PRIVATE EQUITY
INSIGHT/OUT

Gilles Roth,
Minister of Finance

Seizing New Opportunities for the Financial Sector

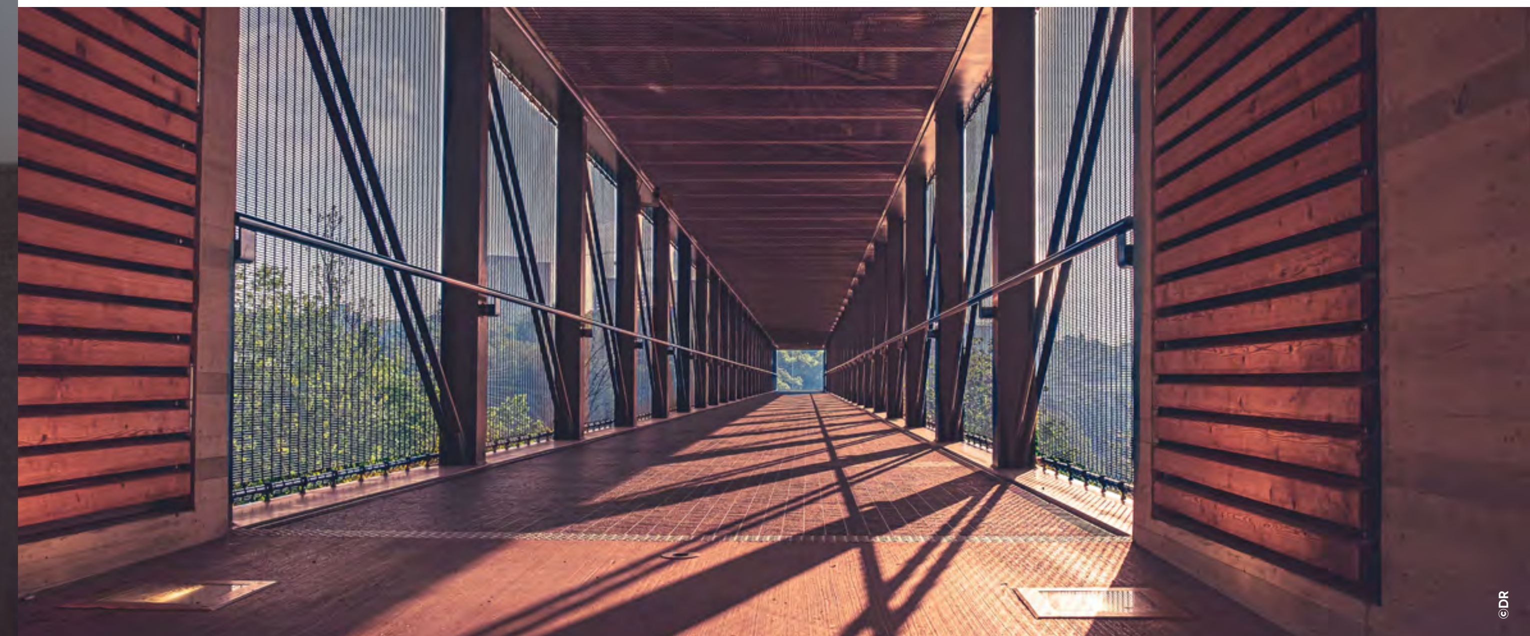
GP Focus: Norvestor, Partners Group, Radix Ventures

Tech Focus: AI, IP & DORA

Issue 31, October 2024

CONTENT

ISSUE #31



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LPEA THE LUXEMBOURG VOICE OF PRIVATE CAPITAL

Dear members, friends and partners,

After a nice summer (finally), some quality time with family and close friends, the events season has returned, kicking off with the IPEM conference in Paris. French and global practitioners gathered to hear top speakers and best-in-class Private Capital specialists, who shared their views and latest observations. In a still "shy" transactional environment (acquisitions, exits), the fundraising efforts have not decreased, and have inspired many Managers to further highlight how they deploy in more complex times, and how to create value and monetize quality businesses. In a constantly accelerating cycle of changes, with productivity as a key driver and next-generation AI technology at its heart, a very promising reconfiguration of winning business models and a redistribution of profits should be expected in the coming years. This will also require the right resources, tools, resilience, appetite for excellence, and "smart" intuitions at the GP level, to stay ahead of the curve. The best GPs know how to increase margins, grow the revenues of their portfolio companies, and conduct well-timed transactions with exactly the right amount of entrepreneurial spirit, risk-adjusted acumen, and experience. On top of this, the art of backing entrepreneurs with their network, strategic advice, and knowledge will be an additional vector of value creation. In such a prolific, fast-paced context, the financing of private firms, which is currently part of the Alternative investment strategies family, could, with the wave of democratisation and an increased retail exposure, become even more mainstream and "traditional" in the future.

On the LPEA side, we are diligently putting the finishing touches on our annual flagship event, the *Insights Conference*, which will be held on October 17th. One of the main innovations this year will be the presence of a new stage, dedicated to Private Equity technology, and featuring ambitious start-up founders, who will dissect the new solutions supporting the automation and digitization of our industry. With more networking space to meet and exchange, as well as more people, speakers, and themes, we have aimed for new highs and expect to see a lot around the core topic of Operational Excellence (main stage), and other key themes that are crucial to our growing ecosystem: fundraising, Secondaries, perpetual funds, Venture Capital, ELTIF, ESG, DORA, etc.

With many roadshows, trips, and events still to come, the last quarter will certainly be both very informative and worthwhile, and we would be pleased to count you in, to develop those promising opportunities together.

Stephane Pesch
CEO, LPEA

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Claus Mansfeldt
Chairman, LPEA

The magazine of the Luxembourg Private Equity & Venture Capital Association
Editors: Johann Herz, Luis Galveias / **Contributors:** Gilles Roth, Simon Bodjanski, Markus Pimpl, Michaël Hoffmann, Pawel Bochniarz, Hung-Ying Chen, Sebastian Zank, Katrien Veranneman, Jean-Pierre Roemen, Maxime Budzin, Mélissa Kdyem, Maxime Bertomeu-Savalle, Katrien Baetens, Alexia Kaztaridou, Luis Gabriel Jiménez, David Alexandre, Alejandro González Vega, Camille Malécot, Sabrina El Abbadi, Morgane Amiot, Alexandre Tangton, Arnaud Brive, Boris Lemiegre, Pascal Hernalsteen, Stephanie Atnas, Claude Crauser, Lindie Fourie, Nathalie Stift, Sophia Karlsson, Riccardo del Tufo, Allen Foley, Anabela Lourenço, François Pfister, Jane Wilkinson, Maria Rodriguez, Jérôme Mullmaier, Adrian Aldinger, Claus Mansfeldt and Stephane Pesch / **Conception & coordination:** 360Crossmedia - project@360Crossmedia.com - 356877 / **Artistic Director:** 360Crossmedia / **Cover photo:** ©Nader Ghavami

LPEA Insights 2024: Operational Excellence and AI in Private Markets

The 2024 LPEA Insights conference, focusing on "Operational Excellence in Private Markets" and the impact of AI, will be held on October 17 at LuxExpo the Box. The event, designed for General Partners (GPs), Limited Partners (LPs), and Private Equity professionals, will explore operational models in response to emerging macroeconomic conditions and market trends.

Key panels will address topics such as fund management models, portfolio value creation, building investor confidence, secondary markets trends, ESG's role in value creation and Perpetual funds. A new focus this year will be the PE-Tech stage, showcasing cutting-edge technology solutions like AI, cybersecurity, and tokenization.

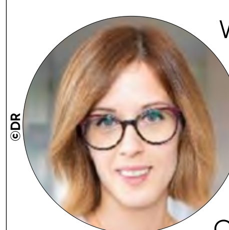
LPEA Insights will be part of the Luxembourg Venture Days, a collaboration between LPEA and LuxInnovation, creating a networking platform for investors and entrepreneurs. This event promises to connect local and international players while exploring the future of private markets in an increasingly digital world.

LPEA Global Seminar Series

Following successful seminars in Hong Kong, Tokyo, London, Stockholm, and Vienna in Q2, the LPEA continues to drive its global advocacy efforts across the EU and beyond. Upcoming seminars are planned for Madrid, New York—next to LPEA's first participation in SuperReturn North America—Chicago, Milan, Warsaw and Frankfurt.

These initiatives aim to highlight emerging trends in PE and VC, while showcasing Luxembourg as a premier private assets hub. Seminars will also emphasize the advantages of fundraising from EU investors through Luxembourg's flexible legal structures, which position the country as one of the most reliable destination for investor relations. Through these efforts, the LPEA continues to reinforce Luxembourg's role as a key player in global private markets.

Emilie Moray Joins LPEA as Legal & Regulatory Coordinator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We are pleased to welcome Emilie Moray to the LPEA team as Legal & Regulatory Coordinator.

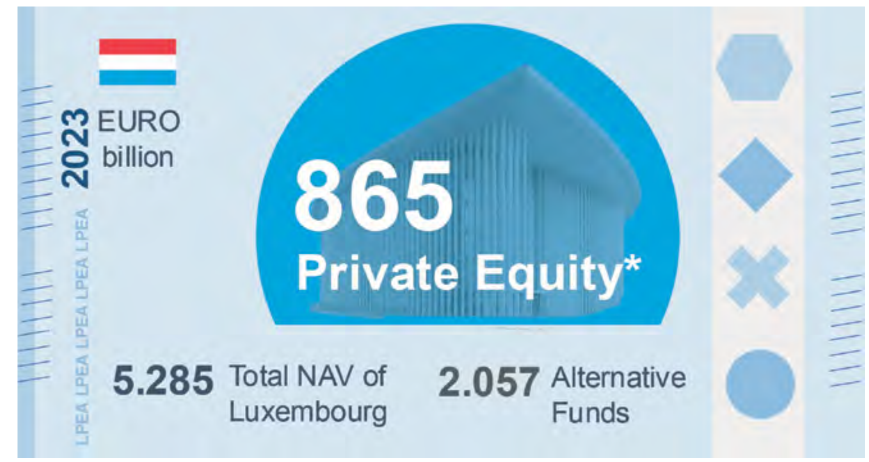
Emilie holds a degree in International Management from HEC-Liège and has experience in insurance (AXA Belgium), risk management (Waystone), and AML (ALFI). Most recently, she worked in regulatory reporting software development.

At LPEA, Emilie will focus on regulatory developments leveraging her diverse expertise to support our members in navigating these evolving challenges.

We are very excited to have Emilie on board.

