PRIVATE EQUITY INSIGHT/OUT

LUXEMPART

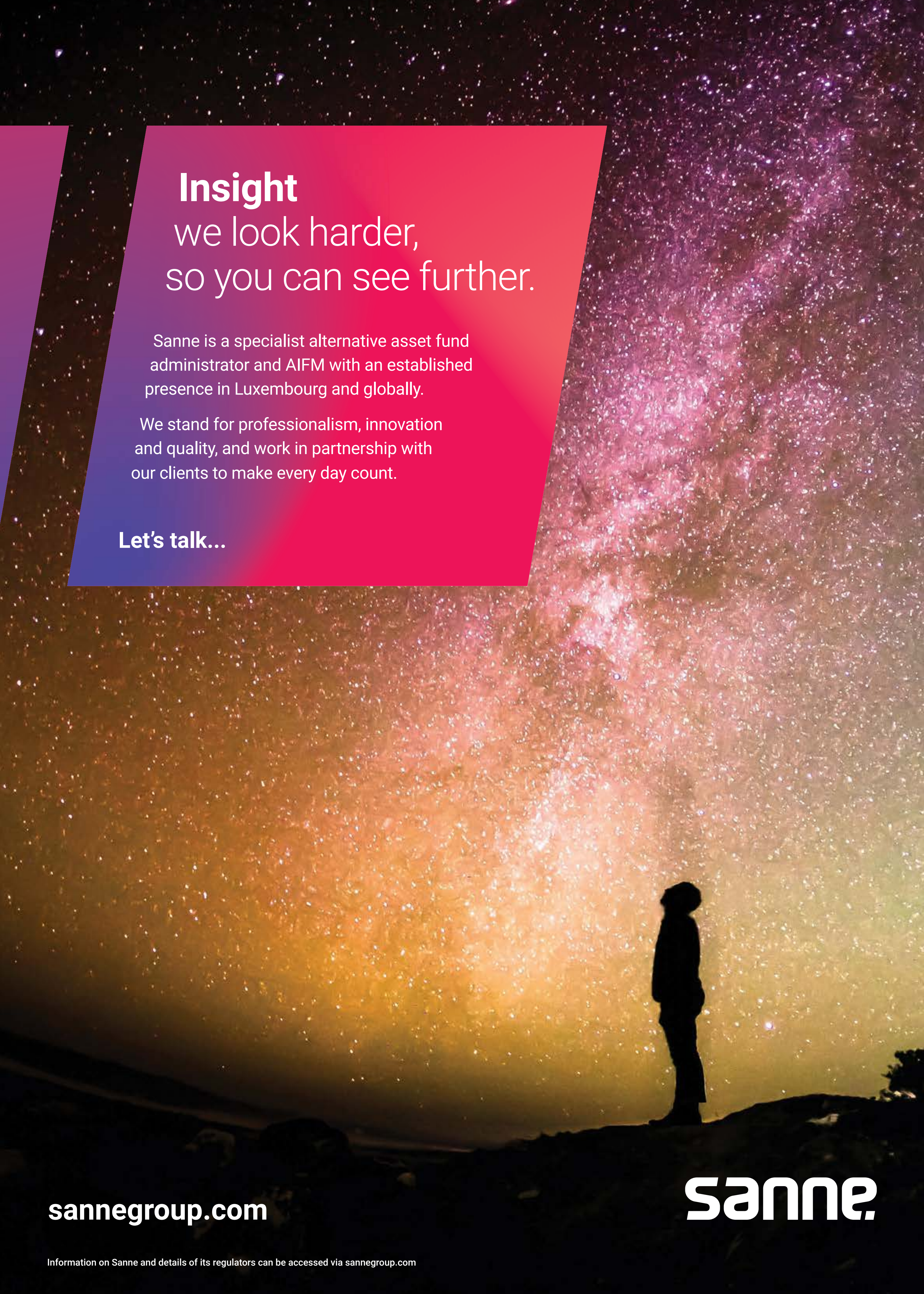
PATIENT CAPITAL TAKES A NEW TURN

Brexit: moving on...

What does "DAC6 ready" mean for Private Equity houses?

The art of Hyper Symmetry

Issue 16,December 2020


Insight
we look harder,
so you can see further.
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DEAR READER,

CONTENT

Welcome to the long-awaited PE INSIGHT OUT edition which is focusing on the recovery from the current sanitary crisis and on recent and upcoming events. The cover story with Luxempart, one of the most emblematic Private Equity investors in Luxembourg, shows how important it is to embrace opportunities and adapt while sticking to corporate culture. In this edition we also feature Capza, Astorg and compiled articles on some of today's most pressing topics: Brexit, Covid-19 and digitalisation.

The Covid-19 crisis brought a lot of new challenges for the LPEA too. Just after confinement we very quickly moved online and launched very successful interview and webinar series for our community. All our insightful content is available on our refurbished YouTube Channel.

Earlier this year we were able to follow our dream and start the LPEA Academy to provide people with the relevant training and knowledge in PE and VC. Our educational program and talent acquisition initiatives are gaining more and more traction, so don't forget to check the career section on LPEA official website.

The list of the LPEA Technical Committees and Clubs has continuously grown and our Members can contribute in numerous ways to the development of the PE & VC industries in Luxembourg.

Last but not the least, our annual E-nsights conference Private Equity in "The Next decade" is taking place as we write (25 November) so either join us online or have a look at our conference recordings soon available on our YouTube channel.

Enjoy your reading and stay safe!

Stephane Pesch
CEO
Luxembourg Private Equity & Venture Capital Association

Claus Mansfeldt
Chairman
Luxembourg Private Equity & Venture Capital Association

LPEA Matching talent and money!
THE LUXEMBOURG VOICE OF PRIVATE CAPITAL

THE MAGAZINE OF THE LUXEMBOURG PRIVATE EQUITY & VENTURE CAPITAL ASSOCIATION
Editors: Luis Galveias, Natalia Koltunovskaya, Laura Zahren / **Contributors:** Claus Mansfeldt, Francois Tesch, John Penning, Olaf Kordes, Hind El Gaidi, Laurent Capolaghi, Pierre Weimerskirsch, Christian Hertz, Pierre Beissel, Jonathan Prince, Georges Bock, Julien Bieber, Brice Hellinckx, Patrick Mischo, Codrina Constantinescu, Jens Beyrich, Evi Gkini / **Conception & coordination:** 360Crossmedia project@360Crossmedia.com-356877 / **Artistic Director:** 360Crossmedia/F.W. / **Cover photo:** © 360Crossmedia/C.E.

LPEAcademy

LONG-AWAITED PE EDUCATION SOLUTION

THE NEXT "SPRING EDITION" WILL TAKE PLACE IN MARCH 2021.

Education and trainings are important priorities for the LPEA and this is the reason why we created our own Academy earlier this year.
The first edition of the LPEA Academy took place during the months of June and July and was by all means a success with more than 90 attendees from all over the world spread through five different modules. The content of the first edition focused on Venture Capital, Impact Investing, PE Foundation, Risk Management and Legal, and was delivered by more than 25 speakers, all of which are practitioners in Private Equity and Venture Capital.
The Academy seeks to increase the skills of professionals in the Luxembourg financial sector but is also open to individuals or young graduates willing to make their first steps in understanding Private Equity. The first edition attracted different profiles from students to investors and was rated "Very Good/ Excellent" by 93% of the attendees.
Due to the success of the first edition, the LPEA is planning a Spring Edition which will take place throughout the month of March. It will bring again some foundation subjects but will also offer new modules and knowledge to explore.
According to Stephane Pesch, LPEA's CEO, "The Academy was very well received by our community and received a lot of support and trust. It is our intention to organise a summer and winter edition every year."
The Academy welcomes contributions from LPEA members. Those willing to sponsor or support the next edition should contact the LPEA.
Registrations to the next Academy will start in January 2021. ●

STUDIO

Since the beginning of the pandemic the LPEA made a huge step forward and completely reformatted its events. The association was among the first in Luxembourg to present online webinars and interviews and held two online charity concerts. Though we believe that soon we will restart our real networking, we also believe that the online format will give the opportunity to people all around the world to join our discussions or masterclasses at anytime. To continue our online streaming in a more exciting way, we constructed a little cosy studio, which we supplied with relevant technology. Meet us at LPEA Studio, either live or on our Youtube channel, where you will never be bored!

COMMITTEES & CLUBS

The LPEA is broadening the choice of Clubs and Technical Committees for the Members. An incredible amount of topics to discuss, things to improve and problems to solve awaits!

Among the recent additions, you will find: HR Club aimed at talent acquisition and training, Private Debt Committee which focuses on the asset class, looks at valuations and analyses the opportunities and challenges, PE/VC Depositary Services, which focuses its efforts on depositary services dedicated to PE/VC.

See the full list below.
We are looking forward to receiving your application!

COMMITTEES

Legal
- AML
- AIFMD
- Company Law Reform
- RAIF
- YPEL
- CMU

Tax
- YPEL
- VAT

Market Practice & Operations
- Risk Management

Central Intelligence
Promotion Sounding Board
PE/VC Depositary Services
Private Debt

CLUBS

ESG
Private Equity for Women (PE4W)
Venture Capital
Large Buyout
Single Family Offices (SFO)
Wealth Management
Human Resources (HR)

NEW CEO

The Executive Committee of the LPEA has appointed Stephane Pesch as the new CEO of the LPEA since September. Stephane Pesch joined the LPEA in October 2019 as Director of Strategy. Until recently Stephane lead the coordination of the association's technical committees, the public advocacy efforts and launched the LPEA Academy, a new and strategic initiative to enhance Private Equity education in Luxembourg.

Stephane Pesch replaces Rajaa Mekouar who led the association for the past year with acclaimed results. Under Rajaa Mekouar's helm the LPEA went through significant growth and reached out to new types of members with a particular focus on family offices exposed to Private Equity.

NEW EXCOM

In June 2020 the Board of the LPEA has elected the new members of its Executive Committee (ExCom), including Claus Mansfeldt as President and Hans-Jürgen Schmitz and Nick Tabone as Vice-Presidents.

The 12 new ExCom members are:

- Claus Mansfeldt (SwanCap), President & Chairman of the Board
- Hans-Jürgen Schmitz (Mangrove), Vice-President
- Nick Tabone (Deloitte), Vice-President
- Eckart Vogler (Investindustrial), Treasurer
- Peter Myners (Allen & Overy), Governance Secretary
- Gilles Dusemon (Arendt & Medernach)
- Sara Huda (Carlyle)
- Emanuela Brero (CVC)
- Katia Panichi (Elvinger Hoss Prussen)
- Jerome Wittamer (Expon)
- Laurent Capolaghi (EY)
- Stephane Pesch (LPEA)

PE SUPPORTS 10.5 MILLION JOBS ACROSS EUROPE

Invest Europe presented its latest data stating that PE supports 10.5 million jobs in Europe, making it a major employer in most industry sectors. PE achieves a job creation rate that is 5 times higher than the wider European market job creation average. According to the study, in 2018 there were 22,659 companies within the EU backed by PE across all industry sectors. 7,4 million jobs were backed by buyout, 2 million by growth and 419,271 by VC. Private Equity is a cornerstone of the European economy present in every region and every major business sector across the continent. From technology and life sciences start-ups to manufacturing small and medium-sized enterprises (SMEs) and large consumer-focused multinationals, Private Equity and venture capital backed companies support millions of high-value jobs driving prosperity and growth in the process.

EUROPEAN PE OUTPERFORMS LISTED EQUITIES OVER LONG TERM

According to another research published by Invest Europe, European buyouts delivered an annualised net IRR of 15.00% since inception to end-2019, far ahead of the 5.84% achieved by the MSCI Europe, while growth investments and venture capital also clearly beat equities benchmarks.
Invest Europe's performance report measures European PE against relevant stock market indices, as well as PE funds from North America and the rest of the world on a range of metrics. The results show that for time horizons of 10 years and over, European buyouts have routinely delivered an annualised IRR of between 15.00% and 15.50% net of fees, while mid-sized buy-outs generated the best returns of 16.65% over the long term and outperformed the MSCI Europe index by the widest margin. European venture capital returned a net IRR of 16.79% over a 10-year horizon, performing on a par with North American funds over the same period.

CASTIK: EUR 1.2 BILLION FUND CLOSING

Castik Capital, the European Private Equity investment firm, announced the successful final close of its second fund, EPIC II at the hard cap of EUR 1.25 billion.
The new fund will seek investments across Europe, with a target transaction size of EUR 200 million - EUR 700 million, and with approximately EUR 100 million - 300 million of equity committed per deal. Like its predecessor fund, EPIC II can remain invested for ten years, or longer, and targets a concentrated portfolio of six to seven companies.
Castik's first fund, sized at EUR 1.0 billion, was successfully invested in six portfolio companies in the areas of Business Services (Waterlogic), Technology (Acrotec, Addsecure), Software (Alpega, ipan/CPA Global), and Specialty Healthcare (AllDent).

