pre-investment disclosure requirements and annual reporting requirements. Divergent national approaches to AIFMD Annex IV reporting, such as different reporting interfaces and technical structures, imply that fund managers are diverted from the core business, with no obvious benefit to financial stability or investor protection.

This was confirmed by the AIFMD Evaluation Report prepared by Europe Economics[1] (December 2017), which looks into the impact that the Directive has had on the European private equity and venture capital industry. The study demonstrates that the set-up of supervisory reporting under AIFMD has not been straight-forward for private equity fund managers, with a lack of guidance and comparability (between national requirements and reports) being the main issue.

Europe Economics’ research notes that on an ongoing basis, there were two implementation-related issues that private equity fund managers raised repeatedly regarding Annex IV reporting to supervisors:

1. There are ongoing delays in the implementation by regulators (i.e. not all are ready to accept Annex IV reports).
2. Although the data points required under Annex IV are set out quite clearly in the AIFMD and its Level 2 Regulation, ESMA has taken a further step of seeking to standardise the information required but there has been little consistency in the approaches adopted by national regulators. Indeed, although an ESMA template is available, its interpretation differs across countries with many supervisors adding their own tweaks and additions to it and with differences observed in the required format (XLS against XML) or language to be used (see also our response to Questions 5 and 6 of Section 1). It is not always possible simply to drop the data from the report to one supervisor into the template used by another. Some AIFMs have involved third party service providers to deal with the various national reports required (see also Question 7 in Section 2). Anecdotally, a very large private equity fund manager believed this had saved it about 0.5 of full time equivalent (FTE) on an ongoing basis, which gives an indication of the potential scale of the obligation.

More information and concrete examples can be found throughout this consultation response.

[1] Europe Economics “Evaluation of the Alternative Investment Fund Managers Directive”, December 2017

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Question 9 - Are there any challenges in terms of processing the data, either prior to (i.e. within the reporting entity) or subsequent to (i.e. within the receiving/processing entity) it being reported?

Yes	X
No	
Don't know	

If you answered 'yes', please elaborate and provide specific examples.

Invest Europe response:

One particular example is the AIFMD passport requirements in relation to notifications for cross-border marketing (Annex IV) and Article 23 disclosures (as referred to therein). While nowhere in the AIFMD does it say that host Member State national competent authorities can contact the manager or review (or comment on) the notification (communicated to them by the home Member State regulator), this does happen in practice and as such promotes divergent views.

Concretely:

- When applying for a marketing passport an AIFM must submit, to its home Member State regulator, a notification comprising the documentation and information described in Annex IV to the Directive (Article 32(2) of the Directive).

  Under Article 32(3) of the Directive, the competent authority of the AIFM's home Member State must, no later than 20 working days after receiving a complete notification, transmit the notification to the competent authorities of the Member State(s) where it is intended that the AIF will be marketed. The competent authority of the home Member State will only transmit the notification if it is satisfied that the AIFM's management of the AIF complies with the Directive. The competent authority of the home Member State must inform the AIFM of the notification's transmission and the AIFM may start marketing the AIF in the host Member State(s) as of the date of that notification (Article 32(4) of the Directive).

- As is clear from the above, nowhere in Article 32 of the Directive (or elsewhere in the AIFMD) is it contemplated that the *host* Member State competent authority should review the content of the notification (and, in particular, the 'Article 23 disclosures') and/or contact the AIFM about its intended marketing activity in their Member State. We are, however, aware that both of these have been occurring in practice.

- Some host Member State regulators have been communicating with AIFMs either through the relevant home Member State regulator or directly. Where this concerns obvious omissions or errors in the mandatory Article 23 disclosures not identified by the home Member State regulator, there can be little objection. On some points, however, there is a risk of multiple divergent views being expressed by different regulators (e.g. how to approach disclosure of NAV when this will fluctuate). Given that under the architecture of the Directive an AIFM is required only to deal with its *home* Member State regulator in the context of the marketing passport, the views of that regulator must be determinative. Any other result undermines the operation of the passport, creates legal and regulatory uncertainty and will hinder AIFMs' cross-border marketing activities.

