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REGULATORY COMPETITION IN EUROPEAN PARTNERSHIP LAW: A CASE OF ALTERNATIVE INVESTMENT FUNDS

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ABSTRACT

This paper analyses the recent reforms of a limited partnership used for structuring alternative investment funds in the UK (2017), Luxembourg (2013) and France (2015). The introduction of the Alternative Investment Fund Managers Directive (2011) has prompted the EU Member States to modernise their legal structures to get ahead of an increasing competition as a leading fund and fund manager domicile. This paper argues that the UK Private Fund Limited Partnership is the most competitive legal structure in terms of management rights accorded to investors and tax-transparency. Luxembourg provides an equally competitive limited partnership model, which will be used extensively by fund managers and investors post-Brexit. Regulatory competition in partnership law will incite other EU Member States to review their legislation applicable to this legal form.

Keywords: alternative investment fund; hedge fund; private equity fund; Alternative Investment Fund Managers Directive; limited partnership

Introduction

The introduction of Directive 2011/61/EU of the European Parliament and of the Council on Alternative Investment Fund Managers [2011] OJ L174/1 (hereinafter 'AIFMD') has marked the first pan-European attempt to harmonise the alternative investment fund industry. Largely unregulated prior to the 2007-2008 financial crisis, this industry is now within the tight scope of national regulatory law. The AIFMD is a part of the EU initiative to regulate all financial markets participants and to promote financial stability within the Union.

The direct consequences of the Directive for the fund industry have been extensively discussed elsewhere.[1] This paper focuses on a particular indirect consequence of the AIFMD, i.e. the

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[1] See, *inter alia*, G. T. Dardanelli, 'Direct or Indirect Regulation of Hedge Funds: A European Dilemma', *European Journal of Risk Regulation* 2011- 2, pp. 463 – 480; A. Seretakis, 'Taming the Locusts? Embattled hedge funds in the EU' *NYU Journal of Law & Business* 2013 – 10, p. 115 – 153; A. Seretakis, 'Regulating hedge funds in the EU? The case against the AIFM directive', *RTDF* 2014-2, pp. 1-6; E. Ferran, 'The Regulation of Hedge Funds and Private Equity: A Case Study in the

amendment of a national partnership law to suit the needs of investment funds. The Anglo-Saxon limited partnership is a gold standard for structuring alternative investment funds within the EU. Its key features – limited liability, contractual flexibility, and tax-transparency – explain the widespread use of this legal form for fund structuring.

In line with other EU Financial Directives, the AIFMD is a minimum harmonisation legal instrument. The Member States shall not introduce regulatory law standards that are less strict than the provisions of the Directive, unless it directly allows doing so. As such, the discretion of a national legislator in the transposition of the Directive is rather limited. This is explained by the overriding objective of the AIFMD to create a level-playing field for the European alternative investment fund industry. The alternative investment fund manager, who is duly authorised in one EU Member State, can freely manage and market alternative investment funds within the whole Union. Several EU Member States have decided to modernise legal forms available for fund structuring in order to gain a competitive advantage in attracting foreign investors and fund managers. Luxembourg modernised its limited partnership regime, at the same time as transposing the AIFMD into its national law. France and the UK have introduced amendments to the partnership law within several years after the transposition of the AIFMD. These initiatives gave rise to what we call 'regulatory competition in European partnership law'. By amending their partnership law, EU Member States compete with each other to position themselves as investor-friendly fund domiciles.

The research on regulatory competition in partnership law is almost non-existent. So far, only a single article has treated this subject.[2] However, it is somewhat outdated (2009) and thus does not deal with the recent legislative developments in this domain.

The objective of this paper is to critically compare limited partnership reforms in the UK (2017), Luxembourg (2013) and France (2015). The order of comparison is explained by the level of significance of the reforms in each jurisdiction. The UK, whose limited partnership model serves as an example for other countries, has introduced a dedicated private fund limited partnership. Luxembourg has included a special limited partnership regime in addition to an already existing limited partnership. For the first time in its legislative history, France has established a limited partnership model. The advantages and disadvantages of these reforms will be assessed from the point of view of fund investors.

This paper is structured as follows. Part II analyses the concept of 'alternative investment fund' as defined by the AIFMD. Part III discusses the key features of a limited partnership that explain its popularity as a fund vehicle. Part IV reviews the UK private fund limited partnership and reflects on its differences vis-à-vis a classical limited partnership. Part V examines a Luxembourg special limited partnership and compares it with an already existing limited partnership, as well as its UK counterpart. Part VI analyses a French limited partnership and critically evaluates its regulation against the UK and Luxembourg models respectively. Part VII concludes by envisioning further developments in the EU partnership law.

I. Alternative Investment Fund: Key Definitions

Development of the EU's Regulatory Response to the Financial Crisis' *SSRN Working Paper* 2011 – 176 p. 2- 38, at: http://ssrn.com/abstract=1762119 accessed 31 October 2017.

[2] M. M. Siems, 'Regulatory Competition in Partnership Law', *International and Comparative Law Quarterly,* 2009-58.

What is an investment fund? In its simplest definition, a fund is a pool of assets contributed by investors in return for the share of the fund profits.[3] Investment funds are divided into traditional UCITS funds[4] and alternative investment funds. The abbreviation 'UCITS' stands for the 'undertakings for the collective investment in transferable securities' that are destined primarily for retail clients. In contrast, alternative investment funds are mainly used by professional investors. This difference in the investment target base explains the differences in the regulatory approach to these funds. As this paper will show, alternative investment funds are 'lightly-regulated' products. Their managers are regulated by the AIFMD, whereas the funds themselves are outside the regulatory perimeter. Prior to the adoption of the AIFMD, these funds were structured in such a way so as to escape from any regulation whatsoever. In the Netherlands, for example, the managers of real estate funds did not need to obtain a license from the Dutch regulator if they offered the units to (i) qualified investors only (*gekwalificeerde beleggers*); or (ii) fewer than 100 non-qualified investors. The real estate funds were not required to be authorised either. As such, neither the managers, nor real estate funds were under the supervision of the Dutch regulator.

This relatively 'light' regulation allows the funds to pursue sophisticated high-risk/high-return strategies with the unrestricted investment asset base and absence of any risk spreading ratio requirements. Conversely, UCITS funds are highly regulated investment products. Both the managers and the funds have to comply with numerous requirements. The Directive UCITS determines the investment assets and risk ratios of the funds, as well as prescribes the conduct of fund managers.