SWANCAP: NEW FUND OVERSUBSCRIBED AT EUR 300 MILLION

SwanCap, the independent Investment Management Platform with c. €3 billion of assets under management announced their new Co-Investment Opportunities Fund IV ("Swan IV") close at EUR 300 million. Since inception of the Fund, the SwanCap team has already invested in various high-quality assets building a well-diversified portfolio of market-leading companies across sectors, geographies and strategies providing investors with attractive risk-adjusted returns. SwanCap specialises on Primary Fund Investments, Direct Secondary Investments and Direct Co-Investments and Western Europe and North America.

BIP: LATEST PASSION IS FASHION

BIP Capital Partners - via its funds BIP Fund (SCA), Sicar -, acquired on August 6th a significant stake in www.laboutiqueofficielle.com together with its founders and its management team. Founded in 2006 by Pascal Vivier and Julien Cohen (chairman of the company), La Boutique Officielle is the leading streetwear e-tailer targeting mainly teenagers and young adults in France. As a pure digital retailer, the company experienced a strong growth since its inception, with more than 300 brands currently available on its website. The new investors' group also includes Arkéa Capital and BNP Paribas Développement, while historical financial shareholders (Azulis Capital, Time for Growth, Cadipa and Showcase) reinvested alongside BIP as well.


LUXEMPART WAS AN OPPORTUNISTIC MOVE. IT INVOLVED SOME COURAGE AND FAITH.
François Tesch

LUXEMPART

PATIENT CAPITAL TAKES A NEW TURN

THE PRESIDENT OF LPEA, CLAUS MANSFELDT, TALKED WITH FRANÇOIS TESCH EXECUTIVE CHAIRMAN OF LUXEMPART S.A. ABOUT FOYER ASSURANCE, THE NEW STYLE OF GOVERNANCE AND THE STRATEGY DIVERSIFICATION OF LUXEMPART. INTERVIEW.

INTERVIEW by **Claus Mansfeldt**
President of LPEA

> IF YOU COMBINE THE FAMILY CULTURE WITH ITS LONG-TERM AND SOLID SHAREHOLDER APPROACH AND THE GOVERNANCE OF A LISTED COMPANY, YOU HAVE VERY STRONG PILLARS FOR DEVELOPING YOUR BUSINESS.
>
> François Tesch

Claus Mansfeldt (CM): Henry Kravis or Warren Buffett?

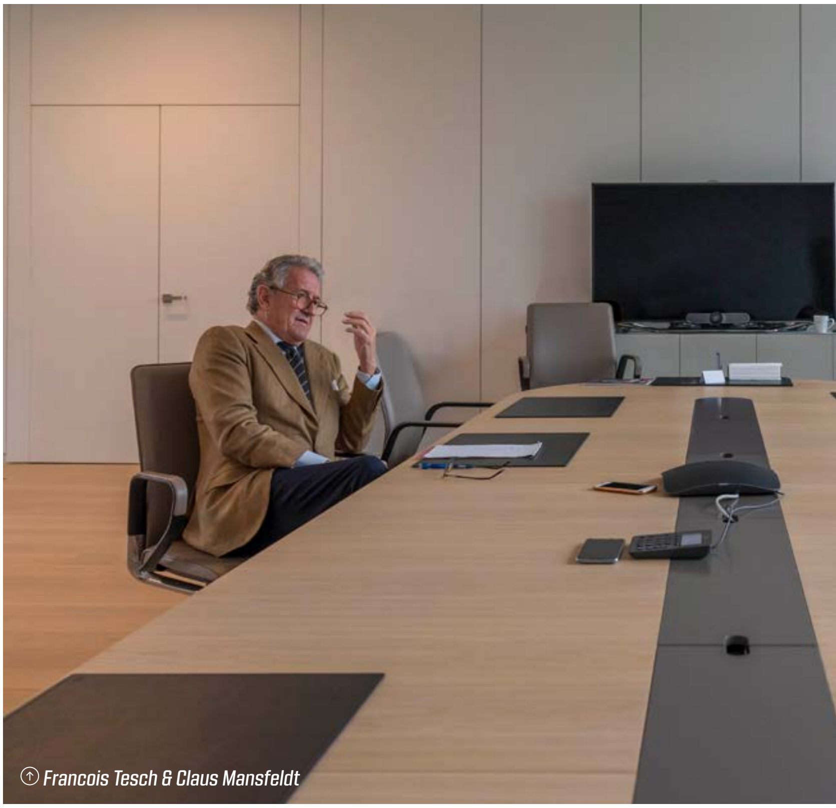
François Tesch (FT): Very tough question (with a smile). I admire both. I started working for an American company in the US, where I spent 4 years, and then 2 years in Paris in the company's headquarters in Europe. The American culture certainly influenced me and my future career. At that time, in the late 70s, KKR was created. They actually initiated the Private Equity (PE) movement with the acquisition of Nabisco. Nabisco was the biggest acquisition by a financial institution at the time and it also created an occasion to write a famous book which we all know "Barbarians at the gate" by Bryan Burrough. Nobody really believed in the success of KKR and of that acquisition at the time. But it certainly initiated the birth of the PE world. Then I joined the insurance business, which was family controlled and spent a big part of my professional life as CEO. It was only in 1992 that I had the opportunity to diversify my career with the acquisition of BIL - Participations, i.e. Luxempart, and that was also thanks to a person I've met and have a great respect for – Gaston Schwertzer, who was my partner for Luxempart for a long time, before working very closely with his son Jacquot. Luxempart owes them both a great deal.

Going back to Warren Buffett, the long-term aspect of the business, is something that I like very much. But I started working for a company with a very industrial experience, which probably gave me a different angle of approach. I had a chance to meet Henry Kravis once, and I was deeply impressed by his knowledge, his personality and his simple and precise words used during the discussion. I will always remember him saying: “François, we made many mistakes, but we adapted very quickly”. I wouldn’t like to compare myself to those big figures of the investment world, but as a young person of course you look around and you try to find people, who could positively influence you. And I admired them both, that’s for sure.

CM: Would it be true to say that Foyer is your family business?

FT: Foyer is almost 100 years in the family. Without Foyer, I wouldn’t be sitting here. But the diversification with Luxempart was an opportunity, which was not foreseen at all. When we decided on the strategy with Foyer a long time ago, we saw that being a small insurance entity in a big country like France or Belgium, where we were operating at the time, was a dangerous game, because at the time there was a consolidation effect driven by AXA, who was buying all the small players. I saw very well that we didn’t have the financial means and the right size to resist the big players in those markets. Market share was very important. So, we decided to sell France and Belgium and keep only Luxembourg, where we are a major player. That was a very important strategic step, because by selling Foyer Belgium we got cash and we had to find a reinvestment. The opportunity came up, just thereafter, to invest in BIL-Participations. And that was the beginning of the story of Luxempart. It was an opportunistic move. It involved some courage and faith, and Gaston Schwertzer with his enthusiasm and André Elvinger with his skilful advice, helped a lot.

We just met and in 10 minutes we decided without any due diligence to just go for it. Sometimes you have to follow your gut feeling. So, Foyer used the money from Foyer Belgium to acquire with partners BIL-Participations which quickly became Luxempart. As an insurance company Foyer had significant investments in Luxembourgish companies, like Cegedel and the local banks like BGL, BIL, KBL. I thought that these holdings, could be better managed by a specific team so the idea was that we would sell these holdings to Luxempart, where we would then play a more active role. It was also better for an insurance company to have more liquid assets in case of a crisis. So, in a way, the money to acquire BIL-Participations came from insurance but thereafter we managed the two entities Luxempart and Foyer as separate entities and with separate investment strategies.



Francois Tesch & Claus Mansfeldt

CM: That leads us to governance, which is one of your focus areas and the choice of listing.

FT: The experience with listing came first with the acquisition of BIL-Participations, and with Foyer in 2000. There I saw the benefits of the market in terms of governance. We needed to do a very precise and transparent reporting. We had to have audit and remuneration committees, change the composition of our boards for more independent board members, review all aspects of governance to be marketable. Family business is a little bit inward-minded and to be on the market you have to be open, look at yourself from the outside. However, if you combine the family culture with its long-term and solid shareholder approach and the governance of a listed company, you have very strong pillars for developing your business. We also insist to say that Luxempart is not a fund, but really an investment company, evergreen, with a long-term strategy, committed to develop and improve businesses, and that makes us different from the pure PE world.

CM: Indeed, and you strengthened your pillars starting with management. Are two CEOs better than one?

FT: There is a difference between an operational company like Foyer with 700 people, a pyramid structure and that has to have a very clear decision process. I always tried to attract the best people and to give them responsibility, the right to take decisions. This allowed me to do things I like better, to start new things. The most important for a manager is to make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I SAW THE BENEFITS OF THE [PUBLIC] MARKET IN TERMS OF GOVERNANCE. WE NEEDED TO DO A VERY PRECISE AND TRANSPARENT REPORTING.

François Tesch

himself unnecessary and to find someone better than himself to go one step further. That is my philosophical statement. Luxempart is only around 20 people, even though we manage over EUR 1,5 Billion. What is important for Luxempart is to have a very good team. What is even more important is to have very robust discussions. It is not that unusual for investment companies to find partners who are equal, who have their strength, who can complement each other. I always had discussions with Gaston and Jacquot and we always took our decisions in a collegial manner. It is not important to be able to say "I am the boss", the important thing is the decision which comes out. Olaf and John share these views with me. Good teams cannot have super-egos, it can be very dangerous. The standards of management we have are very high. Not everyone from a family can say "I want to join the company, because I am a shareholder", that is not enough. We have a very strict family governance.

CM: You started recently a stock option program. You think that is important for the alignment of interests? What are your milestones?

FT: Over 25 years we have produced an average return of over 15%, which is good for this period of time. We are aiming to pursue this, and it is certainly a challenge. To attract the best possible investment managers to Luxembourg, and to be competitive with places like Paris, London or Frankfurt, it is of paramount importance to be able to offer competitive remuneration schemes which align the interests of managers with shareholders. We had this opportunity in the past and we hope that we will be able in Luxembourg to offer attractive remuneration packages also in the future.

John and Olaf are following the same investment strategy of direct investments and investments into funds but with more focus and international ambition from Luxembourg. We want to remain agile and adapt in a very fast changing world. We aim for our shareholders a return on average between 12 and 15% per year with a diversified risk profile.

CM: At the LPEA we aim to give investment access to this asset class for HNWI or even retail. Should your asset management business start giving access to PE funds… or is the best choice to buy Luxempart shares?

FT: We give access to our investments through Luxempart listed on the stock market. By investing in Luxempart' shares, you invest into quality investments like Foyer S.A., which is not listed anymore but which still represents 25% of the assets of Luxempart. You also invest indirectly into selected funds which have a proven track record and promising prospects, and which are difficult to access for private individuals.

On top as a listed company, Luxempart offers better liquidity than funds.

CM: Looking at your crystal ball for 2021. Do you think you will need more resilience?

FT: I think we learnt from the first wave of the COVID-19 crisis and that the economy will not come to a complete stop in this second wave. However, we do expect a long "winter" with certainly an impact on 2021. Stock markets, even though volatile, behave so far in a rather resilient way. This is also probably because cash and bonds with negative or low interest rates are not attractive. The shares always remain the best pie, even if we get inflation. The lack of choice keeps markets high. And as interest rates should remain low, I believe that we will see very promising returns in PE in the future. ●

LUXEMPART

COMPLEMENTARITY IN DUALITY

FOLLOWING HIS TALK WITH FRANÇOIS TESCH, CLAUS MANSFELDT INTERVIEWED JOHN PENNING AND OLAF KORDES THE TWO CEOS OF LUXEMPART S.A.


John Penning

CM: John, Olaf, what is your role at Luxempart?

John Penning (JP): I am 48, I am a Luxembourger and I joined Luxempart about 4 years ago joining the family business. I came to our family business quite late at 44. Before that I set up a company called Saphir Capital Partners in 2009 where we were doing advisory work, but also running a small PE fund and real estate. It was not an easy choice for me to join our family business, though quite an obvious one. But I do not regret it. My aim is to contribute to the further development of Luxempart and successfully write the next chapter of Luxempart.

Olaf Kordes (OK): I am 49 and also a Luxembourger. All my professional career I spent between France and Germany. I previously was a partner in a PE fund, Alpha, focusing more on the upper mid-market segment. Then came the moment when I decided to find an opportunity which could be more in line with my understanding of the future of PE markets in Europe, one of which could allow me to go back to value creation and become a more flexible investor. These days PE funds have very stringent deployment constraints. If they are in the higher mid-market segment they need to invest in European companies while I think there is a lot of value creation by taking national champions to European level, or even just by consolidating one national market. The family background also gives us the long-term view. Too many funds are rotating their portfolio too quickly and our long-term approach will be an important differentiating factor in the future.

WE ASK OURSELVES REGULARLY IF WE ARE STILL THE BEST PARTNER OR SHAREHOLDER.

John Penning

CM: How do you complement each other?

JP: Luxempart has a very good track record and IRR. We were thinking about what we should do next and came to a few conclusions. We realised that we want to do more direct investments out of Luxembourg, and these equity investments need to be a little bit bigger, starting at EUR 25 million up to EUR 100 million. We also needed to become more structured and attract new talents. Olaf was the person with the right experience and track record in mid cap deals. Along with his experience on French and German markets, where we want to continue to be present, he brings the right network. My experience is more in deal-making and small cap deals. From the trust point of view, it is also good to have me as the representative of the family, as it makes our long-term investment approach credible.