Market Size

NAV of PE Funds Domiciled in Luxembourg



* Private Equity, Funds of Funds in Private Equity and Infrastructure
Source: CSSF AIFM Dashboard 2023

EU Commission Adopts New Regulatory Technical Standards for ELTIFs

On 19 July 2024, the European Commission adopted the Commission Delegated Regulation supplementing the ELTIF Regulation (the "ELTIF CDR"), thereby finalizing the long-awaited regulatory technical standards for European long-term investment funds (ELTIFs) under the revamped ELTIF 2.0 framework. Despite some delays and what could be described as a legislative thriller, the outcomes are perceived as a successful reconciliation of the need for flexibility given the large variety of conceivable ELTIF strategies and the key principles of retail investor protection that are central to the ELTIF label.

Read the full analysis by Silke Bernard, Partner and Mariusz Wiese, Managing Associate at Linklaters

Mangrove-backed Flo Health Reaches Unicorn Status

Flo Health, a women's health app launched in 2015, has achieved unicorn status after raising over $200 million in Series C funding from General Atlantic. The app, backed by Mangrove Capital Partners, offers personalized menstruation and ovulation tracking, powered by machine learning, and boasts 70 million active monthly users. This investment pushes Flo Health's valuation beyond $1 billion.

The funds will support the company's growth, including expanding research and development and targeting new user segments. Flo Health is also focused on global outreach through its "Pass it on" initiative, offering free access to Flo Premium in 66 countries, especially in underserved regions. CEO Dmitry Gurski highlighted the company's commitment to prioritizing women's health, while Chief Medical Officer Anna Klepchukova emphasized the need to address gender disparities in health outcomes. Flo Health now aims to reach 1 billion users globally.

COVER STORY

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By **Stephane Pesch,**
CEO of LPEA

and **Luis Galveias,**
COO of LPEA

Gilles Roth, Minister of Finance

Seizing New Opportunities for the Financial Sector

In this interview, Luxembourg's Finance Minister Gilles Roth comes back on the key measures implemented during his first year in office and outlines the upcoming initiatives aimed at bolstering the resilience of Luxembourg's alternative assets hub.

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> **“As Finance Minister, I am committed to further improving both the regime of profit-sharing bonuses as well as the expat tax regime to support companies in attracting and retaining the highly skilled talent they need.”**

To set the scene, can you please tell us more about yourself and what motivated you to become Finance Minister of Luxembourg?

After graduating from the Athénée, studying law in Luxembourg and Leuven and gaining a degree in business management, I worked as a lawyer and later joined the Ministry of Finance. I also worked as an alderman and mayor of Mamer for more than 20 years. Moreover, I was a Member of Parliament for a long time and as such member of the Budget Committee. In November 2023, I was elected to the government and appointed Minister of Finance.

Being back at the Ministry of Finance is particularly interesting to me having worked there in the past and having such great predecessors. Given the importance of Luxembourg's financial center and the number of administrations under its jurisdiction, the Minister of Finance has many responsibilities, both locally for fiscal measures and employment and internationally as the third largest international financial centre in the world. Being the Minister in charge of this covers a wide range of areas from budget, taxation, financial sector regulation, sustainability, international relations, customs, and the future of our economy, to name but a few. This gives me the opportunity to do something useful for people. And this is what guides me since taking office, helping the people with tax adjustments, housing measures and a major relief package, and many more things to stimulate our economy.

How were your “100 first days”?

The first 100 days have been exciting. I've also had the honour of meeting many of my counterparts in Europe and beyond, helping me focus and shape our priorities locally in a global context.

I've met and have strengthened a very capable team around me that is helping me a great deal to implement the measures foreseen in the coalition program, as well as dealing with timely issues that concern the Ministry of Finance, for example crises management, new financial sanctions etc.

The expertise and loyalty of our employees is very important to me. And I know I can count on them. The first months have been very busy. Within the first three months, we adjusted the income tax scale, set up an aid package for housing construction and prepared the budget that should bring new momentum to our country. We've launched an Action Plan for sustainable finance, and I've met much of the financial industry locally and internationally to hear about their businesses, their concerns, and opportunities. I have spent a lot of weekends at the Ministry of Finance, but I have enjoyed it and look forward to working more for the good of our country.

What were your top priorities, which actions have you already taken and what are some of the next steps on your agenda?
The coalition agreement clearly provided for measures in the tax area. That was my first priority. So, as I already said, my first action was the adjustment of the income tax scale to inflation by 4 index brackets. Yet, I still wanted to go further. With the "Entlaaschtungspak", I presented a comprehensive relief package that benefits everyone, but especially single parents and people on low incomes. This social aspect was very important to me. Furthermore, it also introduces targeted tax reforms to attract top talent, boost business and strengthen financial services.

Housing remains an issue locally, which is why we have decided on further measures together with the banks in addition to the measures agreed to with the Ministry of Housing.

Furthermore, I have presented a 10-Point-Action-Plan for sustainable finance, a strategic plan that will guide the Ministry's efforts over the next five years to develop Luxembourg's sustainable financial ecosystem. I have also shown my support for women in the financial sector in steering the Gender Finance Task Force. We also increased our collaboration with the LHoFT, where we now also support it in the digitalisation of green finance.

Finally, the legislative side has also seen a number of files moving forward and this is always an ongoing area of work for my team, as negotiating and implementing EU laws is crucial for our financial center.

There are many more priorities and actions that we will take, but as you can see, my actions have initially been centered around creating the strategies and structure for a better future for our citizens, our financial center, and our economy. We now have just over 4 more years to really make the necessary changes for a successful and competitive Luxembourg.

From day one, you proactively launched an ambitious dialogue with the local financial community and professionals. What were your observations and conclusions?
Indeed, dialogue with the practitioners and leaders of our financial community is very important to me. From them, I hear about many of the macro issues: global tensions, high inflation and steep interest rate rises as well as slower economic growth. Such issues mark the context, but our financial industry has proven resilient faced with such environments. The industry also has had to adapt to increased digitalization of its processes and distribution channels as well as to stricter disclosure requirements around sustainability risks.

I have met a lot of remarkable personalities ready to go forward and seize opportunities. This is very important since the financial industry, as a key pillar, is central to our efforts. It has managed to position itself in new areas such as alternative investment funds, corporate banking, Fintech, and sustainable investments.

However, this is no reason to rest on our laurels. As in any financial centre, there are challenges we need to address. We need to ensure that Luxembourg remains an attractive and

> **"The comprehensive relief package introduced targeted tax reforms to attract top talent, boost business and strengthen financial services."**

competitive jurisdiction and a leader in cross-border financial services, that we are attractive to businesses and professionals arriving in Luxembourg. To do this we will for example lower the corporate tax rate by 1% as of next year. This is an important signal to companies and international investors and a first step in the government's commitment to align corporate taxation with the OECD average. I also intend to reduce the subscription tax for actively managed ETFs. I am also completely revamping and simplifying our expat regime to make it much more attractive.

With the tremendous growth of the Alternative sector both internationally and in the Grand-Duchy how do you plan to further foster its development and ensure its competitiveness?
I want to continue to modernize our financial sector legislation to allow our financial center – and this also means the alternative sector - to seize new opportunities. Luxembourg has become the dominant EU hub for private assets. This is thanks to our attractive ecosystem of finance professionals, fund toolbox, and being able to cater to all investment strategies in the alternative space.

We also need to continue to climb up the value chain both in the alternative fund sector as well as in all the other key market segments of our financial center.

The alternative sector has certainly been an area of growth for us, the key driver in recent years in fact. Yet, I would also like to develop new areas such as digital assets. Luxembourg has become the go-to jurisdiction for the issuance of digital bonds, with global players setting up their digital asset platforms. Building on the success of our pioneering blockchain laws, I have just tabled additional legislation before the summer to consolidate Luxembourg's leadership position as a hub for asset tokenization.

Our government is also committed to further strengthen the role of Luxembourg in sustainable finance. Indeed, our financial center has a key role to play in mobilising private capital towards the green transition. In this regard, it is interesting to note that according to a recent study by the Luxembourg Sustainable Finance Initiative, assets under management in ESG funds represent 67 % of Luxembourg's UCITS assets.

Based on your global experience, which threats should Luxembourg avoid and do you see any specific diversification opportunities for the future?
Luxembourg is a truly international financial center and we need to constantly monitor what is happening across the world, and adapt to a changing global environment if we want to continue to seize new opportunities.

We have in the past seen a noticeable shift towards protectionism, including close to home in Europe. As Finance Minister, I am fully committed to defend the founding principles of the single market. Cross-border financial services are key to economic growth within the EU. At the same time, we need to ensure that the single market remains open to the rest of the world. This interconnectivity with global markets, including the tried and tested delegation model, has been key to the success of EU "brands" such as UCITS

"Luxembourg also needs to continue to be able to develop and attract the expertise that we need for continued growth. That is why we have introduced tax benefits for young talent in terms of salary and housing, and are introducing much more attractive expat and profit-sharing bonus regimes."

or AIFs. We should not jeopardise this European strength.

Luxembourg also needs to continue to be able to develop and attract the expertise that we need for continued growth. That is why we have introduced tax benefits for young talent in terms of salary and housing, and are introducing much more attractive expat and profit-sharing bonus regimes. We were the first to pass legislation in the area of blockchain and want to remain at the forefront.

Our opportunities lie in seizing the chances to remain nimble, with short "routes" to good decisions, to identify and create new financial instruments for our toolbox, and collaborate across borders for more success. International financial institutions and global investors choose Luxembourg for its stable environment, its forward-looking legislation and regulatory environment, and the expertise of its comprehensive financial sector ecosystem.
This is not a given, but needs to be tended to on a daily basis. This is exactly what I am doing and will continue to do, in dialogue with the financial industry.

Talent attraction has become a serious challenge. Which solutions could we envisage in order to attract more talents to Luxembourg?
Yes, it is no secret that we want Luxembourg to climb up the value chain in financial services. And there has been a growth in middle-office and front-office financial activities over the past years.

Access to talent is a global issue, where the top talents have many choices, not only in finance, but also in other sectors that are sometimes perceived as more exciting such as the tech industry. I do believe that a career in finance can be very exciting, challenging, and attractive, for talents all over the world.

We need to continue to put Luxembourg on the global map for talent, and take the necessary measures to ensure that companies can access and retain them. Another important dimension is the development of talent in Luxembourg performs well on social matters, political stability, family benefits, access to international schooling, and opportunities for spouses. These are key areas that make us very attractive.

