



EUROPEAN  
PRIVATE EQUITY &  
VENTURE CAPITAL  
ASSOCIATION

# Insights into the AIFM Directive

30 July 2010

- Background
- What is at Stake?
- Legislative Process – Where are we now?
- AIFMD Status
- Concerns of the Private Equity and Venture Capital Industry
- What happens next?
- Annex I: Legislative Process – Detailed Overview
- Annex II: Private Equity and Venture Capital Industry's Key Messages



EUROPEAN  
PRIVATE EQUITY &  
VENTURE CAPITAL  
ASSOCIATION

Background

---



## AIFMD - Background

- **Summer 2008** - European Parliamentary reports express concerns about hedge fund and private equity activity
- **October 2008** - EVCA Policy Meeting - Industry unites
- **Dec 2008** - First formal private equity and venture capital industry response to Parliamentary Reports
- **Feb 2009** - [Formal submission of the industry](#); European Commission Public Hearing
- **April 2009** - European Commission's proposal for a Directive on Alternative Investment Fund Managers (AIFM)
- **May 2009** - Council starts informal technical work. Formal work starts under the Swedish Presidency (July 2009)
- **June 2009** - [The Industry's Common Position](#) - remains the same today
- **Sept 2009** - Newly elected Parliament appoints Economic and Monetary Affairs (ECON) committee and starts work. Also the Legal Affairs (JURI) committee achieves a mandate to comment and amend the Directive.
- **Nov 2009** - ECON Rapporteur MEP Gauzès produces first draft report on AIFMD

## AIFMD - Background

- Jan 2010 - JURI Rapporteur MEP Regner produces first draft Opinion
- Feb 2010 - ECON MEPs table 1,700 amendments. JURI MEPs table another 300 amendments.

Capital Requirements Directive, which covers the regulatory capital regime for banks and was the hallmark of the EU's regulatory response to the financial crisis, saw 'only' 285 amendments.

By volume of amendments, about a quarter posed a serious threat to the wellbeing of private equity finance provision in Europe.

- April 2010 - JURI adopts formal Opinion on the AIFMD
- May 2010 - ECON adopts Report on the AIFMD
- May 2010 - Ecofin adopts common approach
- May-June/September 2010? - Commission, Parliament and Council trying to come to an agreement (trialogue negotiations)



EUROPEAN  
PRIVATE EQUITY &  
VENTURE CAPITAL  
ASSOCIATION

What is at Stake?

---

# What is at Stake?

- **Broad scope**

Would affect virtually all PE/VC fund managers of whatever scale or focus

- **Capital requirements**

Constraint on PE/VC firms' establishment and growth

- **Independent valuator**

Requirement to appoint an independent valuator, leading to incremental processes with uncertain costs and few (if any) benefits to investors

- **Depositary**

Requirement to appoint a depositary for the safe custody of fund assets, leading to an additional layer of due diligence with uncertain expenses and few (if any) benefits

- **Remuneration provisions**

Would also apply to carried interest

# What is at Stake?

- **Requirements at portfolio company level**

Additional requirements when controlling influence is reached (potentially defined as 10% of voting rights) and for portfolio companies with 50+ employees

- Obligation to disclose board-level, commercially-sensitive information such as business plans and research strategy
- 4-year lock-in period of AIF investment, during which it is prohibited to make distributions or increase leverage to a level that would prejudice the financial viability or the long term economic interest of the company
- Obligation for AIFM to meet with the employee representatives on the future of the company and the information included in the annual report of the AIF

- **Lack of a grandfathering clause**

AIFMD would apply to existing funds

## What is at Stake? – Impact on Investors

- Additional costs (*expense of fully implemented AIFMD estimated at €25bn / year*)
- Higher pension contributions to compensate for costs
- Incremental administrative burdens and compliance requirements associated with alternatives
- Loss of access to full suite of investment opportunities, foregone returns and diminished diversification
- Likely overall consequences would be more concentrated portfolios, higher pension premiums and lower net payouts for beneficiaries – largely ordinary European citizens, pensioners and policy-holders

## What is at Stake? – Third Countries

- As currently drafted, the third country regime would put severe constraints on fund marketing, capital raising, capital flow and investor's choice.
- There would be a 'guillotine effect' after a three-year transition period for AIFMs and AIFs that don't meet the standards (or if the implementation mechanisms are not yet in place).
  - AIF from third countries regardless of where the AIFM is established can only be marketed in the EU on the basis of the AIFM Directive. National regimes will be 'disapplied'.
  - As a result, if any of the conditions are NOT met, it would mean a FULL BAN of third country AIF/AIFMs from marketing in the EU.
- After the transition period, EU investors can only buy (invest in) AIF which are domiciled in countries that comply with a set of conditions (cooperation agreement, anti-money laundering, agreement on exchange of information on tax issues (OECD Model), reciprocal market access).
- It is not clear if the Directive would apply to non-EU AIFMs in respect of EU AIFs.

