Shaping the Regulatory Environment

The dialogue and relationship between those who regulate and supervise and those regulated and supervised is by essence not always exempt from divergence in opinion and often characterised by a certain distance between those involved. But the relationship between the Luxembourg Commission de Surveillance du Secteur Financier Luxembourg (CSSF) and the Financial centre it supervises has always been described, and rightly so, as being heavily influenced by a true common interest approach.

The Luxembourg Investment Fund Industry has regularly had a very close and direct say on the evolution of the Luxembourg prudential regulatory environment governing the collective Investment Industry as well as on the introduction of new legislation in this specific field of financial products. Those efforts were always undertaken with the sole aim to enhance the attractiveness of Luxembourg in an industry sector which, based on the tremendous success experienced over the past decade, has become of essential importance to the Luxembourg economy as a whole.

This influence has been exerted directly and indirectly by the lobbying initiatives taken on the level of the different professional associations, be it ALFI or ABBL , but also and more importantly, trough a direct association with the Luxembourg Supervisory Authorities by means of a number of standing committees, to name only a few : the Investment Fund Committee, the Pension Fund Committee, the Prudential Regulatory Committee, the Committee for the Development of the Financial Centre and the more recently established Committee for Risk Capital Investment. It is in those Committees which have proven instrumental in launching new legislative initiatives like the International Pension Funds or the SICAR (société d'investissement en capital à risque) and providing pragmatic and timely solutions to the evolution of the industry. It is also there where the circulars on hedge funds, late trading & market timing, the emergence of pension pooling vehicles and the various fiscal improvements like the progressive reduction of the Luxembourg capital tax levied on investment funds have originated.

More recently these fora have provided efficient checks and balances and been the birthplace of pragmatic but efficient solutions when confronted with regulatory zeal, most often driven by initiatives taken at a European level.

The undisputed success encountered by these committees on the domestic front has been enabled by the open approach of the Luxembourg regulators willing to consider industry views and thus leaving the doors wide open to new progressive ideas favouring the ease of doing business and thus the development of the collective investment industry.

On the European level the same approach has been advocated; the Commission as well as CESR having instituted a number of consultative bodies and expert groups, where the Luxembourg industry is also well represented. Unfortunately the repeated calls of the industry to stem the regulatory flows have for a long time remained unheard and the advice to leave a minimum of freedom to the industry unheeded. The investment fund has over recent years become the most transparent and regulated product in the European inventory. It is now time to make the existing regulations work and address the ever reappearing domestic barriers, them being of fiscal or regulatory nature, in order to make the European single marketplace work in an efficient way. Regulatory diarrhoea will never be a substitute for confidence building measures and mutual recognition amongst regulators. A minimum of confidence and trust is required that the investment fund industry has grown sufficiently mature so that it will not hasten its own doom. This perception is gaining ground and it is to be hoped that the so-called Luxembourg model might one day be successfully exported to the wider European arena for the greater good of the emergence of a truly Paneuropean Fund Industry.

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