As mentioned before, as Finance Minister, I am committed to further improving both the regime of profit-sharing bonuses as well as the expat tax regime to support companies in attracting and retaining the highly skilled talent they need. These are important steps, and I'm ready to look at additional measures as needed. Another important dimension is the development of talent in Luxembourg. This includes the Chair in Sustainable Finance at the University of Luxembourg and expanding the offer in research, training and certification. These are areas where we can set talent apart. The Ministry will also support the creation of a Masters programme in Private Assets at the University.

My team and I are always open to new suggestions and are continuously looking into how we can best shape the future of Luxembourg. ●


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By **Luis Galveias,**
COO of LPEA

Norvestor: Building Nordic Businesses

In this interview, Simon Bodjanski highlights Norvestor's business model, centered on close collaboration with management and employees, a strong focus on product quality and innovation, and a commitment to making a positive societal impact.

Norvestor is all about the Nordic region. Can you describe the group and your investment strategy?
We are a leading private equity firm specializing in mid-market companies with a strong focus on the Northern European region. Norvestor has offices in Oslo, Stockholm, Helsinki, Copenhagen, Berlin, London, and Luxembourg, where we leverage our extensive regional presence and expertise. The team, composed of 62 individuals, is one of the most experienced in Northern Europe. Over the years, we have executed 93 investments, completed more than 500 add-on acquisitions, and completed 60 exits, including 16 IPOs. Currently, Norvestor advises and manages funds with assets under management of approximately EUR 5.2 billion.

We primarily target Nordic mid-market service businesses, driven by our belief that this sector offers a broad range of opportunities. Our success in this space is attributed to our deep-rooted network, operational expertise, disciplined portfolio selection, and a partnership approach with portfolio companies' management that we believe is crucial for achieving outstanding results. As one of the longest-standing private equity firms in the region and one of the few with a presence in all four Nordic countries, we seek to invest in resilient companies with scalable business models.

Our primary focus is on four core sectors where we have consistently achieved success: Business Services, Technology-Enabled Services, Industrial Services & Solutions, and Consumer Services. Central to our strategy is identifying strong local companies and supporting their growth through a well-defined value-creation playbook. This approach includes buy-and-build strategies, digital leadership, and a commitment to ESG principles. Through these efforts, we aim to build regional champions, establishing excellence across the Nordic region and beyond. Nordic Champions!

You work on a "partnership approach" in which often the founders of the business remain co-owners. How do you make the best of the existing management teams?
At the outset of the investment process, we strive to position ourselves as the preferred partner for founders and management teams looking to take their businesses to the next level. The Norvestor team dedicates substantial time working closely with the management of potential investee companies to understand the key drivers of their success and identify how Norvestor can contribute to their future growth and development.

While we explore opportunities across various industries, our primary focus is on sectors where our team brings deep experience and well-established networks. Our objective is to drive significant growth in the companies we partner with during our typical holding period of three to six years. We actively support businesses in expanding into new markets, acquiring complementary firms, and implementing effective digital strategies. As a partner, we offer the combined expertise of the Norvestor team, a network built over decades in private equity, and the capital necessary to fuel growth. Our philosophy emphasizes collaboration with management and employees, investing in product quality and innovation, while also making a positive societal impact.


Attilio Femiano-Chillé, Erlend Bondo and Simon Bodjanski.

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> **"Our success in this space is attributed to our deep-rooted network, operational expertise, disciplined portfolio selection, and a partnership approach with portfolio companies' management."**

Your commitment includes contributing to a more "Equitable, Low-Carbon Society". How do you achieve this through your portfolio?
From an ethical standpoint, ensuring that portfolio companies have a pos-

itive impact on society and the environment is, without question, the right thing to do. However, at Norvestor, we firmly believe that responsible actions also lead to superior financial outcomes, making it easier to attract top talent and secure long-term success. Our ESG framework is rooted in the double materiality methodology, which assesses both the impact of sustainability factors on portfolio companies and the influence of these companies' operations and value chains on society and the environment.

Our portfolio companies are in part selected for their vision and ambition regarding ESG, and we look to provide the tools and structure to help realise ambitious goals, ultimately driving both returns and creating a positive impact on society. Each company is guided by a tailored set of goals and KPIs for tracking progress, while we also maintain several portfolio-wide ESG commitments to ensure a cohesive approach to sustainability.

While maintaining a minimum standard for ESG factors when making an investment, we understand that no single company can address every aspect of sustainability, and we support them in making meaningful impacts where they can – investing in ESG value proposition enhancements and installing best practice approaches to reduce carbon emissions, increase management diversity, ensure best corporate governance practice, just to mention some of the key areas. By doing so, Norvestor not only drives positive change but also enhances value creation and mitigate risk, aligning ethical responsibility with business success.

Last year in which many PE funds struggled to fundraise, you closed your 9th flagship fund at a hard cap of EUR 1.5 billion. Who is your typical investor and why do they follow you?

Norvestor is privileged to have the support of a broad range of international institutional investors, many of whom have partnered with us across multiple fund vintages, witnessing our growth and success alongside their own. Our commitment to a partnership approach extends to our Limited Partners, where a deep sense of trust and collaboration has been cultivated over the years. While the ongoing support from our investors is undoubtedly driven by our consistently strong returns and unique exposure to the Nordic mid-market, it is also a reflection of Norvestor's culture. We pride ourselves on fostering transparency, openness, and a down-to-earth approach, qualities that resonate deeply with all our stakeholders including the LPs.

What is the role of the Luxembourg office and how is it evolving?

Since its inception in 2019, Norvestor Investment Management Sarl (NIM) has served as the in-house Alternative Investment Fund Manager (AIFM) for the Norvestor Funds. From the 8th flagship fund, we invest through funds established in Luxembourg. NIM operates under the supervision of the Luxembourg Commission de Surveillance du Secteur Financier as an authorized AIFM.

NIM comprises a team of eight professionals, including three conducting

> **"Our ESG framework is rooted in the double materiality methodology, which assesses both the impact of sustainability factors on portfolio companies and the influence of these companies' operations and value chains on society and the environment."**

officers. The team, all recruited locally, bring extensive experience and a deep understanding of the Luxembourg market and the alternative investment funds industry. NIM retains the portfolio management and risk management AIFM function in Luxembourg, while leveraging the strong and local expertise of the other Norvestor offices in terms of deal sourcing and deal-making.

As Norvestor continues to grow sustainably, we plan to expand and enhance our Luxembourg operations and infrastructure over the next 2-3 years.

How should Luxembourg's financial center position itself in Nordic markets?

To effectively position Luxembourg's financial center in Nordic markets, it should capitalize on its strengths in regulatory excellence, global financial expertise, and comprehensive asset management capabilities. Building strategic partnerships with Nordic financial institutions and engaging with local networks will enhance credibility and create cross-border opportunities. By offering tailored investment solutions, emphasizing efficient regulatory reporting, and showcasing advancements in financial technology and innovation, Luxembourg can attract Nordic investors.

Additionally, highlighting successful collaborations and Luxembourg's strong commitment to ESG and sustainable investments will resonate with the Nordic focus on green finance. This strategic approach will bolster Luxembourg's presence and appeal in the Nordic financial sector.

In summary, success hinges on delivering efficient and pragmatic solutions alongside a competitive service offering.

What are your plans for the future?

The team continues to grow, but maintains a close culture and a true one-team approach that nurtures talent from within. The firm continues to invest and expand its capabilities to support portfolio companies in their growth journeys. Simply put, Norvestor will continue to build Nordic Champions, extending a strategy that has delivered consistent results for all stakeholders for more than three decades. ●

By **Markus Pimpl,**
MD, Head Private Wealth Europe at Partners Group

and **Michaël Hoffmann**
Private Wealth Benelux at Partners Group

Assessing Evergreen Funds: an Investors' Guide

Over time, private markets investing has dynamically adapted to macroeconomic and business landscape developments, but how the asset class is accessed by most, has remained relatively unchanged.

Already over two decades ago, Partners Group challenged the status quo and introduced an innovative approach to accessing private markets with the launch of an evergreen fund.
Evergreens are perpetual capital funds that offer investors the ability to subscribe and redeem (within limits) over time, in contrast to the typical 10 to 12 year lockup for traditional closed-end funds. The structure's lower minimum investment requirements and these flexible liquidity options cater better to individual investors' needs. As such, evergreen funds have always been a crucial part of Partners Group's offering.

In recent years, the industry has recognized evergreens as a key part of the landscape going forward and numerous have been launched as a result. Given our expertise, we often get asked by investors what they should be looking for in an evergreen. In this article, we aim to provide an overview (or even checklist) of characteristics that a great evergreen must have.

1. Focus on Direct Investments: limiting the role of fund building blocks

In private markets, direct investments involve a manager investing in a company or asset without intermediation (such as a fund), while fund investments involve committing capital to a (closed-end) fund managed by a third party. We believe evergreen funds should prioritize direct investments because they are fully drawn and offer more flexibility - ultimately allowing for greater control over deployment pace and the ability to pivot investment focus in response to real-time market opportunities. In contrast, capital committed to a fund is deployed gradually, creating uncertainty about cash flow timing and requiring extra cash on hand. Once an evergreen manager has committed to a fund, they are forced to follow its cash flow pattern, limiting flexibility in steering liquidity.

Direct investments can be supplemented by a flexible allocation to secondaries. This can help stabilize deployment over time, in particular during market turbulences when direct transaction activity declines and allow managers to take advantage of market dislocations through discounted opportunities. In the last two years for example, we've seen a decrease in the market for direct transactions, but

What makes a great evergreen fund?

Key questions to ask before investing

1. Focus on direct investments
- Does the evergreen fund predominantly make direct investments?
- Is performance truly sustainable? (Be wary of a track record built on discounted secondaries.)

2. Access to the right investment platform
- Does the manager generate consistent and diverse investment flow?
- Does the evergreen fund have equal access to this investment flow?

3. Disciplined growth
- How fast has the manager been fundraising?
- Does the fund have a healthy mix of mature and young assets?

4. Valuation policy
- Does the manager have his own team responsible for valuations?
- Can it conduct independent monthly valuations and adjust third-party values when necessary?

5. Liquidity management
- Can the manager generate sufficient liquidity in a prolonged stress case?
- Is the evergreen fund routinely and independently stress tested? Has it experienced prolonged market stress before?

this was offset by an increase in both the flow and discounts in the secondary market. However, investors should be cautious of evergreen funds that are heavily reliant on on secondary (often tail-end) transactions undertaken at deep discounts (30-50%+). In such cases, most of the investment's potential is oftentimes used up (written up to NAV) on Day 1, rather than developed over time, which tends to be unsustainable.