# Third Countries – What is at Stake?

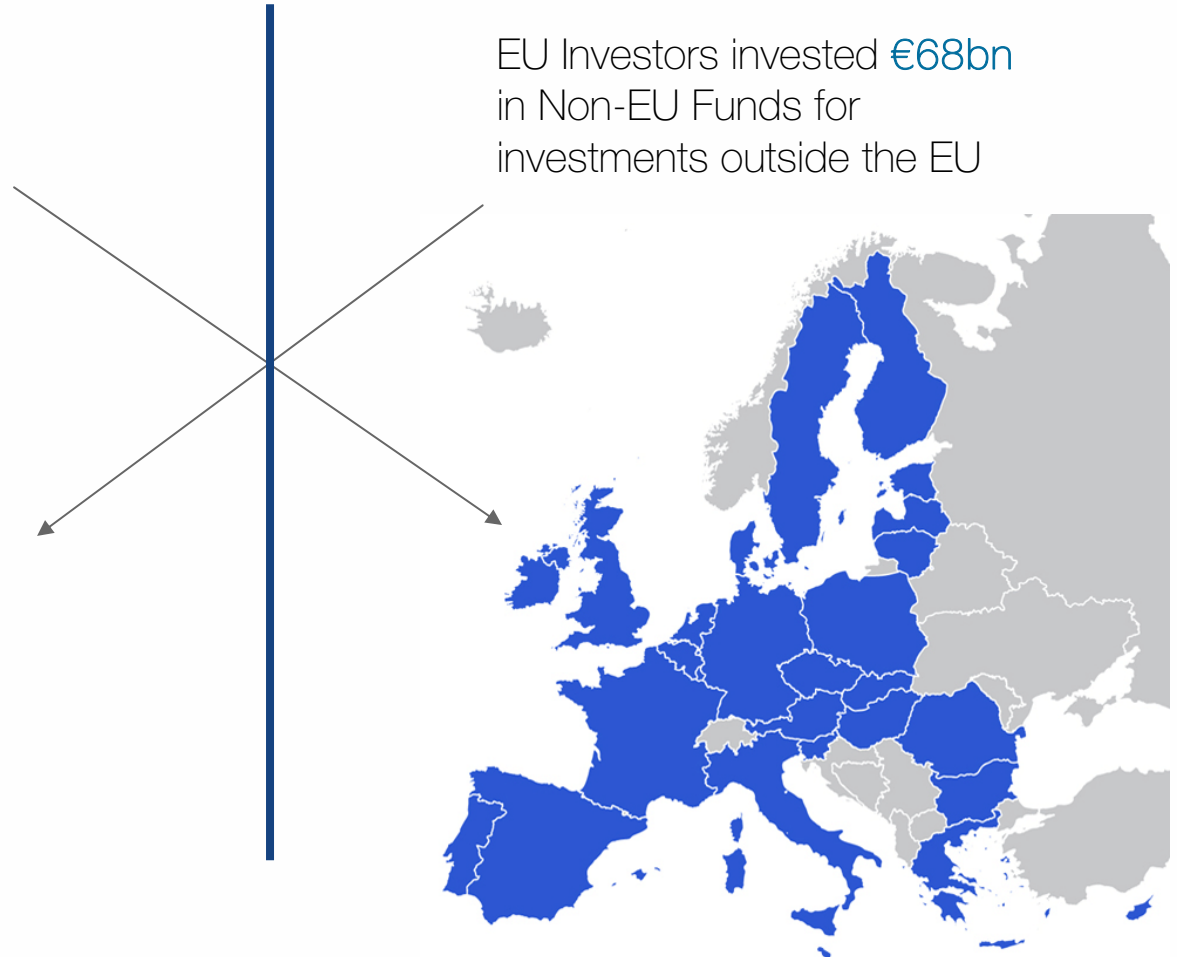
## Capital Flows, by Investor Location, from and to the EU (2007-2008)



AIFM Directive

Non-EU Investors invested **€65bn** in European funds investing in the European economy

EU Investors invested **€68bn** in Non-EU Funds for investments outside the EU



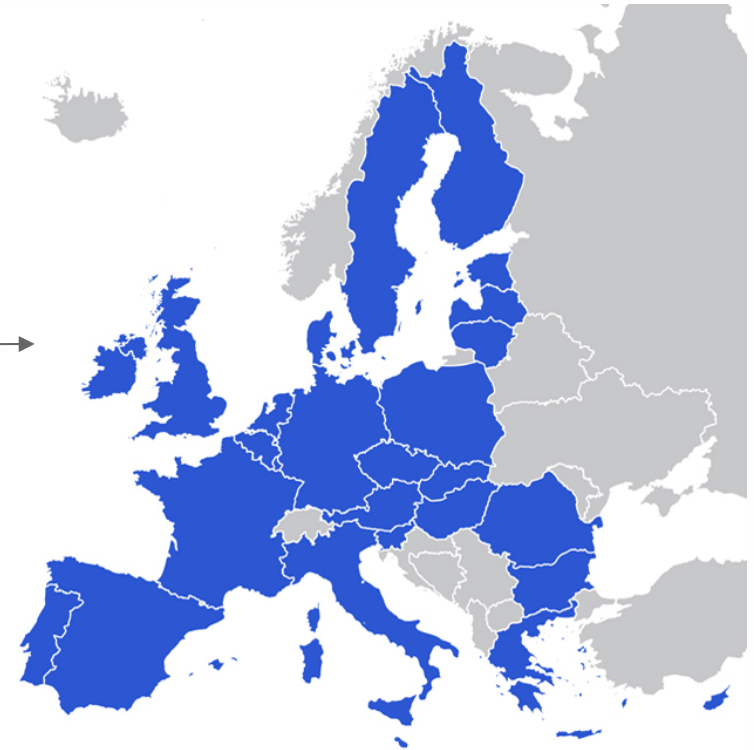
# Third Countries – What is at Stake?

