COMENTARIOS DEL COMITÉ CONSULTIVO DE LA CNMV SOBRE LA CONSULTA PÚBLICA DE LA COMISIÓN EUROPEA REFERENTE A LA REVISIÓN DE LA DIRECTIVA DE GESTORES DE FONDOS DE INVERSIÓN ALTERNATIVA

I. INTRODUCCIÓN

El Comité Consultivo de la CNMV (en adelante, el Comité Consultivo) agradece la posibilidad de realizar observaciones y comentarios a la Consulta Pública de la Comisión Europea sobre la revisión de la Directiva 2011/61, del 8 de junio, sobre gestores de Fondos de Inversión Alternativa (en adelante, **DGFIA**).

La ponencia se estructura en los siguientes apartados:

- **Apartado II. Antecedentes.** Se explica el origen de la Directiva, el motivo de la revisión y la estructura de la consulta pública.

- **Apartado III. Observaciones generales.** Se resaltan las ideas generales que subyacen a las respuestas al cuestionario.

- **Anexo.** Se acompañan las respuestas a cada una de las 102 preguntas que componen el cuestionario.

II. ANTECEDENTES

En 1985 se aprobó la Directiva 85/611, de 20 de diciembre, reguladora de los Organismos de Inversión Colectiva en valor mobiliarios (en adelante **OICVM** o, en su acrónimo inglés, **UCITS**). El diseño de esta regulación supuso un gran esfuerzo por parte de los Estados miembros por encontrar el espacio común a las respectivas legislaciones en el que todos los Estados miembros pudieran admitir, con seguridad desde una perspectiva de protección del inversor, la comercialización en sus territorios de vehículos de inversión procedentes de otras jurisdicciones.

Por ello, la Directiva reguló un tipo de vehículo concreto (de tipo abierto que ofreciera sus participaciones en venta al público y cuya actividad fuera la inversión en valores mobiliarios, considerados estos, en esencia, como valor cotizados o negociados en mercados regulados), regulando en gran detalle el producto en sí y su funcionamiento, entre otros en lo relativo a activos aptos, reglas de diversificación y límites de concentración, técnicas a emplear para la gestión de la cartera, métodos para la medición de determinados riesgos y obligaciones de transparencia.

La crisis financiera que azotó las economías en 2007 puso de manifiesto que, junto al mundo regulado o armonizado de las UCITS, existía asimismo un universo de vehículos de inversión no armonizados (a los que se denominó Fondos de Inversión Alternativa, en adelante **FIA**), sobre cuya operativa, funcionamiento, riesgos e interconexiones con el sistema financiero poco o nada se sabía en algunos países.

Con el objetivo de mejorar la información y poder prevenir los riesgos que pudieran dimanar de ese sector, se aprobó la DGFIA, que con buen criterio optó por regular a los Gestores de dichos vehículos (imponiéndoles una serie de reglas de registro, supervisión, gestión de riesgos e información, similares a las de otros operadores financieros), pero no a los vehículos en sí, debido a la dificultad e inconveniencia de regular exhaustivamente la actuación de vehículos que, al ser definidos por exclusión (todo lo que no es UCITS es FIA), abarca figuras muy diferentes, que incluyen:

- Fondos cuasi-ucits[1]
- Fondos inmobliarios
- Hedge Funds
- Venture capital
- ELTIF, EUSEF y EUVECA
- Otras tipologías específicas existentes en diversos países (por ejemplo, Spezialfunds en Alemania)

La presente consulta pública tiene por objeto la revisión que la propia Directiva prevé en su artículo 69, y que persigue evaluar su funcionamiento y subsanar posibles áreas de mejora, una vez transcurrido un tiempo prudencial desde su entrada en vigor.

Esta consulta se configura como el paso previo a la publicación de un texto articulado de modificación de la Directiva, y cuenta como precedentes relevantes en el proceso, que se citarán en la consulta, los siguientes documentos:

- Estudio encargado a KPMG sobre la eficiencia y coherencia de las normas de la DGFIA en 15 Estados miembros (enero-2019).
- Informe de la Comisión Europea al Parlamento y al Consejo, sobre el alcance y la aplicación de la DGFIA (10-junio-2020). En el informe se concluye que, aunque hay una serie de ámbitos en los que podría mejorarse el marco jurídico, la DGFIA ha contribuido a la creación del mercado de los FIA en la UE, ha brindado un alto nivel de protección a los inversores y ha facilitado el control de los riesgos para la estabilidad financiera.
- Carta de ESMA a la Comisión Europea sobre prioridades en materia de revisión de la DGFIA (18-agosto-2020).
- Informe estadístico de ESMA sobre el sector de DGFIA (segunda edición publicada en enero de 2020).
- Informe de ESMA sobre sanciones impuestas en 2018-2019 en aplicación de la DGFIA (12-noviembre-2020).

El documento consta de 102 preguntas, divididas en 7 secciones que se describen a continuación:

1. **Funcionamiento del marco regulador, ámbito de aplicación y requisitos de autorización.** Las cuestiones planteadas se refieren a la posible mejora del régimen de autorización y al alcance de la DGFIA, incluyendo la idoneidad del mecanismo de concesión de autorización y, en su caso, los requisitos de capital y fondos propios. La Comisión considera la posibilidad de acompasar las preocupaciones manifestadas por los Gestores de FIA de menor tamaño con la necesidad de unas reglas de juego similares entre los FIA y otros intermediarios financieros que prestan servicios similares. Varias preguntas también se refieren al funcionamiento del pasaporte del GFIA para mejorar la comercialización transfronteriza y facilitar el acceso de los inversores.

2. **Protección del inversor.** La Comisión espera comentarios sobre cómo podría mejorarse el régimen de protección del inversor para tener mejor en cuenta las diferencias entre inversores minoristas y profesionales, así como sobre la idoneidad de los requisitos de transparencia existentes. Las preguntas de esta sección cubren el régimen de depositario, las reglas aplicables a los *prime*

[1] Se trata de Fondos diseñados para inversores minoristas que presentan diferencias mínimas con respecto a los Fondos armonizados, aunque no cumplen el 100% de los requisitos de la Directiva UCITS. En el caso español, están recogidos en el artículo 72 del Real Decreto 1082/2012, e incluyen, entre otros, Fondos cuya gestión esté encaminada a la consecución de un objetivo concreto de rentabilidad en las que exista una garantía otorgada a la propia institución por un tercero, que incumplan determinados requisitos de diversificación de la Directiva UCITS, como el relativo a diversificar al menos en 6 emisiones cuando se invierta más del 35% en Deuda Pública de un mismo emisor.

brokers, la idoneidad de las reglas sobre conflictos de intereses y la claridad de las reglas de valoración de activos.

3. **Cuestiones internacionales.** Esta sección cubre cuestiones sobre la competitividad de los FIA de la UE, el funcionamiento de los regímenes nacionales de colocación privada, la idoneidad del régimen de pasaporte de terceros países de la DGFIA y las normas de delegación.

4. **Estabilidad financiera.** La consulta incluye preguntas sobre si las Autoridades Nacionales Competentes (en adelante, **ANC**) y los GFIA tienen las herramientas adecuadas para gestionar eficazmente los riesgos sistémicos. La Comisión se centra en particular en mejorar el reporte de información a supervisores, así como en los beneficios de una información de supervisión más centralizada y un mejor intercambio de información entre los supervisores pertinentes. Esta sección también considera:

    - La armonización de las herramientas de gestión de la liquidez.
    - La definición de activos ilíquidos.
    - Posibles ajustes a las reglas de remuneración.
    - Cambios en el marco de información, con un posible mayor grado de detalle en lo relativo a apalancamiento, liquidez, reporte de LEI, clasificación de FIA y estrategias de inversión.
    - Tratamiento de los Fondos de originación de deuda.

5. **Fomento de la inversión en empresas.** Las preguntas buscan información sobre si las normas que regulan la inversión en empresas realmente logran sus objetivos de contribuir, a través de los FIA, a la financiación de las empresas.

6. **Sostenibilidad.** La consulta incluye una sección sobre si los GFIA deben cuantificar los riesgos de sostenibilidad y los impactos adversos.

7. **Varios.** La última sección incluye preguntas sobre las competencias y facultades de las autoridades de supervisión y sobre si debe encomendarse a ESMA la autorización y supervisión de todos los GFIA de la UE y de fuera de la UE, así como sobre la eficacia de la supervisión de entidades que actúan transfronterizamente.

III. OBSERVACIONES GENERALES

Durante todo el proceso de revisión de la Directiva, incluyendo los estudios e informes sobre su funcionamiento señalados en el Apartado II anterior, la conclusión es que éste ha sido bueno y se han conseguido los objetivos que motivaron su adopción hace ya casi diez años.