2. Access to the right investment platform

As perpetual investment vehicles, evergreen funds must consistently invest in new transactions to maintain attractive investment levels (and thus minimizing so-called cash drag), requiring a strong, constant investment pipeline for diversification and steady deployment. If this is not the case, an evergreen fund risks being underinvested or overly concentrated.

Furthermore, it is crucial for evergreen funds to have equal access to investment opportunities as other offerings from a manager. Unfortunately, many managers favor their flagship closed-end funds over their evergreen equivalent, putting the latter at a disadvantage. This "Waterfall" approach, where the evergreen fund is deprioritized, is evidently not in the best

> **"Evergreens are perpetual capital funds that offer investors the ability to subscribe and redeem - within limits - over time, in contrast to the typical 10 to 12 year lockup for traditional closed-end funds."**

interest of its investors. Therefore, we strongly advocate for a strict pro-rata allocation policy, ensuring equal access for all clients.

3. Disciplined growth: the key to long-term success

As evergreen funds can accept inflows on an ongoing basis, a manager might be tempted to capitalize on momentum by fundraising as much as possible. However, maximizing fundraising at any cost can create portfolio imbalances. For instance, by accepting disproportionately large inflows, a manager may be forced to make significant near-term investments to remain fully deployed – thereby creating a concentration risk in specific investments and vintages.

A more disciplined approach to growth can pave the way to a more diversified portfolio – achieving a healthy balance between younger and mature assets. Striking this balance has a clear impact on a fund's ability to deliver liquidity and returns. This can only be achieved through a combination of disciplined fundraising and careful investment sizing over time.

4. Valuation assessments: more accurate and frequent

Valuing private markets investments is increasingly in focus because market participants differ in their valuation approach, particularly when it comes to frequency and reflecting public market fluctuations.

Managers of closed-end funds typically conduct quarterly valuations, while evergreen funds offer monthly unit prices for investor subscription and redemption. It is crucial for investment valuations to accurately reflect the health of underlying assets and the market environment. Big price fluctuations at quarter-ends for example, can indicate a lack of accurate monthly valuations. If an evergreen fund is not perceived to be accurately valued, investors may be incentivized to redeem or subscribe based on their assessment, potentially leading to arbitrage opportunities to the detriment of existing unitholders!

Therefore, managers offering evergreen funds must have a robust valuation process in place, be able to consider real-time valuation-relevant events and make appropriate adjustments.

5. Liquidity management: the moment of truth

Liquidity is the lifeblood of any evergreen fund and managing it requires dedicated resources. These funds offer liquidity through gates or redemption queues, making it crucial for investors to trust the manager's portfolio construction we described earlier, since the way capital has been invested determines the fund's ability to service redemptions.

Only during market stress will it become clear which managers have strong processes in place. Managers must stringently stress test their portfolios under various scenarios and be able to demonstrate their ability to generate sufficient liquidity during prolonged (12+ months) and severe stress while minimizing negative portfolio impacts - where the challenge lies in avoiding fire sales and carefully steering liquidity according to previous communication. Experience shows that only few managers can successfully manage liquidity during times of significant stress and volatility.

Conclusion

In conclusion, we view the increasing interest in evergreen funds as a positive development for private markets investors and one we have strongly believed in for over two decades. We trust that managers with credible means, on the investment side but importantly also on the operational side, will be capable, and best positioned, to deliver attractive and sustainable long-term performance.

We hope this article serves as a valuable resource for investors, empowering them to make informed decisions and hold evergreen managers to high standards. By asking the right questions, we believe investors can embark on a successful and enduring evergreen investment journey. ●

The liquidity check list

Portfolio construction
- Is the portfolio adequately diversified?
- Are there single-asset or investment-year concentrations?
- What are the levels of unfunded commitments?

Investor base
- Has the investor base grown in a disciplined way?
- What is the ratio of long-term to new investors?
- Is the investor base diversified by region and type?

Liquidity mechanism
- Are the liquidity mechanisms transparently disclosed?
- Has the manager ever failed to deliver on the terms of the fund?
- Is there a specialist team responsible for managing liquidity?

Experienced management
- How long has the team responsible been constructing evergreen portfolios?
- Has the fund been successfully managed through a crisis period in the past?
- Can the manager demonstrate investment level steering expertise?

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By **Pawel Bochniarz,**
Co-founder of Radix
Venture Partners

Why You Should Open Up to Deep Tech Investment Opportunities in CEE

In the evolving world of venture capital, few areas offer as much untapped potential as deep tech, particularly in Central and Eastern Europe (CEE). While Silicon Valley and Western Europe often dominate the tech spotlight, the CEE region has quietly emerged as a fertile ground for innovation, driven by cutting-edge technologies such as artificial intelligence (AI), spacetech, quantum computing, and cybersecurity.

Having been deeply involved in this space, I've witnessed firsthand the incredible potential CEE offers to investors looking for deep tech opportunities. In this article, I'll explore why the region is so promising, supported by market data, and why now is the time to take a serious look at investing in CEE-based deep tech startups.

The Rise of Deep Tech in CEE: A Personal Journey

My journey into deep tech investment began over twelve years ago, during my work in technology transfer in Poland. Advising research teams on commercializing their inventions opened my eyes to the region's immense innovation capacity, which, at the time, was underfunded and underappreciated globally. I first established a deep tech accelerator, in collaboration with MIT, whose purpose was to provide hands-on support to academic entrepreneurs. The accelerator which was set up in 2015 under the brand of MIT Enterprise Forum Poland provided mentorship, training and fundraising assistance at the very early stage, often before a startup was incorporated. I am proud to say that many of the deep tech startups we helped back then made huge progress, examples being XTPL - now a globally present pioneer in ultra-precise nanoprinting, Fluence - a producer of femtosecond lasers, or Poltreg - which is in the final stage of clinical trials to introduce to the market effective T-regulatory cell (TREG) based therapies for autoimmune diseases.

This first hand and very rewarding experience of supporting radical innovators eventually led me to found Radix Ventures, a €50M venture capital fund with a specific focus on deep tech startups in CEE. Our goal is to harness CEE's highly educated workforce and entrepreneurial talent.

What Makes CEE a Hotbed for Deep Tech?

Historically, the region has produced prolific inventors like Maria Curie, Nikola Tesla, and John von Neumann, all of whom contributed groundbreaking innovations. Today, their legacy continues in the form of cutting-edge research and innovation across the CEE region.

Central and Eastern Europe has steadily become a hotbed for deep tech for several reasons. First and foremost, the region is home to an exceptionally talented workforce. Countries like Poland, Hungary, Romania, and the Czech Republic produce a high number of STEM graduates each year. More than 250,000 people are employed across over 300 multinational R&D centers in the region, further supported by a rich tradition of innovation.

CEE's technical talent is world-class, and if there were Olympic games in programming, CEE as a region would most likely win them. Among the Top10 countries in HackerRank country rankings 3 are from CEE - (Poland is no, 3, Hungary is no 5 and Czechia is no 9). And Romania, Bulgaria and Ukraine are all in the Top20.

This high level of expertise, coupled with the relatively lower cost of operations, allows deep tech companies in the region to maximize their capital efficiency. According to a McKinsey report, B2B startups in the CEE offer five times the capital efficiency of those in Western Europe, which means that investors can get significantly more value for each euro invested. In other words, compared to the U.S. or Western Europe, entrepreneurs in the CEE can scale startups for a fraction of the cost while maintaining high-quality results.

> **"The region's highly skilled workforce, cost advantages, and growing ecosystem of investors and accelerators make it an ideal location for venture capitalists looking to diversify their portfolios."**

CEE's Deep Tech Potential Across Various Sectors

One of the most exciting aspects of deep tech in CEE is its diversity across sectors. From AI to robotics, energy tech to biotech, the region is abuzz with activity. Neurala, an AI company with roots in Poland, has been a pioneer in edge AI technology, while 11Labs, a recent unicorn startup co-founded by Polish and Ukrainian talent, has made headlines with its advances in AI-driven voice synthesis. These companies are emblematic of the region's growing deep tech competencies, positioning CEE as a leader in the global AI race.

AI is not the only sector where CEE is making strides. The spacetech sector is growing as well. ICEEYE - a Polish/ Finish "soonicorn" owning the world's largest synthetic aperture radar (SAR) satellite constellation has already raised over USD 438M from investors and last year made overo USD 100M in revenues. Other sectors of interest include SaaS (Romanian UiPath has become the largest tech company in the region and its current market cap is close to 2% of the country's GDP) cybersecurity (Tresorit, AVG, Avast), gaming (after all who hasn't heard of The Witcher?) and fintech (Think: Wise or Finqware).

The Role of Investors: Local and Global Synergies

CEE's deep tech success would not be possible without the growing involvement of both local and global investors. While CEE's venture capital ecosystem is still maturing, it has shown remarkable resilience. Local investors are playing a crucial role, but international venture capital firms are increasingly collaborating with local players to tap into the region's potential.

Overcoming Challenges in CEE Deep Tech Investments

While the potential is vast, investing in deep tech in CEE is not without its challenges. Bureaucracy, underdeveloped infrastructure in some areas, and a shortage of experienced sales and marketing talent can slow down progress. I've seen many technically brilliant startups struggle to commercialize their products globally due to limited marketing resources.

That said, these challenges are being addressed. Governments are working to reduce red tape and provide financial incentives for tech startups. Many companies are also opening offices abroad to tap into global markets and attract top marketing talent. At Radix Ventures, we actively support our portfolio companies by providing strategic guidance on IP management, fundraising, and scaling their operations.

Why Now is the Time to Invest in CEE Deep Tech

In conclusion, the deep tech landscape in Central and Eastern Europe is ripe for investment. The region's highly skilled workforce, cost advantages, and growing ecosystem of investors and accelerators make it an ideal location for venture capitalists looking to diversify their portfolios.

I strongly believe that now is the time to invest in CEE deep tech. The window of opportunity is wide open, but it won't last forever. As more investors catch on to the potential in this region, valuations will rise, and the competitive advantage currently enjoyed by early movers will shrink.

For those willing to take the leap, the rewards can be substantial. My own experiences working with deep tech startups in CEE have shown me that the region is on the cusp of something extraordinary. Now is the time to be a part of that journey. ●

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By **Hung-Ying Chen,**
Head of Research
at Calista Direct Investors

How Do Single Family Offices Tackle Their PE/VC Aspirations? – Observatoire Tells the Story

After three years of making, Calista Direct Investors, the Luxembourg-based PE/VC advisory and co-investment firm dedicated to single family offices, launched the "Observatoire", an annual rendez-vous dedicated to its families, with an inaugural edition at Château de Courances, on June 27th and 28th, 2024. It marked the debut of a streamlined insight-driven platform dedicated to PE/VC for family investors.