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- In some cases, local expectations about the content of a marketing passport notification go beyond the requirements set out in the Directive. We understand, for example, that at least one national regulator is in some instances requiring an AIFM to provide certain confirmations in its passport notification about its marketing arrangements and (where relevant) the arrangements in place to prevent marketing to retail investors. Whilst we acknowledge that, pursuant to Article 32(5) of the Directive, such arrangements are subject to the laws and supervision of the host Member State, we believe this means that the arrangements should secure compliance with the local laws and do not think that a host Member State competent authority has any legal basis on which to require additional confirmations from an AIFM as part of its passport notification.

Material change notifications (see also Question 5)

- In addition, the requirement to give prior notice of material changes to marketing documents, triggering a one-month 'wait period' while the notice is considered by the regulator, creates material difficulties for private equity firms given the typical negotiated (iterative) marketing process. Prior to the AIFMD, investors would often negotiate with the fund manager right up to closing, with the partnership agreement being signed once the final negotiation points are resolved. If any of the changes negotiated late in the process are considered 'material' for notification purposes, there is then necessarily a delay between agreement being reached in principle and the final agreement (incorporating the proposed changes) being signed. In some cases, this can have material commercial implications, and it is a significant change to prior market practice.

Question 10 - Are there any negative environmental and/or social impacts related to supervisory reporting stemming from EU legislation?

Yes, both environmental and social	
Yes, environmental only	
Yes, social only	
No	
Don't know	X

If you answered 'yes' for either or both types of impacts, please elaborate and provide specific examples.

Invest Europe response:

Not applicable.

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II. Section 2: Quantifying the cost of compliance* with supervisory reporting requirements

** Some of the costs incurred until the end of 2016 may have been incurred in anticipation of supervisory reporting requirements to be implemented only as of January 2017. Section 2 is not intended to cover these compliance costs. All replies should be provided on the basis of the situation at the end of December 2016 for frameworks in force at that date.*

Question 1 - Is supervisory reporting in its current form unnecessarily costly for its intended purposes (i.e. ensuring financial stability, market integrity, and investor protection)?

Yes	X
No, it is at an appropriate level	
Don't know	

Invest Europe response:

As the European association for private equity and venture capital, it is difficult for us to answer the questions in this Section from *an individual firm perspective*. This part of the consultation response does not therefore reflect the specific situation of individual member firms; rather, it has been written from the perspective of the *European private equity industry as a whole*, based on common market practice and experiences with the AIFMD.

Generally, it is clear that the most definitive effect of the AIFMD transparency and reporting requirements is an increased cost burden on fund managers' businesses. According to the AIFMD evaluation research undertaken by Europe Economics[2] (December 2017), almost 90% of the surveyed fund managers agreed with that statement.

Question 2 - To what extent have the following factors contributed to the excessive cost of supervisory reporting? Please indicate the relevance of the following factors by giving each a rating from 0 to 4 (4: contributed greatly; 0: not contributed at all).

Too many requirements	2
Need to report under several different reporting frameworks	4
Need to report to too many different entities	3
Lack of interoperability between reporting frameworks and/or between receiving/processing entities or supervisory authorities	4

[2] Europe Economics "Evaluation of the Alternative Investment Fund Managers Directive", December 2017

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Need to report too frequently	4
Overlapping requirements	0
Redundant requirements	0
Inconsistent requirements	4
Unclear/vague requirements	0
Insufficient use of (international) standards	0
Need to introduce/update IT systems	0
Need for additional human resources	2
Too many/too frequent amendments in the relevant legislation	0
Lack of a common financial language	0
Insufficient use of ICT*	0
Insufficient level of automation of the reporting process**	0
Lack of (adequate) technical guidance/specifications	3
Other (please specify and provide a ranking from 0 to 4) Lack of tailoring to private equity and venture capital	4

* Use of ICT is understood as presenting data in an electronic format rather than on paper and/or submitting it using electronic means (e.g. by email, via an online template) rather than by post or in person.
** Automation is understood as reducing or even fully eliminating human intervention from the supervisory reporting process.

Question 3 - To what extent have the following types of legislative/regulatory requirements been a source of excessive compliance costs in terms of supervisory reporting? Please indicate the relevance of the following types of legislative/regulatory requirements by giving each a rating from 0 to 4 (4: very significant source of costs; 0: not at all a source of costs).

Supervisory reporting requirements imposed by EU Regulations and/or Directives	2
Different Member State implementation of EU financial legislation, resulting in diverse national supervisory reporting requirements for the same financial entity/product	4
National supervisory reporting requirements in addition to those in	1

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EU legislation for a specific financial entity/product	
Other supervisory reporting requirements in addition to those in EU legislation for a specific financial entity/product (please specify)	

Please elaborate and provide examples.