A este fin han servido las reglas sobre pasaporte, valoración, conflictos de interés, requisitos de capital, gestión de riesgos, información a inversores y a supervisores, delegación o políticas de remuneración, entre otras.

La no contribución relevante al riesgo sistémico se ha puesto de manifiesto con la reciente situación derivada del COVID-19, en la que a pesar de las tensiones en los mercados en los peores momentos de la pandemia, el 99,4% de los Fondos europeos han sido capaces de atender con normalidad sus reembolsos, de acuerdo con el reciente informe publicado por ESMA en noviembre, en el que se recogen las conclusiones de la acción de supervisión conjunta llevada a cabo por las ANC, siguiendo la recomendación del ESRB. Destacan del mismo las siguientes conclusiones:

- Los Fondos con exposiciones significativas a deuda corporativa y activos inmobiliarios analizados han sido, en general, gestionados para mantener adecuadamente sus actividades durante la crisis del COVID-19, cuando han experimentado reembolsos o episodios de incertidumbre en la valoración.

- Solo un número limitado de Fondos analizados (0,4%) suspendieron suscripciones o reembolsos, mientras que la mayoría pudieron atender correctamente las solicitudes de reembolso y mantener la estructura de la cartera.
- Algunos Fondos han presentado potenciales desajustes, debido a su estructura de liquidez, que debieran ser abordados (por ejemplo, Fondos con inversiones en activos de naturaleza ilíquida que ofrecen una alta frecuencia de reembolsos y periodos cortos de preaviso).
- Solo algunos Fondos han tenido que ajustar su estructura de liquidez teniendo en cuenta su estrategia de inversión y la problemática en materia de liquidez identificada.
- Además, existe preocupación en torno a la valoración de los activos que conforman las carteras, particularmente en el caso de Fondos de inversión inmobiliarios, para los que la crisis podría tener un impacto más significativo a largo plazo. En España no existen Fondos de este tipo.

En el Anexo a este documento se facilitan las respuestas a cada una de las 102 preguntas, de cuyo contenido se destacan las ideas generales que se exponen a continuación:

a) La revisión de la DGFIA debe tener presente en todo momento la naturaleza de los FIA

La labor de los gestores es gestionar los riesgos, y éstos no pueden suprimirse por la vía de una mayor normativa. El valor al que entran y salen los inversores depende del valor de las inversiones subyacentes, y la posibilidad de que dichas salidas puedan producirse depende de la liquidez de dichos activos, que a su vez depende del momento.

Por ello resulta esencial que:

- El perfil de liquidez de los FIA esté ajustado, de modo que las condiciones de entrada y salida sean coherentes con la naturaleza de los activos, tanto en condiciones normales como en condiciones de mayor estrés.
- El marco normativo aplicable sea flexible, de manera que permita ajustar las condiciones de entrada y salida a la evolución de la liquidez de los activos, mediante procedimientos ágiles y flexibles.
- Los documentos informativos de los FIA faciliten la información necesaria para que los inversores conozcan todos los riesgos inherentes, incluido el de liquidez.

Además, los GFIA disponen de un marco normativo muy exigente, con obligaciones muy concretas y detalladas en el ámbito de la gestión de la liquidez (art.16), que permite minimizar el riesgo de liquidez, pero debe tenerse presente que no por aumentar la carga normativa en este ámbito el riesgo de liquidez puede eliminarse, pues es consustancial a la inversión en mercados financieros.

Por ello, las conclusiones de ESMA, como la relativa a que los mayores problemas potenciales de liquidez se encuentran entre los fondos inmobiliarios, resultan bienvenidas y razonables, pero no por ello merecedoras de acciones regulatorias adicionales.

b) Los cambios derivados de la revisión de la DGFIA deberían ser reducidos, atendiendo al buen funcionamiento de la Directiva

El funcionamiento de la Directiva es valorado positivamente, pues ha contribuido a clarificar el régimen aplicable a los gestores de FIA y a un mejor conocimiento de su actividad e interconexiones con otros sectores de actividad.

Por ello, las modificaciones que se realicen como consecuencia de la revisión en curso deberían ser de pequeño calado, limitándose a mejorar algunas cuestiones concretas, pero conservando el marco de la Directiva y evitando al máximo, especialmente en estos momentos, costes de adaptación que no se vean compensados con una mejora de la protección de los inversores o que no puedan ser conseguidos por otras vías, como un uso más intensivo de la información de la que ya se dispone o una mayor coordinación supervisora.

c) El marco de información a inversores de la DGFIA es adecuado, pero origina ciertos solapamientos indeseados en su interacción con otras Directivas, en particular, con Mifid II

Dicha interacción eventualmente también puede suceder con PRIIPS, teniendo en cuenta que, si nada se modifica en los próximos meses, el 1 de enero de 2022 los FIA que entreguen un Documento de Datos Fundamentales para el inversor (como así sucede con los FIA españoles) estarán sujetos tanto a su norma específica como a la de PRIIPS en lo que a elaboración de este documento se refiere. En todo caso, no se formulan propuestas concretas sobre esta cuestión, toda vez que la reciente modificación de MiFID II (*"quick fixes"*) que será objeto de transposición próximamente, ya prevé una importante flexibilización de los requisitos de información cuando los destinatarios son clientes profesionales o contrapartes elegibles, lo cual resultará especialmente favorable a la distribución de FIA, cuya base actual de partícipes está mayoritariamente formada por este tipo de inversores (de acuerdo con los datos de ESMA a nivel europeo, el 84% frente a solo un 16% de minoristas).

d) Conveniencia de valorar la exclusión de los cuasi-UCITS del ámbito de la DGFIA

Por la propia definición de FIA (que incluye a los Fondos que no son UCITS), han quedado incorporados a la DGFIA determinados productos para minoristas similares a los UCITS, lo que unido a la interacción con la Directiva MiFID (que considera todos los FIA automáticamente como productos complejos) tiene consecuencias importantes, no solo en su distribución a minoristas, sino también en el conocimiento del sector por parte de ESMA.

En este sentido se recuerda que, en el reporte a ESMA que los GFIA deben realizar mediante la cumplimentación del modelo que figura como Anexo IV del Reglamento Delegado (UE) n ° 231/2013 de la Comisión, de 19 de diciembre de 2012, por el que se complementa la DGFIA, se facilitan 6 categorías para identificar el tipo de FIA (ver pregunta 70), y de acuerdo con el informe estadístico de ESMA publicado en enero de 2020, el desglose del total del sector entre dichas categorías, por volumen de activos gestionados, responde a los siguientes porcentajes:

- Hedge funds 6%
- Private equity 6%
- Inmobiliarios 12%
- Fondos de fondos 14%
- Otros 61%
- Ninguno 1%

En países como España o Alemania, en esa categoría de "otros" en realidad se reportan mayoritariamente Fondos cuasi-UCITS, cuya inclusión en la DGFIA, asociada a activos o estrategias menos líquidas o más apalancadas, desvirtúa el conocimiento de este sector y puede generar una falsa impresión de mayor riesgo sistémico.

Estos denominados Fondos cuasi-UCITs están totalmente regulados en su diseño y funcionamiento, por lo que su eventual exclusión de la DGFIA e inclusión en la de UCITs, no plantearía ningún problema. De hecho, estos Fondos están diseñados para inversores minoristas y presentan diferencias mínimas con respecto a los Fondos UCITS armonizados, ya que la única diferencia es que no cumplen uno de los requisitos de la Directiva UCITS para ser considerados como tales (el relativo a diversificar al menos en 6 emisiones cuando se invierta más del 35% en Deuda Pública de un mismo emisor). En el caso español, están recogidos en el artículo 72 del Real Decreto 1082/2012, e incluyen, entre otros, Fondos cuya gestión esté encaminada a la consecución de un objetivo concreto de rentabilidad en las que exista una garantía otorgada al propio Fondo por un tercero.

e) El éxito de la DGFIA ha sido más modesto en lo relativo a la creación de un mercado único para los FIA, pero la aplicación de la reciente normativa de distribución transfronteriza[2], actualmente en transposición en muchos países y cuyos plenos efectos se producirán a partir de agosto de 2021, debería servir para subsanar estas deficiencias, por lo que debería esperarse a disponer de evidencia empírica sobre sus efectos antes de adoptar medidas

Por tanto, parece prudente que en este ámbito no se adopten medidas adicionales o diferentes a las ya previstas en estas normas. En su lugar, debería esperarse a comprobar la eficacia de la normativa *crossborder*, cuya finalidad viene precisamente a subsanar las divergencias en los enfoques normativos y de supervisión, que resultan, tal y como se señala en el Considerando 1, en la fragmentación y obstaculización de la comercialización y el acceso transfronterizos de los FIA.

f) El reporte exigido a los GFIA, en caso de introducirse modificaciones, debe garantizar el nivel de información adecuada para asegurar la protección del inversor y el buen funcionamiento de los mercados, sin incurrir en requerimientos innecesarios o redundantes

Es por el interés común que el supervisor disponga de la información necesaria para adoptar medidas que garanticen la protección al inversor y minoren el riesgo sistémico. Por otra parte, el suministro de información tiene un coste que debe mantenerse bajo control para la viabilidad de las entidades, y la petición de información por una pluralidad de sujetos y en una pluralidad de formatos y plazos multiplica innecesariamente este coste. Debe por ello encontrarse el equilibrio adecuado.