'Alternative investment fund' is defined in Article 4(1)(a) AIFMD as

> collective investment undertaking, including investment compartments thereof, which: (i) raise capital from a number of investors, with a view to investing it in accordance with a defined investment policy for the benefit of those investors; and (ii) do not require authorisation pursuant to Article 5 of Directive 2009/65/EC.

It should be stressed that the AIFMD regulates alternative investment fund managers and not the funds *per se*. This regulatory approach is explained by the following reasons: (i) an array of alternative investment funds in the EU Member States is very distinct and is impossible to harmonise on the European level;[5] and (ii) legislators are slow to adapt to an ever-changing landscape of financial products and they should rather focus on the conduct of the manager who is responsible for the management of these financial products.[6] The Directive directly states that Member States are given discretion as to the regulation of the funds.[7] This paper argues that since the EU Member States do not have much discretion on the level of the fund manager regulation, they adjust their fund regulation approaches to position themselves as a fund domicile of choice.

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[3] T. Spangler, *The Law of Private Investment Funds*, 2nd edn., Oxford: OUP 2012, para 1.77.

[4] Regulated by the Directive 2009/65/CE of the European Parliament and of the Council on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) [2009] OJ L302/32 as amended.

[5] Alternative Investment Fund Managers Directive 2011, Recital (10).

[6] D.A. Zetzsche, Ch. 38 *'The AIFMD and the Joint Principles of European Asset Management Law'* in D.A. Zetzsche (ed.), *The Alternative Investment Fund Managers Directive*, 2nd edn., The Hague: Kluwer Law International 2015, para.2.2.

[7] *Supra* note 5.

As mentioned above, the AIFMD is of a minimum harmonisation character, i.e. it establishes a minimum standard of behaviour that the AIFMs must adhere to. As such, the EU Member States are not allowed to impose less strict requirements on the fund managers than those provided for in the Directive. In contrast, they are given legislative freedom with regards to the regulation of funds. As such, by adopting flexible fund structures, the EU Member States aim at attracting fund managers and investors within their jurisdictions. This is referred to as 'regulatory arbitrage', i.e. companies being established in those jurisdictions that offer tax and regulatory advantages. The most prominent example of this quest to become a fund domicile of choice is seen within the partnership law. A limited partnership structure, which meets the needs of investors in terms of tax transparency and contractual flexibility, ensures that the EU fund managers will establish the funds in this specific jurisdiction to benefit from an advantageous legal environment.

In contrast, UCITS funds are regulated products, i.e. their eligible investment classes and investment ratios are defined by the relevant EU legislation. In addition, UCITS fund managers are subject to regulatory requirements, comparable to those applicable to alternative investment fund managers. Therefore, both funds and managers are within the EU regulatory perimeter. This radical difference between the regulation of two types of investment funds is explained by their investor target base. The UCITS funds are called 'traditional investment funds' because they are aimed primarily at retail investors. Retail clients do not possess the necessary skills and investment experience to invest into volatile portfolios and evaluate the risks such investment entails. This justifies the strict regulation of UCITS fund industry. Historically, UCITS funds were only allowed to pursue low risk – low return strategies by investing in a specified class of assets. However, UCITS III Directive[8] permitted UCITS funds to invest in a wider range of securities, including units in other funds and derivatives.

Alternative investment funds are generally destined for 'professional investors'. 'Professional investor' is defined in the Annex II of the Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on Markets in Financial Instruments [2004] OJ L145/0001 (hereinafter 'MiFID') as 'a client who possesses the experience, knowledge and expertise to make its own investment decisions and properly assess the risks that it incurs'. This category is comprised of high-net-worth individuals and institutional investors. Professional investors are deemed to be knowledgeable enough to select their investment targets. They have the necessary resources to conduct due diligence and to negotiate the terms of the investment agreement.[9] In other words, professional investors are able to "fight for themselves". As such, alternative investment funds are 'lightly-regulated' as compared to traditional UCITS funds. This 'light regulation' allows alternative investment funds to pursue unrestricted investment strategies, with an extensive use of short-selling and derivatives. The most prominent examples of alternative investment funds are hedge funds and private equity funds. By understanding the nature and specificities of these funds, one can better understand the importance of using a limited partnership for their structuring.

[8] Directive 2001/108 [2002] OJ L41/35 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS), with regard to investments of UCITS (the 'Product Directive') ; Directive 2001/107 [2002] OJ L41/20 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) with a view to regulating management companies and simplified prospectuses (the 'Management Directive').

[9] L. Chincarini, Ch. 1 *'Hedge Funds: The Misunderstood Investment Vehicles'* in *The Research Handbook on Hedge Funds, Private Equity and Alternative Investments*, Cheltenham: Edward Elgar Publishing 2011, p. 36, at: http://ssrn.com/abstract=1788473 accessed 7 October 2017.

Hedge funds form a distinct investment class due to their sophisticated trading strategies.[10] Whilst retail investment funds simply follow a direction of the market, i.e. they sell securities when the market is going down and vice versa, hedge funds take opposite direction to that of a current market. A hedge fund manager chases an 'alpha' performance,[11] i.e. a performance that is not or only slightly correlated with the overall performance of the market. 'Alpha' denotes the ability of a hedge fund manager to select securities and hedge the risks of the overall investment portfolio. 'Hedging' is a technique whereby a fund manager enters into a position in one market in order to offset the exposure of the fund's portfolio to the risk of price fluctuations in the opposite market. [12] As such, they look for price abnormalities in different securities, trying to profit from financial market's imbalances. Hedge funds represent a liquid investment, since their investors can usually redeem the units at a short notice (within 1 month from the date of the request to do so).

Private equity funds invest in private (unquoted) companies at different stages of their life: (1) start-up and expansion stage (venture capital funds); (2) mature companies with a need of financing (pure private equity); and (3) companies in financial difficulties (leveraged buy-outs). The objective of this strategy is to maximize the value of the company in order to sell the stakes in it later with a profit. [13] Private equity funds target either private companies or public companies that are immediately taken private following the private equity deal.[14] The fund usually has a fixed life (10 years on average), a period that corresponds to the lifespan of this investment strategy. It thus represents an illiquid investment, i.e. investors are usually locked in for the full duration of the investment strategy and cannot exit the fund at a short notice.

The analysis of these two types of alternative investment funds shows that such investment should only be open to professional investors, who are able to properly evaluate the risks involved. In addition, given the riskiness of these investment strategies, fund investors should benefit from a limited liability so as not to risk their personal capital in case the fund goes bankrupt. This brings us to the discussion of the limited partnership model that is specifically tailored for these situations.