THERE IS NO SPECIFIC SECTOR OF INVESTMENT FOR US AND WE CAN INVEST IN THE GERMAN-SPEAKING REGION, FRANCE, BELGIUM AND NORTHERN ITALY.

Olaf Kordes

CM: How would you describe your type of investments and key objectives?

OK: I think there are three key pillars. The first is the family business Foyer, where Luxempart has a minority stake which helps to keep the business private. Then the diversification of the portfolio through the deployment of two strategies. First is direct investment where we are a long-term partner to management teams. There is no specific sector of investment for us and we can invest in the German-speaking region, France, Belgium and Northern Italy. The second strategy is fund of funds investments, which are supposed to diversify the assets. Historically it has been focussing on Europe and hence is in some overlap with our Direct Investment. Therefore, we consider whether to extend to other geographies.

CM: Which sectors worked for you and what would you like to continue to invest in?

JP: We decided to remain a generalist and not to become a specialised fund in for example energy or healthcare. But we still have to choose our battles and maybe over the years we will eventually develop some specialisations. In the past we had a few very successful investments, one being SES, which we almost exited by now. We also had RTL and Vox Mobile. So, we have a nice track record in the TMT sector which remains of interest to us. Energy was also a strong focus in the past (with Cegedel in Luxembourg, Renewable energy in Germany and Direct Energie in France which we sold to Total in 2018) but not so much in the recent years. It became much more difficult to achieve double digit returns on energy. Over the last years, we have made several investments in healthcare, education and security.

CM: Tickets are increasing. Does it mean you will control deals?

OK: Even though we have started to increase the ticket size, we will remain flexible. If there is a good opportunity where we can only deploy EUR 25 million, we will not push it away. We are long-term investors and deploying additional capital over a period of time should allow us to reach our target investment level. We don't want to change the culture too much. There are entrepreneurs who want to grow without giving control and it can be interesting for us. We are interested in 50/50 control as well.

CM: Do you face problems with exits?

JP: As we do not have the constraints of a typical PE fund, we have the option to invest long-term but will not necessarily remain invested in a portfolio company for 10-15 years. Our toolbox is very similar to a PE fund, and we work closely with management and founders / key shareholders. We just have to ask ourselves regularly if we are still the best partner or shareholder. In terms of liquidity we will always enter a company with a shareholder agreement. For instance, we recently made a deal with a German entrepreneur on a co-control basis, but with a very clear exit strategy on the longer term. The owner wants to sell, but without the stress to be forced to sell within 3 to 5 years. He wants more room to develop and a partner that helps with acquisitions, and he didn't want any leverage to be put straight into the company. So, we went under a full equity structure with no leverage at entry, but eventually we will use leverage to do acquisitions together. In the past we even invested in one Italian company where we have a shareholder agreement but no detailed provisions for the liquidity event. We will always give the entrepreneurs a way to organise themselves with regard to our liquidity. For example, in case of the German entrepreneur, if in 7 years he changes his mind, he will still have 12 months to organise financing to buy us out.

OK: An exit is always a period of tension and it is our job to make sure the alignment of interests is handled in an efficient way. Even if you are a majority shareholder, you need to keep good relationship with all the remaining stakeholders within a company. It is all about what you bring to the table, the value you add. As long as you do your job properly, it is a respectful relationship. If you are in a minority position, the majority shareholder might consider it not the best moment for exit, but then at least will find a way to give you a fair liquidity.

JP: We always behave like a PE investor. We are close to management with regular and deep interactions. This is also a change from our past when we were more often in a more passive role. Now, we want to participate more actively in value creation. This is why we are ex-

Olaf Kordes

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tending our team, to have the right people who will be able to cover those skills and markets.

CM: Many sectors have been suffering from the current crisis. How has your portfolio reacted?
OK: This year made us all feel like 2008. But you work on the portfolio, you find out what the issues are, what the impact is. If you look at the results we published at the end of June, you see there was a slight decline in net asset value. But the portfolios are actually resilient. We have investments close to leisure and hospitality and these suffer, despite the fact that the assets are of great quality. But they will survive because the state helps these sectors. Healthcare investments are performing extremely well.

CM: Are the reporting requirements that come from the public listing challenging or burdensome at some point?
JP: There are a lot of positive sides to being listed. When you look at our shareholder base, which to a large extent is made up of entrepreneurial families, a strong governance is really important. There needs to be a clear line between the shareholders and management. In order for management to be able to do its work, they need a strong board and no interference from shareholders, which you might have in some family offices. Being listed, imposes discipline and transparency. For instance, we have to value our portfolio twice a year, which is good.

CM: I noticed in your latest report that you have some alternative performance indicators. Is this an attempt to make you more attractive?
JP: Traditionally the market capitalisations of holding companies have a discount to their Net Asset Value. Some have managed to reduce such discount. There is a question of size sometimes and a question of liquidity of the stock. We have very stable long-term investors, but also many smaller investors, who are not that active in trading and who keep their stock for a long time. In the future we will continue to improve our communication, for instance, recently we have improved our website. Also, last year we have started to communicate more regularly on investments and exits.
OK: We want to improve the visibility of shares, and that could improve the discount in the future.

CM: How do you see 2021 for your business and economy?
OK: We should remain cautiously optimistic. During every crisis there is a moment where things flip and bounce back. And this is the best time to invest. Crisis always includes opportunity and we have means to deploy capital.
JP: I also remain optimistic. This year has also been positive for us in terms of recruitment. It is good to see how attractive we are for candidates – Olaf is a very good example. We also found that it is possible to attract good talents to Luxembourg. ●

ASTORG

THE ART OF LISTENING

THERE IS A NEW ENERGY AT ASTORG. WE HAVE POWERED THROUGH 2020 DESPITE THE COVID CRISIS, FINDING OPPORTUNITIES FOR DEAL-MAKING, HIRING TALENT, INNOVATING AND UNVEILING OUR NEW BRAND IDENTITY. OUR SECRET? A COMPANY CULTURE THAT ENCOURAGES ITS PEOPLE TO SET AMBITIOUS GOALS AND MEET THEM, UNITING AROUND DISTINCT VALUES, CREATING AN IDENTITY AND A COHESION THAT ENABLES SUCCESS, EVEN IN THE THROES OF A GLOBAL PANDEMIC AND WHILE WORKING FROM HOME.

By **Hind El Gaidi**
Head of Financial Information and Valuation
Astorg

Corporate shift but the same DNA

Today, Astorg represents close to €10 billion assets under management and 22 years with an investment track record averaging 27% gross annualised returns. With offices in New York set up earlier this year, the French-born investment firm is signalling its ambition: to be one of the Private Equity greats, across borders, beyond its European roots.

Recently in October our CEO, at the same time co-Founder and Managing Partner, Thierry Timsit, shared his ambition of institutionalising the firm without losing the Astorg DNA. And we are on track to deliver. We thrive on values of entrepreneurship, substance, fairness and, perhaps surprisingly in a world of 'alphas', humility. We believe in the power of listening. At the heart of everything, these values epitomise the ambition and sum up our people.

Since I joined Astorg, I have experienced this distinct culture coming to life in many instances. In my modest experience since joining the group in April 2019, people are not asked to simply show up, we also have to be creative and entrepreneurial in whatever we do. We are expected to be up to the challenge and show tenacity, regardless of our title or seniority. I gave myself the opportunity to make some changes, big and small, and I was challenged yet encouraged. There is an implicit supportive mindset within the firm that leaves people galvanised by the freedom to undertake and to propose innovation, by the fluid and speedy way in which "intellectual integration" happens, and by the belief and trust in a team that can look at itself and learn continuously at all levels, including at the very top – all the hallmarks of a high-performing culture.

In my role as Head of Financial Information & Valuation, I am also responsible for the financial communication to LPs for the reporting and fundraising activities. This year, I've become a board member of the Luxembourg Private Equity Association (LPEA) and I'm honoured to be featured at the annual E-nsights conference as well as in oth-


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2020 HAS SEEN OUR TWO LARGEST INVESTMENTS TO DATE.

Hind El Gaidi

er international events. In such a "private" sector, I find it very important to share our voice and perspective in the broader community.

2020: A growth year despite Covid-19

In 2020, our fund "Astorg VII" added three new companies to its portfolio: Normec, a leading provider of testing, inspection, and certification services in the foodcare, life, safety & environment space; LGC, a leading Healthcare firm whose products form an essential part of its customers' quality assurance procedures and enable organisations to develop and commercialise new scientific products and advance research; and ERT, a leader in technology, services and clinical expertise, cementing the Healthcare positioning (a strong suit for Astorg). The ERT acquisition notably enables Astorg to consolidate its new entrant position in North America, and follows on from the 2019 acquisition of Anaqua.

It's impressive to see that 2020 has seen our two largest investments to date. This year as well, Astorg divested Audiotonix (Money Multiple of 3.2x) and Surfaces Group (Money Multiple of 2.7x) from the portfolio, in the middle of the COVID-19 storm. The 2020 acquisitions each met the criteria of the 'Astorg Deal': B2B niche market leader with international exposure. Confidently, Astorg is walking the walk.

Incredibly, when most of the world was freezing or reducing headcount this year, Astorg was seen to be recruiting. Overall going from 85 employees across Europe in 2019, the company has 116 employees today across two continents, from 21 nationalities, a 30+% growth in staff. People join because there is plenty of interesting work and the open playing field to compete effectively and grow the business.

Two notable recruitment who did not pass unnoticed this year are Lionel de Posson and Edouard Pillot who joined the investment team to run Astorg's future €1 billion Mid Cap fund. They are hailing it as disruptive and different, a native pan-European fund by design that will execute on the Astorg strategy, and will apply robust large cap methods and processes that are rarely mobilised on midcap deals. The fundraising was launched mid-October and is estimated to close in the first half of 2021.

Rebranding for the global stage

Another major 2020 milestone is the development of the Astorg brand identity, which was unveiled in October. The brand has transformed itself and showcases what Astorg is really about: its people, its methods, its mindset and culture. This effort aims at matching the brand recognition on the world stage with the level of returns Astorg has been able to deliver over decades. There is clearly still a notoriety disconnect which we try to address in the market. We are a mid-size firm making transactions and offering returns at par with the industry giants.

Over time, the new corporate identity campaign aims to reinforce Astorg as one of the select few of trusted PE brands on an international stage. This visual calling card is there to underscore the transformation. This is particularly important considering the trend for LPs to allocate greater capital to fewer names and for senior management teams to prefer to partner with PE firms with a strong brand.

I'm certainly proud of what we've accomplished as a team over the last year, and even more excited about what's to come. ●

CAPZA

LEVERAGING LUXEMBOURG

BÉNÉDICTE DE TISSOT, CFO, AND JEAN-MARC FIAMMA, PRIVATE DEBT PARTNER SAY THAT "LUXEMBOURG HAS BEEN THE RIGHT CHOICE FOR CAPZA". AN INTERVIEW OF LAURENT CAPOLAGHI.

INTERVIEW by **Laurent Capolaghi**
Member of the LPEA's Executive Committee

Laurent: Bénédicte, Jean-Marc, we are very happy to have you both here to speak about CAPZA. Can you please introduce CAPZA?

Bénédicte: Sure. CAPZA, previously known as "Capzanine", was created in Paris in 2004 with one core strategy in mind: namely to provide equity and mezzanine capital to small & mid cap companies. At that point of time, private debt was mainly covered by mezzanine financing. We saw the need of these companies for flexible capital and we replied to that need. In this respect, we were clearly a pioneer for private debt in the French market. We pursued our strategy along three fund generations and the performance achieved proved us to be on the right track.

Jean-Marc: By 2017, we saw a growing demand for uni-tranche financings from the market. We reacted to this new demand and launched two separate offerings with the 4th generation: CAPZA 4 Flex Equity, dedicated to equity and mezzanine financing of small cap companies and CAPZA 4 Private Debt, dedicated to private debt for the mid cap market. This marked a new era of development of capital financing and strategy for CAPZA. Today, CAPZA offers a platform of six complementary areas of expertise: Flex Equity, Private Debt, Transition, Artemid Senior Loans, Capza Expansion and Capza Growth Tech and manages 4.7 billion €.

Laurent: You started to stronger differentiate between equity/ mezzanine and private debt. How did these two strategies evolve?

Jean-Marc: It was important to us to keep the two strategies apart and avoid any conflict of interest. For CAPZA Flex Equity, we target companies with a defined range of 2 – 10 million € EBITDA and a clear cut at 10 million €. The CAPZA Private Debt fund targets a different segment with companies of an EBITDA range between 10 – 50 million €.

Currently, we are about to complete the fundraising of the 5th generation of these vehicles: we are on track to reach soon our 1.5 billion € target for CAPZA 5 Private Debt. CAPZA 4 Flex Equity closed at 450 million € and we are targeting 500 million € for the next generation.

Laurent: Congratulations to these achievements and such a strong track record. Let's speak about CAPZA 5, that you are just fundraising for.