Observatoire by Calista

Calista Direct Investors is a specialist advisory firm focused on private markets, with particular expertise in Private Equity and Venture Capital (PE/VC). As a fully independent entity, Calista operates on a global scale but maintains a local approach to stay closely connected with its investors in Luxembourg. The firm was founded by Rajaa Mekouar, a seasoned industry veteran with over 20 years of experience and the Executive Chairman, Serge de Ganay, hailing from the Bemberg family.

"The potential of PE/VC presents gigantic opportunities but also substantial risks. This asset class is dynamic, innovative, and sometimes even disruptive. On the other hand, family offices and private investors, by definition, have a long-term performance objective and a strong natural appetite for PE/VC. However, they are confronted with access, valuation, monitoring, and sustainability issues, and more globally, with what will happen next. This is Observatoire's raison d'être", remarked Serge de Ganay, the Chairman of Calista.

Observatoire genesis

Observatoire is the "lens" through which Calista Direct Investors experiences PE/VC as a key and growing asset class for private investors—family offices and entrepreneurial alike. It is a platform nurtured by investors and entrepreneur talents providing data, insights and advanced analytical views on how to better optimize the allocation. It is also an annual rendez-vous of families who gather to exchange their knowledge and experience. It can take any form of distributions, but the insights from layers of "Observation" remain the cornerstone.

Simply speaking, Observatoire provides insights from both "family offices" and "PE/VC" perspectives. From the "family offices" side, an annual survey was conducted to understand families' PE/VC allocation status, investment outlook, process, preferences, etc. From the "PE/VC" side, Calista presents an accumulation of thematic research topics that the firm has been exploring together with family investors since its inception three years ago, from very resilient to frontier sectors.

Rajaa Mekouar, the Managing Partner of Calista, commented: "Working with dozens of entrepreneurs for over two decades as a GP and LP, has provided me with the opportunity to tackle the Private Equity world in a manner that is hard to replicate and allows our families to become even more professional investors. This also provides unique insight into how such investors think, view value creation and risk. We are therefore committed to translating this extensive knowledge into actionable lessons and opportunities, for a win-win cooperation when it comes to dealmaking."

Why PE/VC for family investors

Calista Direct Investors is at the confluence of "family offices" and "PE/VC" worlds to see how they interact with each other. The firm has a direct network of over 300 families globally that represent different investment philosophies and varied levels of sophistication and attitudes towards PE/VC. Some families are just starting their journey in the private markets, while some others have become savvy in the industry after 20 or 30 years in the markets.

What does not change is their passion for private businesses, which incarnates the spirit of "entrepreneurship" and makes PE/VC investing a natural fit for family investors, combined with matched risk tolerance and long-term investment horizon.

The inherited passion for "entrepreneurship" drives families to invest in future creative businesses via PE/VC, linking their past entrepreneurial success to future entrepreneurial excellence, whether inside or outside the original realm of the family. As the family owner transfers entrepreneurship to the next generations, this is often embodied by the creation of new family businesses or by supporting external ventures—eventually a series of directs or funds opportunities that make PE/VC a substantial allocation in their portfolio.

Chateau de Courances.

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PE/VC is a challenging market to manage

With such a large appetite for PE/VC, families usually find it difficult to digest as they have such a scattered focus on PE/VC. Families are often forced to become generalists, inundated with investment prospects from all asset classes, such as real estate, fixed income, and public stocks. But PE/VC, which is known for its opacity, is among the hardest ones to tackle, and challenges can be observed in almost any part of the investment value chain.

According to Observatoire's first edition survey results, with 37 family offices mostly with over 100 million euros of AuM responding to the questions, 62% of their deals are sourced from their direct network, which represents potential selection biases. Regarding due diligence, lack of time and poor quality of available data, when combined, accounts for more than two-thirds of the major challenges identified by families in their direct and fund due diligence processes.

The issue of resources and process management also enters the picture. 51% of families report a lack of resources to oversee monitoring as the portfolio constantly grows, and more than half admit that they do not have a formal investment committee. All the striking results show that there is significant mismatch between families' optimism in PE/VC and their suboptimal process in managing such asset class, and consequently there is a large gap to fill.

Where do families build convictions?

Analysis of the survey also shows that Healthcare and Deeptech are the most preferred sectors of direct investments for family offices. The healthcare sector is favored due to its strong growth, resilience and alignment with family offices' long-term objectives. Whilst the immense trend of global digital transformation positions DeepTech as a rapidly growing and highly attractive investment area.

In alignment with families' expectation, Healthcare and DeepTech are a part of conviction-based themes that Calista Direct Investors co-researched with families, among others including Secondaries, Lower Middle Market LBOs, SpaceTech, and B2B Services. These are all products of extensive studies, brainstorming, deal reviews, and investors feedback, which help build strong vocabulary when we convey insights to like-minded family investors.

> **"As the family owner transfers entrepreneurship to the next generations, this is often embodied by the creation of new family businesses or by supporting external ventures."**

Observatoire today and tomorrow

This year, we are privileged to host the event at Chateau de Courances, the Ganay family's private estate. This place is of high significance to Calista as it represents real family values and long-term commitment across generations. Observatoire by Calista Direct Investors is now under the patronage of HRH Prince Felix of Luxembourg, who will host future editions at his estate, Château Les Crostes, from 2025 onwards. ●

More information is available in the featured Forbes article.

1. Family Office 2.0: How Calista's Direct Investors Are Reshaping Single Family Offices In PE/VC, Forbes August 2, 2024


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By **Sebastian Zank,**
Head of Corporate Credit
Production at Scope Ratings

European Direct Lending: Credit Metrics Strained but Negative Ratings Migration Likely to Ease

Direct lending has seen significant growth over the past 10 years and has emerged as a vital funding channel for mid-market companies. While borrowers' credit profiles have deteriorated over the last two years, we believe the erosion in credit quality has bottomed out.

Assets under management of debt fund managers focused on lending to European companies have reached USD 400bn, achieving compound annual growth of 17% over the past decade. We expect growth rates to slow, at least until the current constraints on economic growth and investment, such as higher-for-longer interest rates, are outweighed by supporting factors.

Given the moderate-to-weak credit profiles of borrowers (typically in the low B to mid BB sub-investment-grade rating categories) thorough credit analysis and due diligence are needed. Especially since the average credit profile of covered entities had deteriorated over the last 24 months because of the impact of variable interest rates, weaker-than-expected operating performance, lower returns from reduced investments, and delayed deleveraging.

That will remain the case even though we believe the erosion of credit quality has bottomed out in light of interest-rate tapering and easing concerns about economic growth. Higher default risk, meanwhile, will likely be mitigated by an array of measures provided by equity sponsors and direct lenders.

Over the last 24 months, we have rated aggregate loan exposure greater than EUR 5.6bn. Scope's credit assessments are at the issuer level and typically on defined debt positions held by lenders, primarily first-lien senior secured or unitranche loans.

European direct lending is concentrated in the UK, France and Germany, which make up roughly 70% of deals. But we believe direct lending in other European markets will catch up. By sector, roughly 60% is concentrated in business and consumer services, TMT (mainly technology/software and IT services) and healthcare. Our ratings, all sub-investment-grade, are a representative sample. Rated entities are typically mid-market corporates with average annual EBITDA of EUR 10m-EUR 50m.

Ratings migration

What is most striking is ratings migration, i.e. how most recent rating actions compare with previous actions. While around half the ratings in our coverage universe could have been maintained or reflect ratings upside, the other half exhibit ratings erosion, either through actual downgrades/lower point-in time ratings or weakened Outlooks.

A number of trends have resulted in negative rating actions or are likely to put further strain on rated companies' credit profiles. First and foremost, we have seen more pressure on important credit metrics that are either expected to deteriorate significantly (e.g. interest cover) or which we can no longer expect to improve quickly (e.g. leverage).

Variable-rate exposure has also taken its toll. While variable rates are great for lenders, higher-for-longer rates are putting increasing pressure on debt service and biting into borrowers' liquidity. Median interest cover (EBITDA/net interest) averaged 2.7x to 2.1x in 2022/2023. Our projections for the same entities in 2024/2025 stand at a median of 2.0x-2.1x. This is still comfortable at an aggregate level but around one-in-four rated entities have cover ratios of just 1.5x, which does not offer much headroom.

Similar, but less problematic, is the slower-than-expected pace of deleveraging. Rated entities are likely to maintain high median leverage levels: 7.4x as measured by Scope-adjusted debt/EBITDA for 2023, followed by only gradual deleveraging to a median of 6.8x in 2024 and 5.8x in 2025E. A quarter of rated entities still show leverage of more than 7.0x at YE 2025E, however.

Deleveraging prospects are primarily driven by expected improvements in operating performance, reduced interest payments and returns from business expansion via M&A. We expect deleveraging to happen at a slower pace compared to a year ago as a function of lower potential for debt reduction owing to weakening operating cash flow; limited room for debt reduction due to ongoing debt-funded acquisitions; or subdued investment returns from acquisitions.

A significant share of borrowers are unable to meet expectations for operating performance as it remains difficult for them to cope with the more sluggish macroeconomic environment. This means sustained cost increases, weaker demand, and margin dilution from acquired entities. Unless they have very strong niche market positions, rated mid-market companies typically lack the pricing power to quickly pass on higher operating costs to customers. Hence, they need time to adapt to the more challenging environment and to implement cost-savings programmes before operating performance and credit metrics can be restored or improved.

Likewise, ambitious growth plans driven by M&A and organic investment that were expected to be supported by new debt funding from direct lenders could not and still cannot be executed as initially planned given higher hurdle rates. As a result, the expected returns from such growth strategies have failed to materialise and have not provided the expected return on investment, while the interest costs from dedicated funding are weighing on credit metrics.

The above factors make it difficult for some rated entities to fully comply with debt covenants when buffer-to-covenant thresholds were already narrow during the 'golden years' – before the mix of more challenging conditions unfolded. Actual or likely covenant breaches require lot of attention from debt fund managers; capacity which might be needed elsewhere.