II. Limited Partnership: Key Features

A limited partnership – an Anglo-Saxon concept – is a commonly used vehicle for structuring alternative investment funds. Its popularity is explained by the advantage of a limited liability for investors, contractual flexibility and tax-transparency. Each of these features will be discussed below.

II.1 Limited Liability

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[10] E. Ferran, 'After the crisis: the regulation of hedge funds and private equity in the EU', *European Business Organization Law Review* 2011- 12, p. 380.

[11] J.M. Longo, *'Hedge Funds: Overview, Strategies, and Trends'* in C.F. Lee & A.C. Lee (eds.), *Encyclopedia of Finance*, NY: Springer Science and Business 2013, pp. 621-632.

[12] Dardinelli 2011, *supra* note 1, p. 464.

[13] D. J. Cooke, *Private Equity: Law and Practice*, 5td ed., London: Sweet&Maxwell 2015, para. 1-01.

[14] J. Payne, 'Private equity and its regulation in Europe', *European Business Organisation Law Review* 2011-4, p. 562.

A limited partnership is defined as a relationship between two or more partners who carry on a business with a view of profit.[15] It differs from a general partnership by the duality of its partners: general and limited. General partners manage the partnership and have unlimited liability for the debts and obligations of the partnership. They often include investment managers, who set up a fund, and the investors with the highest capital contributions. Limited partners do not participate in the management of the partnership and have limited liability only up to the amount of their contributions. They are sometimes called 'sleeping partners', because they simply commit their money to the partnership, without taking on any management role. If limited partners participate in the management of the fund, they will be treated as general partners and, therefore, will lose their limited liability.[16] It is worth mentioning that the unlimited liability of a general partner can be circumvented by establishing it as a limited liability vehicle (limited company, limited partnership or limited liability partnership).

When an alternative investment fund is structured as a limited partnership, the general partner can act as (1) a manager of the partnership; and (2) a manager of the fund. This is important since by fulfilling three roles simultaneously – of a general partner, of a partnership manager, and of a fund manager – a general partner has to comply with the array of regulatory law provisions applicable to each of the functions listed. In addition, such fund will be considered internally-managed for the purposes of the AIFMD and its general partner will have to comply with the provisions of the Directive. In practice, a general partner often appoints an external fund manager with specific investment expertise. This shows that limited partnership provides an advantage of limited liability to its investors (either general or limited partners). As we have seen earlier, alternative investment funds engage in risky investment strategies and thus this advantage is important in order to preserve investors' personal assets in case a fund goes bankrupt. The fund's creditors will have claims on the fund's assets, and not those of its investors.

II.2 Contractual Freedom

A limited partnership is a contract-based legal form. It is established by a partnership agreement between general and limited partners. Partnership law statutes provide a set of default rules, which can be modified or excluded by the partnership agreement. For example, Section 19 of the Partnership Act 1890 (hereinafter 'PA 1890') states that 'the mutual rights and duties of partners, whether ascertained by agreement or defined by this Act, may be varied by the consent of all the partners, and such consent may be either expressed or inferred from a course of dealing'.

When looked at in the context of investment funds, virtually any term of the partnership agreement is the result of negotiations between investors.[17] These investors include high-net-worth individuals and institutional investors. They differ in their tax status and investment preferences. In addition, investors with bigger capital contributions may ask for preferential treatment, such as side letters.[18] All of these issues are specified in the partnership agreement.

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[15] Partnership Act 1890 ('PA 1890'), s 1 (1).

[16] Limited Partnership Act 1907 ('LPA 1907'), s 6(1).

[17] Eddy Wymeersch (ed.), *Alternative Investment Fund Regulation*, The Hague: Kluwer Law International 2012, p. 17.

[18] A side letter is a contractual agreement between a fund manager and an investor, which provides for particular amendments of the partnership agreement. If properly disclosed to existing fund investors,

Contrary to the partnership law, company law rules are mandatory. In almost any jurisdiction, the rules with regards to the company formation, scope of its operation and the procedure for taking decisions are laid down by a relevant statute. These rules cannot be overridden by a contractual agreement between the parties. Therefore, a limited partnership offers a higher degree of contractual freedom to the investors, who can tailor a partnership agreement to suit their needs. In order to understand the differences between partnership and company law, a short insight in their respective historical development is very useful.

Partnership law has developed as a voluntary concept, contrary to the obligatory nature of company law.[19] What is meant by this is that the majority of corporate statutory rules are obligatory provisions that have a character of a public duty, i.e. they are imposed by law, rather than by contract. As such, they cannot be freely modified or excluded by the contract, unless a law directly allows to do so. In contrast, partnership law is a contractual concept. The majority of partnership statutory rules are default provisions, meaning that they can be modified or excluded by the partnership agreement.

In the UK, a general partnership has evolved through the interplay of the laws of contract, agency and equity. Since English general partnership does not have either legal personality or limited liability, it has never presented a serious concern for a legislative interference. To this day, it continues to enjoy a limited set of compulsory rules.[20] In other words, since the responsible persons (partners), and not the partnership itself, have unlimited liability for their actions, they benefit from a freedom to structure their relationship as they wish. Since its inception, a partnership law positions itself as a default set of rules that can be modified or excluded by the contractual agreement between the parties. Indeed, if one compares the provisions of the Partnership Act 1890 with those of the Companies Act 2006, it becomes clear that the former is a voluntary code. Section 19 of the Partnership Act 1890 (rights and duties of the partners towards each other) provides parties with the freedom to modify the rights and duties established in this section either by express or implied consent.

The introduction of the limited partnership by the Limited Partnership Act 1907 was a direct response to the creation of the private company under the Companies Act 1907. Whilst a private company granted limited liability to directors and shareholders, together with a benefit of a floating charge fundraising,[21] a limited partnership created two types of partners: general and limited. General partners were responsible for the management of the partnership, while limited partners simply invested money and benefited from a limited liability. The Limited Partnership Act 1907 is based on the deviations from the general partnership rules, especially with regard to the formation, flexibility of limited partner and internal relations within a partnership.

On 26 May 1987, the Inland Revenue and the Department of Trade and Industry has authorised the use of limited partnership form for venture capital funds. This has prompted the

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side letters are not considered as a preferential treatment and thus will not trigger fund manager's liability. See, *inter alia*, Spangler 2012, *supra* note 3, Ch. 11.

[19] Geoffrey Morse, *Partnership Law*,7th ed., New York: OUP 2010, p. 10-1.

[20] *Idem*, p. 28.