Bénédicte: We just reached a successful first closing in July 2020 for CAPZA 5 Flex Equity at 450 million €. CAPZA 5 Flex Equity is a French vehicle. CAPZA 5 Private Debt has been launched in Luxembourg.

Jean-Marc: Indeed, CAPZA 5 Private Debt is our first Luxembourg vehicle and we very much look forward to expanding our operations into Luxembourg.

Laurent: Why did you decide to come to Luxembourg?

Bénédicte: Alongside the increase of assets under management that CAPZA has seen in the last years and that we just spoke about, we experienced an increased exposure in Europe and around the globe. Before 2015, CAPZA used to be active exclusively in the French market, while over the past five years our activities, our investments as well as our investors became more international. In order to support our international expansion strategy, further to Paris, CAPZA has opened offices across Europe: Madrid in 2015, Munich in 2017 and Milan in 2018. Our investments are spread over Europe and the globe and so are our investors. We particularly serve more institutional investors than we did in the past and these investors look at Luxembourg as a "must jurisdiction" for their requirements.

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Laurent: Would you say that your decision for Luxembourg has been mainly driven by your Limited Partners?

Bénédicte: CAPZA's origin is French and for several years we exclusively operated in the French market. Today, our presence continues to be very strong in France. Alongside our internationalization, however, we started to look for a European platform that allows efficient cross border distribution and reach to international investors. The preference of our international and institutional investors for Luxembourg clearly played an important role in our decision process.

Jean-Marc: Luxembourg has been the right choice for us. CAPZA 5 Private Debt is a RAIF vehicle and provides both speed to market and structuring flexibility.

Laurent: Talking about investments, what sectors are you focusing on?

Jean-Marc: CAPZA is a generalist but over the years we have built up strong expertise in supporting companies in the health, technology and BtoB services sectors. Healthcare and technology make around 55% of our total portfolio. Different to what you might think, this strong focus on healthcare and IT has been applicable in our portfolio for the last 5 years. It has not been a reaction to Covid-19 but certainly we

ALONGSIDE OUR INTERNATIONALIZATION, HOWEVER, WE STARTED TO LOOK FOR A EUROPEAN PLATFORM THAT ALLOWS EFFICIENT CROSS BORDER DISTRIBUTION AND REACH TO INTERNATIONAL INVESTORS. THE PREFERENCE OF OUR INTERNATIONAL AND INSTITUTIONAL INVESTORS FOR LUXEMBOURG CLEARLY PLAYED AN IMPORTANT ROLE IN OUR DECISION PROCESS.

Bénédicte de Tissot

DURING THE LIFE OF THE INVESTMENT, WE PERFORM AN ANNUAL ESG REVIEW WITH DETAILED CRITERIA.

Jean-Marc Fiamma

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see strong performances in these sectors following the pandemic.

Laurent: Would you share with us one of your success stories and illustrate what was the key to this success?

Jean-Marc: Questel can be clearly mentioned as one example of a very successful investment. Questel today is one of the world's largest intellectual property software and service providers. CAPZA invested into Questel for the first time in 2015 as a shareholder. It was our ambition to accelerate the international expansion of the company and to complete several build-ups, particularly in the US market. We entered in 2015 when the company was generating an EBITDA of only 5.5 million €. Three years later we sold to IK at an EBITDA value of 18 million €. Soon afterwards, we came back and provided a 170 million € private debt tranche to Questel. Thanks to this financing tranche the company has been able to complete several build-ups across the US, Germany and Japan. Recently, Questel was sold to an international consortium of investors, generating an EBITDA of 44 million €. We expect to be part of financing this new transaction whose value is estimated to be at 450 million €. The key to success? Certainly, a strong partnership with the company over a long period.

Laurent: Which role plays ESG at CAPZA?

Jean-Marc: CAPZA provides capital to companies and as such we are in a position to influence ESG in our portfolio companies. This position brings responsibility and we take that responsibility very serious. Before the investment process, we perform in-depth ESG due diligence. We can decline an investment if we do not consider it to be fully ESG -compliant and e.g. we recently declined an investment in a company engaged in medical tests on live animals. Second, during the life of the investment, we perform an annual ESG review with detailed criteria. Our objective is to have the same quality of information whether we are in Private Equity or in private debt.

Bénédicte: If we want to make an impact with our portfolio companies and challenge them on ESG topics, it is pretty obvious that we have to apply the same principles to CAPZA. Until 2019, we had a number of different initiatives going on but they were not really coordinated at the company level. We decided last year to gather all those activities into an overall approach, which we called CAPZA for Good. The first thing we did was to perform the same type of ESG analysis on our own company as we do on our investments, and identify the areas that we need to focus on. We wrote our own corporate social responsibility charter and we have already identified several areas that we intend to prioritise, including happiness at work, diversity, carbon footprint and waste management. In all of these areas we now have a number of initiatives up and running. ESG is something that you need to live every day and it is our ambition to do so! ●

BREXIT – HOW TO CONTINUE MARKETING YOUR FUND INTO THE EU

OVER THE LAST TEN YEARS THE EUROPEAN ASSET MANAGEMENT INDUSTRY HAS BECOME AN INTEGRATED AND SEAMLESS MARKET WITH LONDON ESTABLISHING ITSELF AS THE INTERNATIONAL HUB FOR PRIVATE EQUITY FUND MANAGERS IN THE EU.


By **Pierre Weimerskirsch**
Managing Director and Co-Founder
LIS - A SANNE Company


and **Christian Hertz**
Managing Director, Head of
LIS - A SANNE Company

Under the passporting principle, managers can freely sell their management services and funds across Europe. For UK licensed managers the music will most likely stop on 31 December 2020 when the post-Brexit transition period ends as all signs point to a hard Brexit. Unless a last minute Brexit Agreement proves otherwise, the UK will be treated as a third-country from an EU perspective post 31 December 2020. Consequently, UK managers will no longer benefit from the passporting rights and won't be able to sell UK funds into the EU. To preempt such an outcome, many UK Private Equity managers have set up funds in Luxembourg which are often structured as a parallel vehicle to the main UK-based fund.

The marketing of these funds is often organised through the managers' UK-based investor relations teams by taking advantage of the EU passporting rights. But from the beginning of next year, UK-based sales teams will no longer be able to carry out marketing activities in the EU. Those managers who would like to continue having access to EU capital and its 448 million citizens have to adjust their operating model. They have two options. Besides setting up their own AIFM in an EU country they can also use the services of third-party AIFM. Whereas the first option takes several months to go through the authorisation process, appointing a third-party AIFM can be done within several weeks. While many managers have already taken action there are still managers who are sitting on the fence and hoping for a last minute agreement. If they don't want to be caught off guard, immediate action is required now. The appointment of a third-party AIFM before the Brexit effective day is the obvious option as it shall avoid any distribution black-out period.

The third-party AIFM solution

The third-party AIFM can indeed help in different ways with the fund marketing. The first option is for the third-party AIFM to act as a distributor and for fund initiators to act as an introducer. The hosting AIFM is identified in the marketing passport notifications as the marketing entity and discharges its duties by providing marketing materials and subscription documents to prospective investors in close coordination with the

MANAGERS HAVE TO PAY ATTENTION TO THE NEW EU FRAMEWORK FOR CROSS-BORDER DISTRIBUTION OF FUNDS THAT WILL ENTER INTO FORCE IN AUGUST 2021.

Pierre Weimerskirsch

fund. The fund initiator acts as a marketing assistant and assists the AIFM with tasks such as identification and sourcing of potential investors and helping with the assessment if the potential investor is eligible to invest in the fund. The fund initiator does not conduct any regulated activities itself as defined under MiFID.

Another option is for the third-party AIFM to act as distributor with secondees from the fund initiator. In this model the hosting AIFM is identified in the marketing passport notifications as the marketing entity and employs one or several secondees from the fund initiator to help discharge this role. Going forward the secondees have to be resident in Luxembourg. The Luxembourg regulator CSSF asked recently that all cross-border secondment arrangements in relation to marketing activities should be terminated at the latest at the effective Brexit date. During the fund raising period, the secondees operate in accordance with specific rules such as allocating a defined amount of time to the marketing activities and complying with the policies of the hosting AIFM. These rules are documented in a secondment or staff provision contract. It could be envisaged that other employees of the fund initiator based in other locations provide technical assistance to the AIFM. However, marketing activities shall remain with the AIFM and the secondees soley.

Besides using the direct support of a third-party AIFM the fund initiator has additional options at hand. One option is for the fund to be identified in the marketing passport notifications as the marketing entity and discharge its duties through general partner board members. The attractiveness of this option is that the manager has the opportunity to propose members from their UK-based investor relations team to be part of the board of managers. Hence, they can reach out to EU-based investors to market the fund. As there is no harmonized EU framework regarding self-marketing, the fund initiator should verify beforehand which jurisdictions allow the General Partner (GP) board members to self-market a duly passported AIF without the GP itself being regulated to avoid violation of regulatory restrictions.

Market with a MIFID investment firm

Another way to access market the fund is to engage with a MiFID investment firm as a tied-agent. In this model, an entity of the fund sponsor is appointed as tied-agent of a MiFID investment firm, which itself is appointed by the fund to conduct marketing activities. The entity "acting as a tied-agent" to the relevant MiFID firm is identified in the marketing passport notifications as the marketing entity. The tied-agent shall explicitly disclose to its counter parties that it acts as tied to the relevant MiFID firm. It is however important to note that the entity appointed as tied-agent must be in an EU jurisdiction as non-EU branches, affiliates and employees of the tied agent cannot conduct marketing activities under such passport. The entity however can be set up as a simple commercial company and does not have to be regulated.

While a hard Brexit scenario poses serious challenges to UK Private Equity managers regarding the marketing of their fund to EU investors, different options are available to address these challenges. It is important to assess on a regular basis the option chosen due to the changing regulatory environment. More particularly, managers have to pay attention to the new EU framework for cross-border distribution of funds that will enter into force in August 2021. The new framework clarifies certain ambiguities with respect to the current rules of marketing of funds and provides a harmonised definition of the activities of "pre-marketing". ●

BREXIT: MOVING ON...

WE'RE NEARLY THERE... WHO WOULD HAVE THOUGHT THAT WE WOULD ONE DAY HOPE FOR BREXIT TO ACTUALLY HAPPEN? AT THIS STAGE INDEED, WE REALLY WANT TO MOVE ON! WHATEVER THE OUTCOME OF THE ONGOING NEGOTIATIONS, IT IS CLEAR THAT THERE WILL BE NO DEAL WITH RESPECT TO FINANCIAL SERVICES. FOR ALTERNATIVE MANAGERS, THAT MEANS LOSING THE MANAGEMENT/MARKETING PASSPORTS. WE HAVE KNOWN THIS FOR A WHILE AND HAVE BEEN PREPARING TO THE BEST EXTENT POSSIBLE... ALBEIT SOME MORE THAN OTHERS.

By **Pierre Beissel**
Partner, Arendt & Medernach

Where are UK managers standing at this stage? How has the Luxembourg ecosystem adapted so far? How friendly has the regulator been? How will this all look as of 1 January 2021?

No disruptive impact on managing Lux funds post Brexit for UK managers

Over the past few years, the main concern for UK managers has been to be able to continue to manage their Luxembourg (or Irish) funds from London post Brexit. In Luxembourg, the regulator quickly gave comfort to UK managers in this respect by confirming that they will be able to continue to manage their Luxembourg AIFs with their UK/non-EU AIFM post 31 December 2020 if they receive the required consent to do so from their investors (who must all be professional investors). In practice and so far, we have seen no issues coming from investors in this respect. Indeed, the protection that was guaranteed to them in an AIFMD-compliant fund will be maintained post Brexit as the UK manager will continue to run its fund in exactly the same manner, with the same guarantees and protections being granted to its investors.
For those UK managers who want to continue to rely on the management passport, we have seen the following trends arising, depending on profile:

- Large(r) UK AIFMs: most of them were already well equipped with AIFMs up and running in one or several EU jurisdiction(s), most often in Luxembourg: preparatory work has been ongoing over the past few years prepare for a smooth transition without major disruption to report. On the marketing side, they have had the capacity to deploy their sales team over different EU branches thereby not impacting their marketing models.
- Mid-market UK AIFMs: a lot of back and forth depending on how much substance they already had in Luxembourg (via funds or SPVs mainly). Most of them already had some significant operations in Luxembourg. They decided to beef up their substance by setting-up a Luxembourg AIFM which allows them to continue to run their activity without disruption.
- Smaller / first-time fund UK managers: investing in the required substance in Luxembourg (human resources and infrastructure) has been very challenging and in most cases, impossible. Instead, they have relied on the third party AIFM model which has been tried and tested already.

Continue to rely on the robust delegation model

Regardless of the above set-ups, UK-based managers will continue, as ever, to rely on the delegation model whereby the portfolio management is delegated by the Luxembourg AIFM to the UK team. And this delegation model is here to stay.
We have surely seen and continue to see increased substance requirements being imposed by regulators throughout the EU. This was reiterated by ESMA in its opinion letter of 18 August 2020. Some have read ESMA's letter like a challenge to the delegation model. We certainly do not see it this way. Instead, we believe that ESMA's point reflects what the market has already well understood and acted upon while planning

for Brexit: it is no longer about making sure that all functions "stay" in London but instead about making sure that more and more operational substance is built-in in the EU in general.