Invest Europe response:

Divergent implementation by Member States of EU financial legislation like the AIFMD continues to create problems for Invest Europe members. In line with and in addition to our responses to relevant questions elsewhere in this consultation, we would like to highlight the following examples:

(1) Registration for non-EU AIFMs

The registration process defined in Article 42 of AIFMD (marketing by non-EU AIFMs under the national private placement regimes) is not harmonised. By forcing non-EU AIFs to fill a different form in each Member State, Member States impose *de facto* barriers to entry to their markets.

Concretely:

AIFMs seeking to use/register under Member States' national private placement regimes under Article 42 of AIFMD are currently faced with the absence of a harmonised (Article 42) 'registration process' across the EU and the varying conditions which must be met to satisfy different national private placement regimes (requirements as such vary from one Member State to the other).

There is a different form which must be filed with each Member State regulator and there are differences also between:

- the supporting information which must be supplied with the form (some Member State regulators require significant amounts of supporting information and documentation whilst others do not);
- whether contractual agreements need to be established between an AIF and a service provider (e.g. depositary) prior to the form being filed;
- the way in which the form must be filed;
- the fees/charges imposed on the AIFM when filing the form; and
- the time period for the regulator to consider the application and the form/material submitted. In some countries it can take up to four months for the national competent authority to review the AIFM's notification application, whilst in other Member States a manager may (be allowed to) market immediately following filing.

The absence of a harmonised process means that AIFMs incur considerable (and often duplicatory) costs in relation to any non-EU fund which is to be marketed across the EU as legal and other advice must be taken in each relevant jurisdiction and administrative charges are incurred on a per-jurisdiction basis. This imposes *de facto* barriers to entry to other EU markets and the consequent implication that it could lead to a market distortion as the number of managers in the market declines.

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It also imposes an unnecessarily onerous compliance burden on managers that, at a time when resources should be focused on raising funds for investment into the real economy, must instead divert certain of those resources towards ensuring that they meet inconsistent regulatory notification obligations/requirements across the EU.

(2) Regulatory reporting under Annex IV

The same problem arises when it comes to regulatory reports set in Annex IV of AIFMD which must be filed with regulators post-registration. In this case, divergent approaches to reporting in Member States increase the time and expense needed for fund managers to market their funds, and in the end reduce the opportunity to invest into European businesses (see also our response to Questions 5, 6 and 7 in Section 1).

Concretely:

Where a non-EU AIFM has registered under multiple national private placement regimes it must comply with the necessary requirements in each jurisdiction. The AIFM must, for instance, file 'Annex IV' periodic reports and notifications (required under Articles 27 and 28 AIFMD) with each Member State regulator and must comply with *each Member State's interpretation* of the applicable requirements. As a result, AIFMs incur significant costs and suffer an onerous administrative burden in order to ensure that they satisfy their regulatory obligations across the EU.

In addition, given that there is *no harmonisation* on the procedures for submitting Annex IV reports, non-EU AIFMs have to use *different reporting forms and online submission platforms* to submit reports in different EU jurisdictions, resulting in a significant and unnecessary increase in ongoing compliance costs. This has also resulted in the rather unusual result that non-EU AIFMs (not subject to the full Directive) are subject to a higher compliance burden than EU AIFMs (subject to the full Directive) in this respect.

Question 4 - **Does the obligation to use structured reporting (i.e. templates or forms in which specific data elements to be reported are listed) and/or predetermined data and file formats (i.e. (i) the exact way in which the individual data elements are to be encoded or (ii) the file format in which the information to be reported is exchanged/submitted) for supervisory reporting increase or decrease the compliance cost of supervisory reporting?**

Increases the compliance cost	X
Decreases the compliance cost	
Does not impact the compliance cost	
Don't know	

Please provide specific examples to substantiate your answer.

Invest Europe response:

Please see our response to Questions 5, 6 and 8 in Section 1.