El Anexo IV de la DGFIA contiene el modelo de reporte que los DGFIA deben facilitar a las ANC (y éstas a ESMA). A priori se trata de un modelo exhaustivo con numerosos campos que deberían permitir a ESMA valorar la actividad de los FIA en su conjunto. Ahora bien, si dicha información es o no suficiente, solo ESMA lo puede valorar.

No obstante, atendiendo al elevado número de preguntas en la consulta sobre esta cuestión (preguntas 61 a 78) cabe inferir que existe una preocupación al respecto a nivel europeo, algo puesto de manifiesto asimismo en otras instancias comunitarias (ESRB o ECB, entre otras), por lo que, sin perjuicio de las respuestas a cada una de las preguntas, se formulan las siguientes consideraciones generales:

[2] Directiva 2019/1160, de 20 de junio y Reglamento 2019/1156, de 20 de junio.

i) Los cambios que eventualmente se incorporen no deberían traducirse en cargas adicionales para los GFIA de aquellas jurisdicciones (como la española), que ya están sujetos a un riguroso sistema de reporte, mucho más amplio que el previsto en la DGFIA.

Al margen de los requisitos de información establecidos en el modelo del Anexo IV de la DGFIA, se aprecia una diferencia muy considerable entre el nivel de partida de la información requerida a los GFIA por cada supervisor de origen. En este sentido, y como ya se ha puesto de manifiesto en numerosas ocasiones, las exigencias de información en España han sido históricamente muy elevadas, tanto para los GFIA como para los propios FIA, y desde luego muy superiores a las previstas en la DGFIA, tanto en contenido como en frecuencia.

Considerando que la atención a dichas exigencias tiene un elevado coste de cumplimiento normativo pero también ha permitido a algunos supervisores, entre ellos la CNMV, un conocimiento puntual y detallado de la actividad del sector, parece razonable que las modificaciones que en su caso puedan llegar a exigirse en materia de información a FIA y DGFIA se diseñen de tal forma que no requieran adaptaciones a los FIA y GFIA de Estados miembros que ya venían reportando abundante información, trabajándose en su lugar en la identificación de un mínimo común, sobre la base de los modelos ya existentes en aquellos países en que, como España, los FIA viene reportando a sus ANC modelos informativos adicionales a los contemplados en la propia DGFIA.

ii) El suministro de datos brutos sobre la cartera es una opción que debe valorarse.

Actualmente, en España los FIA suministran distintos modelos, con distintos formatos y plazos. En particular, se trata de:

- Los modelos generales establecidos en las Circulares CNMV con finalidad supervisora.
- Los modelos para reporte al BCE.
- Los modelos del Anexo IV de la DGFIA.

En los dos primeros tipos de modelos, los FIA ya facilitan la información sobre toda la cartera, por lo que si la conclusión es que la adecuada monitorización de los FIA requiere un mayor nivel de información en la propia DGFIA, se propone que al menos la información que los GFIA deban dar sean datos brutos, es decir, toda la cartera sin procesar, y que los usuarios de la información adapten esta información a sus fines, evitando que sean los propios GFIA los que tengan que hacer diversos reportes adaptados.

iii) Con independencia del uso que se haga de la información, el reporte debería ser a una única entidad.

Esta única entidad, en la medida de lo posible, deberían ser las ANC, pues la interlocución siempre es más sencilla por razones de conocimiento más cercano del mercado, compatibilidad de sistemas e incluso idioma. Como consecuencia de ello:

- En caso de ser varias las autoridades que finalmente requieran información (en la pregunta 68 se mencionan expresamente BCE, Bancos Centrales nacionales, ESMA, ESRB y ANC), debería arbitrarse la coordinación necesaria entre ellas para que la obtención de la información no se traduzca en nuevas solicitudes y adaptaciones para las entidades supervisadas.

- Por el mismo motivo, debería evitarse la creación de nuevos centros de reporte, descartándose el reporte a una autoridad central, como se propone en la pregunta 67.

iv) Lo anterior no es óbice para que haya algunas mejoras/aclaraciones que hacer en la información que actualmente se reporta.

Entre ellas destacan:

- La clasificación de los tipos de FIA, en particular en lo relativo a los cuasi-UCITS que, si bien preferentemente deberían quedar excluidos de la DGFIA, si se mantuvieran en la misma, deberían al menos reportarse como una categoría específica, y no en el tipo "Otros", que actualmente aglutina dos tercios del total de FIA europeos.

- La utilización del LEI siempre que sea posible para identificar a los sujetos intervinientes en las operaciones financieras, pues es ésta precisamente la finalidad con la que se creó este código.

g) Sin perjuicio de que convenga establecer una regulación similar en algunos aspectos concretos, la revisión de la Directiva debería mantener la actual separación entre la DGFIA y la Directiva UCITS

En la pregunta 101 se consulta sobre la conveniencia de unificar la regulación UCITS y DGFIA. Junto a esta pregunta general, a lo largo de la consulta se formulan cuestiones concretas sobre aspectos puntuales de dicha unificación, como lo relativo a unificar el reporte (preguntas 76-77) o las métricas para el cálculo del apalancamiento GFIA (pregunta 80).

En el marco de la DGFIA, FIA es todo vehículo de inversión colectiva que no está cubierto por la Directiva UCITS. De este modo, los FIA varían fuertemente en términos de sus estrategias de inversión, mercados, tipos de activos y formas jurídicas, quedando incluidos bajo el mismo paraguas regulatorio de la DGFIA vehículos tan diferentes como los Fondos de capital riesgo, los Fondos inmobiliarios, los Hedge Funds y los cuasi-UCITS (ver nota al pie 1).

Como consecuencia de tales diferencias profundas y estructurales, al abordar el marco regulador de los FIA, las autoridades europeas decidieron acertadamente centrarse en las tareas de gestión de activos y no en las características del vehículo, y por esta razón la Directiva UCITS es principalmente una regulación de productos, mientras que la DGFIA es una normativa que regula a los gestores.

Mantener separados ambos regímenes ha permitido construir y preservar las UCITS como una referencia fuerte y de distribución mundial, al tiempo que define un entorno seguro y supervisado para los FIA y sus gestores, compatible con la innovación, debido a la capacidad de lanzar nuevos tipos de vehículos sin el encorsetamiento que inevitablemente causaría una regulación del producto.

Por ello, no se aprecian ventajas y sí bastantes desventajas en unificar las normas UCITS/FIA, por lo que se propone mantener ambas normas separadas, sin perjuicio de la conveniencia de dotar a los gestores de UCITS y GFIA de un mismo contenido normativo en lo relativo a determinadas cuestiones, como las que se señalan a continuación.

h) Entre los aspectos en los que sí convendría equiparar el contenido de la regulación en ambas Directivas (DGFIA/ UCITS) se encuentran los relativos a empleo de herramientas de gestión de la liquidez, el cálculo del apalancamiento o el establecimiento del umbral mínimo para la aplicación de políticas de remuneración

En concreto, y siguiendo las recomendaciones de IOSCO y ESRB, debería recogerse expresamente la posibilidad de utilización de todas las herramientas de gestión de la liquidez existentes y permitir que con carácter general sean los gestores, y en circunstancias extraordinarias también las ANC, quienes decidan sobre su uso.