The Luxembourg regulator has confirmed this position on a couple of occasions recently; the delegation model has always been working efficiently with a benefit to all players. And "if it ain't broke, don't fix it".

Some planning remains to be done for the marketing functions

As for the management passport, the marketing passport of UK AIFMs will disappear post Brexit. This gets a bit tricky as marketing teams tend to be based in London, flying in and out to market investors throughout the EU.

Post Brexit, UK AIFMs will have a few options in terms of marketing models:

- Rely on private placement rules available to non-EU AIFMs (which we know can be tricky in some EU countries).
- Stay outside the scope of regulated "marketing" activities; this means monitoring closely what type of activity is carried out, making sure that it is not regulated neither from a UK perspective nor from a target country perspective.
- For those who have a Luxembourg AIFM, they may "piggyback" on its marketing passport through secondments, chaperoning, dual employment contracts, GP-led marketing,... Whichever model is ultimately chosen, all such dual-hatting functions must be implemented with care (tax and labour law considerations must also be kept in mind).

And overall, let's not neglect the cultural dimension...

While Brexit planning has been mainly about limiting disruption when managing and marketing EU funds, we believe that the interaction between the Luxembourg and UK teams should not be underestimated to ensure a perennial strategy.

In most cases, we have indeed seen UK managers adding substance through the addition of members of staff in their Luxembourg office. That comes with an additional challenge: the integration of the Lux-based individual/team with the UK headquarter / firm culture. Managers who invest in nurturing that relationship will most often succeed in achieving a perennial post-Brexit strategy. This is a challenging task as it would not be realistic to have UK team members relocate to Luxembourg on a systematic basis.

However, we do tend to see more and more relocations to Luxembourg recently. Indeed, most London teams in the alternative space are composed of members from all over Europe. Should one such member happen to have (close) links to the Luxembourg region in one way or the other, that can be a win-win situation. At the same time as boosting the substance/qualifications of the Luxembourg office, he/she would also "bring" along the firm culture and play a key role in making sure that the Luxembourg team forms an entire part of the firm more globally.

OVER THE PAST FEW YEARS, THE MAIN CONCERN FOR UK MANAGERS HAS BEEN TO BE ABLE TO CONTINUE TO MANAGE THEIR LUXEMBOURG (OR IRISH) FUNDS FROM LONDON POST BREXIT.

Pierre Beissel

This does not represent the majority of the cases obviously but it is surely worth looking into when planning for more substance in Luxembourg. Many will say that it is impossible to attract people/families to Luxembourg because it does not offer the same breadth of resources as the London scene. We shall not disagree with this statement of facts obviously; but we would respectfully ask the readers to reconsider! Life in Luxembourg is full of resources and offers a lifestyle like no other. This, combined with unlimited carrier opportunities in the alternative investment space merits further investigation... You may well have some volunteers within your teams in London who would be very much willing to make the move when looking at the combined professional and personal package ... We'll say no more! ●

EMBRACING DIGITALISATION: THE ULTIMATE WIN-WIN?

By **Jonathan Prince**
Co-founder & CSO at Finologee

Digitalisation: do or die

According to most consulting companies, for many firms, digitalisation is a question of 'evolve or die.' Some even add that there is little hope of long-term survival for financial firms that cannot - or will not - embrace digital change. Customers are increasingly tech-savvy and are demanding more from their institutions than ever before: push-button transactions, and systems and processes that streamline necessary but traditionally cumbersome processes like payments, KYC and onboarding.

The financial services industry is sometimes considered slow to change or overly fond of manual processes, but the reality is most firms are keen to digitalise: after all, they are no strangers to technology. So, while so many firms want to embrace digitalisation, how can they facilitate its implementation? More importantly, how can digitalisation solve some of the most pressing issues for financial firms in Luxembourg?

The journey to digitalisation does not have to be navigated alone

As with any groundbreaking change, digitalisation can be daunting, especially when it will fundamentally change the way a business operates from the inside out.

Digitalisation is not about automation and advancement for the sake of it. It is about solving problems and making processes and systems more robust and efficient. Practically, the question is how fund managers are challenged and what is costing them time, money, manpower or risk. Only then will we show how one or more of our solutions can help solve those issues, and how that translates to a benefit for internal and external stakeholders.

Digitalisation also becomes more manageable when financial institutions understand that it is not something they have to undertake alone; a trusted digital partner may be necessary. Very few firms can digitalise themselves - especially at the level and speed their business needs. There are so many moving parts, such as building the technology choosing the right infrastructure or getting the right regulatory approvals that make it a very time-consuming and complex process. Many of the clients I work with say that they find digitalisation to be easier than they thought it would be, once they are working with the right 'Support PFS' Licence holder.

DIGITALISATION IS NOT ABOUT AUTOMATION AND ADVANCEMENT FOR THE SAKE OF IT. IT IS ABOUT SOLVING PROBLEMS AND MAKING PROCESSES AND SYSTEMS MORE ROBUST AND EFFICIENT.

Jonathan Prince

What does digitalisation look like in the Luxembourg financial services sector?

In the financial industry, regulations are becoming more complex, and meeting new regulations efficiently is always a challenge. As an example, one of the problems for many players is that the more complex the regulatory landscape is, the more time-consuming and labour-intensive the client onboarding process becomes.

There is also another factor at play: with digitalisation more and more commonplace, financial institutions relying solely on traditional approval and onboarding processes look increasingly clunky in the eyes of their clients. In a world where efficiency and speed are commodities, financial institutions face clients seeking out more advanced competitors, if they cannot show they are keeping up to speed with relevant digital solutions.

An ability to digitalise compliance and AML processes is just one of the ways to digitalise. For example, when the Insurance Distribution Directive (IDD) came into force in 2018, distributors of insurance-based products had to completely re-think the onboarding process. They are obliged to provide specific information to a customer before both parties can enter into an insurance contract, ensuring insurers sell policies that are consistent with their clients' needs. The insurance company or distributor must obtain proof from the customer attesting that they have received such information and advice in relation to the proposed contract(s). Naturally, this proof must be obtained and appropriately documented.

Faced with the need to comply with IDD rules and knowing further regulations would surely follow, one of our clients - Luxembourg's Foyer Group, turned to Finologee in search of a digital solution. The process started by determining their requirements to ensure the solution was tailored to meet the full scope of their needs. Foyer's need for excellent usability, technical needs and regulatory constraints were all considered as part of the process. All in all it took less than two months to provide an efficient framework that met all the regulatory requirements regarding the pre-contract customer consent.

Foyer uses Finologee's remote signing for their Advice Reports. Each report issued by the platform contains a LuxTrust Electronic Seal (E-Seal), certifying its content and with an encrypted timestamp of the creation date. After downloading the report, Foyer's customers acknowledge reception and sign-off on the document, using a one-time password (OTP) sent to them via SMS. Today, Foyer's remote signing service has a 92% conversion rate compared to the 33% they had in the past with the paper-based process.

Georges Berscheid, Raoul Mulheims, Didier Spick & Jonathan Prince.

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DIGITALISATION ALSO BECOMES MORE MANAGEABLE WHEN FINANCIAL INSTITUTIONS UNDERSTAND THAT IT IS NOT SOMETHING THEY HAVE TO UNDERTAKE ALONE; A TRUSTED DIGITAL PARTNER MAY BE NECESSARY.

Jonathan Prince

Another client we worked with, Luxembourg's Keytrade Bank, provides online brokerage services to resident and international investors. The bank, regulated by the CSSF and subject to Luxembourg's banking and privacy laws, wanted to modernise its customer onboarding process, which was very traditional. The process was costing the bank time and - more importantly - customers, given manual form-filling was time-consuming and required multiple emails, letters or visiting a branch.

Together we redesigned their entire client onboarding journey. Ultimately, Keytrade wanted help improving onboarding conversion and retention rates. They also wanted to reduce unnecessary administrative costs and reduce the amount of non-automated processes required to onboard each client. Knowing this, we designed a fully compliant, digital onboarding process for Keytrade. It is straightforward and easy to use, and Keytrade's customers can use their smartphones, tablets or desktops to complete the process.

The digitised onboarding process allows Keytrade's customers to complete an account opening questionnaire in about 20 minutes, compared to 2 to 3 weeks based on the previous process.

A system was designed to automatically analyse and carry out a risk assessment at each stage of the onboarding process. When the risk level is low, only essential documents and data are requested – for higher risk levels, users need to provide additional documentation, information and evidence. Keytrade's customers can now choose a process with a guided scan and upload of an ID document validated against a picture of their face ('face match').

Digital opportunities

When it comes to financial services firms, companies should focus on the opportunities and solutions that await, rather than potential pitfalls. It offers the opportunity for financial services firms to benefit from less risk, better customer experience, more efficient processes and less manual work. Digitalisation is the ultimate win-win.' ●

IT IS TIME YOU ACTIVATE YOUR BOT WORK-FORCE

THE FIRST THING THAT COMES TO A PRIVATE EQUITY FUND MANAGER'S MIND WHEN THINKING ABOUT DIGITALIZATION IS THE DIGITAL TRANSFORMATION OF THEIR PORTFOLIO COMPANIES. HOWEVER, THE DIGITAL TRANSFORMATION OF THE MANAGEMENT OF THE FUND ORGANIZATION ITSELF IS JUST AS IMPORTANT.

By **Georges Bock**
Chief Strategist,
Governance.com

What are the benefits of managing Private Equity funds digitally?

1. It boosts growth, allowing you to do more work with the same amount of people.
2. It decreases risks because you can ensure that the necessary controls are executed on a timely basis for your operations.
3. It lowers your operating costs, as a direct effect of the two first benefits.

How to get started with your Digital Transformation

The first advice we give is to think big, but to start small. Always keep your main goal and your global vision in mind. Nonetheless, start with the correct building blocks, which means starting one process at a time.
Generally, we encourage our clients to start their digital journey with their biggest pain points. The advantage of this is twofold; firstly, it gives you an area to focus on addressing the infamous question of where to start. Secondly, it will encourage employees to embrace change, becoming increasingly at ease with refining their old ways of working, and improving processes.
It is important to keep in mind that digitalization will be a journey rather than a big bang. The incremental approach avoids the famous zero/push the button moment, which is not only risky but requires a much larger amount of resources. At Governance.com we follow an iterative approach of working by building, testing, and refining a process to strike a healthy balance between effectiveness and efficiency.

How to approach the Digital Transformation of your organisation as a PE House

A clear roadmap is developed by our teams to ensure successful implementations. While each plan is adapted to suit client needs, the framework will always follow the four-phase logic.

1. Connect and aggregate data
2. Automate and optimize workflows
3. Monitor the status of workflows
4. Keep a record of key decisions

The sequence will ensure that data is transformed into useful information, providing better oversight, and enhancing your decision-making quality.

Move away from the unconnected data folder structure to a connected data framework

The classical way of storing data in folders and spreadsheets, in the best case, according to a certain logic and with a strict naming convention, is mostly idealistic rather than reality. Even when well-executed, it is a burden to quickly retrieve the correct data because it is often only intuitive for the person having created the folder structure. This does not only lead to frustration but also to a huge loss of time.

We take a different approach: connect the information in a logical hierarchical structure that makes retrieval and reporting easy. This means connecting static fund, positioning information coherently and attaching the documentation directly to the data point where it makes the most sense. The result is a logical structure which leads to an instinctual way of information retrieval and working.

> WE TAKE A DIFFERENT APPROACH: CONNECT THE INFORMATION IN A LOGICAL HIERARCHICAL STRUCTURE THAT MAKES RETRIEVAL AND REPORTING EASY.
>
> Georges Bock

Structure charts give a great overview of the company, of how positions are financed, and what their assets are as well as the relation between them all. The corresponding documents are linked directly to the data point they refer to with a simple drag-and-drop. Should a new version of the document be available, the user can simply drop it on top of the old one, making the versioning a piece of cake. In addition to the coherent arrangement of data and visual aid of the structure chart, the search feature will make sure you can retrieve the desired material within seconds.

Organize all workflows into processes and automate routine tasks

Allocating tasks via email, telephone, or in-person seems to be the norm. However, this has significant shortcomings such as floods of emails inhibiting work to be done efficiently, lack of insights into the progress of a specific process, and potentially important follow-ups being missed.

We believe that process and task flows should be fully integrated into data and document management. Workflows should be triggered when a combination of data points are fulfilled. Imagine launching a new fund domiciled in Luxembourg; this should automatically trigger a process, ensuring the correct documentation on the fund is provided and the appropriate controls are ensured. The process engine takes this much further, allowing the automation of workflows like client onboarding, streamlining follow-ups with external service providers, and the composition and generation of documents such as client offers, intergroup contracts, power of attorneys of the board of directors, and much more.

