association of the
luxembourg fund industry

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ALFI STATEMENT TO UPCOMING TRILOGUE NEGOTIATIONS CONCERNING THE AIFMD REVIEW

The European Parliament published a decision to enter into interinstitutional negotiations on the AIFMD review on Monday 13 February 2023. Visit the website.

Before the beginning of trilogue negotiations aiming to conclude the long-standing review of the AIFMD, ALFI recalls that the AIFMD is a global European success story that is to be preserved and further developed. As voiced at many occasions, after the European Commission released its consultation in September 2020 any amendments should be targeted to satisfy demonstrable needs of improvement. The nature of the directive as a manager framework should not be put into question.

Moreover, any alignment of the UCITS Directive with the AIFMD should be strictly limited to situations where a misalignment could not be justified or would even cause issues to the industry and/or investors.

ALFI will monitor and, where possible, comment on developments, as well as continue the positive constructive dialogue established over the past years with various representatives of EU institutions that are involved in the AIFMD review.

The following sections summarise the Luxembourg fund industry's view on key aspects under review.

Delegation

Delegation is an essential part of the EU's open global model as well as the UCITS and AIFMD frameworks. It gives investors access to global expertise (including local expertise not available in the EU itself), resulting in more diversified portfolios, significantly lower costs and efficient management, while benefiting from a high level of investor protection. It also made an important contribution to the creation of the global UCITS and AIF brands.

These merits of delegation are not called into question and have been confirmed by the targeted approach of the Commission in its proposal for a directive, as well as by the position of the Council in June 2022. However, there are divergent views on how regulators should be enabled to have a clear picture on delegation arrangements concluded by AIFMs und UCITS management companies.

ALFI believes that this need could be addressed by expanding the information required as per the managers' authorisation application file, supplemented by an obligation to notify material changes to the NCA. This would be preferable over complexifying again reporting requirements.

Liquidity Management Tools (LMTs)

LMTs are undoubtedly needed to overcome situations of liquidity stress under normal or deteriorated financial market conditions. Luxembourg funds are already familiar with the typical tools.

ALFI is convinced that LMTs should be available in all EU Members States, as suggested by the EU institutions. However, it is unusual to focus only on one or two tools as suggested by the Commission. Fund managers normally provide a ‘toolkit’ of LMTs and then choose the appropriate one for each circumstance.

Given that the characteristics and use of LMTs are diverse and stress situations vary in terms of length or intensity, a maximum of liberty should be granted to the AIFM or UCITS management company to decide whether an LMT should be (de-)activated.

Loan-originating AIFs

Although the discussed provisions are mostly targeted, the introduction of rules on loan-originating AIFs is contrary to the nature of the AIFMD that should remain a directive governing managers and not directly the products. Moreover, ALFI is not aware of facts evidencing the need to introduce restrictive rules and specific requirements *vis-à-vis* loan originating funds in the AIFMD.

In particular, restricting the possibility for debt funds to qualify as open-ended funds would be detrimental to this successful sector of the industry contributing positively to the financing of the real economy. The important business of microfinance/impact/sustainable funds would also be at risk.

Imposing a cap on leverage would limit the ability to hedge risks *via* derivatives. A qualitative limit, based on the AIFM’s assessment and responsibility, would better address the various risks at stake.

Depositaries

With respect to concentrated markets that lack a competitive supply of depositary services, competent authorities should be able to allow, subject to specified conditions and further to a case-by-case assessment, depositary services to be procured in other Member States.

However, such an exemption from the general rule should, in ALFI’s opinion, in no way indirectly lead to the introduction of a depositary passport, e.g. by introducing thresholds that are met by almost every national depositary market. A passport for depositaries would add new risks of overlapping existing rules to be complied with by industry players which are already subject to a high level of regulatory scrutiny. The depositary in the home country is a stable and valuable point of contact for the regulator, who helps the proper implementation of the AIFMD’s requirements and thereby protects investors.

Other aspects

The following aspects are in ALFI’s view also important to consider while negotiating in the coming months.

Allowing the marketing of AIFs to semi-professional investors, provided certain conditions are met, would meet an existing demand. While it is well understood that retail investors need enhanced protection, excluding sophisticated investors from potentially high-performing products is not targeted towards a true Capital Markets Union. Similar concepts already available in some Member States work well, and MiFID provides safeguards in terms of appropriateness and suitability.

First, the AIFMD review on Annex IV reporting should be finalised and settled before new UCITS reporting requirements are considered.

A number of details will be determined at level 2 or 3. It is important to ensure that the hierarchy of acts, as defined by the Lamfalussy process, is always followed/obeyed. Accordingly, level 3 measures should not deviate from or go beyond the level 1 and level 2 acts, and level 2 measures should not deviate from or even go beyond the level 1 acts.

Moreover, technical clarifications are often adopted only months or even more than a year after the adoption of changes at level 1. Implementation dates should be sequenced so as to ensure sufficient time, e.g. application of rules only twelve months after publication of the final level 2 text. Alternatively, a sufficiently long grandfathering rule for all existing funds should be adopted.

ENDS

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Notes to editors:

The Association of the Luxembourg Fund Industry (ALFI) represents the face and voice of the Luxembourg asset management and investment fund community, championing mainstream, private assets and sustainable investing. ALFI seeks to promote Luxembourg's fund sector internationally, and to cultivate for the benefit of its members a collaborative, dynamic and innovative ecosystem underpinned by the most robust regulatory framework. ALFI's ambition is to empower investors to meet their life goals.

Created in 1988, the Association today represents over 1,500 Luxembourg domiciled investment funds, asset management companies and a wide range of business that serve the sector. These include depositary banks, fund administrators, transfer agents, distributors, legal firms, consultants, tax advisory firms, auditors and accountants, specialised IT and communication companies. Luxembourg is the largest fund domicile in Europe and a worldwide leader in cross-border distribution of funds. Luxembourg domiciled investment funds are distributed in more than 70 countries around the world.

To keep up with all the news from ALFI and the fund industry in Luxembourg, follow us on LinkedIn, Twitter (@ALFIfunds), YouTube and Flickr.

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[1] Average growth based on data provided by depositaries surveyed.