[21] *Idem*, p. 30.

widespread popularity of this vehicle for structuring alternative investment funds not only in the UK but also within the EU.[22]

It should be noted that whilst the majority of the partnership law provisions are default rules, a partnership agreement has to comply with the rules of regulatory law and private law that are non-modifiable. The question arises as to whether a partnership agreement can modify or exclude the liability of a fund manager towards the investors of the fund. The provisions of the AIFMD that deal with the liability of a fund manager are transposed into the national regulatory rules. A fund manager's liability may also be based on private law and contractual provisions. According to Busch and Demott, there is no generic answer to this question since each Member State differs in its approach to a fund manager liability and a possibility of its contractual modification/exclusion.[23] However, the authors suggest that, in general, a contractual limitation of fund manager's liability as compared to the standards set by regulatory law will be ineffective.[24] The same should hold true for the limitation of fund manager's liability vis-à-vis the rules of private law. For example, in France, there is no distinction between regulatory law and private law as regards the liability of a fund manager.[25] As such, any contractual clause that limits the fund manager's liability will be void and null. Even though a contractual relationship is characterised by the parties' freedom to structure their relationship as they wish, they still have to comply with the rules of the regulatory and private law.

In this respect, an important distinction is made between retail and non-retail clients. It has been mentioned throughout this paper that retail clients are given a high standard of statutory protection. In contrast, non-retail clients, due to their presumed investment experience and knowledge, do not require the same degree of statutory protection. For example, in *Hospital Products Ltd v United States Surgical Corporation*[26] it was held that the court should not impose fiduciary duties on the relationship between commercially experienced parties, unless the contract between them directly provides for their application. Therefore, a limited partnership model is best suited for professional clients who can tailor the terms of the relationship as they deem appropriate.

II.3 Tax Transparency

It is submitted that investors choose the investment fund based on the taxation of their future profits.[27] This does not come as a surprise since the level of tax will determine the net profit of investors. It follows that a fund should enable its investors to be in the same fiscal position as if they invested directly into the underlying assets.[28]

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[22] The Law Commission Consultation Paper No 161/ The Scottish Law Commission Discussion Paper No 118, 'Limited Partnerships Act 1907: A Joint Consultation Paper' (September 2001), para.1.5,at:https://www.scotlawcom.gov.uk/files/6712/7892/7070/dp118_limited_ partnership.pdf accessed 22 February 2018.

[23] D. Busch & D. A. Demott, Ch. 16 *'Comparative analysis of the jurisdictions – the impact of regulatory frameworks on an asset manager's private law duties and liability'* in D. Busch & D. A. DeMott (eds.), *Liability of Asset Managers*, Oxford: OUP 2012, para. 16.19.

[24] *Idem*, para. 16.10.

[25] A. Couret et al., Ch. 3 '*France*' in D. Busch & D. A. DeMott 2012, *supra* note 23, para. 3.46.

[26] Following *Hospital Products Ltd v United States Surgical Corporation* (1984) 156 C.L.R. 41.

[27] T. Spangler, *A practitioner's guide to alternative investment funds*, 3rd edn., London: Thomson Reuters 2015, p. 271.

[28] *Ibid.*

A limited partnership is tax-transparent. It is not treated as a separate legal entity distinct from its members and as such, there is no taxation on the partnership level. The profits of the fund are distributed directly to investors, who are then taxed according to their tax-resident status. This paper argues that tax-transparency is the main reason for the success of a limited partnership for fund structuring. The investment activity of the fund is rarely limited to a single jurisdiction. For example, a hedge fund invests in different markets across the globe to hedge its risks. In addition, a fund and a fund manager are often based in two separate jurisdictions. Alternative investment funds are predominantly based in offshore centres (Luxembourg, Ireland, and the Cayman Islands) in order to minimise the applicable regulatory requirements. The managers of these funds are based in London to benefit from a network of highly-experienced investment specialists. Furthermore, fund investors come from different countries with different fiscal regulations. As a result, establishing a tax-transparent fund simplifies the distribution of returns and proceeds. This is in stark contrast to the company, who is treated as a separate legal person[29] and, therefore, is subject to income and capital gains tax. It should be noted that whilst there are differences in the EU Member States' approach regarding the fact whether a limited partnership has a separate legal personality, almost every jurisdiction establishes tax-transparency for this legal form.

The next parts of this paper will assess the limited partnership model in the selected jurisdictions.

III. UK Private Fund Limited Partnership

The UK Government has recognised the importance of modernising its limited partnership model to adapt it to the needs of investment funds. Whilst alternative investment industry evolves on a daily basis, a UK limited partnership is still regulated by the legislation that is more than 100 years old.[30] HM Treasury has highlighted the increasing partnership competition across the EU Member States by stating the following:

> Other jurisdictions in which such funds are typically domiciled either already have, or are in the process of introducing, laws to ensure that private fund sponsors have the flexibility to structure funds in the most efficient way, and to avoid incurring unnecessary costs and administrative burdens. Without such changes, the UK risks becoming a less attractive domicile for funds when compared to other jurisdictions.[31]

The Legislative Reform (Private Fund Limited Partnerships) Order 2017 (hereinafter 'LRO 2017') introduced a modernised limited partnership structure to be adopted by private investment funds.[32] It is aimed specifically at private equity funds. The LRO 2017 maintains the key features of the limited partnership, i.e. limited liability of limited partners, contractual flexibility and tax transparency.

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[29] As established in *Salomon v Salomon & Co Ltd* [1896] UKHL 1, [1897] AC 22.

[30] PA 1890, LPA 1907.

[31] HM Treasury, 'Proposal on using Legislative Reform Order to change partnership legislation for private equity investments: Consultation on draft legislation' (July 2015), para. 2.6, at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/447458/Proposal_on_using_LRO_for_LimPart_condoc.pdf accessed 28 September 2017.

[32] A limited partnership that satisfies a definition of 'collective investment scheme' under the Financial Services and Markets Act 2000, s. 235 can elect to become a private fund limited partnership.

One of the most important modifications introduced by the LRO 2017 relates to a "white list" of internal management rights of limited partners. Under a limited partnership model, limited partners shall not take part in the external management of the fund, or they will lose the privilege of limited liability. HM Treasury has underlined the fact that private fund investors, even though being 'passive investors', require a set of powers to monitor and influence the activity of the fund manager.[33]

Section 5 LRO 2017 lays down the list of actions that the limited partners can undertake without jeopardizing their limited liability. They include, *inter alia*, (i) taking part in a decision about the variation of the terms of the partnership agreement, entry and exit of a general partner, appointment of a person to wind up a partnership; (ii) contracting with other partners or a partnership itself; (iii) acting as a guarantor for the partnership; (iv) approving the accounts and valuation of partnership's assets; (v) advising a general partner or a manager of the partnership about the affairs of the partnership; (vi) deciding upon a business strategy of the partnership provided that this does not involve taking part in the actual management of the partnership. In addition, a limited partner may be employed as a conducting person of the partnership's management body.