## Capital Flows, by Fund Location, to the EU (2007-2008)



AIFM Directive

47%\* of the total funds raised from European PE/VC houses is raised through managers based outside the EU



\*This represents **€73bn** raised by European PE/VC houses through legal structures based outside the EU, for investment in the EU economy

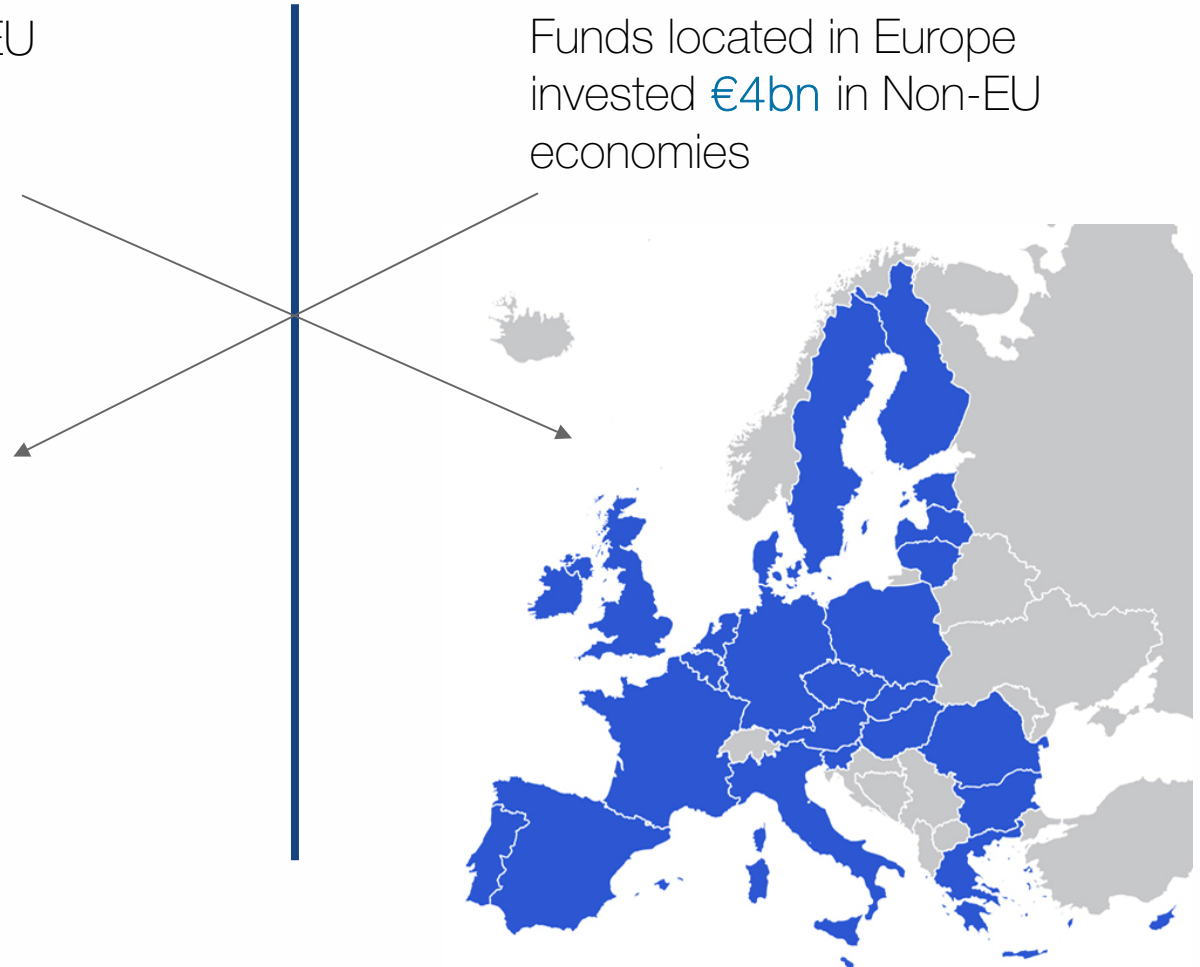
# Third Countries – What is at Stake? Capital Flows, by Investments in the Real Economy, from and to the EU (2007-2008)