> **TO CHANGE DATA INTO INFORMATION, DEDICATED DASHBOARDS DISPLAY DATA IN A VISUAL MANNER, COMPILING IT INTO USEFUL AND ACTIONABLE INFORMATION.**
>
> Georges Bock

Take as an example that a member of your company leaves, and this person has been on several boards. How long does it take to find all the boards the person was in? How long does it take to produce the resignation documents? Imagine it takes 10 minutes to find all the boards and have all the resignation done and e-signed and filed at the right place!
The process dashboard will provide an insight into the running processes in the company, their individual stages of completion, and overdue tasks. This allows us to anticipate and act on potential risks and generally make the allocation and follow-up of workflows and the resulting tasks a comfortable exercise. In a global crisis moment like the one we are facing with Covid-19, the process engine makes it significantly easier to allocate tasks and guarantee follow-ups, insight, and business continuity.

Visualize your dashboards and make the right decisions

To change data into information, dedicated dashboards display data in a visual manner, compiling it into useful and actionable information. Each team or even user can have their own dashboard dedicated to the information they need to keep track of.

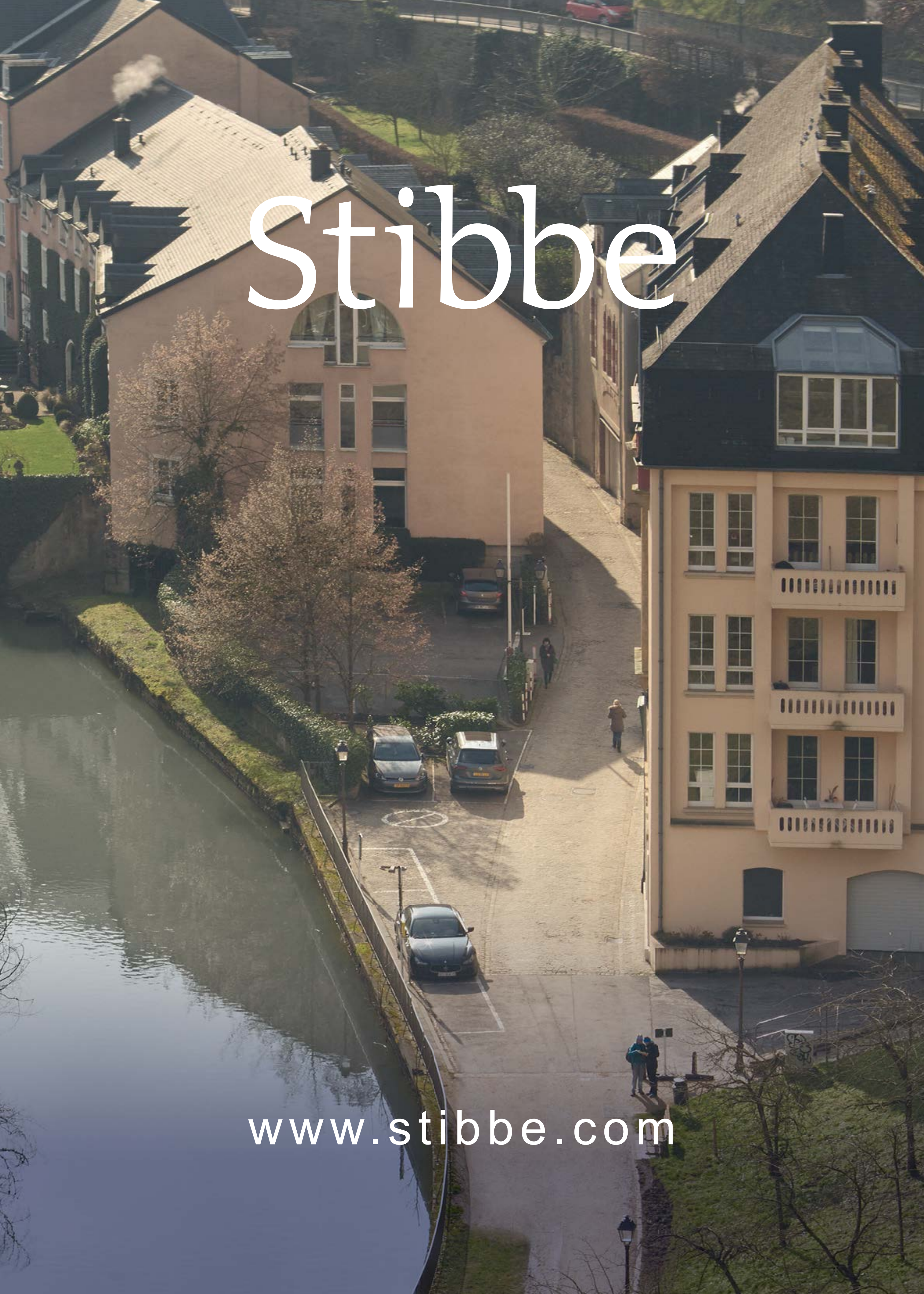
Due to the hierarchical nature of the data structure, such a digital tool allows to look-through reports to be generated, giving the users information from fund level all the way down to the last transaction document. Filters allow the user to see data in a specific date range or related to a specific data point. All information is live, meaning you get insights based on the newest data.

One more thing...

A state of art digital governance system should have a digital board tool allowing you to connect your meetings to the relevant entities, set them up in the board tool, and invite people to join them.
With a digital board tool, you can organize your meetings, share your agenda, share documents, allow board members to collaborate, work on the documents, keep track of the votes, and provide comments. Minutes can be taken by the secretary directly in the system, including follow up items and issues logged during the session. Should those points not have been closed by the user they were allocated to by the next session, they will automatically be transferred to the next meeting for follow-up. The board pack, including all the above information, can be generated with one click to ensure maximum efficiency.

There is no alternative to digital transformation

Do not wait until your organization is overwhelmed because you are stuck to your traditional ways of working. As a quote from Jeff Bezos goes: "There is no alternative to digital transformation. Visionary companies will carve out new strategic options for themselves — those that don't adapt will fail". Private Equity companies are no exception to this. ●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WHAT DOES "DAC6 READY" MEAN FOR PRIVATE EQUITY HOUSES?

EVEN THOUGH THE INITIAL REPORTING DEADLINES HAVE BEEN POSTPONED ACROSS MOST EUROPEAN UNION (EU) MEMBER STATES, THE MANDATORY DISCLOSURE RULES (MDR) OF COUNCIL DIRECTIVE (EU) 2018/822 AS AMENDED ON 25 MAY 2018 (DAC6) REMAIN A HOT TOPIC, WITH THE FIRST LUXEMBOURGISH REPORTING OBLIGATIONS KICKING IN AT THE BEGINNING OF 2021.

By **Julien Bieber**
Partner
KPMG

It will be a significant challenge for Private Equity (PE) houses to identify and assess all reportable arrangements across all EU Member States as of 25 June 2018.
Here, we highlight the main impact from a Luxembourg standpoint.

How has Luxembourg transposed DAC6?

The Luxembourg law dated 25 March 2020 (Mémorial A — N° 192 of 25 March 2020) transposed DAC6 into domestic law.
After the EU allowed an optional six-month deferral of DAC6 reporting deadlines, the law of 24 July 2020 (Mémorial A — N° 638 of 24 July 2020) extended the Luxembourg deadlines by another six months, which was more than welcome by the financial players affected.

DAC6 AIMS TO IMPLEMENT NEW REPORTING OBLIGATIONS OF CERTAIN CROSS-BORDER ARRANGEMENTS.

Julien Bieber

Most EU Member States also decided to implement this six-month deferral, except notably in Finland and Germany.
The new reporting deadlines for Luxembourg are:

- 30 January 2021 regarding arrangements triggering the reporting obligation between 1 July 2020 and 31 December 2020
- 28 February 2021 instead of 31 August 2020 for historical cross-border arrangements implemented between 25 June 2018 and 30 June 2020 (the so-called "retroactive reporting period").

This deadline extension also means that sanctions and penalties for incomplete, inexact, late or absence of transmission of the reporting obligations laid out in EU Member States' current laws should not be applied until the new deadlines enter into force. It is worth noting that penalties are determined by each EU Member State and can range between less than EUR1,000 in Italy and more than EUR5.5 million in Poland. In Luxembourg, the legislator has decided to set the penalty at an amount of up to EUR250,000.

What is the purpose of DAC6?

DAC6 aims to implement new reporting obligations of certain cross-border arrangements.
This should enable EU tax authorities to quickly identify certain types of transactions that feature cer-

THE CLOCK IS TICKING, SO THE NEXT WEEKS MUST BE DEDICATED TO BECOMING DAC6 READY AND WELL EQUIPPED TO FACE THIS NEW CHALLENGE.

Julien Bieber

tain hallmarks, allowing EU Member States to take appropriate measures if undesirable tax effects are identified.
MDR are a global phenomenon and are implemented outside of the EU (for example, Mexico) as national implementations of the Organisation for Economic Co-operation and Development (OECD) BEPS Action 12.

Examples of hallmarks relevant to some PE houses

The most relevant hallmark for PE houses is hallmark C. This refers to cross-border deductible payments made between two or more associated enterprises (i.e. under the following alternative conditions: significant influence condition, or more than 25 percent of voting rights/of direct and indirect ownership in the capital, or at least 25 percent of profit entitlement, or the acting together concept).
Other notable examples are hallmark C-1-b-i, which applies when the recipient is resident for tax purposes in a jurisdiction that does not impose any corporate tax or imposes a corporate tax at the rate of zero or almost zero (e.g. Jersey or Cayman Island recipients), and hallmark C-1-c, which applies when the payment benefits from a full exemption from tax.
Meeting one of the hallmarks is generally not enough to consider an arrangement as reportable. It may need to be assessed if the main benefit test is met for some of them.
Hallmark C1-b-ii, not subject to the main benefit test, refers to deductible cross-border payments made between two or more associated enterprises where the recipient is resident for tax purposes in a jurisdiction listed as being non-cooperative by the EU or OECD. For example, the Cayman Islands were on the EU list for several months in 2020 before being removed.

What does this mean in practice for PE houses?

Any cross-border arrangement that satisfies one of the hallmarks must be reported, within a specific timeframe, either by the intermediary involved in this specific arrangement or by the relevant taxpayer itself if the intermediary is covered by the legal professional privilege (LPP) or is located outside the EU, or if the arrangement is developed in-house with no intermediary involved.
As PE houses generally have a footprint in various EU jurisdictions — e.g. for their funds, management and advisory companies, holding and financing vehicles — any cross-border arrangement that meets a hallmark and involves more than one EU Member State or an EU Member State and a third country would need to be identified, assessed and potentially reported within a specific timeframe in various jurisdictions. Each jurisdiction may have transposed DAC6 differently into its local law and hallmarks may be subject to different interpretations in practice; for example, the understanding of hallmark A3 on standard documentation.
It is worth mentioning that, in practice, some investors are specifically focusing on the upcoming DAC6 obligations in their due diligence, asking fund managers how they are dealing with these new reporting obligations.

Legal professional privilege (LPP)

In Luxembourg, even if intermediaries are exempt from DAC6 reporting obligations because of their LPP status (i.e. lawyers, chartered accountants and auditors), they still have the obligation to notify within 10 days the other intermediaries and in the absence of any other intermediary not covered by LPP, the relevant taxpayers of their own reporting obligations. These obligations must be performed within 30 days from the same initial date — i.e. the day after the reportable cross-border arrangement is made available for implementation, or the day after it is ready for implementation, or when the first step of its implementation has been taken, whichever occurs first.

KPMG's DAC6 Processor

The reporting obligation presents several challenges that must be properly addressed to avoid any reporting breach. As the rules and their interpretations have not been uniformly applied across the EU, this can result in an unclear allocation of responsibility between intermediaries and different rules around notifications, LPP status and deadlines. Plus, it can also be difficult to obtain the necessary data.

How can PE actors monitor their obligations and be "DAC6 ready"?

KPMG provides a tailor-made service to get PE houses DAC6 ready, including a three-stage modular approach and KPMG's DAC6 Processor, an innovative MDR IT solution to categorize arrangements, monitor deadlines, perform the necessary reporting in each EU country and streamline the reporting process.

KPMG's DAC6 Processor offers a personalized dashboard that optimizes your DAC6 compliance, providing an overview of assessments and reporting in line with a predefined policy.

KPMG's DAC6 Processor makes the reporting process as fast and efficient as possible by mapping structured questionnaires based on local legislation, which can be used to collect and evaluate transactions and relevant information. This simplifies and streamlines the reporting process.

This tool allows PE houses to anticipate the DAC6 assessments of most recurrent cross-border arrangements with precompleted questionnaires and arrangement reporting.

In line with this approach and assistance that is tailored to our specific client's needs and domestic rules of each EU country, KPMG's DAC6 Processor also allows the proper governance of the responsibility and actions taken by each intermediary or relevant taxpayer and helps monitor the reasons why each arrangement has been reported or not, providing a consistent approach across all countries and projects.