> **"European direct lending is concentrated in the UK, France and Germany, which make up roughly 70% of deals. But we believe direct lending in other European markets will catch up."**

Direct lenders shielded from stormy weather

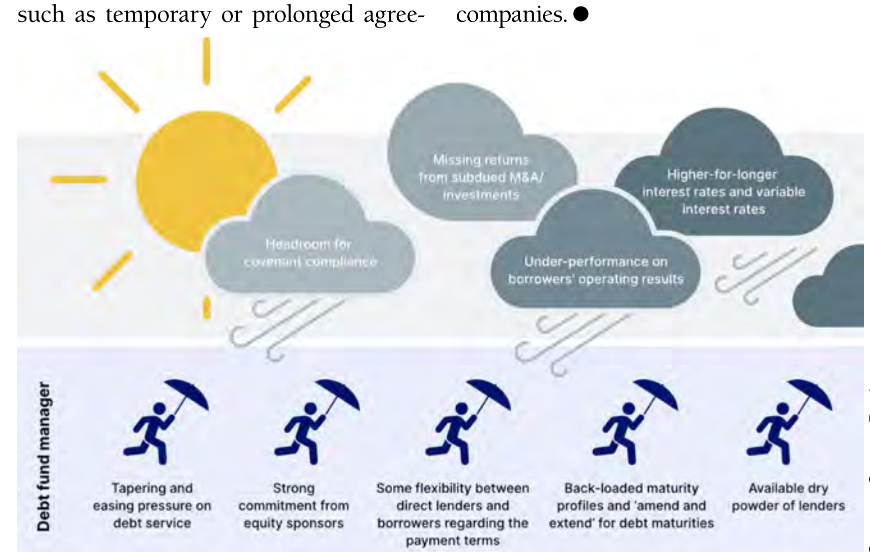
Despite the negative ratings pressure, default risk is less pronounced and will likely be contained. First, because of our expectations of an improving picture after 2024. Base rates are expected to taper in coming months hence the general pressure on interest cover will bottom out or even reverse, providing relief on debt service. Investment activity is also likely to resume, with the returns from new investments providing support to cash flows and credit metrics.

Second, companies will gradually adapt to the altered business environment through cost savings programmes, restructurings or simple adjustments to pricing and procurement policies. Also, there is greater flexibility between direct lenders and borrowers on payment terms compared to more traditional financing with banks or groups of professional investors. Borrowers can implement amendments on terms and conditions on a bilateral basis, such as temporary or prolonged agreements of Payment-in-Kind (PIK) interest recognition.

Direct lending borrowers typically have some flexibility to roll over maturities in advance if debt coverage is at risk. While this is similar to the typical 'amend and extend' process of banks, we believe that amendments with direct lenders are leaner, take less time and happen much earlier, given the close ties between direct lender and borrower.

Commitment from Private Equity sponsors is also key. Sponsors tend to support portfolio companies in challenging times through equity injections. Also, a large share of borrowers have exposure to shareholder loans, which can be fully or partially converted into equity or carry PIK interest for some time. This can strengthen affected companies' balance sheets thereby easing pressure on credit erosion or even default risk.

As such, companies with strong and committed equity sponsors have better chances of weathering temporary or extended challenging times. And director lenders have significant dry powder – we estimate this at 20%-30% of total AuM – which can provide bridge financing to companies. ●



Source: Scope Ratings

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By **Katrien Veranneman,**
Partner at Elvinger Hoss Prussen

And **Jean-Pierre Roemen,**
Associate at Elvinger Hoss Prussen

One Year of Luxembourg's Foreign Direct Investment Screening Mechanism: Managing Uncertainties

Foreign direct investment ("FDI") is essential for the development of the European Union's economy. However, FDI can pose a threat to security and public order in the EU and its Member States if a foreign investor wishes to acquire control over a critical infrastructure or access to sensitive data. Luxembourg's FDI screening regime has been in force for one year.

The EU legislator has provided a framework for the screening of FDIs into the Union on the grounds of security or public order via Regulation (EU) 2019/452 establishing a framework for the screening of foreign direct investments into the Union ("Regulation").[1] It does not limit the right of each Member State to decide whether or not to screen a particular investment but it creates a cooperation mechanism between Member States and the European Commission.

The Luxembourg Law of 14 July 2023 establishing a mechanism for the screening of FDIs likely to affect security or public order ("Law") obliges foreign investors to notify in-scope FDIs to the Minister for the Economy prior to completion and provides for sanctions in the event of non-compliance. The mechanism enables the Minister to assess whether a given investment could undermine security or public order based on certain screening factors.

Since the entry into force of the Law in September 2023, its defining criteria and the screening procedure have been put to the test, in particular for Private Equity transactions involving Luxembourg legal entities. As described below, it is fair to say that the Law contains shortcomings in terms of the definition of an in-scope FDI and certain procedural aspects, which are partly undergoing reform at European level.

An evolving approach to indirect investment

The national mechanism applies to FDIs, with the exception of portfolio investments, likely to affect security or public order, in a Luxembourg-registered entity carrying out critical activities in Luxembourg.[2]

An FDI is an investment of any kind by a foreign investor aiming to establish or maintain lasting and direct links with a Luxembourg entity, thus enabling the investor to participate, alone, together with or through an intermediary, in the control of this entity.[3]

"Control" is notably defined as the fact of, directly or indirectly, having the right to appoint or dismiss the majority of the members of such entity's governing bodies, or exceeding the threshold of more than 25% of the voting rights in such an entity.[4] In particular, the role of the 25% threshold may raise questions.

Although the Law explicitly only applies to investments made by investors from outside the European Economic Area ("EEA"), the Council of State indicated that "control" must be interpreted in view of a possible circumvention of the screening mechanism "with regard to the foreign investor acting alone, together with or through a company, even one established in another Member State of the European Union or the European Economic Area".[5]

As part of an overhaul of the Regulation, the Commission wishes to ensure greater consistency by treating investments made directly by a foreign investor in the same way as those made through an entity located in the EEA since they can have the same effect.[6] Thus, investments made through an EEA entity will also have to be notified even if there is no intention to circumvent the screening mechanism. One can expect the Law to be amended to reflect this explicitly.

> **Since the entry into force of the Law in September 2023, its defining criteria and the screening procedure have been put to the test, in particular for Private Equity transactions involving Luxembourg legal entities."**

Broad definition of critical activities

Critical activities include, for example, certain activities in the energy, health, aerospace, media and agri-food sectors. These are often defined so broadly that it can be difficult to exclude a certain activity from the scope of the Law. For example, a taxi service, arguably not an activity relating to Luxembourg's strategic interests, security or public order, could fall within the scope of the Law, which defines land transport as critical. In addition, the Law also defines as critical research or production activities directly linked to a critical activity or related activities that provide access to sensitive information or to premises where a critical activity is carried out. Therefore, would an app that collects data on customer journeys for the taxi service also fall within the scope of the Law?

Also giving rise to debate are FDIs involving Luxembourg holding companies that have no genuine activity, i.e. no income or employees, where related target entities outside Luxembourg may exercise critical activities. A common sense approach should be adopted in our view when applying the Law.

Bridging procedural gaps

When a notification is required, the notification form notably requests information on the ownership structure of the foreign investor and of the Luxembourg entity before the FDI was made, including information on the beneficial owner, the products, services and commercial operations of the foreign investor and the Luxembourg entity, and the financing of the FDI.[7]

Upon receipt of the notification, the Minister has two months to decide whether the FDI will be subject to the screening procedure (Phase 1). If the information provided is deemed insufficient, the Minister may request additional information, which will suspend the review period.

When launched, the screening procedure may not exceed 60 calendar days (Phase 2). The FDI is then examined in accordance with the screening factors set out in the Law, such as the possibility for the foreign investor to control a critical infrastructure or sensitive information, or the fact that it has close links with the government of a third country, or is involved in illegal activities. Here again, suspension is possible if further information requests are launched.

Therefore, in theory, the review period is of – minimum – two months if no screening procedure is triggered and of – minimum – four months if there is a screening procedure.

If the screening procedure is launched, the Law does not require that decision to be reasoned. In its proposal for a regulation, the Commission provides that, before taking a screening decision subject to conditions or blocking a transaction, the competent authority should inform the foreign investor of its intentions, explaining its reasons and giving the foreign investor the opportunity to state its position.[8] However, given the sensitivity of the field and Member States' duty of confidentiality, it remains to be seen to what extent meaningful statements of reasons will be provided.

The Minister, who decides whether to authorise, authorise with conditions or refuse the FDI, concludes the screening procedure. The Law does not indicate what happens if the Minister has not made a decision after the deadline expires, which adds a further degree of legal uncertainty that should be addressed as part of a future reform of the Law.

Looking ahead

Many practical scenarios encountered over the last year have shown the impact of the Luxembourg FDI screening regime. In view of the proposal for a regulation, amendments at Luxembourg level could be expected. They would offer an opportunity to clarify certain areas of uncertainty.

In addition, although the responsible ministry addresses some helpful questions in an online FAQ, the latter has not been updated and, in our view, could be completed to take account of its practical experience with the review mechanism. ●

1. Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 establishing a framework for the screening of foreign direct investments into the Union, OJ L 079I 21.3.2019, p. 1, as amended, Article 1(1).
2. Article 2(1) of the Law.
3. Article 1(6) of the Law.
4. Article 1(1) of the Law.
5. Opinion of the Council of State, parliamentary document No 7885/01, 22 March 2022, page 3.
6. European Commission, Proposal for a Regulation of the European Parliament and of the Council on the screening of foreign investments in the Union and repealing Regulation (EU) 2019/452 of the European Parliament and of the Council, COM(2024) 23 final, 24 January 2024, recitals 7 and 11.
7. Article 4 of the Law.
8. European Commission (footnote n 6), Art. 4(3).

INSIGHTS


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By **Anker Sorensen**[1],
Partner, De Gaulle Fleurance,
Avocats et Notaires

M&A: Pragmatism a Long-standing Asset to Successful Transactions

Among Henry Ford's[2] numerous citations, there is supposedly one about his expectations when dealing with his legal advisers: "I don't need lawyers to tell me what I cannot do, but to tell me how to achieve what I want". This citation encapsulates an obvious caricature of lawyers. It suggests that lawyers tend to state the terms of the law that stand in the way of a project, without simultaneously suggesting alternative ways to make the project possible. It is the latter skill that requires most hindsight and analysis, and thus time.

A hundred years later, savvy businessmen do not think differently to Henry Ford. Most of their advisers, including their lawyers, strive to be proactive and pragmatic, which is a criterion high on their priority list in today's very competitive environment.

What follows are a few examples of where pragmatism has become the norm for advisers in the different stages of M&A transactions.