It is important to note that this list is non-exhaustive. Section 5(4)(a) LRO 2017 provides that 'nothing in this section ...limits the circumstances in which a limited partner in a private fund limited partnership is not to be regarded as taking part in the management of the partnership business'.

These internal management rights are extensive and detailed. These provisions can be used as default settings for drafting a partnership agreement. They provide a good indication of the actions that do not constitute external management and thus do not jeopardise the limited liability of limited partners. These rights allow investors to participate in the internal management of the fund, supervise the activity of the fund manager and protect their investments. This is especially important because hedge fund managers are short-term driven and they aim at securing their remuneration and bonuses. In this respect, they may engage in risky strategies with a view to obtaining a short-term profit, even though this may lead to long-term losses for investors. It is, therefore, essential that the investors should be able to supervise and control the activity of the fund manager. It is suggested that this reform makes a limited partnership very similar to a limited company in terms of governance rights accorded to limited partners. Similar to corporate shareholders, limited partners can participate in the internal management of the fund. The distinction between these two legal forms is blurred. However, whilst a limited partnership is tax-transparent, a company is not. This further incites fund managers to set up a fund in the form of a limited partnership.

A question arises as to whether a limited partner may act as a manager of the fund. Section 5(k) LRO 2017 allows a limited partner

> acting ... as a director, member, employee, officer or agent of, or a shareholder or partner in –
> (i) a general partner in the partnership; or
> (ii) another person appointed to manage or advise the partnership in relation to the affairs of the partnership,

[33] HM Treasury 2015, *supra* note 31, para. 3.7.

> provided that this does not involve a limited partner taking part in the management of the partnership business...

This formulation implies that a limited partner may serve as a manager of the fund, or employee of the management company. Nothing in this section should be considered as preventing a limited partner from exercising the duties of the fund manager or from acting as an employee of the fund manager.[34] If they are appointed to act as a fund manager, he will fulfil his management duties in this precise capacity, and not in his capacity as a limited partner. In this case, he will have a dual role (1) as a limited partner; and (2) as a fund manager. The tasks he undertakes in his capacity as a limited partner should not include external management of the fund in order to maintain his limited liability. In contrast, the tasks he undertakes as a fund manager could and reasonably should include external management of the partnership. Nevertheless, for the sake of legal certainty, it is advisable to state directly in the LRO 2017 that a limited partner may act as a manager of the fund.

Another modification introduced by the LRO 2017 relates to capital contributions. Historically, a UK partnership law required limited partners to make capital contributions to the partnership prior to joining it. Private equity funds usually have a fixed-life of around 10 years. The capital and any returns generated are only distributed at the end of the fund life. In addition, if limited partners had withdrawn their capital contributions, they were still liable for the debts and obligations of the partnership up to the amount of their respective contributions. This has prompted limited partners to contribute only a very small proportion of their investment as a capital, and the rest was provided as loan advances to the partnership. These loans were then repaid back by the partnership before its liquidation. This arrangement has caused practical difficulties to ensure that limited partners' contributions are treated as loans and not as capital contributions.[35]

In order to mitigate these complexities and inconveniences, Section 2(3)(b) LRO 2017 does not require limited partners to make any capital contributions to the partnership. If they choose to contribute a capital to the partnership, the amount of contributions does not need to be declared to the registrar and can be withdrawn at any time during the life of the fund. Section 2 (3)(d) LRO 2017 states that the changes as to the sum contributed by a limited partner must be notified to the Registrar in case of a limited partnership, which is not a private fund limited partnership. It is thus not required for a private fund limited partnership.

The LRO 2017 further simplifies administrative requirements. A private fund limited partnership, on the contrary to a classical limited partnership, does not require a registration of the general nature and term of the partnership,[36] as well as an advertisement of the assignment of a limited partner's interest.[37] To this effect, Section 10 of the previous version of the Limited Partnership Act 1907 (hereinafter 'LPA 1907') has been removed. It provided that if a general partner becomes a limited partner, or if a limited partner transfers his interest to another person, such changes would be effective only after being advertised in the Gazette. It is suggested that these modifications represent a positive step towards preserving the confidentiality of limited partners.

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[34] See e.g., LRO 2017, s 4(c) that directly prohibits a limited partner to wound up a partnership.

[35] S. Witney, 'The UK Private Fund Limited Partnership: A "New" Tax Transparent Vehicle for Onshore Funds', *LSE Law - Policy Briefing Paper*, 2017 – 27, at: https://ssrn.com/abstract=2947656 accessed 29 September 2017.

[36] LRO 2017, s 8.

[37] *Idem,* s 11.

Furthermore, a simplified procedure for winding up of a private fund limited partnership is introduced by the LRO 2017.[38] A previous version of the LPA 1907 required a limited partnership to be wound-up by the general partner unless a court order allowed another person or entity to effectuate this procedure. This gave rise to practical inconveniences in situations where a general partner has been removed. The creditors of the partnership had to wait until a court appointed another person or entity to proceed with winding up. In order to overcome these difficulties, the LRO 2017 allows limited partners to appoint a person or an entity (which is not a limited partner) to conduct a winding-up procedure.

In addition, default duties in Section 28 (duty of partners to render accounts) and Section 30 (duty of partners not to compete with the firm) PA 1890 does not apply to a private fund limited partnership unless a partnership agreement expressly states so. Section 36 (1) PA 1890 (rights of persons dealing with the firm against apparent members of the firm) does not apply to a partner of the private fund limited partnership who ceases to be a partner. HM Treasury has highlighted the fact that these duties are cumbersome for passive investors, who may simultaneously hold several investments across competing funds.[39]

HM Treasury has evoked a possibility to allow a limited partnership to elect whether to have a legal personality or not. However, this would require a complete reassessment of all UK primary legislation and thus the question was left open. A limited partnership registered in England and Wales does not have separate legal personality. A limited partnership established in Scotland has separate legal personality. It follows that allowing two limited partnership forms to be used throughout the whole UK will promote UK's competitiveness and ensure its leadership ahead of the European partnership law competition. It will align the UK legal framework with Luxembourg, which already has a dual limited partnership model.