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Question 5 - **Please specify the supervisory reporting frameworks to which you are subject (or, in the case of entities receiving and/or processing the data or supervisory authorities, which you deal with or make use of) and estimate the cost (in monetary terms and as a percentage of operating cost) for your entity of meeting supervisory reporting requirements (or, in the case of entities receiving and processing the data or supervisory authorities, of processing the data).**

- **Subject to/deal with/make use of the following supervisory reporting frameworks:**

Invest Europe response:

Private equity fund managers with more than €500 million assets under management need to be fully authorised by the AIFMD and comply with all of the Directive's requirements including as regards disclosure and transparency. Also fund managers below the *de minimis* threshold are subject to certain disclosure requirements under the AIFMD.

The AIFMD, together with the Level 2 Regulations, introduce regulatory reporting requirements for AIFMs including all AIFMs based in the EU as well as non-EU AIFMs which either manage an EU AIF or market within the EU. Reporting is made to relevant national regulators.

ESMA took the view that there was need to supplement the AIFMD Regulation with further guidelines on reporting obligations to ensure greater standardisation of information sent to national competent authorities to facilitate the easy exchange of information.

- **Average initial implementation cost (i.e. one-off cost):**

Cost in euro	as a percentage of total assets/turnover/other (please specify), as applicable
Not possible to estimate (please elaborate) The AIFMD evaluation report produced by Europe Economics (December 2017) assesses and estimates what costs the AIFMD has generated, in terms of both one-off costs and ongoing costs. One-off costs could capture, for example, the costs of authorisation and understanding the legislation, legal advice, adjusting internal structures and documents. In monetary terms, the average one-off cost estimates obtained from above-threshold private equity fund managers were almost €750,000. The median one-off costs	Not possible to estimate (please elaborate) Of the above-threshold private equity fund managers (i.e. with assets under management above €500 million) that responded to the Europe Economics survey, 78% described the one-off costs of implementing the AIFMD as significant, and another 17% thought they were moderate. The provisions of the AIFMD that primarily drove one-off costs were those related to: (i) authorisation and notification (95% said this was a significant or moderate driver of one-off costs), (ii) marketing (88%), and (iii) setting up the depositaries (87%).

were close to €500,000. Not all costs have yet been incurred but Europe Economics estimates that when they are the total one-off industry-wide costs would amount to between €106-€195 million. It is, however, impossible to make a distinction and allocate these costs to the different AIFMD requirements.	

- **Average annual running cost (i.e. recurrent cost) in 2016:**

Cost in euro	as a percentage of operating cost
Not possible to estimate (please elaborate) The AIFMD evaluation report produced by Europe Economics (December 2017) assesses and estimates what costs the AIFMD has generated, in terms of both one-off costs and ongoing costs. Ongoing costs include the cost of complying with the AIFMD's continuous requirements such as depositaries and reporting. They generally tend to represent an increase in the operating costs of doing business. In monetary terms, the average annual ongoing costs were slightly above €250,000. The median ongoing costs were just under €200,000. Not all costs have yet been incurred but Europe Economics estimates that when they are the total industry-wide annual ongoing costs would amount to between €60 and	Not possible to estimate (please elaborate) Ongoing costs seem to be slightly less material [for those above-threshold private equity fund managers that responded to the Europe Economics survey], with only 35% of the respondents describing them as significant, and 61% as moderate. The rules around depositaries, and transparency and reporting were identified as being the primary drivers of higher ongoing costs (95% and 80% respectively). Other provisions driving the ongoing costs were those related to: (i) authorisation and notification (74%), and (ii) marketing (60%). Separately (and anecdotally), we understand that the AIFMD filing requirements (as outlined in Question 5, Section 1) add approximately €20,000 (before VAT) in professional services costs (or the equivalent in internal management time of the AIFM) in respect of each new fund. This cost is typically borne by investors, reducing returns.

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€180 million. It is, however, impossible to make a distinction and allocate these costs to the different AIFMD requirements.	

- **Average annual running cost (i.e. recurrent cost) over the last 5 years:**

Cost in euro	as a percentage of operating cost
Not possible to estimate (please elaborate)	Not possible to estimate (please elaborate)

- **Average annual running cost (i.e. recurrent cost) over the last 10 years:**

Cost in euro	as a percentage of operating cost
Not possible to estimate (please elaborate)	Not possible to estimate (please elaborate)

Please indicate whether the above figures concern your entity as a whole or only a part thereof (i.e. a department, a subsidiary, a branch, a regional division, etc.).

Not applicable.

Question 6 - Which reporting frameworks contribute the most to the cost of compliance with supervisory reporting requirements? Please indicate as many frameworks as necessary and explain your answer.