Igualmente, deberían unificarse las formas de cálculo del apalancamiento, de acuerdo con las recomendaciones de IOSCO (pregunta 80), y recogerse, tanto en la DGFIA como en la Directiva UCITS, la aplicación del umbral de mínimos en lo relativo a políticas de remuneración (pregunta 60).

i) La revisión de la Directiva debería aprovechar para clarificar la interacción con MiFID II en lo relativo a comercialización de FIA por los propios gestores

Si bien la gestión de activos al amparo de la DGFIA abarca también su comercialización, con motivo de la misma hay Estados miembros, entre ellos España, que aplican MiFID con motivo de dicha comercialización. Debería armonizarse esta cuestión en la propia Directiva, estableciéndose expresamente si a la comercialización por los propios Gestores resulta o no de aplicación dicha Directiva, de modo que el régimen que se decida, sea cual sea éste, resulte armonizado a nivel europeo y evite por tanto diferencias entre Estados miembros.

j) Las reglas sobre depositario han funcionado adecuadamente y no se considera necesario abordar la figura del pasaporte

Esta afirmación, que resume la respuesta a las preguntas 24 a 35, cobra especial relevancia considerando la ausencia de armonización europea del marco regulador en caso de insolvencia del depositario, lo que podría dificultar enormemente la resolución de situaciones en las que entraran en juego regulaciones de distintas jurisdicciones.

k) La regulación sobre sostenibilidad se está debatiendo en otros proyectos normativos, por lo que debería, por coherencia y claridad, excluirse en éste

En varias preguntas (62, 71 y 90 a 95) se plantea la posibilidad de incluir en la revisión de la DGFIA medidas en el ámbito de la sostenibilidad. El Plan de finanzas sostenibles ya recoge una serie de medidas regulatorias en distintos textos normativos, algunos aprobados (como el Reglamento de divulgación) y otros en tramitación (como los actos delegados del Reglamento de divulgación o los actos delegados de integración de riesgos ESG en la DGFIA).

El seguimiento y comprensión de toda la normativa de sostenibilidad es, sin duda, uno de los expedientes normativos más complicados en la trayectoria del sector financiero, por lo que resulta imprescindible que todas las modificaciones que se lleven a cabo se sustancien en el contexto de dichos textos ya en curso, y no con motivo de la revisión de otros proyectos, como la actual revisión de la DGFIA. De lo contrario, se dificulta mucho el seguimiento y la comprensión conjunta y se pone en peligro la necesaria coherencia.

ANEXO

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?

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

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

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

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

The Directive itself has worked well. Notwithstanding, some alternative managers complain that when they themselves market their AIF in application of the AIFMD, the national supervisor requires the application of the MiFID II Directive, which produces an overlap and duplication of obligations, for example, in terms of information.

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				☑		
enabling monitoring risks to the financial stability				☑		
providing high level investor protection				☑		

- **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						
The AIFMD costs and benefits are balanced (in particular regarding the regulatory and administrative burden)				☑		
The different components of the AIFMD legal framework operate well together to achieve the AIFMD objectives				☑		
The AIFMD objectives correspond to the needs and problems in EU asset management and financial markets				☑		
The AIFMD has provided EU AIFs and AIFMs added Value				☑		

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

The AIFMD has clarified the regulatory regimen for AIFM and has provided supervisors with information to assess the risks and interlinks of AIFM and AIF with the financial sector. The implementation has naturally increased the compliance costs for AIF, and for this reason, and considering the need to foster CMU and helping companies to improve their access to finance, the review in course should be limited to improve minor aspects, avoiding significant changes whose costs of implementation would not be balanced with the benefits.

In addition, some plain vanilla funds (which we may call "quasi UCITS") have been captured within. Some of the obligations are too severe for this kind of funds, for example their immediate consideration as complex product under MiFID II.

AIFMD has, indeed, created an internal market for AIF but has not been so successful within the international market, maybe due to some national restrictions, private placement regimes and also a severe premarketing regime, not quite in line with the markets' requests. Notwithstanding this should be solved with the application of the regulatory package on cross border distribution of funds (Directive 2019/1160 of 20 June 2019 and Regulation 2019/1156 of 20 June 2019), which will be transposed into local frameworks in the upcoming months and fully in place by August 2021. It therefore seems reasonable to wait and assess the effect of these new rules and if, and only if, they have not worked well, adopt new measures.

Regarding the regulatory and administrative burden, AIFMD reporting may be adequate on a stand-alone basis but it should be reviewed together with many other European and national regulatory reporting requirements to make it really effective and less burdensome.

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

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

Question 4.1 What other functions would you suggest adding to the AIFM licence? 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:

AIFM may, among others, provide portfolio management services. Many clients that request such services also require risk management services and administration services related thereto. Notwithstanding, Annex I only covers administration and risk management services related to AIF, therefore AIFM should also be authorized to provide these ancillary services for other kind of clients.

On top of that, AIFM should be authorized to manage pension funds as a different service from portfolio management, like UCITS/AIF investment management are treated differently from other kind of portfolios. Like in this case, pension fund management should be basically ruled by their sectorial regulation and not by MiFID legislation; such situation is not adapted to the pension funds needs, while creating obligations in terms of disclosure, reporting and information not adapted to this kind of clients. This implies the need to provide unnecessary documents and information in compliance with MiFID and additional reporting, per the client's request, considering the relevant sectorial legislation.

It would be also advisable to get legislative clarification on the application of rules when providing all these services in order to grant legal certainty and avoid different national interpretations.

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

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

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

Many dispositions under AIFMD provide for an alignment of risks and interests of the AIFM and the AIF under management. Such alignment can be achieved by allowing the investment of the AIFM on its own account, applying the relevant conflicts of interest policies and procedures.

Question 5.1 Please explain your answer to question 5:

See answer above.

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

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

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

Although securitisation vehicles are out of the scope of the Directive, as indicated above, the distinction could be improved by introducing cross references, both in the scope of AIFMD and on

the requirements to invest in securitisation vehicles to the Regulation (EU) 2017/2402, in order to avoid overlapping or misinterpretations.

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

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

Question 7.1 Please explain your answer to question 7:

The implementation of AIFMD in Spain clearly stated that it's not applicable to employee participation schemes or employee savings schemes and said provisions have been effective and has not led to misinterpretations.

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

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

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

The asset management activity is an off-balance sheet activity. On the other hand, the capital requirements already established have proven to be sufficient, and their increase would be a barrier to the entry of new managers and a difficult requirement to meet for some of those that already exist, so it should be discarded.

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

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

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

Please, see above answer to question 8.

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

- **Fully agree**

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

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

AIFMD should clearly establish which of the services provided by an AIFM are subject to the MiFID regulation and to what extent, in order to create homogeneous conditions for the provision of services by an AIFM within the EU.

In particular, in case of allowing commercialization between retail investors from different EU countries, the establishment of particular conditions by each Member States should be eliminated and replaced by harmonized requirements.

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

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

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

Please, see above answer to question 8.

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

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

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

N/A

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:

No change is needed, as the provision of services by AIFM has proven to be safe and appropriately regulated to ensure investor protection and a level playing field.

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

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

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

In November, ESMA published its Report on Recommendation of the European Systemic Risk Board (ESRB) on liquidity risk in investment funds.

Based on the sample of funds (541 funds from 13 EU jurisdictions, including Spain, with large exposures to corporate debt and with a total NAV of EUR 2.07tn at the end of June 2020), ESMA came up with the following conclusions:

- The funds exposed to corporate debt and real estate funds overall managed to adequately maintain their activities when facing redemption pressures and/or episodes of valuation uncertainty.
- Only a limited number of funds amongst the ones under analysis suspended subscriptions and redemptions (0.4%) while the vast majority being able to meet redemptions requests and maintain their portfolio structure.
- There are however some weaknesses, such as potential liquidity mismatches for some funds due to their liquidity set up (e.g. a combination of high redemption frequency, no/short notice periods and no liquidity management tools (LMTs) in the case of funds investing in asset classes either illiquid by nature or whose liquidity may recede during a period of market stress)
- Only a few funds have adjusted their liquidity set-up according to the pursued investment strategy and in light of the liquidity issues encountered.

As a consequence, there's no need for a Supervisory Review and Evaluation Process (SREP) similar to that applicable to the credit institutions, of which activity is different from that of asset managers, rather being advisable to improve certain areas of the Directive, in particular a harmonised legal framework to govern the availability of LMTs for fund managers in AIFMD.

We therefore understand that the purposes and target of the SREP are adequately captured by the current supervisory practices. Introducing an extra review would entail more costs and would definitely be burdensome, without creating real extra value.

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

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

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

The professional indemnity insurance is a good and flexible alternative to comply with capital requirements laid down in Article 9.7 AIFMD.

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

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

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

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

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

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

Nevertheless, in order to grant a level playing field and adequate investor protection, sub-threshold AIFM that wish to benefit from the passport should opt in for the application of the full-scope AIFMD.

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?

According to ESMA register, there are only 402 EUVECA Funds (data at 30th of December). Probably the reason for the modest success of this specific regime and the preference for the AIFM Directive regime is that the latter is better known and clearer than the one derived from the EUVECA regulations (for example, in Spain there are only three funds subject to this regime). The absence of a specific and harmonized tax regime (despite the difficulties that its establishment would entail) also hinders EUVECA development.

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

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

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

As stated in question 3, AIFMD has, indeed, created an internal market for AIF but has not been so successful within the international market, maybe due to some national restrictions, private placement regimes and also a severe premarketing regime, not quite in line with the markets' requests. Additionally, there should be a clear definition of private placement at European level, which complements the current premarketing and marketing regimes. Please, refer to question 49 concerning this point.