IV. Luxembourg Special Limited Partnership

In parallel with the transposition of the AIFMD, the Luxembourg government took the opportunity to modernise its limited partnership regime. In addition to already existing common limited partnership (*société en commandité simple*), the Law of 12 July 2013 on Alternative Investment Fund Managers has added a special limited partnership (*société en commandite speciale*) into the Luxembourg company law.

In contrast to the common limited partnership, a special limited partnership does not have legal personality.[40] This explains a limited application of corporate law provisions, fiscal transparency and a greater degree of contractual freedom. In a special limited partnership, general partners can approve the annual accounts of the partnership, without the approval of limited partners. This is not allowed for a common limited partnership. In addition, the new vehicle provides a higher degree of confidentiality for investors. A special limited partnership does not have to file its annual accounts with the Luxembourg trade register. Only an excerpt of the partnership agreement must be published, which does not include the names and contributions of limited partners.

[38] *Idem*, s 4(c).
[39] HM Treasury 2015, *supra* note 31, para. 3.26.
[40] Art. 22- 1(2) Law of 10 August 1915 on commercial companies.

Unlike the Luxembourg limited partnership, a special limited partnership is tax-transparent. A partnership is a look-through entity and is not taxed on its income and capital gains.

However, a special limited partnership is subject to a business municipal tax if it carries on trading or business on a permanent basis as defined by the Circular L.I.R. n° 14/4 from 9 January 2015 on the taxation of income of limited partnership and special limited partnership. According to this Circular, two conditions must be fulfilled simultaneously to avoid considering a special limited partnership as carrying on a trading and business activity:

(1) a special limited partnership is an alternative investment fund; and
(2) its general partner holds less than 5% of the partnership interests.

Notwithstanding the legal form of the fund, the fund product laws (Specialised Investment Funds Law,[41] Investment Company in Risk Capital Law[42] and Reserved Alternative Investment Funds Law[43]) determine the level of the tax applicable to the fund.[44] As compared to the UK private fund limited partnership that is fully tax-transparent, a tax status of a Luxembourg special limited partnership is less straightforward and requires additional due diligence from the side of investors.

Article 22-4 of the Law of 10 August 1915 on commercial companies (hereinafter 'the 1915 Law') establishes a "white list" of actions for limited partners. It provides that:

> Do not constitute the acts of management for which limited partner has unlimited liability, the exercise of partnership prerogatives, providing of opinions or advice to the special limited partnership, to its affiliates or to their managers, carrying out of any control or supervisory measures, the granting of loans, guarantees or securities or the giving of any other type of assistance to the special limited partnership or its affiliates, and giving of any authorisation to the managers in the cases provided for in the partnership agreement for acts outside their powers.

Therefore, the rights of limited partners are less extensive than in the UK private fund limited partnership. It is somewhat surprising that this list appears to be exhaustive. The wording used in Article 22-4 of the 1915 Law does not suggest that other rights might be introduced by the partnership agreement. However, the right of the partners to exercise partnership prerogatives opens a possibility to include additional rights, as long as they do not include participation in the external (*vis-à-vis* third parties) management of the partnership. In this regard, a carefully drafted partnership agreement can provide limited partners with the necessary rights to monitor and control the management of the partnership.

In addition, Article 22-4 of the 1915 Law provides that 'the limited partner may act as a member of a management body or as an agent of a manager of the special limited partnership, even if that manager is an unlimited partner'. As compared to the UK private fund limited partnership, Luxembourg provides for a clearer governance framework within a limited partnership.

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[41] The Law of 13 February 2007 relating to specialised investment funds ('SIF 2007').
[42] The Law of 15 June 2004 relating to the investment company in risk capital ('SICAR 2004').
[43] The Law of 23 July 2016 on Reserved Alternative Investment Funds.
[44] See e.g., SIF 2007, Ch. 11 'Fiscal provisions'.

Another difference between the approach of the UK and Luxembourg relates to capital contributions. Article 22- 1(1) of the 1915 Law provides that limited partners 'contribute a specific amount constituting partnership interests which may but need not be represented by instruments as provided in the partnership agreement'. Article 22 – 1 (3) of the 1915 Law states that these contributions can be made either in cash, in kind or in services. Partnership interests can be either represented by securities or by partners' accounts. It differs from a UK private fund limited partnership regime, which does not require limited partners to make any capital contributions.

The 1915 Law is silent on the liquidation procedure of the special limited partnership. This matter is left to the contractual will of the partners. However, a fund product legislation lays down a procedure for the liquidation of the fund if such decision is taken by the Commission of the Supervision of the Financial Sector (*Commission de Surveillance du Secteur Financier*).[45] It would be advisable for a Luxembourg company law to establish default rules on the winding-up procedure, as is done in the UK.

In summary, Luxembourg has largely followed the UK model by adopting a limited partnership with legal personality (like in Scotland) and a special limited partnership without legal personality (like in England and Wales). Similar to the UK approach, Luxembourg company law contains a small number of mandatory rules for a limited partnership. The majority of its provisions are default rules, which can be excluded or modified contractually. Overall, the UK private fund limited partnership is more favourable for investors in terms of their management rights and taxation.

V. French Limited Partnership

The Law n° 2015-990 from 6th August 2015 (Law Macron) has introduced a limited partnership (*société de libre partenariat*) into the array of French legal forms. The objective of this reform is to increase the attractiveness and competitiveness of French investment funds and to promote Paris as a fund domicile.

A French limited partnership is largely modelled on the Anglo-Saxon model.[46] It is referred to as 'hybrid vehicle'[47] and as a 'legal mutant'[48]. Its design is based on the interposition of two legal categories. First, a limited partnership is constructed as an exception to the rules normally applicable to a French general partnership (*société en commandite*).[49] French Monetary and Financial Code (hereinafter 'FMFC') expressly states that the majority of the general partnership provisions do not apply to a limited partnership. Secondly, a limited partnership is used for structuring a special type of French alternative investment funds – specialised professional fund (*fonds professionnel specialisé*).[50] For this reason, a limited partnership was

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[45] SIF 2007, Arts. 46 and 47.
[46] M. Storck & J. L. Capdeville, *Commentary to the French Monetary and Financial Code*, 6th edn., Paris: Dalloz 2016, p. 362.
[47] M. Storck, 'Création d'un nouveau véhicule de capital investissement, la société de libre partenariat, et renforcement de l'attractivité des OPCI', *RTD Com.* 2015, p. 549.
[48] A. Couret et al., 'La société de libre partenariat: anatomie d'un mutant juridique', *RTDF* 2015-2, p. 5.
[49] FMFC, Arts. L. 214-162-1, I and V, L. 214-162-8.
[50] *Idem*, Art. L. 214-154.

introduced in the FMFC, and not in the French Commercial Code as is the case for other legal forms.