Invest Europe response:

Not applicable. This response has been written solely from the AIFMD point of view.

Question 7 - Does your entity deal with supervisory reporting directly in-house or has this task been outsourced to an external provider?

fully in-house	
partially outsourced	X

fully outsourced	

Please elaborate and, if possible, explain the reasons for your business choice.

Invest Europe response:

The requirement for electronic reporting under AIFMD - and the different system requirements across national regulators - have made regulatory reporting particularly challenging, not least because not all national regulators are yet equipped to receive these reports.

Our intelligence suggests that this has led to a number of existing service providers such as administrators seeking to add this to their offering, and there appears to be a trend towards (private equity) managers outsourcing this regulatory reporting obligation.

Question 8 - Please indicate the size of your entity's department dealing with supervisory reporting:

- **in terms of the number of employees, indicated as full-time equivalents (FTE):**
    - **at the end of 2016:**

[*number*] FTEs	Not applicable.
Not possible to estimate (please elaborate):	

    - **in 2009:**

[*number*] FTEs	Not applicable.
Not possible to estimate (please elaborate):	

- **as a percentage of the compliance work force:**
    - **at the end of 2016:**

[*number*] %	Not applicable.
Not possible to estimate (please elaborate):	

    - **in 2009:**

[*number*] %	Not applicable.
Not possible to estimate (please elaborate):	

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- **as a percentage of the total work force:**
  - **at the end of 2016:**

[*number*] %	Not applicable.
Not possible to estimate (please elaborate):	

  - **in 2009:**

[*number*] %	Not applicable.
Not possible to estimate (please elaborate):	

Please indicate whether the above figures concern your entity as a whole or only a part thereof (i.e. a department, a subsidiary, a branch, a regional division, etc.).

Invest Europe response:

Not applicable.

Question 9 - **Have any of the EU level reporting frameworks brought (or partially brought) cost- saving benefits (e.g. simplified regulatory reporting, facilitated internal data management processes, improved risk management, increased operational efficiencies, etc.)?**

Yes	
No	X
Don't know	

If you answered 'yes', please indicate which frameworks, explain in what way they have contributed to cost-savings, and if possible quantify the savings (with respect to previous or other similar reporting frameworks).

Invest Europe response:

Not applicable.

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III. Section 3: Identifying possible ways to simplify and streamline supervisory reporting

Question 1 - Please indicate which of the following could reduce the compliance cost while maintaining a sufficient level of supervisory reporting to ensure that the intended objectives are achieved. Please select all relevant answers that apply.

Yes/No		Short term	Long term	Don't know
	reduction of the number of data elements			X
	clarification of the content of the data elements			X
Yes	greater alignment of reporting requirements	X	X	
	greater standardisation/use of international standards			X
	development of a common financial language			X
Yes	ensuring interoperability between reporting frameworks and/or receiving/processing entities or supervisory authorities	X	X	
	greater use of ICT			X
	greater automation of the reporting process			X
Yes	other (please specify): 1) Better tailoring to the different affected asset classes, industries and their respective business models (in this case, the private equity and venture capital fundraising process) 2) Greater alignment of expectations from national competent authorities	X	X	

Please elaborate, in particular explaining how you believe the answer(s) you selected could be achieved in practice.

Invest Europe response:

- Lack of tailoring to private equity: As mentioned previously, the requirement to report to competent authorities within 30 days (as per Article 110 of the AIFMD Delegated Regulation) is not very well tailored to the nature and practices of the private equity industry. A relaxation of this timing

requirement to 2–3 months would align supervisors with existing industry practice and the reporting schedule used with investors.

- Passporting notification: The development of common supervisory expectations about the passport and the contents of the passporting notification would allow the marketing passport application process to function more effectively, provide AIFMs with the certainty they need to ensure their notifications will meet regulatory expectations on a cross-border basis and avoid disruption to AIFMs' fundraising activities.

- Annex IV reporting - Complexity and number of fields: Simplification of the Annex IV reporting rules and the data collected would be welcomed.

- Divergent national approaches: It is time-consuming and costly for private equity firms to comply with a patchwork of local implementing laws, which often differ in their detailed requirements. Streamlining the (registration and) notification process and subsequent (post-registration) periodic reporting requirements would help to reduce costs. At the moment, different forms are used for filing by different Member State regulators (see also next bullet).