Notwithstanding this should be solved with the application of the regulatory package on cross border distribution of Funds, which will be transposed into local frameworks in the upcoming months and fully in place by August 2021. It therefore seems reasonable not to adopt new measures, and instead wait, in order to be able to assess the effect of the cross-border package, and only if it has not worked well, evaluate the need to take further steps.

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)?

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

Question 21.1 Please explain your answer to question 21:

There is a need for homogeneous classification to simplify the distribution activity.

Question 22. How AIFM access to retail investors can be improved?

Please see answer to question 3 and 20.

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

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

b) Depositary regime

Question 24. What difficulties, if any, the depositaries face in exercising their functions in accordance with the AIFMD?

Please provide your answer by giving concrete examples identifying any barriers and associated costs.

No opinion.

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

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

Question 25.1 Please explain your answer to question 25:

If possible, all services should be clearly regulated to let depositaries duly display their role in terms of supervision.

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

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

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

Yes. In order to allow the depositary to properly display its role; rules should be clear for every party.

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

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

Please explain why you think the obligation for the asset manager to provide the depositary with the contract it has concluded with the tri-party colateral manager should be explicitly regulated by the AIFMD.

Please present benefits and disadvantages of this approach as well as potential costs of the change, where possible:

The depositary should have the necessary evidence of the agreement reached and on the obligations of each party.

Please explain why you think the flow of information between the tri-party collateral manager and the depositary should be explicitly regulated by the AIFMD

Please present benefits and disadvantages of this approach as well as potential costs of the change, where possible:

As it will help the depositary to properly carry out its tasks.

Please explain why you think the frequency at which the tri-party collateral manager should transmit the positions on a fund-by-fund basis to the depositary in order to enable it to record the movements in the financial instruments accounts opened in its books should be explicitly regulated by the AIFMD.

Please present benefits and disadvantages of this approach as well as potential costs of the change, where possible:

As it will help the depositary to properly carry out its tasks.

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

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

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

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

Current rules have worked well.

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

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

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

N/A

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

No opinion

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

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

Question 31.1 Please explain your answer to question 31:

The lack of depositary passport is clearly a regulatory option. Regulators have chosen for a specific surveillance model in which the depositary should be domiciled in the country of origin of the Funds, as the closeness and expertise will let the depositary better display its tasks also benefiting investor protection. No problems have arisen in this regard, so the current model is properly functioning. In our opinion the review should focus on the necessity of having independent depositaries.

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:

No potential benefits are foreseen.

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:

While there are no barriers, it is a regulatory option. It is not necessary to change things that are well functioning in terms of investor protection.
Additionally, the lack of harmonization at European level of the regulations on bankruptcy, will add additional complexity to the already complex case of an event of insolvency of a depositary, if different jurisdictions were to intervene.

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:

Yes. With exceptions allowing such services by foreign providers if there is no other option. The scale in the depositary services has been proven as essential to bring efficiency to the collective investment system, and eventually to strengthen investor protection.

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

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

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

The provision of CSDR core or ancillary services should never result in a CSD being considered as a delegate under AIFMD. In this regard CSDs that are providing access to other CSDs using direct links between Securities Settlement Systems (SSS) should be classified as market infrastructure and not as delegates. Custody of securities is included in the service of operating securities settlement systems, and CSDR as the regulatory framework under which CSDs are active includes organizational requirements and conduct of business rules pursuing the protection of client's assets. Being subject to the segregation rules under AIMFD, in addition to those already included in CSDR, would be too costly and lead to significant market disruption and settlement fails as a result of the increased complexity related to their links arrangements.

c) Transparency and conflicts of interest

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

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

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

The mandatory disclosure regime is fine as it is, and no amendment is proposed. Notwithstanding, the interaction of AIFMD with other provisions (such as MIFID II or PRIIPs), give rise to certain overlaps.

In addition, disclosure requirements should be adaptable for professional clients and eligible counterparties, since they have different needs and amounts. Furthermore, these investors frequently find standardized information useless, and instead they need, request and obtain tailor-made information, turning the standards information requirements into mandatory administrative burdens lacking added value.

Notwithstanding MiFID II is right now under an amendment process (the so-called Mifid II quick-fixes, Proposal for a Directive amending Directive 2014/65/EU as regards information requirements, product governance and position limits to help the recovery from the COVID-19) to introduce some improvements in this field. In particular, the majority of the amendments to the current Mifid II rule-book will focus on providing alleviations for professional clients and eligible counterparties.

For this reason, it seems better to wait to see how the modifications introduced in MIFID work, before proposing improvements in other regulatory frameworks.

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

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

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

Please, see answer to question 37 above.

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

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

Question 40. Are the AIFMD rules on valuation appropriate?

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

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

According to Article 19 of AIFMD, AIFMs shall ensure that, for each AIF that they manage, appropriate and consistent procedures are established so that a proper and independent valuation of the assets of the AIF can be performed.

In addition, said Article establishes transparency rules and, together with Commission Delegated Regulation (EU) No 231/2013 of 19 December, sets forth liquidity management systems and procedures to allow AIFMs to apply the tools and arrangements necessary to cope with illiquid assets and related valuation problems in order to respond to redemption requests.

Current regulatory framework recognizes that valuation standards differ across jurisdictions and asset classes, and to help AIFM to cope with this situation, established market value, as a general principle, admitting that it can be determined, in different ways, such as by reference to observable prices in an active market or by an estimate using other valuation methodologies according to national law, the AIF rules or its instruments of incorporation.

This Regulation should supplement the common general rules and establish benchmarks for AIFMs when developing and implementing appropriate and consistent policies and procedures for the proper and independent valuation of the assets of AIFs. The policies and procedures should describe the obligations, roles and responsibilities pertaining to all parties involved in the valuation, including external valuers.

In short, the current regulatory framework is deemed complete, clear and appropriate.

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

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

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

The perception of the Spanish case is that the risk assessment and management procedures have worked adequately. Since the beginning of the pandemic, the CNMV implemented bilateral channels with the Management Companies to accompany them in monitoring the situation, and the regulatory regime has demonstrated sufficient flexibility to adapt the valuation measures (e.g. swing pricing, bid/ask valuation) and liquidity risk management to the circumstances.

In short, the functioning of the regulatory framework and the interaction with the CNMV have been excellent and there have been no significant incidents.

At the European level, the ESMA report on joint supervisory action seems to point to similar conclusions, except in relation to Real Estate Funds, on which no comments are made as they do not exist in Spain.

Question 42. Are the AIFMD rules on valuation clear?

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

Question 42.1 Please explain your answer to question 42:

The rules are clear. The question is that the more complex and illiquid financial instruments become, the higher the risk of inappropriate valuation. For this reason, both level I and II require the AIFM to address this situation, putting in place sufficient controls to ensure that an appropriate degree of objectivity can be attached to the value of the AIF's assets.

It's important to highlight that illiquidity is not necessarily an inherent feature of a particular financial asset. Of course, certain assets are, per se, less liquid tan others (e.g. real state), but every asset can potentially turn into an illiquid asset under stressed market conditions.

Question 43. Are the AIFMD rules on valuation sufficient?

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

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

Please, see answer to question 42.

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

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

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

Provided that the requirements on Article 19 (and level II developments) are fulfilled, different methodologies and combinations to valuate assets should be admitted, including the combination of inputs from internal and external valuers.

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:

In accordance with Article 19 of the Directive, both the AIFM and, where appropriate, the external valuer are liable for the breach of their functions and for the losses caused in case of negligence or intentional failure to perform their tasks, but despite this explicit infraction definition, recent ESMA report on "Penalties and measures imposed under the AIFMD Directive in 2018- 2019", published in November 2020, shows that both the AIFMD in general and Article 19 on valuation, in particular, are very peaceful, with hardly 3 incidents across EU in the full period (2 years).

None of them has been in Spain, therefor not being able to reply this question with empirical evidence.

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:

Please, see answer to question 45 above.

III – International relations

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

The AIFMD framework has helped ensure the EU Fund industry competitiveness by creating a brand awareness for AIFMD as a coherent set of rules for alternative investment funds. More precisely, the following elements play an important role in the competitiveness of the EU AIF industry:

- Passporting - The passporting mechanism for EU AIFMs sets the foundation for a level playing field within the internal market regarding distribution of EU AIFs. It has become difficult for Member States to wall off their local industry against competition from AIFMs domiciled in other Member States, at least as far as products for professional clients are concerned. The passporting rules require non-EU AIFMs wanting to access the EU market to adhere to regulatory standards similar to those for EU AIFMs and thus protect the latter from unfair third country competition.
- Delegation - The strength of the EU AIF industry is that a fund can be registered in one Member State while simultaneously being managed from several other Member States as AIFMs can have their portfolio management and risk management teams in different jurisdictions. If new rules should be provided as a result of a public consultation to improve its regime, they should be intended, in any event, to enhance this advantage and its proper harmonization. If this is the case, it might be good to have a clear definition and common understanding of:

    i. the expected controls to be performed on delegated activities, since this is something that may vary substantially from one country to another,
    ii. the differences between delegation and outsourcing and its interaction with EBA guidelines on outsourcing.