Contrary to a UK private fund limited partnership and a Luxembourg special limited partnership, a French limited partnership has a separate legal personality. This explains the differences in their respective tax treatment. Whilst both the UK and Luxembourg legal models are generally treated as tax transparent vehicles, a French limited partnership is assimilated to a common fund (*fonds commun de placement*)[51] for tax purposes. In order to be regarded as a tax-transparent vehicle, a French limited partnership has to invest at least 50% of its assets in non-listed companies situated in the European Economic Area. These companies must exercise either industrial, commercial or craft activity, and be subject to a corporate tax. To conclude, a French limited partnership offers lesser tax advantages, as compared to Luxembourg and the UK models.

French alternative investment funds are divided into the funds that are opened to (1) professional investors; and (2) non-professional investors. Alternative investment funds opened to professional investors are further classified into (1) agreed funds; and (2) declared funds. A constitution, a transformation or a liquidation of an agreed fund requires an agreement of the Financial Market Authority (*Autorité des marches financières*).[52] In contrast, a declared fund does not need to obtain this authorisation. It has to declare its constitution, transformation or liquidation within one month after the event.[53] A limited partnership can only be used for structuring a specialised professional fund, which belongs to the category of declared funds.

There is the following similarity between a UK private fund limited partnership and a French limited partnership. A partnership agreement of a French limited partnership can freely determine the investment ratios and strategies of the fund.[54] This also holds true for a UK model. In contrast, a Luxembourg special limited partnership is obliged to comply with investment ratios imposed by product laws.[55]

According to Article L. 214-162-1, IV FMFC, a general partner can be either an individual, a legal person or a body corporate. Therefore, both the entities with or without legal personality can serve as a general partner. This implies that a French common fund, which does not have a separate legal personality, can act as a general partner of the limited partnership.

In contrast, limited partners must belong to the category of professional investors,[56] as specified in Article L. 214-162-1, VI FMFC. This requirement ensures that only commercially experienced clients can commit to the fund. There is no comparable provision in the partnership law statutes of the UK and Luxembourg. This is explained by the fact that FMFC

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[51] It is assimilated to a professional private equity fund (*fonds professionnel de capital investissement*) which is structured as a common fund (*fonds commun de placement*) for the application of tax rules (French General Taxation Code, Art 1655, A).
[52] *Supra* note 49, Art. L. 214-24-24.
[53] *Idem*, Art. L. 214-153.
[54] *Idem*, Art. L. 214-162-7.
[55] An investment company in risk capital must 'invest its assets in securities representing risk capital...' (SICAR 2004, Art .1(1)).
[56] Annex II of the Directive 2004/39/EC of the European Parliament and of the Council on Markets in Financial Instruments [2004] OJ L145/0001 ('MiFID') defines 'professional client' as 'a client who possesses the experience, knowledge and expertise to make its own investment decisions and properly assess the risks that it incurs'.

regulates both investment funds and their legal forms.[57] It acts as a single reference point for all questions relating to the operation of investment funds.[58] Conversely, the UK and Luxembourg have separate legal acts that regulate funds and their legal forms. In the UK, a limited partnership is regulated by the PA 1890, the LPA 1907 and the LRO 2017. The funds themselves are regulated by the Financial Services and Markets Act 2000 and Financial Conduct Authority Handbooks. These legal instruments define the requirements applicable to alternative investment funds (e.g., quality of fund investors).[59] The same holds true for Luxembourg. Whilst a limited partnership legal form is regulated by the 1915 Law, the funds themselves are regulated by product laws.[60] Therefore, an ensemble of the legislation on the limited partnership and specific investment fund laws should be considered to ascertain a full set of applicable rules. In this context, the French approach appears to be more competitive and investor-friendly, as compared to dispersed legislation in the UK and Luxembourg.

Another difference between French and Luxembourg approach relates to the definition of limited partners. Under Luxembourg special limited partnership model, 'limited partner can be a general partner on a condition that there is at least one general and one limited partner'. This possibility is not directly mentioned in the FMFC. It is suggested, however, that limited partner can also be a general partner in French limited partnership.[61] This conclusion is based on the analysis of Article L. 214-162-1, IV FMFC. It states that 'general partner's interest can be subscribed and acquired by any physical or legal person, or a body corporate authorised in the partnership agreement'. This provision covers situations in which a limited partner wishes to acquire, in addition to the limited partnership interest, a general partner's interest.

Article 214-162-3 FMFC implies that both general and limited partners can act as managers for a limited partnership. A limited partner can participate in the external management of the fund only in his capacity as a manager of the partnership or as a fund manager. A limited partnership is managed by one or more general partners. When a limited partnership form is used for structuring an alternative investment fund, a fund manager must be appointed to provide portfolio management and risk management functions to the fund.[62] In this scenario, the same person or entity can act as a manager of the limited partnership and as a fund manager. The AIFMD allows an alternative investment fund to be either externally or internally managed.[63] In case of external management, this function is delegated to a management company. In case of internal management, partners themselves can fulfil functions of a fund manager. The Article 214-162-3 FMFC should thus be read as allowing a limited partner to act as a manager, or employee of the manager, of the limited partnership and of the fund itself. His appointment as a manager of the limited partnership and/or as a fund manager should not impact his limited liability as a limited partner.

Article L.214-162-3, I FMFC provides a "white list" of actions for limited partners. It states that:

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[57] Investment company with variable capital, common fund and limited partnership.

[58] Supplemented by the General Regulations of Financial Markets Authority.

[59] In the UK, investors in the alternative investment funds can be either professional investors in the sense of MiFID or retail clients that are either high net worth investors, certified and self-certified sophisticated investors. See FCA COBS 3.5, at https://www.handbook.fca.org.uk/handbook/COBS/3/?view=chapter accessed 22 February 2018.

[60] Investors in these funds must be 'well-informed' investors (e.g., SIF 2007, Art. 2 (1)).

[61] I. Riasetto & I. Corbisier, 'La société de libre partenariat française et la société en commandite spéciale luxembourgeoise, quel degré de parenté?', *Revue des sociétés* 2015, para 8.

[62] AIFMD, Recital (21), Arts. 4(1)(w) and 6(5)(d), Annex II.

[63] *Idem*, Recital (20).

