alfi association of the luxembourg fund industry

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ALFI statement on the conclusion of trialogue negotiations concerning the AIFMD review

This week, with the end of the trialogue negotiations on the review of the AIFMD, fundamental talks that began over three years ago with various reports and a consultation from the European Commission are concluding. While the original discussions essentially focused on managers of alternative investment funds, many provisions of the UCITS Directive were also revised as a result.

ALFI generally welcomes that the European Commission opted for a targeted approach, which confirmed that the AIFMD is working well overall. Although the formal adoption and linguistic revision of the texts are still pending, it is worth mentioning some of the key points that will change.

Delegation

The changes to the directives will lead to enhanced information requirements upon authorisation of an AIFM or UCITS management company. This should provide authorities with a clear picture on the (sub-)delegates and on how the managers perform periodic due diligence on them.

ALFI welcomes that the merits of delegation were as such acknowledged and not put into question. Moreover, the initial focus on third countries, combined with an obligation to indicate if more has been delegated than retained, was not maintained. It will still be required to distinguish between partial and full delegation. Moreover, specific reporting obligations will be introduced, which include reporting on the amount and percentage of the AIF's or UCITS' assets which are subject to delegation arrangements concerning the portfolio management function.

Liquidity Management Tools (LMTs)

LMTs are used in the context of normal portfolio management and to overcome situations of liquidity stress. Luxembourg funds are already familiar with the typical tools.

Policymakers have decided that an AIFM managing an open-ended AIF or UCITS management company must select from a pre-defined list at least two LMTs, which must be suitable to the pursued investment strategy, the liquidity profile and the fund's redemption policy. For money market funds, one LMT is sufficient.

Although ALFI is of the view that it is unusual to focus only on one or two tools, because fund managers usually provide a 'toolkit' of LMTs, practitioners are relieved that this requirement is combined with only limited (de-)activation powers by National Competent Authorities (NCAs) or even ESMA. AIFMs and UCITS management companies concerned must on their side implement detailed policies and procedures for the (de-)activation of any selected LMT and the operational and administrative arrangements for the use of such LMT.

Loan-originating AIFs

Although the European Commission also opted for a targeted approach on debt funds, including quite generous grandfathering rules for existing funds, some of the new provisions are considered quite strict.

This refers in particular to the leverage cap, which will be at 175% for open-ended AIFs and at 300% for closed-ended AIFs. In ALFI's view, a qualitative limit, based on the AIFM's assessment and responsibility, would have been more adequate to address the various risks at stake.

It is also worth noting that the risk retention requirement of 5% was not only maintained, but extended to a period of at least 8 years. The fund industry was of the view that, if at all introduced, such a requirement should only apply during the fund's ramp-up period (defined in the fund's founding documents), during which the fund is focused primarily on raising capital and acquiring projects. In ALFI's view, it would have been sufficient to prohibit a pure originate-to-distribute investment strategy, which comes now on top.

Depositaries

Further to the outcome of discussions, Member States may exceptionally entitle their NCAs to allow institutions established in another Member State to be appointed as depositary, provided certain conditions are met. In particular, if applied, there will be a case-by-case assessment of the lack of relevant depositary services, given the investment strategy of the AIF.

ALFI welcomes that policymakers did not opt for a depositary passport, because the presence of the depositary in the home country of the fund is a stable and valuable point of contact for the regulator, which overall helps the proper implementation of the AIFMD's requirements. A review of the AIFMD in 5 years' time will analyse the functioning of the new derogation as well as on the potential benefits and risks of amending its scope.

Other aspects

ALFI clearly welcomes the extended list of ancillary services, and that it will be possible to perform non-core services without also being authorised to provide discretionary portfolio management.

Practitioners were also relieved to see that the AIFMD and UCITS Directive did not go at this stage for set rules on undue costs, because this topic was not part of the impact assessment carried out in 2021 and is discussed thoroughly in the context of the Commission's Retail Investment Package.

If adopted and published in the Official Journal in the first quarter of 2024, the new rules would for the most part apply from Q1 2026. In the meantime, important details are still to be determined by level 2 or 3 measures. Therefore, it will certainly still take some time until practitioners can start implementing the changes.

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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.

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