- Flexibility - This allows to take into consideration the specificities of each type of non-UCITS funds has also contributed to the success of the AIFMD. Instead of imposing a too restrictive

all-fit-one approach to all AIFs, it enables to maintain a wide of range of investment funds adapted to the various needs of end-investors.

Question 48. Which elements of the AIFMD regulatory framework could be altered to enhance competitiveness of the EU AIF industry?

As mentioned above, passporting is an efficient mechanism regarding UE *crossborder* distribution, in that sense, the extension of this regime to passport AIF for retail clients will enhance the competitiveness of the industry while also widening EU investor's options.

If improvements or modifications on AIFMD supervisory reporting are envisaged, they should be designed in a way as not to impose more costs on the industry. Specially as there are jurisdictions where AIFM reporting is already profuse when modifying or including new reporting it should be based on what is already reported by managers to those NCAs and built on common ground instead of from scratch causing cost duplicity.

As for distribution, even though product flexibility has been listed as one of the great successes of the AIFMD competitiveness, the negative definition of AIF as opposed to UCITS, forces the inclusion of many collective investment schemes (CIS) that are practically UCITS-like and that, leads to a misrepresentation of the real AIF market. Hence, the exclusion from this Directive of such CIS should be seriously considered as it has detrimental consequences on its distribution, for example, its consideration as complex products under MiFID perspective.

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

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

Actually, given that national private placement regimes are allowed within the EU, they should be permitted in every country and for every AIF.

Additionally, a clear harmonized definition of "private placement" should apply to all Member States, in order to grant a level playing field.

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

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

Question 50.1 Please explain your answer to question 50:

Please see answer to question 52 below.

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

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

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

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

Article 82 defines, in a qualitative manner, what a letter-box entity is considered under AIFMD (e.g. when the AIFM no longer retains the necessary expertise and resources to supervise the delegated tasks effectively and manage the risks associated with the delegation; when the AIFM no longer has the power to take decisions in key areas which fall under the responsibility of the senior management or loses its contractual rights or ability to inquire, inspect, have access or give instructions to its delegates).

Certain Member States have gone beyond, listing certain functions that cannot be delegated.

Not being aware of any problem in this field, if the concern is that an extensive use of delegation may increase operational and supervisory risks, some empirical evidence should be provided to propose new rules. Likewise, if as a result of the consultation in process new rules are proposed, a common understanding should be intended, in order to avoid that delegation schemes that have functioned well so far result prohibited as a consequence of new provisions.

Question 52.1 Should the delegation rules be complemented with:

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

No option is selected, because the current delegation regime is considered appropriate and effective.

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

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

Question 53.1 Please explain your answer to question 53:

For the sake of consistence, the same rules should be applicable, wherever the third party is located.

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

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

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

The current delegation regime is considered appropriate and effective.

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:

The current delegation regime for UCITS is considered appropriate and effective.

IV – Financial stability

a) Macroprudential tools

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

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

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

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

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

In February 2018 ECB stated that the availability of a diverse set of liquidity management tools in all member states would increase the capacity of fund managers to deal with redemption pressures when market liquidity becomes stressed. For this reason, the Commission was recommended by ECB to propose that Union legislation incorporates a common Union legal framework governing the inclusion of additional liquidity management tools in the design of investment funds originating anywhere in the Union so that the decision on which a-LMTs to incorporate in the constitutional documents of or other pre-contractual information on investment funds is made individually by each entity responsible for management.

Also, IOSCO recommendations on "Funds liquidity and risk management" (February 2018) showed that the list of available liquidity management tools differs significantly across EU.

Although since these recommendations a number of EU Member States have by different means improved their framework, liquidity management tools, together with a proper interaction between NCA and asset managers have proven to be very effective to cope with liquidity issues under stressed market circumstances (as it has been proven during the latest COVID-19 crisis).

For this reason, further work could be done in this field, following ECB recommendation, by increasing and harmonising availability of liquidity risk management tools for AIFMs across the EU.

In our opinion, the whole liquidity management toolkit should be at the asset managers disposal in all EU Member States Asset managers should be free to choose which tools they use and when they

activate them, as they are best able to make this decision, which is part of their fiduciary duty and of their risk management obligation.

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

Given that liquidity risk has a strong systemic component, it seems reasonable that when liquidity problems arise with a cross-border component, NCAs should maintain close cooperation, sharing information that allows them a better understanding and anticipation of problems that may arise.

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

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

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

This option already exists in the Spanish legislation, and is considered very positive, because although every asset manager has to fulfil their duties, including a proper risk management, under certain stressed circumstances the supervisor is the only authority with a global view on what is going on in the sector as a whole from a systemic risk perspective.

In these cases, it is very positive that all liquidity management tools, including the possibility to suspend the issue, repurchase or redemption of units are available, not only for the asset managers, but also for NCAs.

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:

In our opinion, there is no way for NCAs to know in advance the data they will need in case of a financial turmoil. It seems very complex and necessarily incomplete to predefine the information that NCAs could need during a crisis that could adopt very different characteristics, rather being more pragmatic to recognize a general ability of NCAs to request the information they need and the obligation of management companies to provide such information in a timely manner.

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

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

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

As a general principle, the answer is no, because most of the liquidity management tools are active all along and part of the risk management procedures in place under normal circumstances (for example, swing pricing or notice periods).

Notwithstanding, under stressed market circumstances, it can be useful to put in place a notification procedure to NCAs, whereby asset managers report to the relevant supervisory authorities when and which liquidity risk management tools have been activated, allowing NCAs have a better understanding of the situation and of the steps that are being taken.

Such procedure should be understood as part of the general NCA powers under crisis periods, and should not, in our view, require a specific provision in the applicable regulation.

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

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

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

Although the rationale behind the remuneration rules on AIFMD/UCITS (alignment of managers' incentives with the long-term interests of their clients) is different to the one behind the remuneration rules of credit entities (alignment of risks from dealing on their own account with the need for these to reconstitute their capital base and avoid systemic risks) and therefore, different content of sectorial rules is justified, the reason for establishing de minimis thresholds in CRD V is applicable to AIFMD/UCITS remuneration rules.

Recital 8 of CRD V establishes that remuneration rules under Directive 2013/36/EU and Regulation (EU) No 575/2013, namely the requirements on deferral and pay-out in instruments have proved to be too burdensome and not commensurate with their prudential benefits when applied to small institutions or staff with low levels of remuneration, in the case of the latter because such levels of variable remuneration produce little or no incentive for staff to take excessive risk. Therefore it has included in the regulation de minimis thresholds in order to exempt both small institutions and staff with low levels of variable remuneration from the principles on deferral and pay-out in instruments.

Although in the UCITS/AIFMD remuneration rules a general proportionality principle already allows not to apply certain variable remuneration rules, said proportionality would operate in a more clear and consistent way if de minimis thresholds are included in the regulation. Said thresholds should replicate the ones introduced for credit entities, i.e., allowing disapplication of variable remuneration rules (deferral and payment in instruments) to:

(a)an institution that is not a large institution as defined in point (146) of Article 4(1) of Regulation (EU) No 575/2013 and the value of the assets of which is on average and on an individual basis in

accordance with this Directive and Regulation (EU) No 575/2013 equal to or less than EUR 5 billion over the four-year period immediately preceding the current financial year;

(b) a staff member whose annual variable remuneration does not exceed EUR 50 000 and does not represent more than one third of the staff member's total annual remuneration.

Likewise, said thresholds should be introduced in the UCITS Directive.

b) Supervisory reporting requirements

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

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

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

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

No option has been chosen, as the supervisory reporting requirements as provided in AIFMD and AIFMR's Annex IV are deemed appropriate.

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

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

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

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

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

The Legal Entity Identifier (LEI) is a unique global identifier for legal entities participating in financial transactions. Also known as an LEI code or LEI number, its purpose is to help identify legal entities on a globally accessible database, in order to gain a global understanding of interactions among them.

We agree that the only way to serve to this purpose is to establish LEI mandatory use whenever it's possible, in particular in reporting to supervisory authorities.

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

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

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

Please, see answer to question 63.1 above.

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

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

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

Please, see answer to question 63.1 above.