The clock is ticking, so the next weeks must be dedicated to becoming DAC6 ready and well equipped to face this new challenge. ●

THE IMPACT OF COVID-19 ON PRIVATE EQUITY FUNDS AND THEIR MANAGERS

"FUNDS MAY FACE LIQUIDITY ISSUES", OR "FUNDS WILL FALL OUT OF CARRY", TO "DEBT IS THE SURPRISE SUBSECTOR THAT WILL SHINE" OR EVEN "THIS YEAR WILL BE A GOOD VINTAGE YEAR" – THESE TYPES OF HEADLINES HAVE BEEN ALTERNATING IN THE PE PRESS SINCE MARCH 2020. WHILE THEY GIVE A MIXED IMPRESSION OF HOW PE FUNDS AND THEIR MANAGERS ARE DEALING WITH THE COVID-19 CRISIS, THEY SHOW THAT THIS YEAR IS A YEAR FULL OF CHALLENGES, BUT ALSO OPPORTUNITIES FOR PE FIRMS. THEY HAVE BEEN REACTING DIFFERENTLY TO THE CRISIS: SOME TOOK A STEP BACK IN Q2 TO LOOK AT THEIR PORTFOLIO AND PROTECT THEIR CURRENT ASSETS, WHILE OTHERS TOOK ADVANTAGE OF THE DISLOCATION AND FOCUSED ON THE COVID-PROOF SECTORS LIKE HEALTHCARE, INFRASTRUCTURE AND TECH.

By **Patrick Mischo**
Office Senior Partner
Allen & Overy Luxembourg

and **Codrina Constantinescu**
Senior Associate
Allen & Overy Luxembourg

Since March, assets' valuations have decreased significantly and exits have been put on hold (except for specific sectors with links to Covid-19, such as healthcare and logistics). Such an environment heavily tests the waterfall and its associated safeguards. The vast majority of Luxembourg funds are well protected by the European model waterfall that pays carried interest very late in the life of the fund. The European model is recognised by the Institutional Limited Partners Association and the like as significantly reducing clawback risks, as opposed to the US deal-by-deal model. The US model may indeed trigger clawback and escrow releases further to the drop in valuations of the assets remaining in the portfolio, as carried may have been paid further to early sales of assets after return of capital contributions and preferred return for those specific assets. Deal-by-deal carried is however rare in Luxembourg fund documents. Another result of the crisis is that the funds that fall out of carry are those that require the most effort from the investment team to recover (and come back even stronger after the pandemic, some executives would say) and performance also depends on the investment strategy and the investment stage of the fund.

A fund that is at the end of its investment period will face more difficulties to restructure and create value for its portfolio companies and investors, considering that commitments are available only for limited purposes (such as follow-ons and management fees) while underlying businesses are often in desperate need of cash. To the extent permitted by the fund documents, GPs waiting for recovery may set up annexes, continuation funds or co-investment vehicles as an alternative to the lack of undrawn capital in their established funds. This solution may benefit their existing investors, as they will be released from paying management fees for long(er) holding periods, while they may decide to participate or not in the continuation fund. In addition, such vehicles may be launched easier than a pooled fund that requires significant fundraising efforts. The Luxembourg market

has seen a significant increase in the demand for such vehicles. As a jurisdiction, Luxembourg benefits from a broad toolbox and is well positioned to accommodate GPs and the LPs who believe in their investment philosophy, the quality of their assets, and resilience to the pandemic.

Funds that have launched or are investing in this period may have in front of them a world of opportunities consisting of good and cheap assets that allow them to deploy the large amounts of dry powder in the market (estimated at USD 2.5 trillion in April). In addition, changes to the investment policy (including the geographical focus given the Asian rebound) are easier to implement by such funds based on a constructive discussion with their LPs.

Since certain car makers announced that they will manufacture medical supplies, the boundaries between strategies and brands have started to decrease and now, more than ever, portfolio companies want to be part of the solution to the pandemic and the recovery. ESG has indeed become an important and long-term focus for fund managers and LPs, and – together with reputational issues – influences their decision making. According to Bloomberg, ESG funds have outperformed traditional funds. ESG requirements and investment drivers will become increasingly more relevant in the future, and LPs will be interested in scrutinising the ESG inputs and output of portfolio companies. This trend is not only driven by LPs, but also by the regulatory change: at the EU level, consisting of the adoption of the Disclosure Regulation (EU 2019/2088) and the Taxonomy Regulation (EU 2020/852), and at the international level, by the voluntary ESG obligations and expectations, e.g. UN PRI, UN SDGs, Impact Management Project, and PRIs report on fiduciary duties. Fund managers will focus heavily on ESG implementation and disclosure. ESG may also be an opportunity for first-time funds that currently have difficulties in fundraising as a result of Covid-19. These funds have the advantage of not having to deal with any legacy portfolios and are adaptable to today's environment by integrating new ESG policies in either pooled funds or deal-by-deal opportunities.

> **THE VAST MAJORITY OF LUXEMBOURG FUNDS ARE WELL PROTECTED BY THE EUROPEAN MODEL WATERFALL THAT PAYS CARRIED INTEREST VERY LATE IN THE LIFE OF THE FUND.**
>
> Patrick Mischo

Portfolio companies may also look to the debt funds for alternative funding sources. Debt funds are either financing new deals (direct lending funds) or assisting companies facing difficulties (distressed debt and special situation funds). The recent USD 1bn loan from HPS to Bombardier, or GBP 1.9bn loan from Ares to Ardonagh are opening the way for mega loans from multi-billion dollar private credit platforms. Debt funds offer more flexibility to borrowers and may include unconventional terms (such as loan-to-own). Debt funds have the advantage of garnering support from large and/or re-upping LPs.

Portfolio companies have also benefited from financial support and public subsidies in some countries. The funds and their portfolio companies should not expect any increases in taxation in the short term, as public authorities are focused on taking measures to overcome the crisis and stimulate economic growth. However, scrutiny of the taxation of PE funds, their managers and portfolio companies is likely to increase in future. Governments that have piled up significant amounts of debt to support the economy will be looking at increasing tax income in the medium and long term.

As CalPERS CIO recalled at the beginning of the pandemic, "keep calm and carry on" should be the main mantra for the current times that bring opportunities and challenges, but would help shine a new light on resilience, long-term strategies, innovation and a mix of physical and digital. ●

IMPLICATIONS OF DATA PROTECTION REQUIREMENTS ON THE LUXEMBOURG FUND INDUSTRY: CHOSEN PIECES

BRICE HELLINCKX IS SPECIALIZED IN BANKING AND FINANCIAL LAW AND IN THE STRUCTURING OF INVESTMENT VEHICLES, AS WELL AS IN SHAREHOLDER LITIGATION.

By **Brice Hellinckx**
Counsel at Brucher Thieltgen & Partners
Avocat à la Cour

More than four years have passed since the adoption of Regulation (EU) 2016/679 of 27 April 2016 on the protection of natural persons with regard to the processing of personal data (the "GDPR") and the initial uproar caused by it amongst players of the financial and banking industry.

A lot of ink has dried since then, but yet the precise outlines and, most of all, practical implications of the GDPR on the operating of investment funds and investment vehicles often remain (too) vaguely perceived.

This short article aims at raising awareness on sometimes forgotten or ignored legal requirements as well as giving a quick overview of some hand-picked critical situations that may arise for financial entities in that context.

Determination of the processor of personal data

Investment vehicles (irrespective of their form) generally rely on the services of external providers (such as investment managers, administrative agents, depositaries etc.) to conduct their business. Of course, those service providers are then inclined to also get a hold of personal data belonging to potential investors of the investment vehicle, on top of data processed by the latter itself.

The GDPR states that if two entities are treating the same personal data for the same purposes (being, for example, the treatment of subscription or redemption orders, global fund administration, respect of AML provisions etc.), two distinct types of qualification of the relations are possible.

The vehicle and the service provider can either be qualified as data controller and data processor respectively on the basis of a delegation (article 28 of the GDPR, scenario 1), or as joint controllers (article 26 of the GDPR, scenario 2).

The applicable regime and implied liabilities vary in consequence.

The main criteria for determining whether scenario 1 or 2 applies is the existence or non-existence of a subordination link between the two entities. If one entity can be considered as determining the purpose and the means of the treatment of data, while the other acts solely for the account of the former, then scenario 1 should be applicable.

Furthermore, even if some purposes of treatment of investor data are identical between the fund and the ser-

THE TOPIC OF DATA PROTECTION BEARS MULTIPLE ADDITIONAL CHALLENGES FOR THE INVESTMENT FUND INDUSTRY.

Brice Hellinckx

vice provider, one should bear in mind that some purposes of treatment may not be similar or comparable.

If such is the case, the service provider, even if considered as a data processor with respect to purposes shared with the investment vehicle as data controller, may simultaneously be considered a data controller with respect to purposes of data treatment that are personal to the provider.

We can therefore only emphasize the relevance of establishing a detailed list of all purposes for treatment of data at both the level of the investment vehicle and its service provider.

In any case, the relationship between the data controller and the data processor (or between two joint data controllers) needs to be governed by a written contract.

Recording of processing activities

Article 30 of the GDPR obliges data controllers to maintain a record of processing activities under its responsibility. Though an exemption may, in principle, be granted to entities employing less than 250 employees, such exemption is likely not applicable to most investment vehicles, as they are bound to process data (inter alia through the collection of copies of passports of investors) which may considered as sensitive under the GDPR. Actors of the fund industry should be aware that identification requirements of investors pertaining to the Registry of the Beneficial Owners ("RBE") generally trigger the collection of sensitive personal data and applicability of associated GDPR rules.

In such case, the exemption may not be practicable. As a prudent approach, the holding of the above mentioned record should therefore be privileged.

Service providers that intervene as data processors on the basis of a delegation are also bound by the obligation to keep such a record when processing data on behalf of the investment vehicle.

A template is available on the Internet site of the CNPD.

Adequate medium of information for investors

As we know, the GDPR (article 13) provides for extensive information requirements that are borne by the data controller. The relevant information must be concise and easily accessible, yet complete. Electronic means such as websites that allow for visualization are encouraged. The European Data Protection Board has underlined in its Guidelines 3/2019 that even a layered approach may be followed, meaning that not all information systematically needs to be provided in one single document, if such "one-shot" approach is not practicable.

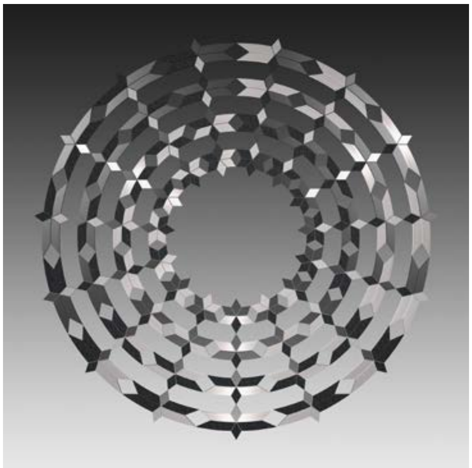
Nevertheless, given the requirement to dispatch such information entirely before any data is collected or treated, the offering document (prospectus, offering memorandum, LPA…) appears to be the sole relevant instrument to provide the information. Application or subscription forms are usually too succinct to be convenient, and information provided on the Internet would not allow to make sure that an investor has received the information prior to its data being collected. Investment entities should be aware of the important volume of information that needs to be provided in the prospectus and should seek further advice from their legal counsel regarding the most suitable way to include all needed information.

A dedicated section on an Internet site containing also the data protection policy of the entity should also be privileged, as amendments to the policy may be required on short notice which cannot be quickly reflected in a rigid document such as a prospectus.

Of course, the topic of data protection bears multiple additional challenges for the investment fund industry. The importance of a continuous awareness of the relevant actors can therefore only be emphasized, without losing sight that a well-conceived data collection tool can also enhance and optimize information flows within the entity. ●

JENS W. BEYRICH THE ART OF HYPER SYMMETRY

Large Star Mandala (black and white)



JENS W. BEYRICH IS DEVELOPING A SYNERGY BETWEEN ART AND FINANCE, BOTH AS AN ARTIST AND AS A PASSIONATE COLLECTOR. IN 2018 HE BECAME THE FIRST ARTIST IN EUROPE PERMANENTLY EXHIBITING AT FINDEL AIRPORT, AND RECENTLY HIS INVESTMENT COMPANY STARTED ISSUING TRACKING STOCK, A SPECIAL TOOL AVAILABLE IN LUXEMBOURG, FOR AN UNPRECEDENTED VENTURE IN ART.

You studied engineering and you hold an MBA from INSEAD - what made you start an artist career?

It´s exactly the numeric background, the understanding of strategic and financial issues and a persistent interest in art that are the prerequisites, as well as creativity, or more precise, the sense to see what is not apparent, though existing. Interest in symmetries and art is inborn, and a start of an artist career is a challenge and a luxury, but a very coherent though.

What is "Hypersymmetrics" all about?

Hypersymmetrics, is what I call my art concept, showing a combination of interwoven symmetric structures in a single graphical artwork or sculpture. Hypersymmetries cannot be observed in nature for thermodynamic reasons, and apparently, as a consequence they do not appear in the art world. A set of sixty different, three-coloured hexagonal elements are the toolkit to generate the hypersymmetric artwork, playing with combinations of open book and rotation symmetries or 2D- and 3D-symmetries, like the complex and first-of-its-kind marquetry of the golden polyhedron at the Findel.

...which brings us to your sculpture in the airport. From Switzerland and living in Liechtenstein, how did you get the opportunity to exhibit in Luxembourg?