AIFM Directive

Funds located outside the EU invested **€57bn** in the EU economy

Funds located in Europe invested **€4bn** in Non-EU economies





EUROPEAN  
PRIVATE EQUITY &  
VENTURE CAPITAL  
ASSOCIATION

## Legislative Process – Where are we now?

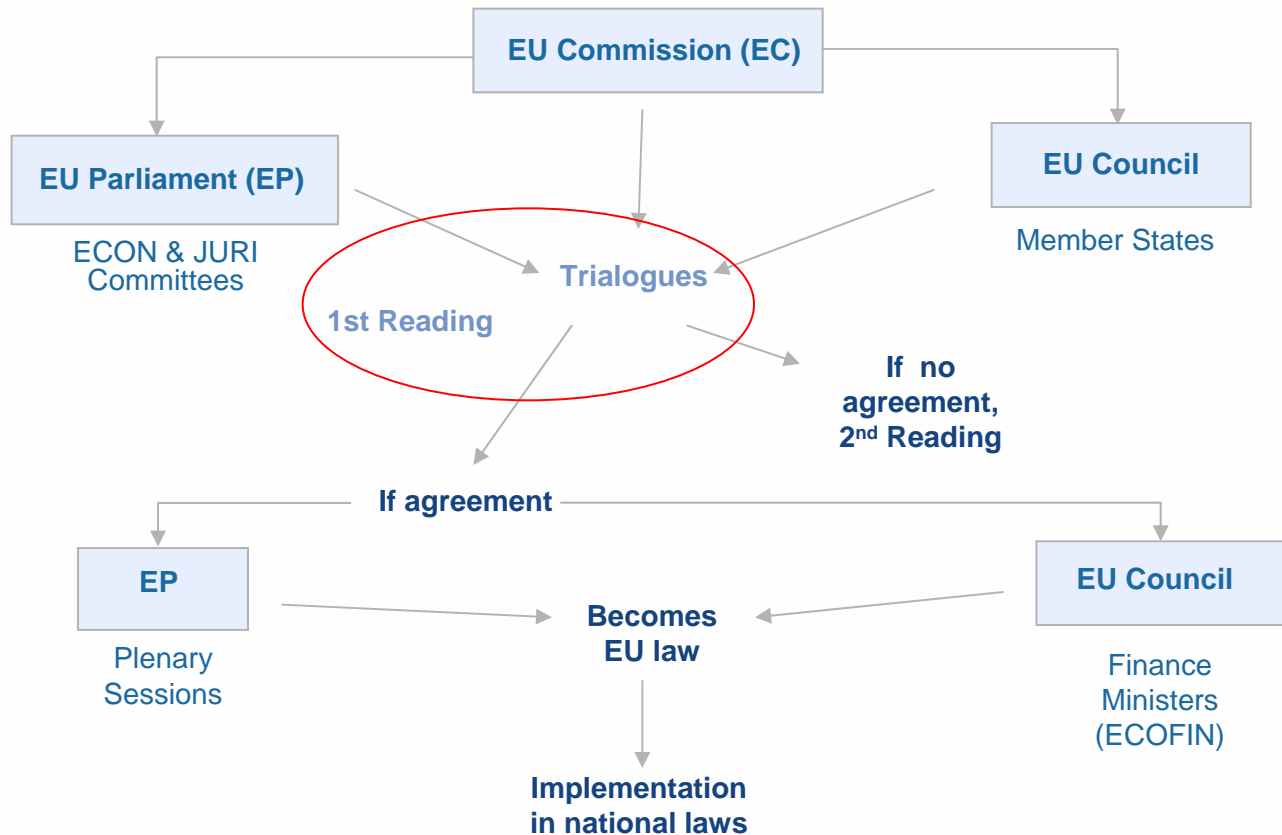
## Legislative Process – Where are we now?

The Directive follows the Lamfalussy process:

- Level 1 – Framework legislation -> This is where we are today
- Level 2 – Technical implementing measures (once adopted)
- Level 3 – Cooperation among national regulators/supervisors to ensure consistent interpretation of the rules
- Level 4 – Monitoring compliance and enforcement of all EU measures, led by the Commission, to ensure consistent implementation (24-36 months from today)

# Legislative Process – Where are we now?

## Level 1 – Legislative procedure = Co-decision



- Debate at European Parliament and Member State level (trialogues)
- First reading of the legislative proposal takes at least six months
- Once the legislation has been adopted Member States will have 18 months to transpose the Directive into national law



EUROPEAN  
PRIVATE EQUITY &  
VENTURE CAPITAL  
ASSOCIATION

AIFMD Status

---

--

- The AIFMD legislative process is in the trialogue stage. The three European Institutions are trying to come to an agreement, with the Commission playing a mediator role.
- The following overview compares the three AIFMD texts for each of the key issues of concern for the PE/VC industry:
  - The European Commission's draft AIFM Directive – April 2009
  - The European Parliament's AIFMD text – May 2010
  - The Council's version of the AIFM Directive – May 2010
- It should be borne in mind that the AIFM Directive remains a moving target and is still under discussion.
- Therefore, it remains unclear what the ultimate legislation will look like.

# Scope - Who will be covered?

Commission	Council	Parliament
<p><b>Threshold for full exemption</b></p> <p>EUR 500 million of cumulative AIF under management for AIFM managing unleveraged AIF and without investors redemption rights during a period of five years.</p> <p>Such AIFM should however continue to be subject to any relevant national legislation</p> <p>AND</p> <p>should be allowed to be treated as AIFM subject to the opt-in procedure.</p> <p>Implementing measures to determine how this opt-in would work.</p>	<p><b>Optional exemption for smaller funds</b></p> <p>Member States have <u>the option</u> not to apply the directive to smaller AIFM with managed assets below EUR 500 million if they do not use leverage.</p> <p>However, such smaller players would be subject to minimum registration and reporting requirements in their home Member States.</p> <p>AND</p> <p>should be allowed to be treated as AIFM subject to the opt-in procedure.</p> <p>Opt-in would mean compliance with the ENTIRE Directive, but with lighter capital requirements (see below).</p> <p>Also EXEMPTED: Employee savings and participation schemes and group schemes.</p>	<p><b>Tailored regime for AIFM managing private equity AIF</b></p> <ul style="list-style-type: none"> <li>- exemption from depositary and capital requirements</li> <li>- periodical valuation is optional</li> </ul> <p>HOWEVER:</p> <p>Not clear if tailored regime for PE includes Chapter VI (passport).</p> <p>Tailored regime also exists for “non-systemically relevant AIFM” (threshold of EUR 250 million if no redemption rights), but this regime is not cumulative with the above.</p> <p>In addition, a tailored regime (without passport) is given to (inter alia) group schemes and employee participation schemes.</p>