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

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

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

- **loans originated by AIFs**
- **leveraged loans originated by AIFs**
- **other**

No option has been selected, as there's no empiric available evidence to reply this question.

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

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

Question 67.1 Please explain your answer to question 67:

Establishing a new authority to report information should be avoided, as it creates a duplication of resources and harms the competitiveness of European industry. Furthermore, in case of incidents in the content of the information or the need for clarification or correction of errors, it is always much easier for both parties (supervisor/supervised entity) to interact with a national authority.

Therefore, reporting to a centralized database should be avoided, and if necessary, improved coordination between NCA and ESMA should be ensured.

Question 67.1 If yes, which one:

- **ESMA**
- **other options**

No option has been selected, as reporting to a single central authority is not considered a positive measure.

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

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

Question 68.1 Please explain your answer to question 68:

We do not see any problem in NCAs sharing this information with other national or EU institutions, provided:

a) The use and the goals of the information are confined to financial stability purposes.
b) The supervisory powers clearly reside in the respective sectoral NCA and their frontiers are well defined.
c) The fact of sharing certain useful information from a macroprudential point of view should not have the undesired effect of expanding the radius of activity of other supervisors to investment funds
d) The requests for information are managed and directly replied by the NCA and not again by the reporting AIFM.

Question 68.1 If yes, please specify which one:

- **ESRB ☑**
- **ECB ☑**
- **NCBs ☑**
- **National macro-prudential authorities ☑**
- **Other**

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

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

Question 69.1 If not, what additional reporting should be required to better capture inter-linkages between AIFMs and other financial intermediaries?

N/A

Please provide your suggestion(s) providing information on the costs, benefits and disadvantages of each additional reporting:

Question 69.1 Please explain your answer to question 69:

Although it is to be assumed that when the model in Annex IV was designed it was made in such a way that it allowed to capture these inter-linkages, probably only ESMA, together with NCAs, the larger recipients of the templates are in the best conditions to reply this question.

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

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

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

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

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

The field "AIF type" included in the AIFMD reporting template only admits six possible options. In January 2020, ESMA published its second statistical report on European Union (EU) Alternative Investment Funds (AIF). The report is based on data from 30,357 AIFs (almost 100% of the market) and found the following sector breakdown:

- Hedge funds 6%
- Private equity fund 6%
- Real estate fund 12%
- Fund of funds 14%

- Other 61%
- None 1%

According to the data, the ability of ESMA to really understand what is behind is probably impaired by the lack of granularity of the fund classification, as it is not very useful to have a catch-all category ("others") that amount for almost two thirds of the total sector. In particular, in relative terms, ''other AIFs'' constitutes the main AIF type in most EU countries, accounting for more than 70% of the NAV in Germany, Ireland, the Netherlands, Poland and Spain, and close to 50% or more in France, Luxembourg and the United Kingdom.

In addition, it is well known that funds which are actually UCITS-like are captured in this category, the exclusion of which from this Directive should be seriously considered, because it has detrimental consequences on its distribution, for example, its consideration as complex products under MiFID perspective.

Question 70.1 Please explain your answer to question 70:

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

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

No option has been selected, as the supervisory reporting requirements as already provided in AIFMD and AIFMR's Annex IV are deemed appropriate.

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

Supervisory reporting requirements as already provided in AIFMD and AIFMR's Annex IV are deemed appropriate.

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

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

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

Considering that the provision of the data is automated, the deletion at this time of fields would require additional adaptation, so even if some fields might be redundant or useless (circumstance unknown), its deletion would not at this time provide any advantage, at least not for reporting entities.

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

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

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

According to Article 110(3) of Commission Delegated Regulation (EU) No 231/2013 of 19 December 2012 (AIFMD Level II), the reporting frequency depends on the asset under management and the level of leverage, varying from quarterly to yearly frequency.

We don't see the need for increasing or decreasing the reporting frequency.

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

In our opinion, there is no way for NCAs to know in advance the data they will need in the case of a financial turmoil. It seems very complex and necessarily incomplete to predefine the information that NCAs could need during a crisis that could adopt very different characteristics, rather being more pragmatic to recognize a general ability of NCAs to request the information they need and the obligation of management companies to provide such information in a timely manner.

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

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

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

It is for the common interest that the supervisor has the information necessary to take measures to ensure investor protection and reduce systemic risk. On the other hand, the information has a cost that must be kept under control for the subsistence of the entities, and the request for information by a plurality of authorities and in a plurality of formats and deadlines unnecessarily multiplies those costs. The right balance must therefore be found.

Moreover, although AIFMD contains an annex with harmonised supervisory information from its origin, this is not the case for the UCITS Directive.

However, this absence of a template has not been an obstacle for many NCAs, including CNMV in Spain, who have developed efficient information systems to carry out their supervisory functions in their more than 30 years of UCITS existence.

Thus, there is a very considerable difference between the level of starting information required by each home supervisor, both to AIF, AIFM and UCITS. In this sense, and as has already been shown on numerous occasions, the information requirements in Spain have historically been very high (and certainly much higher than those provided for in AIFMD), both in content and frequency.

Whereas attention to these requirements has a high cost of regulatory compliance but has also enabled the CNMV with timely and detailed knowledge of the sector's activity, it seems reasonable that the regulatory framework for reporting is kept as it is, but if finally it's amended:

- Amendments that eventually might be adopted in the area of reporting by AIF and AIFMD are designed in such a way that they do not require adaptations by the AIF and AIFM from Member States that have already been reporting under a complex and very demanding framework, working instead on the identification of a common minimum, on the basis of existing models.

- Identical consideration can be made in relation to UCITS, for which NCA are called to coordinate with each other to pool the information they need, avoiding the request for new models, again especially in those Member States where the information provided is already very high.

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

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

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

Please see answers to questions 76.1, 78.1 and 101.1

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

- **Yes**

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

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

Harmonization is useful when the reporting obligations start from scratch. Notwithstanding, when there are already reporting requirements in place, as is the case in many EU countries and across different regulatory regimes, said harmonization implies adaptation of what already has been implemented and should, unless necessary, avoided.

c) Leverage

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

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

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

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

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

Recently ESMA has published its long awaited ESMA's guidelines on Article 25 AIFMD, to address leverage risk in the AIF sector.

The Guidelines set out common criteria in order to promote convergence in the way NCAs:

- assess the extent to which the use of leverage within the AIF sector contributes to the build-up of systemic risk in the financial system; and
- design, calibrate and implement leverage limits.

The guidelines follow the 2 steps-approach introduced by IOSCO and have been welcome by the European industry, as highlighted during the consultation process.

These are the Guidelines that, as European framework, should be used both for AIF and for leveraged UCITS.

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:

It is deemed appropriate, please see answer to question 80.1

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

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

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

Being the main goal to have a global understanding on the leverage level of AIF, it seems reasonable to measure it in a single way, at least for aggregation purposes.

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

We don't see the need for additional measures, considering that Article 24(4) already establishes that AIFM managing AIFs employing leverage on a substantial basis shall make available information about the overall level of leverage employed by each AIF it manages, a break-down between leverage arising from borrowing of cash or securities and leverage embedded in financial derivatives and the extent to which the AIF's assets have been reused under leveraging arrangements to the competent authorities of its home Member State. That information shall include the identity of the five largest sources of borrowed cash or securities for each of the AIFs managed by the AIFM, and the amounts of leverage received from each of those sources for each of those AIFs.

Said information builds up the content of a specific reporting template defined in Annex IV of AIFMD and there is no evidence that this information has been insufficient so far.

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

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

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

This is the case in Spain, where Article 71 septies of Law 35/2003, on Collective Investments Schemes, establishes that:

"CNMV shall assess the risks that use of leverage by a management company may entail with respect to the vehicles it manages. Whenever it is considered necessary for the stability and integrity of the financial system, CNMV, prior notification to the European Securities and Markets Authority, the European Systemic Risk Board and, where appropriate, the competent authorities due to the origin of the Investment Fund, will set limits to the level of leverage to which it is authorized the management company, as well as other management restrictions regarding the vehicles it manages in order to limit the incidence of leverage in generating a systemic risk in the financial system or risks of market disturbance. CNMV shall duly inform the European Securities and Markets Authority, the European Systemic Risk Board and the competent authorities by reason of the origin of the Investment funds about the measures adopted in this regard, through the procedures of established supervisory cooperation"

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

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

Question 85.1 Please explain your answer to question 85:

We do not have empiric available evidence to reply this question.

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

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

While no option has been selected, as we have no empiric evidence to answer question 85,marketing of this kind of funds should be available both for professional clients and eligible counterparties and retail investors. Funds which bring benefits to the real economy are encouraged by the European Commission and some retail investors are really interested in this kind of investments for diversification purposes, better return rates and even a will of contribution to the recovery. With all adequate investor protection measures available, it makes no real sense not to permit retail investors to acquire them.