> Do not constitute management acts, in particular, the exercise of partnership prerogatives, providing of opinions or advice to the special limited partnership, to its affiliates or to their managers, carrying out of any control or supervisory measures, the granting of loans, guarantees or securities or the giving of any other type of assistance to the special limited partnership or its affiliates, and giving of any authorisation to the managers in the cases provided for in the partnership agreement for acts outside their powers.

This list is identical to the one provided for a Luxembourg special limited partnership. However, this list is non-exhaustive in the French version, as opposed to Luxembourg law. A wording used in Article L. 214-162-3, I 'do not constitute management acts, in particular …' opens a possibility for a partnership agreement to add other supplementary rights. The main requirement is that those rights do not involve participating in external management (vis-à-vis third parties) of the partnership. This formulation provides more clarity than the Luxembourg version since it removes all ambiguities as to whether a partnership agreement can include other duties than those mentioned in the legislation. Storck and Capdeville[64] highlight the importance of Article L. 214-162-3, I FMFC by arguing that this is the first time in French legislative history when fund investors can take part in the internal management of the fund.

In line with a general approach of a limited partnership to preserve a privacy of its investors, Article D. 214-206-1 FMFC does not require publication of the names of limited partners. This provision is aligned with the UK and Luxembourg.

According to the contractual flexibility rationale of a limited partnership, a partnership agreement can freely determine the rules and procedures for taking collective decisions. However, Article L. 214-162-8, I, 3° FMFC provides one rule that is non-modifiable. It refers to the decisions that include a modification of social object, mergers and acquisitions, transformation and liquidation of the limited partnership. Such matters must be decided collectively by all partners. If a decision is taken in breach of this rule, it will be declared null and void in court on the demand of any interested party. This is different from both the UK and Luxembourg that allow a partnership agreement to freely determine the procedure for all decisions.

Under the rules of a French partnership, limited partners can make capital contributions to the fund either in cash or in kind. This is to be contrasted with a Luxembourg special limited partnership, where limited partners can also make contributions in services. Riasetto and Corbisier[65] note that a particular attention should be exercised to ensure that those services do not amount to the acts of external management.

A liquidation procedure of a French limited partnership is similar to that of a Luxembourg special limited partnership. The conditions of this procedure can be freely determined in the partnership agreement. As opposed to Luxembourg law, French law provides a default rule that a liquidator is designated in court on the demand of any interested party.[66]

To summarize, French limited partnership has many similarities with Luxembourg special limited partnership, save for the existence of separate legal personality, the extent of the 'white list' and a particular tax treatment. These similarities are explained by the fact that both of these

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[64] Storck & Capdeville 2016, *supra* note 46.
[65] Riasetto & Corbisier 2015, *supra* note 61, para. 10.
[66] *Supra* note 49, Art. L. 214-162-8.

legal regimes are largely inspired by the Anglo-Saxon example. Overall, a UK private fund limited partnership offers the highest degree of contractual flexibility and tax advantages as compared to France and Luxembourg.

Conclusion

This article has critically assessed the use of the limited partnership model for structuring alternative investment funds in the EU. It has discussed the particularity of alternative investment funds as compared to traditional retail-oriented UCITS funds and the need to provide a flexible legal form for their structuring. Further, this paper has examined the key features of a limited partnership – limited liability, contractual flexibility and tax transparency.

Limited partners – investors of the fund – are only liable up to the amount of their contributions to the partnership. Their liability is limited upon a condition that they do not participate in external (vis-à-vis third parties) management of the partnership. A limited partnership is a contract-based relationship. A partnership law is based on the set of default rules, which can be contractually modified to suit the requirements of contracting parties. In addition, a tax transparent status of the limited partnership implies that there is no taxation on the fund level. Profits are directly distributed to limited partners, who are then taxed according to their tax-resident status.

Transposition of the AIFMD has prompted the EU Member States to review their limited partnership regime. The Directive establishes a minimum conduct of behaviour for fund managers. As such, a national law cannot establish less stricter duties for fund managers than those laid down in the AIFMD. However, the EU Member States are given discretion as to the regulation of fund structures. By adopting attractive legal forms for these funds, they aim to get ahead of the competition as a fund domicile of choice.

This paper has analysed the reforms to this effect in the UK, Luxembourg and France. Each of the selected jurisdictions proposed a new legal structure to be used by investment funds in order to attract international investors and fund managers. These reforms have many similarities ("white list" of management actions and simplified administrative requirements). The main differences relate to the existence of legal personality and the degree of tax transparency.

The UK has a long history of successful operation of a limited partnership model, which is used as an example for other jurisdictions to design their partnership law. As compared to Luxembourg and France, the UK private fund limited partnership offers the biggest advantages in terms of fund governance. It provides investors with a non-exhaustive set of rights to participate in internal management of the fund and establishes a simplified administrative operation of the fund. In addition, there is no requirement to make capital contributions to the fund, which greatly facilitates the admission of new partners.

A Luxembourg model comes very close in terms of flexibility and tax-transparency. Even though the management rights of investors are more limited than under the UK model, a Luxembourg special limited partnership offers an efficient structure as regards the time-to-market and the absence of regulatory oversight. This enables fund managers to quickly set up an investment fund and engage in sophisticated, almost unlimited investment strategies. This is especially important in the post-Brexit period when fund managers and investors will engage in forum-shopping within the EU. The UK has a long-standing reputation as the headquarters for the EU fund management. However, the UK will be considered a third country, and not an EU State post-Brexit. Therefore, UK fund managers will have to look for an EU jurisdiction to move their operations to if they wish to market their funds to the EU investors. It goes without saying that Luxembourg offers an interesting choice in terms of a limited partnership structure, the importance of which will only increase after the UK exits the EU.

As compared to the two previously discussed jurisdictions, a French limited partnership presents practical inconveniences. First, the French legislator did not create a truly new legal structure but rather designed a limited partnership as exception to the rules usually applicable to a common partnership and professional specialised fund. Secondly, a limited partnership is not tax-transparent *per se* but is assimilated to a common fund for tax purposes. It has to invest 50% of its assets in the companies with a specific activity to offer tax-transparency to the investors. This significantly limits the investment strategy of the fund. These legislative ambiguities explain its limited popularity fund structuring.

This article argues that these recent developments foster regulatory competition in European partnership law. It is a rather positive phenomenon that should encourage legislators to continuously review and adjust their partnership regime to suit the needs of international investors and evolving market conditions. The discussed initiatives will likely encourage other Member States to modernise their limited partnership form used for fund structuring to get ahead of the partnership law competition. As this paper has shown, these reforms should especially focus on establishing an extended 'white list' of actions for limited partners and preserving tax-transparency of the limited partnership.