# Disclosure at Portfolio Company Level

Commission	Council	Parliament
<p>Threshold for 'controlling stake' at 30%</p> <p>Exemption for acquisition of control in SMEs.</p> <p>Information to be disclosed includes:</p> <ul style="list-style-type: none"> <li>-development plan for the non-listed company</li> <li>- policy regarding management of conflicts of interests</li> <li>-communication policy</li> <li>- operational and financial developments</li> <li>- statement on significant divestment of assets</li> </ul> <p>Public companies, in which the AIFM has acquired a controlling influence (30%), taken private would continue to be subject to public disclosure requirements for two years.</p>	<p>Threshold for 'control' at 50%</p> <p>Exemption for acquisition of control in SMEs</p> <p>Confidential information is protected</p> <p>No disclosure of development plan</p> <p>BUT disclosure of (changes in) number of employees and of portfolio company leverage</p> <p>No disclosure of identity of investor in case of preferential treatment.</p> <p>Requirements for disclosure after delisting deleted.</p> <p>The EC to review relevant company law legislation and financial sector directives within 3 years of the deadline for implementation.</p>	<p>Controlling influence set at 10%, 20%, 30%, and 50% of the voting rights of a non-listed company.</p> <p>Exemption for companies employing less than 50 persons only.</p> <p>Confidential information is protected.</p> <p>Extensive disclosure requirements, including R&amp;D, remuneration policy, and PLANNED significant divestment of assets.</p> <p>AIFMs taking a listed company private would continue to be subject to public company disclosure requirements for 1 year.</p> <p>The EC to review relevant company law legislation and financial sector directives by entry into force of this Directive.</p>

Commission	Council	Parliament
<p>Leverage provisions apparently only apply at the AIF level.</p> <p>Commission to adopt implementing measures setting limits to the level of leverage AIFM can employ, taking into account the type of AIF, their strategy and the source of their leverage.</p> <p>Disclosure and reporting requirements regarding leverage ONLY for AIF employing high levels of leverage on systematic basis.</p>	<p>Clarifies that leverage provisions only apply at the AIF level.</p> <p>Member States may, when deemed necessary by their competent authorities, set limits to the leverage that an AIFM may employ or other restrictions on management of AIF.</p> <p>The Commission to adopt implementing measures setting out principles specifying the circumstances in which limits on leverage would be set.</p> <p>Additional disclosure and reporting requirements on leverage for AIF employing leverage on systematic basis.</p> <p>AND:</p> <p>NEW Article 28a on disclosure of portfolio company leverage in case of acquisition of control.</p>	<p>AIFMs would be required to set their own leverage limits for each AIF, taking into account the type of AIF, its strategy and other factors.</p> <p>Furthermore, various factors are specified that the competent authorities must take into account in ensuring that the leverage limits set by an AIFM are reasonable (e.g. debt/EBITDA ratio).</p> <p>The net assets of a company owned by private equity must comply with Second Company Law Directive capital adequacy regime.</p> <p>Additional disclosure and reporting requirements on leverage for ALL AIFM, and some more for AIFM managing AIF employing leverage</p>

# Capital requirements



Commission	Council	Parliament
<p>One-size-fits-all.</p> <p>PE subject to full capital requirements:</p> <ul style="list-style-type: none"> <li>- own funds of at least EUR 125 000</li> <li>- where the value of the portfolios of AIF managed by the AIFM exceeds EUR 250 million, the AIFM shall provide an additional amount of own funds equal to 0.02 % of the amount by which the value of the portfolios of the AIFM exceeds EUR 250 million.</li> <li>- own funds should be at least a quarter of the firm's annual expenses.</li> </ul> <p>No cap is foreseen.</p>	<p>PE subject to capital requirements</p> <ul style="list-style-type: none"> <li>- initial capital of at least EUR125,000 (EUR 300,000 if internally managed AIF)</li> <li>- when the value of the portfolios of AIF managed by the AIFM exceeds EUR 250 million, the AIFM must be required to provide an additional amount of own funds which is equal to 0.02 % of the amount by which the value of the portfolios of the AIFM exceeds EUR 250 million</li> <li>- cap of EUR 10 million for the required total of the initial capital and the additional amount</li> <li>- own funds should be at least a quarter of the firm's annual expenses</li> </ul> <p>A lighter regime of capital requirements (initial capital of EUR 50 000) for AIFM managing &lt; € 500 million of non-leveraged AIF, with no redemption rights and no frequent trading when opting in (to benefit from the internal market EU passport).</p>	<p>Exemption for AIFM managing private equity AIF.</p>