Besides, loan origination should not be limited to closed-ended funds, as long as the establishment of redemption periods match the nature of the assets in order to avoid liquidity risks.

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?

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

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

Question 87. Are the AIFMD rules provided in Section 2 of Chapter 5 of the AIFMD whereby the AIFM of an AIF, which acquires control over a non-listed company, is required to provide the NCA of its home Member State with information on the financing of the acquisition necessary, adequate and proportionate?

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

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

We do not have empiric available evidence to reply this question.

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

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

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

We do not have empiric available evidence to reply this question.

Question 89. How can the AIFMD provisions against asset stripping in the case of an acquired control over a non-listed company or an issuer be improved? Please provide your

suggestion(s) including information, where available, on the costs and benefits, advantages and disadvantages of the proposed measures:

We do not have empiric available evidence to reply this question.

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?

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

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

Sustainability regulation is being discussed in other regulatory proposals and should therefore, for consistency and clarity, be excluded from this review. Several questions (62, 71 and 90 to 95) raise the possibility of including measures in the field of sustainability in AIFMD's review.

Notwithstanding, the EC Sustainable Finance Action Plan already contains a number of regulatory measures in different policy texts, some approved (such as the Disclosure Regulation) and others in process (such as delegated acts of the Disclosure Regulation or delegated acts on integration of ESG risks into AIFMD).

Monitoring and understanding of all sustainability regulations is undoubtedly one of the most complicated policy dossiers in the financial sector's trajectory, so it is imperative that all changes to be made are debated in the context of these texts already under way, and not in the context of the revision of other projects, such as the current AIFMD review. Otherwise, follow-up and joint understanding are very difficult and necessary coherence is jeopardized**.**

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

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

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

Please see answer to question 90.1

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

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

Question 92.1 If you agree, please explain how and at which level the adverse impacts on sustainability factors should be integrated in the quantification of sustainability risks (AIFM or financial product level etc.).

Please see answer to question 90.1

Please explain your answer including concrete proposals, if any, and costs, advantages and disadvantages associated therewith. 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

Please see answer to question 90.1

Question 92.1 Please explain your answer to question 92:

Please see answer to question 90.1

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

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

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

AIFMs should not contemplate, when considering investment decisions, sustainability-related impacts beyond what is required by EU law. If a particular AIFM decides to consider other factors, it should be on a voluntary basis and not upon legal requirements that go beyond the ones applicable to other market participants.

Question 93.1 Please explain your answer to question 93:

Such an approach would put AIFMs in an explicit and unjustified disadvantage with respect to the rest of economic agents bound by such rules (i.e. UCITS managers, banks, investment services entities), leading to a violation of the fair level playing field principles.

We understand that a real and deep transformation of the economy towards a more sustainable industry could only be achieved if ESG laws are applied in an homogenous fashion to the largest amount of economic agents, therefore, discrimination amongst those agents would not be justified.

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

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

Question 94.1 Please explain your answer to question 94:

Please see answer to question 90.1

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

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

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

AIFMs should not contemplate, when considering investment decisions, sustainability-related impacts beyond what is required by EU law. If a particular AIFM decides to consider other sustainability-related requirements or international principles beyond those laid down in Regulation (EU) 2020/852, it should be on a voluntary basis and not upon legal requirements that go beyond the ones applicable to other market participants. Please refer to the explanation given to question 93.1 on this point.

VII - Miscellaneous

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

Please select as many answers as you like

- **entrusting ESMA with authorisation and supervision of all AIFMs**
- **entrusting ESMA with authorisation and supervision of non-EU AIFMs and AIFs**
- **enhancing ESMA's powers in taking action against individual AIMFs and AIFs where their activities threaten integrity of the EU financial market or stability the financial system**

- **enhance ESMA's powers in getting information about national supervisory practices, including in relation to individual AIMF and AIFs**
- **no, there is no need to change competences and powers of ESMA ☑**
- **other**

In cases where there is a regulated AIF under certain legislation which is managed by a company located in another jurisdiction and, hence, subject to a different regulation, it should be clear what should be supervised by the product supervisor and what by the AIFM supervisor.

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

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

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

We are not aware of any incident which has recommended to increase powers and competences beyond what is already foreseen, at least in the Spanish framework.

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

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

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

We think so, as we don't have any empirical evidence against.

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:

Perhaps reinforcement of cooperation procedures when needed.

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

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

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

ESMA's Report on Penalties and measures imposed under the AIFMD Directive in 2018-2019 (published in November 2020), points to a well-designed and effective sanctioning framework in practice, so there is no evidence to suggest its modification.

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

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

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

Under AIFMD, AIF are any collective investment funds that are not covered by UCITS Directive. AIFs vary strongly in terms of their investment strategies, markets, asset types and legal forms and includes under the same regulatory umbrella vehicles so different as venture capital and private equity funds, real estate funds, hedge funds and UCITS-like funds.

As a consequence of such deep and structural differences, when tackling AIF regulatory framework, European authorities rightly decided to focus on the asset manager duties rather than in the vehicle characteristics, and for this reason UCITS is mainly a product regulation, while AIFMD is a manager company regulation.

Keeping both regimes separated has allowed to build and preserve UCITS as a strong, world-renowned label, while defining a safe and monitored environment for AIF compatible with innovation, due to the ability to launch new types of vehicles without the stringing that would inevitably cause a product regulation.

Therefore, there are no advantages, but quite a few disadvantages, in unifying the UCITS/FIA rules, so it is proposed to keep both rules separate, without prejudice to the desirability of enacting UCITS and AIFM with the same regulatory content regarding certain issues, as measure of leverage, setting the minimum threshold for remuneration policies or the availability of liquidity management tools, among others. These concrete aspects where same regulation content is welcome have been replied in the relevant questions of this questionnaire.

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:

AIFMD framework is deemed to be clear, effective and useful for the purposes it was designed, therefore not needed for changes, except for the minor aspects highlighted in previous answers.

In short, the functioning of the Directive has been positively valued by different stakeholders, as it has helped to clarify the regime applicable to AIF managers and to a better understanding of their activity and interconnections with other sectors of activity. Therefore, the amendments made because of the ongoing review should be of small size, merely improving some specific issues, but

retaining the framework of the Directive and avoiding to the maximum, especially at this time, adaptation costs that are not offset by improved investor protection or which cannot be achieved by other means, such as more intensive use of the information already available or greater supervisory coordination.

Besides what is already mentioned, regarding other regulatory issues of the AIFMD framework, it is in the interests of all market participants to ensure that there is a common understanding of the scope of AIFMD and a consistent application of the AIFMD across Europe.

Accordingly, it would be convenient to clarify through regulatory guidance that the issuance of structured bonds or notes (or at least the ones which comply with the criteria we set out below) fall outside the scope of the AIFMD and do not fall under the AIF definition. Structured products can be issued by an operating entity (e.g. bank or subsidiary of it) or by a special purpose vehicle (SPV).

Listed below are the reasons to consider that structured products should fall outside AIFMD scope:

- No investment policy. In this type of issuances, the issuer does not have a defined investment policy. According to the definition of AIFMD, the return received by investors should be "generated by the management of the assets in line with the investment policy". However, this is not the case in relation to structured issues since there is not management by the issuer of the underlying assets and it is not required to act in the best interests of them. When underlying assets are acquired within the structure of the issue, these are generally acquired to provide investors with security for the issuer's obligations and not for the purposes of investing in a pool of assets. In other words, structured products are a form of intermediation between a bank or other financial counterparty and investors and not a means of raising capital with the view to investing such capital in accordance with a defined investment policy for the benefit of investors.

- No pooled return. When assets are acquired in this type of products, these are generally acquired to provide investors with security for the issuer's obligations or with a view to hedging the issuer’s exposure and not with the purpose of investing to generate pooled profit for investors.

- Application of other regulatory regimes. The structured issues are equivalent to the issue of other bonds or securities. The structured notes are capital market transactions and not funds. The structured notes are already regulated and therefore subject to regulatory scrutiny. For instance, they could be subject to other regulatory frameworks such as Prospectus Regulation, MiFID II/MiFIR requirements, EMIR, PRIIPs, etc.

- Potential impact in markets. The application of AIFMD rules to structured products would have an adverse impact in the market. On the one hand, issuers would be imposed with additional excessive administrative burden, what in turn, would have a negative impact for investors since their investment options might be drastically reduced or become more expensive.

In light of the above, clarification that the AIFMD is not intended to apply to structured issues would be of great importance since the absence of such clarification creates uncertainty arising from the AIFMD and could have unintended negative effects on the market for structured issues and the funding and liquidity generated by them.