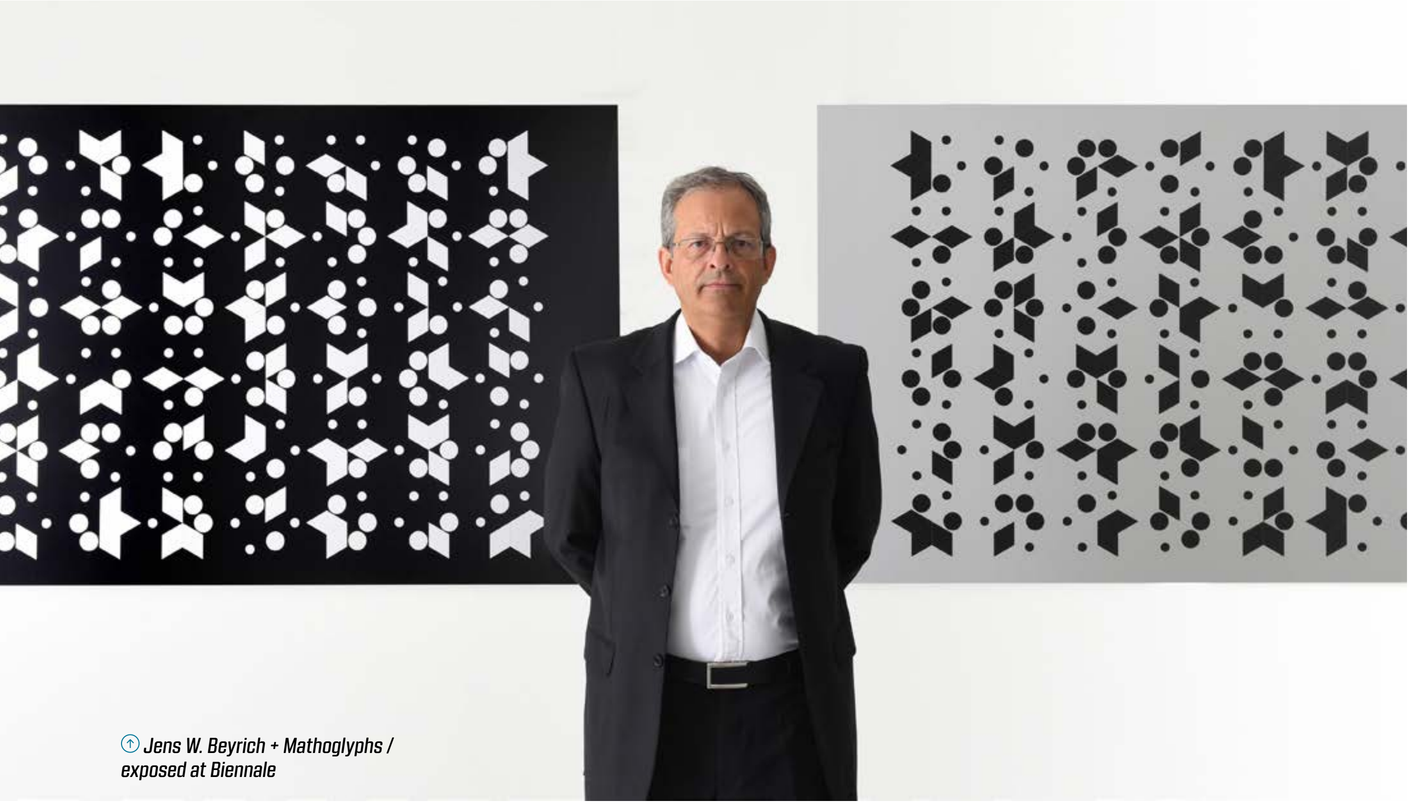
First, I considered to present my artwork concept in a gallery. London seemed to be the place to start. My first personal exhibition took place in London's famous Cork Street, in 2013. Just a year later, I had the opportunity to design a stamp for Singapore. In 2016, I had my first personal museum exhibition in the Kunstmuseum Liechtenstein, and later that year Connaissance des Arts presented my graphic works "City State" in the Special FIAC edition, together with artwork of Christo and Cruz Diez. The opportunity to exhibit in Rome´s best visited Chiostro del Bramante introduced me to the Italian diplomatic circle. All this happened with a fantastic speed. The idea to display in an elegant setting with a high flux of people with high standards of living and education made me conclude that the airport of Luxembourg would fit best. The very cooperative attitude of the management made the idea came true very rapidly.

What are your future plans in Luxembourg?

I got commissioned recently by the Luxembourg Post Philately to create the Christmas Stamps for 2021. Matching the stamp issue, the MNHA, National Museum for History and Art, will present an exhibition on the topic of the aesthetics of symmetry and their significance in history and art. It´s an exciting opportunity for the visitor to meet science, history and art simultaneously, as well as for me to show some of my artworks and antiquities of my collection. My work will also be displayed at Nosbaum Reding Gallery soon.

We know you also have plans for an "Outdoor Sculpture". Can you give us more details on that?

My intention is to build a large Star Sphere, with a diameter of 2.60 meters, for a public place. It has never been done before. The sculpture is unique in many ways. First, there is a philosophical message, representing the core values of modern global thinking. The six-pointed stars on its



Jens W. Beyrich + Mathoglyphs / exposed at Biennale

© DR

surface are all different, symbolising a multi-cultural mindset. All are connected and fit in a homogeneous grid, standing for balance and democracy. Each three stars on its surface, all different, respect a rotation symmetry, symbolising close cooperation. Finally, each star follows a rule of reciprocity with its counterpart juxtaposed on the other hemisphere, symbolising global consciousness and exchange.

HYPERSYMMETRICS, IS WHAT I CALL MY ART CONCEPT, SHOWING A COMBINATION OF INTERWOVEN SYMMETRIC STRUCTURES IN A SINGLE GRAPHICAL ARTWORK OR SCULPTURE.

Jens W. Beyrich

Project large Star Sphere

Born in Ticino 1961 (the only year in the century that is symmetric to itself by rotation), Jens W. Beyrich created his first artwork with advanced symmetrical features at the age of 5. In 1985 he graduated with distinction from the Universität Karlsruhe and later obtained an MBA from INSEAD. Jens has been engaged in activities in the international art market ever since and is today a member of the LPEA, of Mensa Lëtzebuerg, and -the world's first- Circle of the Ministry of Foreign Affairs, in Rome.

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Your proposal to fund that landmark is also very creative…

The idea to issue tracking stocks with an attributed ISIN (International Securities Identification Number) will allow investors to include shares in their portfolios and therefore become co-owner of the first large *Star Sphere*. I trust the financial structure is suitable to attract interested partners. The ISIN application for the tracking stock is on the way, I am finalising the documentation and expect it to be available soon

Once the first *Star Sphere* is built, a next step would be to set up a RAIF and to look for partners to invest in collectibles and antiques, thus matching talent and money, as you put it. This would be a perfect synergy and there are all along plenty of opportunities. ●

Jens W. Beyrich – Artwork - will be exhibited from 3 December 2020 till 16 January 2021 at Nosbaum Reding Gallery, 2+4 rue Wiltheim, 2733 Luxembourg

Jewellery, gold and diamond bracelets, shown at the Biennale

WILDGEN 4 CHILDREN: MOBILISING GENEROSITY FOR DISADVANTAGED CHILDREN

INITIALLY LAUNCHED ON THE 20TH OF NOVEMBER 2014, THE WILDGEN 4 CHILDREN (W4C) TOY COLLECTION AIMS TO SUPPORT CHARITIES PROVIDING CARE AND ASSISTANCE TO CHILDREN AND TEENAGERS FACING CHALLENGING CIRCUMSTANCES WITHIN LUXEMBOURG AND THE GREATER REGION.

How did this initiative originally come about?

For a number of years now, corporate social responsib\ility (CSR) has been at the heart of the concerns shared by the Luxembourg law firm Wildgen. Labelled as a Socially Responsible Company (Entreprise Socialement Responsable - ESR) by the INDR (National Institute for Sustainable Development) and as an active IMS member (Inspiring More Sustainability), Wildgen has always been dedicated to certain causes which it holds dear: the environment, diversity, education, gender equality... Having become aware of the daily struggles faced by so many children, the firm then decided to take things further and tap into the solidarity and generosity of an entire country with the national W4C donation collection. Since originally bringing 6 companies and 9 charities together, in 2019 the W4C initiative involved over 25 of Luxembourg's economic figureheads and was supporting 12 charities.

How are the charities chosen?

W4C currently supports a dozen charities working on behalf of disadvantaged children in Luxembourg, including institutions that are household names as well as other much smaller organisations. Any charity working to support children and teenagers within Luxembourg and the Greater Region is eligible and is encouraged to get in touch with the organisers.

W4C CURRENTLY SUPPORTS A DOZEN CHARITIES WORKING ON BEHALF OF DISADVANTAGED CHILDREN IN LUXEMBOURG.

How is the collection organised?

Charities are contacted in advance by the W4C team so that a comprehensive list of their needs can be drawn up. This means they are only provided with what they need once the collection and sorting have been carried out.

Any Luxembourg company interested in being involved is invited to organise a collection on its premises between the 20th of November and the 7th of December 2020, which its staff or clients can contribute to. The W4C team will then take care of all the logistics, supplies the communication material for employees and for the purposes of the collection, work with Michel Greco to gather all of the items. Volunteers will sort all of the goods on the basis of the needs expressed by the charities and oversee delivery to recipients before the holiday season.

What should be collected?

Toys (other than teddy bears), books, board games, outdoor toys, consoles and video games, sports equipment (other than shoes and clothing), schools equipment, bicycles, scooters... in perfect working order (new or second-hand). All involvement is warmly welcome! Let's make sure that throughout Luxembourg and the Greater Region, the holiday season will help all children forget their worries and bring nothing but joy. ●

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PHOTO GALLERY

LPEA 10TH ANNIVERSARY PARTY

FEBRUARY 11TH, 2020

H.E. Minister of Finance Pierre Gramegna, Rajaa Mekouar and Claus Mansfeldt

Natalia Koltunovskaya, Luis Galveias, Michaela Viskupicova, Rajaa Mekouar, Stephane Pesch and Claus Mansfeldt

Luis Galveias and Jens Beyrich

Mark Tluszcz and Norbert Becker

Hans-Jürgen Schmitz

Paul Junck and Peter Myners

Rajaa Mekouar, Jhemp Bastin and H.E. Minister of Finance Pierre Gramegna

Aïssata G. Coulibaly, Rajaa Mekouar, Manon Aubry, Marie-Adelaide Leclercq Olhagaray

Laurent Capolaghi and Pierre Beissel

Dr. Carmen von Nell-Breuning and Christoph N. Kossmann

Olivier Coekelbergs and Natacha Oskian

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ABOUT LPEA

The Luxembourg Private Equity and Venture Capital Association (LPEA) is the most trusted and relevant representative body of Private Equity and Venture Capital practitioners with a presence in Luxembourg.

Created in 2010 by a leading group of Private Equity and Venture Capital players in Luxembourg, with 294 members today, LPEA plays a leading role locally actively promoting PE and VC in Luxembourg.

LPEA provides a dynamic and interactive platform which helps investors and advisors to navigate through latest trends in the industry. International by nature, the association allows members to network, exchange experience, expand their knowledge and grow professionally attending workshops and trainings held on a regular basis.

If Luxembourg is your location of choice for Private Equity, LPEA is your choice to achieve outstanding results.

LPEA's mission towards its members is to represent and promote the interest of Private Equity and Venture Capital players based in Luxembourg and abroad.

LPEA's mission towards Luxembourg is to support government and private initiatives to enhance the attractiveness of Luxembourg as an international hub for carrying out PE business and/or servicing the PE/VC industry in all its dimensions.

In summary, LPEA is the go-to platform where PE practitioners can share knowledge, network and get updated on the latest trends of the industry across the value chain.

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Mangrove

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Vice-President
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Sara Huda
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Jérôme Wittamer
Member
Expon

Laurent Capolaghi
Member
EY

Stephane Pesch
CEO
Luxembourg Private Equity & Venture Capital Association

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- YPEL
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PE/VC DEPOSITARY SERVICES
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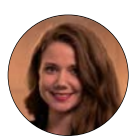
ESG
PRIVATE EQUITY FOR WOMEN (PE4W)
VENTURE CAPITAL
LARGE BUYOUT
SINGLE FAMILY OFFICES (SFO)
WEALTH MANAGEMENT
HUMAN RESOURCES (HR)

LPEA TEAM

Stephane Pesch
CEO
Luxembourg Private Equity & Venture Capital Association

Luís Galveias
Chief Operating Officer

Kheira Mahmoudi
Executive Office, Governance & Operations



Michaela Viskupičová
Global Events and Business Development Manager

Natalia Koltunovskaya
Head of Communication and Membership

Evi Gkini
Operations and Project Manager (student job)

Jens W. Beyrich

3 December 2020 - 16 January 2021
NOSBAUM REDING | PROJECTS - LUXEMBOURG

Jens W. Beyrich, *STAR SPHERE (bronze body)*, 2013, Anodised aluminium, spherical marquetry, diam. 58 cm
Photo: ospelt photography, Vaduz (FL)

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