Need for and drafting of a Letter of Intent ("LOI")

The LOI is a necessary and important first step in an M&A process. As its name suggests, and today this is a matter of usage and a pragmatic approach, it should reflect only the parties' intentions and remain a non-binding agreement for most of its provisions until a formal and definitive SPA is executed. Sellers' or buyers' advisers may nevertheless be tempted to obtain some binding commitments on key provisions from their counterpart, hence the need for precise and appropriate wording. Increased attention from common law lawyers is recommended if they negotiate an LOI subject to the law of a civil law country, where the code may state that[3] "a sale is deemed perfect and ownership is acquired by the buyer from the seller as soon as the parties have agreed on the item and the price ("la chose et le prix"), even if the item has not yet been delivered and the price paid. In this regard, depending on the wording of the LOI, specifying that the provisions in relation to the parties' intent to buy and sell are not binding, may not suffice to avoid with certainty that they have not reached an agreement on the item and the price and sealed a perfect sale in the LOI.
In most jurisdictions, common clauses of an LOI are addressed to the parties' intention to sell and buy assets or shares, the buyer's indicative price (and not a firm and final price for the reasons mentioned above in civil law countries), a temporary exclusivity period, a commitment to set up a full and complete data room, the due diligence process and duration, the conditions to close, including financing contingency. The LOI may also contain some key provisions of the future SPA including, for example, the guarantee cap and the deductible and trigger threshold, transaction milestones, the conduct of the business until closing, the confidentiality of the LOI and information provided, the assumption of costs by each party and choice of law and jurisdiction provisions[4].

Due Diligence ("DD") and reporting to the investor in a "red flag" format

This is the increasingly common format for mid-sized transactions. It consists in going straight to what is essential and avoiding long descriptions with low added value. The pragmatic approach here is to report only material findings[5] which may affect the target's operations, its business value or threaten the investor's interest in the transaction. Typical findings worth mentioning under this selective approach are:

- Poorly drafted agreements, essential to the target's business with clients and main suppliers for example, or transferring title over the shares of subsidiaries or land and buildings in which the business is operated;
- Lack of compliance with key legislation, including but not limited to health and safety, AML, tax, environment;
- Repeated work accidents that may lead to heavy fines, temporary suspension of the business activity or a ban on participating in public tenders;
- Litigation with main clients or suppliers, the tax or local authorities, the work force, the unions or minority shareholders; and
- Unusual provisions in existing shareholders' agreements when the investor is bound to "cohabit" with other shareholders after closing the transaction.

> **"Lawyers tend to state the terms of the law that stand in the way of a project, without simultaneously suggesting alternative ways to make the project possible. It is the latter skill that requires most hindsight and analysis, and thus time."**
>
> Anker Sorensen

Beyond reporting the material findings, it is customary to suggest how to address the DD findings in the SPA or in other documents to be amended or prepared during the transaction process (e.g the articles of incorporation, shareholders' agreement, undertakings to buy or sell shares or the post-closing disposal of a business unit, TSAs…). This is a particularly useful approach in multi-jurisdictional transactions and a regular expectation of lead counsels when dealing with the specific issues in relation to foreign subsidiaries in the transaction documents.

Failure by the seller(s) to provide complete Data Room information

This is an unusual scenario. But it has been experienced despite the customary commitment in the LOI to set up a fully-fledged legal, tax and financial data room. The reason can be found in the lack of organization or coordination within the seller's team or the target. Testing the acquirors' appetite for the transaction can also be a reason, particularly in a competitive open bid process. Avoiding disclosure of a situation that could have a downward impact on the purchase price is the worst-case explanation.
This is again where pragmatism comes into play when the buyer decides to continue the negotiation process despite missing information and unanswered queries from the seller. The obvious approach then is to state in the SPA that information requested by the buyer was not provided and to append a list of unprovided information to the SPA. That usually resolves the situation. If it does not, the next rational step is to exclude the seller(s)' representations and warranties in relation to the missing information from the guarantee cap. This is naturally a negotiation, where the most determined party gets its way.

If he were still alive, Henry Ford might have considered that the standardization of an M&A process from the LOI to closing and the expertise developed in the field by law firms over the years is a true step forward. But his opinion might certainly be tempered by the increasing number of regulatory and disclosure requirements and possible obstacles in a vast number of areas, such as competition, information of employees' representatives, foreign investment, financing and stock exchange requirements to mention just a few of them. ●

1. Is dual qualified, in Paris and Luxembourg and permanently based In Luxembourg
2. Henry Ford, founder of Ford in 1903 and of the first moving assembly line
3. French Civil Code, article 1583. The Luxembourg Civil code has an identical concept
4. These last provisions (confidentiality of the LOI and information provided to potential buyer, assumption of costs by each party, choice of law and choice of jurisdiction) should to the contrary be binding on the parties
5. With some minor exceptions, often in relation to the key provisions of leases (rent, indexes for rent increases, term, exit conditions…)

INSIGHT/OUT #31

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By **Maxime Budzin,**
Tax Counsel at Clifford Chance

And **Mélissa Kdyem,**
Corporate Senior Associate
at Clifford Chance

Management Incentives Plans: Focus on Key Tax and Corporate Aspects

Management incentive plans ("MIPs") are a confidential (and crucial) component of Private Equity deals, and one which LPEA community members should be familiar with, whether as participants or architects. Structuring a MIP can be a complex journey towards a tailor-made structure reflecting commercial terms agreed among sponsors and management ("Management").

In this article we will try to unveil certain key tax and corporate aspects of Luxembourg MIPs.

Key tax considerations

Taxation is a key aspect in the structuration of a MIP as the beneficiaries are generally keen to have their tax burden mitigated. That being said, putting in place an efficient tax structure can be rather tricky as multiple factors come into play: the nature of the expected return (e.g. capital gain, dividend, employment income) and the type of vehicle used (opaque vs. transparent), but also the tax residency of the beneficiaries, who are often domiciled in various jurisdictions.

While there is no one-size-fits-all approach, a "capital gain" qualification (as opposed, for instance, to employment income) is usually the preferred route to achieve an efficient tax treatment in the hands of the beneficiaries, even if many jurisdictions tend to requalify certain schemes into ordinary income taxable at higher rates or try to close the tax loophole of the carried interest treatment as capital gains. For instance, the UK's carried interest reform recently proposed by the Labour party could result in carry receipts being taxed at more than 45% as opposed to 28% under the current UK regime, while certain jurisdictions have already introduced special carried interest regimes with clear requirements to be met to avoid the requalification of the income/gains received as employment income (e.g. France).

Regarding non-Luxembourg resident managers, capital gains derived from the sale of a substantial shareholding (i.e. more than 10%) in a Luxembourg company are not taxable in Luxembourg if the period between the acquisition and the disposal exceeds six months (or if a double tax treaty grants the exclusive taxation right to the country of the non-resident manager). Dividends are, in principle, subject to 15% Luxembourg withholding tax, while there would be no withholding tax on arm's-length interest.

As for Luxembourg, there is currently no specific carried interest taxation regime in place. Typically, Luxembourg resident managers investing in the most common forms of Luxembourg carry vehicles (i.e. tax transparent vehicles with several investors) as limited partners would, depending on the nature of the underlying assets, be subject to the following tax treatment:

- While short-term capital gains, i.e. when the disposal takes place within six months of the acquisition, are subject to Luxembourg progressive income tax rates (0% to 45.78%), any capital gain realised on the disposal of underlying shares after a six-month period are not taxable, unless the beneficiary has a substantial participation of more than 10%, which would trigger a taxation as extraordinary income at half the average combined tax rate, i.e. a maximum rate of 22.89% (proper structuring would allow to avoid such tax leakage).
- Dividends and income from employment (including all benefits in cash and in kind received) are also subject to progressive income tax rates (0 to 45.78%). Under certain conditions, half of the dividend income received may be tax exempt and part of the employee income can be structured as a profit-sharing scheme (prime participative), 50% of which is exempt from tax. Interest income will generally be subject to a 20% tax in full discharge of personal income tax.

INSIGHTS

Like many jurisdictions, capital gains realised by Luxembourg resident managers would typically enjoy a better tax treatment than any other type of income, which is the reason why the granted share instruments are the most common incentives. However, specific attention will be needed to avoid a potential requalification as deemed employment income or director remuneration due to the nature of the legal arrangement and/or the quality of the beneficiaries (e.g. employee). It should also be kept in mind that the set-up of a MIP is not only tax-driven but requires a holistic approach to consider the commercial terms, and align the interests of the managers and other shareholders.

> **"While a good MIP helps to build a fruitful environment for collaboration between Management and business owners, its efficiency will be measured through employee stability as well as the return on investment on exit."**

Corporate and economic interaction

Retention of employees in line with the business strategy: vesting and leaver concepts

Contractual arrangements are an important part of the MIP as they lay out the agreed economic terms, which are designed to give employees "skin in the game" and thereby foster talent retention and motivation.

The vesting period delineates the time frame over which Management earns its full incentives and its timing is aligned with the business owners' strategy. Vesting can either be graded over years or cliff-style, in which all incentives vest after a set period.

Leaver provisions set out the terms of an employee's exit, impacting the financial terms of departure. The major metric is the price at which the leaver's instrument will be sold. Leavers are generally qualified as good (commonly relating to retirement or health disability) or bad (resignation/fraud or negligence). However, we have also seen the emergence of the intermediate leaver concept, introducing a nuance to a standard distinction of good/bad leavers. As such concepts are not regulated by law, the trigger event for the relevant leaver qualification is fully dependent on the commercial discussions.

Non-compete undertakings are another tool to prevent Management from leaving the group. Their terms shall also be carefully reviewed from a labour law perspective, especially (but not only) the location and the duration of such non-compete undertakings.

Acquisition costs of management instruments: with or without financial assistance to Management?

Business owners may provide financial assistance to Management through the granting of loans to partially finance the acquisition costs of their equity instruments. A thorough analysis must be made to determine the lending entity within the group, especially in light of potential tax consequences.

The terms and conditions of such loan must be carefully determined, with a specific focus on the arm's length interest rate as well as the terms of the reimbursement. The loan agreement may be silent with regards to the possibility of an early reimbursement, in which case the full reimbursement will be made at the time of the sponsors' exit. Alternatively, the loan agreement may provide for a mandatory annual reimbursement via the allocation of a certain percentage of the variable part of the remuneration package.

To secure Management's obligations under the loan, a Luxembourg law pledge agreement is an efficient and commonly used collateral, by which a pledge is taken over the instruments held by Management. From this perspective there is great contractual freedom to build a robust and safe framework for the provision of such financial assistance to Management. Out of the various substantial clauses of the pledge agreement, the situations triggering an event of default (thus a potential enforcement of the pledge) shall be carefully negotiated.