- No central reporting point for Article 42 firms: Consolidation of reporting for private placement firms would be greatly welcomed. The fact that private placement firms need to report separately in each jurisdiction adds considerable costs. This is particularly so given that each regulator uses different systems of varying degrees of sophistication, meaning that each report needs to be slightly different despite a template report issued by ESMA. Each jurisdiction must therefore be treated as unique.

  The ability to register with, and to report only once to, a single, centralised authority who could then share such information with Member State regulators (e.g. through ESMA) as deemed necessary would greatly reduce costs and complexity for fund managers. Such a single registration/filing hub, potentially managed by ESMA and to which Member State regulators would have access, would be most effective if it permitted AIFMs to file a single NPPR registration and submit only one version of any Annex IV report or notification required to be made under Articles 27 or 28 of the Directive.

  Whilst we acknowledge that the implementation of such a hub would require Member State regulators to agree on the interpretation of applicable parts of the Directive, we would strongly encourage regulators to seek to reach common views even prior to the implementation of any such hub in order to increase legal and regulatory certainty for third country managers and funds.

Concerning the development of a common financial language (i.e. a set of harmonised definitions of the terms used in supervisory reporting):

Question 2 - To what extent would the development of a common financial language help reduce the compliance cost of supervisory reporting?

Very significantly	
Significantly	
Moderately	

Marginally	
Not at all	
Don’t know	X

Please elaborate.

Invest Europe response:

Not applicable.

Question 3 - To what extent would the development of a common financial language help improve the management (i.e. reporting or processing) of supervisory data required to be reported?

Very significantly	
Significantly	
Moderately	
Marginally	
Not at all	
Don’t know	X

Please elaborate.

Invest Europe response:

Not applicable.

Question 4 - Are there any prerequisites for the development of a common financial language?

Yes	X
No	
Don’t know	

If you answered ‘yes’, please elaborate and provide specific examples.

Invest Europe response:

A key prerequisite for the development of a common financial language – to the extent this is deemed necessary - is the avoidance of a one-size-fits-all approach. Different EU level reporting frameworks have different target audiences, each with their own characteristics, perspectives, strategies, beneficiaries and market practices.

Even within one and the same reporting framework, a distinction will need to be made between the different market participants and asset classes covered. In the case of AIFMD for example, it will be important to recognise and to tailor for the different asset classes and types of alternative investment fund manager affected by the Directive.

Question 5 - Are there any obstacles to the development of a common financial language in the short term (i.e. 2 years or less)?

Yes	
No	
Don't know	X

If you answered 'yes', please elaborate and provide specific examples.

Invest Europe response:

Not applicable.

Concerning interoperability between reporting frameworks (i.e. alignment/harmonisation of the reporting requirements) and/or receiving entities (i.e. the ability of entities receiving supervisory data to share it amongst themselves in such a way that it remains legible):

Question 6 - To what extent would ensuring interoperability between reporting frameworks and/or receiving entities help reduce the compliance cost of supervisory reporting?

Very significantly	
Significantly	X
Moderately	
Marginally	
Not at all	
Don't know	

Please elaborate.

Invest Europe response:

Please see our response to previous questions in Section 3.

Question 7 - To what extent would ensuring interoperability between reporting frameworks and/or receiving entities help improve the management (i.e. reporting or processing) of supervisory data required to be reported?

Very significantly	
Significantly	X
Moderately	
Marginally	
Not at all	
Don’t know	

Please elaborate.

Invest Europe response:

Please see our response to previous questions in Section 3.

Question 8 - Are there any prerequisites for introducing greater interoperability between reporting frameworks and/or receiving entities?

Yes	
No	
Don’t know	X

If you answered ‘yes’, please elaborate and provide specific examples.

Invest Europe response:

Not applicable.

Question 9 - Are there any obstacles to introducing greater interoperability between reporting frameworks and/or receiving entities in the short term (i.e. 2 years or less)?

Yes	
No	
Don't know	X

If you answered 'yes', please elaborate and provide specific examples.

Invest Europe response:

Not applicable.

Concerning greater use of ICT in supervisory reporting:

Question 10 - To what extent would greater use of ICT help reduce the compliance cost of supervisory reporting?

Very significantly	
Significantly	X
Moderately	
Marginally	
Not at all	
Don't know	

Please elaborate.