Commission	Council	Parliament
<p>One-size-fits-all.</p> <p>Mandatory appointment of a depositary for each AIF the AIFM manages.</p> <p>Depositary must be a credit institution with registered office in the Community and authorized according to the Capital Requirements Directive.</p> <p>Delegation of depositary tasks is allowed and will not affect depositary's liability.</p> <p>Depositary tasks can be delegated in respect of non-EU AIFs to a sub-depositary in the same country, provided the requirements of Article 38 are met.</p>	<p>Depositaries must be appointed in respect of EU AIFs.</p> <p>Broader range of institutions who can act as depositaries, but the competent authorities must approve the depositary. Additional eligible entities for non-leveraged AIF with no redemption rights.</p> <p>The Council text also provides for some additional tasks for the depositary.</p> <p>Not all tasks can be delegated and sub-delegation is allowed.</p> <p>Rules on depositary liability would be less strict than under the Commission's proposal.</p> <p>Liability can be avoided in case of unforeseeable circumstances beyond their control.</p> <p>Although non-EU AIFs would not be subject to Article 17, an entity other than the AIFM would have to perform certain depositary functions.</p>	<p>Exemption for AIFM managing PE AIF.</p>

Commission	Council	Parliament
<p>One-size-fits-all.</p> <p>Mandatory appointment of an independent valuator for all AIFM.</p> <p>Assets to be valued at least annually.</p> <p>Valuators can be established in a third country, provided the requirements of Article 37 are met.</p>	<p>No mandatory independent valuator.</p> <p>For each AIF: appropriate and consistent procedures need to be established to ensure proper valuation of assets of AIF</p> <p>Closed-ended AIF whose shares/units are traded on a regulated market, would be exempted from the requirements to calculate and publish the net asset value per share or unit of the AIF.</p> <p>Assets to be calculated and published at least once per year.</p> <p>Valuation function needs to be independent, subject to a proportionality test except when the AIFM's compensation is linked to performance.</p> <p>When the valuation function is not independent Member States may require that AIFMs' valuation procedures and/or valuations be externally verified.</p> <p>Requirements relating to the qualifications and liability of valulators.</p>	<p>Periodical valuation is optional for AIFM managing private equity AIF.</p> <p>The frequency with which the valuation is performed shall be in compliance with the rules of the AIF and each time shares or units in the private equity AIF are issued or redeemed.</p>

Commission	Council	Parliament
<p>One-size-fits-all.</p> <p>AIFMs required to adopt liquidity management systems.</p>	<p>Exemption for unleveraged closed-ended AIF.</p>	<p>Exemption for AIFM managing private equity AIF.</p>

Commission	Council	Parliament
<p>No remuneration provisions.</p>	<p>Remuneration policies for staff whose professional activities have a material impact on risk profiles.</p> <p>Must be proportionate to the nature, scale and complexity of the AIFM's activities and to the AIF it manages.</p> <p>Remuneration principles will NOT apply to returns paid when an AIF is liquidated or when amounts invested have been reimbursed to investors.</p> <p>Aggregate remuneration would need to be disclosed in the annual report.</p>	<p>AIFM remuneration rules must be compatible with rules applicable to credit institutions and investment firms.</p> <p>Must be proportionate to the nature, scale and complexity of the AIFM's activities and to the AIF it manages.</p> <p>Remuneration principles apply BOTH to remuneration paid by the AIFM and to the remuneration paid by the AIF itself, INCLUDING carried interest.</p> <p>Remuneration disclosure in Annual Report.</p>

# Third country regime

Commission	Council	Parliament
<p>The activities of management and administration of AIF are reserved to EU domiciled and authorised AIFM, with the possibility for AIFM to delegate administration (but not management) functions to offshore entities subject to appropriate conditions.</p> <p>After an additional period of three years (i.e. three years after the transposition period) and subject to strict conditions:</p> <ul style="list-style-type: none"> <li>-EU AIFM could market non-EU AIF to professional investors throughout Europe</li> <li>-non-EU AIFM will be allowed to market their funds in the EU.</li> </ul>	<p>The right for an AIFM to market AIF to professional investors in the EU on the basis of a single authorisation (the European passport for AIFM) should only be granted where the AIF is established in a Member State.</p> <p>Member States may, however, allow or continue to allow AIFM to market AIF established in third countries to professional investors on their territory subject to national law.</p> <p>Within two years after the deadline for implementing the AIFM directive, the Commission should review rules on institutional investors to assess the need to impose tighter requirements on their investments in AIF managed by non-EU AIFMs.</p>	<p>In order to get access to the EU markets, a non-EU AIFM would have to voluntarily subject itself to the directive's requirements. The financial supervisors of that third country would have to act as agents to ESMA in the supervision of that manager.</p> <p>Non-EU AIF would be allowed to be marketed in the EU if the country where it is located has high enough standards to combat money laundering and terrorist financing, grants reciprocal access to marketing of EU funds on its territory and has agreements in place with the Member States where marketing is intended on exchange of information related to taxation and monitoring matters.</p> <p>IF, after the transition period of three years, these conditions are not met, it would mean FULL ban of third country AIFs/AIFMs from marketing in the EU (Article 54).</p>

## Third country regime (2)

Commission	Council	Parliament
<p>IF, after the transition period of three years, these conditions are not met, it would mean FULL ban of third country AIFs/AIFMs from marketing in the EU.</p>		<p>BUT:</p> <p>Member States shall not allow marketing to retail investors of interests in AIFs that invest more than 30% in other AIFs that do not benefit from the EU marketing passport.</p> <p>AND:</p> <p>A new Article 35a prohibits a professional investor domiciled in a Member State from investing in shares or units of non-EU AIFs where if any of the requirements above are not met.</p>

# Grandfathering



Commission	Council	Parliament
<p>No grandfathering provision.</p>	<p>Closed-ended AIFs that do not make additional investments after implementation, may continue to manage such AIF without authorisation until three years after entry into force.</p>	<p>No grandfathering provision.</p>