Invest Europe response:

Rather than greater use of ICT, we would argue for better, more appropriate use of ICT, ironing out the technical difficulties market practitioners are currently facing with electronic reporting.

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Question 11 - To what extent would greater use of ICT help improve the management (i.e. reporting or processing) of supervisory data required to be reported?

Very significantly	
Significantly	X
Moderately	
Marginally	
Not at all	
Don't know	

Please elaborate.

Invest Europe response:

As above, rather than greater use of ICT, we would argue for better, more appropriate use of ICT, ironing out the technical difficulties market practitioners are currently facing with electronic reporting.

Question 12 - Are there any prerequisites for the greater use of ICT in supervisory reporting?

Yes	
No	
Don't know	X

If you answered 'yes', please elaborate and provide specific examples.

Invest Europe response:

Not applicable.

Question 13 - Are there any obstacles to the greater use of ICT in supervisory reporting in the short term (i.e. 2 years or less)?

Yes	
No	

Don’t know	X

If you answered ‘yes’, please elaborate and provide specific examples.

Invest Europe response:

Not applicable.

Concerning greater automation of the reporting process:

Question 14 - To what extent would greater automation of the reporting process help reduce the compliance cost of supervisory reporting?

Very significantly	
Significantly	
Moderately	
Marginally	
Not at all	
Don’t know	X

Please elaborate.

Invest Europe response:

Not applicable.

Question 15 - To what extent would greater automation of the reporting process help improve the management (i.e. reporting and/or processing) of supervisory data required to be reported?

Very significantly	
Significantly	
Moderately	
Marginally	
Not at all	

Don't know	X

Please elaborate.

Invest Europe response:

Not applicable.

Question 16 - Are there any prerequisites for a greater automation of supervisory reporting?

Yes	
No	
Don't know	X

If you answered 'yes', please elaborate and provide specific examples.

Invest Europe response:

Not applicable.

Question 17 - Are there any obstacles to a greater automation of supervisory reporting in the short term (i.e. 2 years or less)?

Yes	
No	
Don't know	X

If you answered 'yes', please elaborate and provide specific examples.

Invest Europe response:

Not applicable.

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Question 18 - What role can EU regulators play in facilitating or stimulating greater use of ICT in supervisory reporting?

Crucial role	
Important role	
Moderate role	
Limited role	
No role	
Don't know	X

Please elaborate and provide specific examples of where and how you believe EU regulators could help.

Invest Europe response:

Not applicable.

Question 19 - What role can EU regulators play in facilitating or stimulating greater automation of the reporting process?

Crucial role	
Important role	
Moderate role	
Limited role	
No role	
Don't know	X

Please elaborate and provide specific examples of where and how you believe EU regulators could help.

Invest Europe response:

Not applicable.

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<u>Question 20</u> - What else could be done to simplify supervisory reporting while ensuring that regulated entities continue to fulfil their supervisory reporting requirements?

<u>Invest Europe response:</u>

- Our members' experience suggests that regulators in certain key jurisdictions for fundraising often face difficulties in dealing with the volume of NPPR registration applications (for example, from firms operating under Article 42 AIFMD). In many cases, regulators seem to be giving priority to AIFM authorisation applications from domestic managers.

  In addition to creating an unequal market for EU and non-EU AIFMs, this has resulted in regulators being unable to meet their own deadlines for processing NPPR registration applications from non-EU AIFMs. These uncertainties make it difficult for non-EU AIFMs to draw up and adhere to fund formation and closing timetables.

  Such unnecessary delays should be avoided and no distinction should be made between applications from EU and non-EU firms.

- In addition, ESMA currently provides no consolidated data "feedback" to the industry – as it probably should do – giving industries a view on industry "norms". In effect, the data provided to ESMA (at substantial cost as pointed out above) disappears into a black hole. Were ESMA to provide useful and constructive analysis of information back to the industry so that managers/investors were able to run comparisons against the "norms", it is likely that the cumbersome reporting systems and processes would be more widely accepted.

<u>Question 21</u> - Can you provide any practical example of improvements to data management processes that could be applied to supervisory reporting with a view to reducing the compliance cost and/or improving the management of supervisory reporting?

Yes	
No	X

If you answered 'yes', please specify and explain your suggestions.

<u>Invest Europe response:</u>

Not applicable.

Contact

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About the PAE

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

About Invest Europe

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

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

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

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

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

For more information please visit www.investeurope.eu.