EUROPEAN  
PRIVATE EQUITY &  
VENTURE CAPITAL  
ASSOCIATION

## Concerns of the Private Equity and Venture Capital Industry

# The PE/VC Industry's main concerns

1. **Improvement of the Scope**
  - Thresholds to protect small firms
  - Level playing field with other investors
2. **Tailoring regulation according to PE/VC specificities and real risks**
  - Liquidity; Capital requirements; Independent valuator & Depositary
  - Imposed requirements should be appropriate, proportionate and tailored to activity and related risks
3. **Revision of Disclosure Requirements**
  - Disclosure at the portfolio company level unfairly disadvantages PE/VC
  - Interaction with existing company law unclear - AIFMD rules should be in line with existing company law rules
4. **Improvement & Clarification of a fair Third-Country Regime**
  - Raises concerns about reducing investment and capital flows into the EU, but also limiting choice for EU investors
  - Remove restrictions related to the Free Movement of Capital
  - Revised & balanced 'Marketing' definition
  - Revised & smart, EU-wide 'equivalence' and 'mutual recognition' definition
5. **Introduction of Grandfathering Clause**
  - Need to control for the impact on existing funds with no redemption rights
6. **Remuneration**
  - Carried interest is not remuneration



EUROPEAN  
PRIVATE EQUITY &  
VENTURE CAPITAL  
ASSOCIATION

What happens next?

---

## What happens next?

- The AIFMD legislative process is in the triologue stage.
- After several triologue meetings, it remains unclear what the final AIFM Directive will look like.
- The Council, European Parliament and European Commission have not reached an agreement on any of the topics discussed so far.
- Last triologue before summer recess took place on 12 July. Negotiations will start again towards the end of August.
- It remains to be seen how negotiations will evolve after summer. A lot will depend on how firm each institution will position itself on its key issues of concern.
- The Belgian Presidency continues to strive for a compromise before the end of its term.

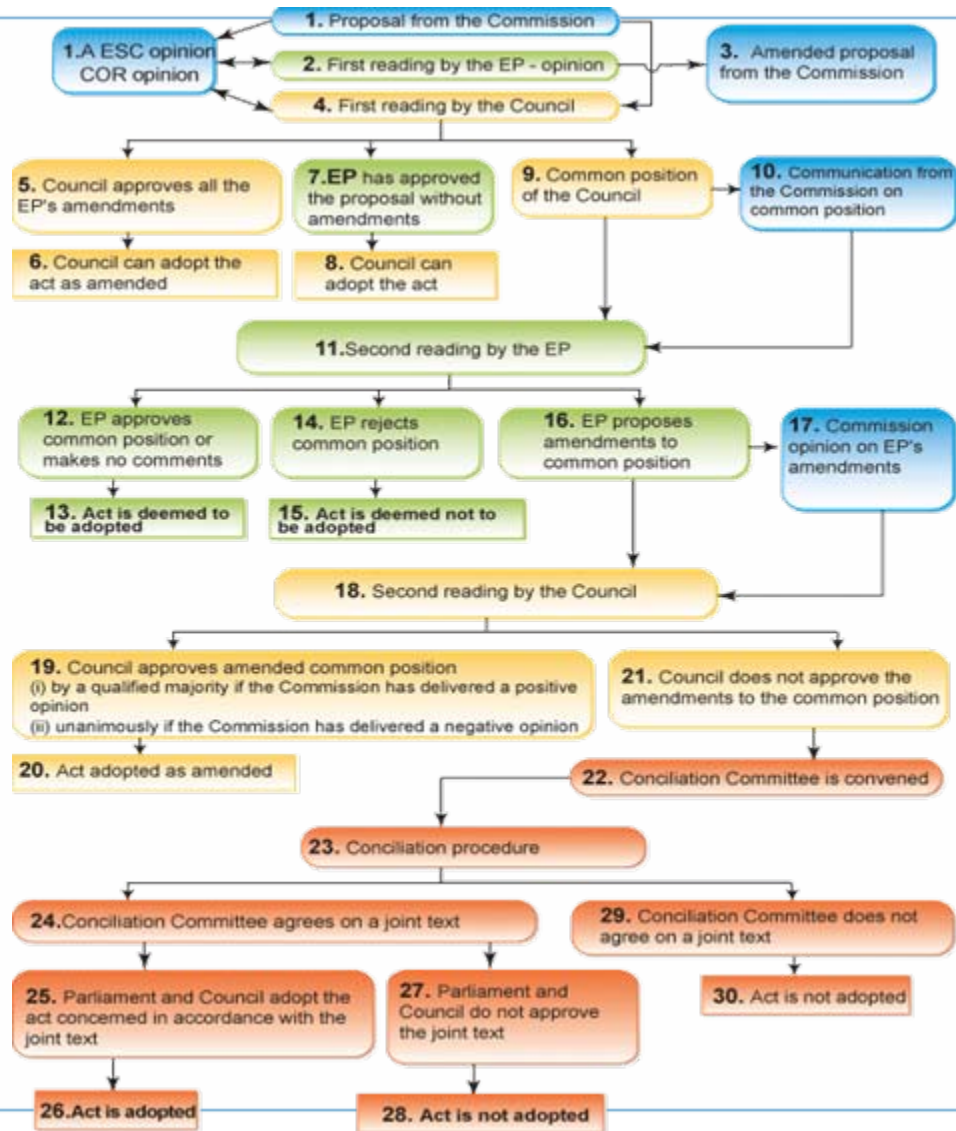


EUROPEAN  
PRIVATE EQUITY &  
VENTURE CAPITAL  
ASSOCIATION

## Annex I: Legislative Process – Detailed Overview

# AIFM Directive = Level 1 Directive

## Decision procedure = co-decision



## Annex II: Private Equity and Venture Capital Industry's Key Messages

---

## DISCLOSURE

- **Disclosure requirements should be reasonable**, both with regards to the content and to the types of companies. EU legislators are responsible for the full economy and must take their responsibility by avoiding undue burden for SMEs.

In this respect, the Spanish Presidency compromise of 11 March, which was agreed upon in mid May, is more favourable than the ECON text and is therefore the preferred option.

- **SMEs**

According to the European Parliament text, companies with 50 or more employees (not the EU SME definition) will be obliged to disclose board-level, commercially-sensitive information without any reference to a level playing field or company law.

This puts a particular onerous burden on small companies in terms of both a competitive and an administrative capacity, rendering it unattractive to entrepreneurs to use venture capital as a means to fund growth.

The Council text avoids extending such requirements to acquisitions of SMEs, so as to avoid hampering start-up or venture capital.

## Disclosure (2)

- **Controlling influence**

For non-listed companies, controlling influence is normally reached when 50% or more of the voting rights is secured.

We strongly support the Council text in this regard and oppose the European Parliament text, which sets the threshold for controlling influence at a mere 10%.

It is important to emphasise that shareholders with 10% voting rights in a privately owned business can execute no influence vis-à-vis the company, the management or the 90% shareholders.

Furthermore, keeping the threshold for controlling influence at 50% or more of voting rights would not only limit legal problems, but would also exempt most of venture backed companies from that burden.

## TAILORING

The European Parliament text is consistent with the initial Impact Statement of the European Commission that private equity funds “did not contribute to increase macro-prudential risks”, a view shared by, among others, De Larosière.

In its proposal, the Parliament acknowledges that there should be differentiated rules for the private equity and venture capital industry, which invests in 'real-economy' companies, and others, which invest in financial instruments.

Excessive or inappropriate regulation of private equity may reduce what is recognised to be their largely beneficial impact.

Therefore, we **welcome the European Parliament text which provides optional valuation for AIFM managing private equity AIF, and which exempts them from the depositary and capital requirements.** This tailoring should be kept by the Council.

However, there is still considerable room for greater tailoring, notably in the Council text, to protect venture capital funds from unnecessary burdens, as well as to safeguard the availability of finance for Europe's companies and to ensure institutional investors do not face greater cost for no greater protection.

# Leverage and Grandfathering

## LEVERAGE

**Leverage should be regulated at fund level**, as currently provided in the Spanish Presidency Compromise Text. To do so at company level would be discriminatory, upsetting the level playing field and would have perverse consequences.

The text of the European Parliament is quite ambiguous in this respect.

## GRANDFATHERING

The rules imposed by this Directive should apply to new funds.

For closed-ended funds which have no redemption rights, do not raise money anymore and therefore do not compete with new funds under the directive, and do not create new risks for the investors, it would be unjustified to re-open the contract signed between the investors and the managers of existing funds.



## THIRD COUNTRIES

Private equity is about raising money worldwide to invest locally. **Therefore, we need a European solution (passport) inspired by the European Parliament text, but improved to make it fly.**

Around 60% of European venture capital funds and 40% of buyout funds come from outside the EU and we should not have these sources of finance put at risk by having our trading partners feel they are being treated unfairly.

There also continues to be a major risk for European institutional investor returns, if undue restrictions are imposed regarding their ability to invest in funds outside the EU.

That said, **national regimes are to be kept at least as long as an EU solution has not been implemented.** The solution proposed by the Council in that respect should be conciliated with the passport. Otherwise, if the conditions for a passport are not met, the proposal of the Parliament will work as a guillotine and cut all capital flows from outside the EU if the conditions to receive a passport are not met after 3 years.

## REMUNERATION

AIFM, banking institutions and investment firms have different functions and characteristics, and as a result represent different levels of systemic risk. It is important to recognise this in order not to impose regulation that goes against current market practices.

In the case of private equity and venture capital, these market practices offer a strong alignment of interest between the fund managers and investors. The rewards available to fund managers are generally directly related to the performance of the funds they manage in the interests of their investors. The professional investors who invest in the funds insist on this. No sector other than the private equity and venture capital sector guarantees such an alignment to this extent, thanks to the initial co-investment.

The Council's text has been able to take these specifics into account, both in Article 9 and in the Annex dealing with Remuneration, and it is vital that this is preserved.

## FUNDS-OF-FUNDS

According to the European Parliament's text:

“Member States shall not allow the marketing of AIF to retail investors in their territory, when an AIF invests more than 30 % in other AIF which do not benefit from the European marketing passport.”

This clause is inappropriate, since the AIFM Directive does not regulate marketing of interests to retail investors, and in any case there is no EU passport under the AIFM Directive for marketing to retail investors.

Furthermore, it ignores that geographical diversification is for the benefit of investors. Transparent offers is the best means to ensure adequacy between risks and financial solidity of the investor, compared to artificial restrictions which play against the aim of the directive at reducing systemic risks.