Conclusion

While this paper highlights certain key tax and corporate aspects of Luxembourg MIPs, it is not intended to constitute an exhaustive list. In addition to the alignment of economic interests of business owners and Management, MIPs are also the crystallisation point of usually long and complex negotiations reflecting the commercial position acceptable for all other stakeholders. While a good MIP helps to build a fruitful environment for collaboration between Management and business owners, its efficiency will be measured through employee stability as well as the return on investment on exit. ●

TECH FOCUS

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By **Maxime Bertomeu-Savalle,**
Counsel, Mainstream Corporate at Linklaters

Katrien Baetens,
Senior Managing Associate (Luxembourg), Litigation, Arbitration & Investigations at Linklaters

Alexia Kaztaridou,
Associate (Knowledge), Litigation, Arbitration & Investigations at Linklaters

and **Luis Gabriel Jiménez,**
Junior Associate, Investment Funds at Linklaters

EU AI ACT

On 1 August 2024, the eagerly anticipated EU Artificial Intelligence Act (the "AI Act") officially came into force.

The AI Act introduces a regulatory framework where stringency escalates with perceived risk levels. Under this framework, AI systems deemed to carry an "unacceptable risk" are strictly prohibited, while AI systems classified as "high-risk" are subject to substantial regulatory obligations. Additionally, the AI Act introduces specific regulations for general-purpose artificial intelligence ("GPAI") through a tiered approach, imposing additional obligations on GPAI models with "systemic risks". While most AI systems will fall under limited regulation, it is crucial to accurately identify which ones are subject to the strictest regulatory tiers. The implementation of the AI Act will be phased over a three-year period. Most provisions will apply from 2 August 2026. However, prohibitions of AI systems deemed to carry an "unacceptable risk" will already apply six months following the entry into force of the AI Act, while rules for GPAI models will apply twelve months after its entry into force. As to high-risk systems used as safety components of a product, they will apply from 2 August 2027.

Material scope

The material scope of the AI Act is based on the OECD's definition of an AI system, which can cover a wide range of artificial intelligence techniques and approaches (e.g., machine or deep learning and neural networks), leaving room for the European Commission to complement the AI Act through delegated or implementing acts to account for technological advancements and techniques. That being said, it remains practically difficult to determine with absolute certainty which systems fall within the AI Act's definition. There is likely to be a presumption that systems using underlying techniques commonly accepted as "AI", such as machine or deep learning, meet the definition of "AI systems".

Territorial scope

Territorially, the scope of the AI Act is exceptionally broad and, similarly to GDPR, is expected to impact organisations globally. Not only does it extend to organisations outside the EU that place AI products on the EU market or put them into service in the EU, but it also applies, with specific exceptions, to outputs delivered by AI products which are used by individuals within the EU. In particular, the AI Act applies to providers placing AI systems or GPAI models on the EU market globally, deployers of AI systems located within the EU, providers and deployers of AI systems globally where the output produced is used in the EU, importers and distributors of AI systems, product manufacturers placing on the market or putting into service an AI system together with their product and under their own name or trademark, authorised representatives of non-EU providers and any person within the EU affected by AI systems under the AI Act.

Risk-based approach

The AI Act follows a risk-based approach with obligations set forth depending on the level of risk the relevant AI system can generate (unacceptable, high or limited).

AI systems deemed to pose unacceptable risks of violating EU fundamental rights and values are prohibited. The list of prohibited AI systems is short, focusing on those used for manipulating or exploiting individuals' vulnerabilities to cause harm, intrusive and discriminatory purposes, social scoring, or remote biometric identification. However, these are unlikely to be relevant to most organisations.

AI systems whose intended purpose can adversely impact people's health, safety, or their fundamental rights, are classified as high-risk and subject to significant obligations. The AI Act lists specific areas and sectors, including the employment context and the financial sector.

AI systems that pose limited risks may be either subject to transparency obligations under the AI Act (e.g., users must be made aware that they are interacting with an AI system or when image, audio or video content is generated by an AI system, and employees must be informed that their employers deploy AI systems in the workplace) or not subject to any obligations beyond the currently applicable legislation (e.g., GDPR).

Impact of the AI Act on the financial sector

The AI Act was adopted at a time when, as a recent survey by the CSSF suggests, the use of AI in the Luxembourg financial sector was still at an early stage, but investments in technology, especially in machine learning, were soaring, promising a revolution in the industry. The AI Act aims to help embrace this challenge by promoting the development and use of safe and trustworthy AI.

It was also developed to apply to a wide array of businesses and does not specifically target the financial sector. The fact remains that it will affect the industry depending on the AI applications and their related categorisation as detailed above. For its part, the European Commission is preparing guidelines for the financial sector with respect to the implementation of the AI Act and high-risk classification in its specific market areas. It is expected that many AI systems used in the financial sector, whose services may be regarded as essential in the EU, will fall under the "high-risk" use case category, subject to stricter rules and standards, such as maintaining data quality, human oversight, transparency, risk assessment and management. In addition, it is likely that most of companies investing in AI systems in Luxembourg will be subject to the obligations of "deployers" of AI systems under the AI Act.

> **"It is likely that most of companies investing in AI systems in Luxembourg will be subject to the obligations of "deployers" of AI systems under the AI Act."**

A number of relevant AI systems have already been categorised as "high-risk" in Annex III to the AI Act. It includes systems assessing the creditworthiness of natural persons as well as risks and pricing in relation to life and health insurance. The same applies to workplace and self-employment management systems (e.g., for screening and candidate assessments, decision-making affecting work conditions, task assignment based on individual behaviours or personal traits, monitoring and assessing the performance and conduct of employees).

Finally, in addition to the AI Act, existing legislation (GDPR, ePrivacy Directive, DORA, NIS - and soon NIS 2) may apply to AI systems used in the financial sector.

Five key steps to prepare for the AI Act

In practice, chances are that many of the largest organisations have AI systems in place that are subject to the AI Act. Determining with certainty which systems are affected is critical, as compliance costs for high-risk systems, and the related sanctions, can be significant. Although the obligations under the AI Act do not have any immediate effect, it is crucial to begin preparations, which will vary by organisation. There are five key steps most structures will need to follow:

1. **Identify AI systems:** Catalogue any software and hardware products used within (or provided by) your organisation and determine whether any of them qualifies as an "AI system";
2. **Assess the territorial scope:** Verify whether products identified as AI systems fall under the broad territorial scope outlined in the AI Act;
3. **Determine the regulatory tier:** Ascertain, for AI systems potentially subject to the AI Act, which regulatory tier applies to each product;
4. **Understand your obligations:** Identify your organisational role (as provider, deployer, etc.) in relation to high-risk AI systems, bearing in mind that obligations will vary significantly depending on your role; and
5. **Develop your compliance action plan:** Develop and implement a plan to meet these obligations and integrate this plan into your broader digital regulation compliance framework, considering AI legislation from other relevant jurisdictions. ●

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By **David Alexandre,**
Partner at DLA Piper


Alejandro González Vega,
Senior Associate at DLA Piper


and **Camille Malécot,**
Associate at DLA Piper

Investing in EU Software/AI Start-ups: What you Should be on the Lookout for From an IP perspective

In this fourth industrial revolution, as we enter the age of artificial intelligence, software and AI-based technologies are at the centre of innovation. Digital technologies are relatively easily reproducible and scalable. They also present lower implementation, infrastructure and operational costs, compared to other capital-intensive sectors, such as pharmaceuticals, real state or extractive industries.

Although Private Equity and Venture Capital investments in the enterprise software sector have suffered a decline since 2021, investing in software start-ups can be extremely lucrative and yield substantial returns for those who acquire an equity interest, particularly at early stages. The promise of hitting a unicorn that would generate significant revenue continues to attract many investors who see in software a good opportunity to diversify their portfolios.

But investing in this type of companies, where the main asset is intangible in nature and technically complex, can be very challenging. Setting aside the issue of the valuation of software solutions, from a purely legal perspective there are several issues to be considered, particularly, when it comes to intellectual property.

Software is, after all, a creation of the human mind and, as such, is protectable by exclusive IP rights. Control over those rights is what makes the technology valuable. Therefore, when analysing whether or not to invest in a company and, particularly, when conducting due diligence, it is important to closely evaluate certain IP aspects to guarantee a successful operation.

How is software legally protected?

At international level, software is protected under copyright law, although some jurisdictions also allow its patentability. However, at EU-level, patents cannot be granted over software as such, leaving aside the possibility to patent so-called "computer-implemented inventions", which would be a topic for another day.

In the EU, copyright automatically protects a computer program from the moment it is expressed, i.e., from the moment the source code is written. This means that there is no need to proceed to fulfil any other formalities for the creator to assert their rights over the software in question.

Although this lack of registration makes copyright a more attractive means of protection from a cost perspective, it also raises issues related to proof of ownership, which may lead to uncertainty and even possible liability.

In order to mitigate this problem, the industry resorts to different means that leave trace of ownership of the initial software and its subsequent versions. Many start-ups decide to register their computer programs with public registries such as the Benelux Office for Intellectual Property, the French Agency for the Protection of Programmes or some private ones, such as Safe Creative. Others may opt to place the source code in escrow with a notary public or another escrow agent, whereas others may embed copyright notices or other markers in the source code to evidence their title.

It is important to keep in mind that copyright protection only extends to the source code and object code, as well as to the technical documentation pertaining to the software, but not the underlying ideas, principles or functionalities. To address these gaps, it is important for the investor to enquire on the strategy followed in order to safeguard non-copyrightable valuable assets, such as algorithms, which can be protected as trade secrets.

How does a start-up ensure that it holds all the rights to its software?

Software and AI development usually requires the involvement of several people, both employees of the company and external contractors and freelances. Therefore, although being provided with evidence of registration is a good indication that the copyright belongs to the target company, it has to be backed up with a complete chain of title, showing that all rights actually sit with the company. Otherwise, the investor might be left to see the possibilities to commercialize the software thwarted, not to mention the risks of exposure to litigation and potential damages.

When it comes to employees, the EU Software Directive determines that all economic rights over a computer program created by employees in the execution of their duties or following the instructions given by their employer, belong to the latter, unless otherwise provided by contract. This presumption does not necessarily extend in every jurisdiction to other protectable elements, including visual appearance, logos or even algorithms. Notably France and Luxembourg do not provide for automatic assignment of copyright to the employer outside the case of pure software.

Conversely, in most EU jurisdictions, software solutions or other works commissioned to a third party not bound by an employment contract are not automatically assigned to the entity hiring its services. In these cases, only a carefully drafted assignment agreement could allow the precious IP rights to flow from the contractor to the start-up.

Consequently, when evaluating the opportunity of the investment, it is paramount to review the contracting policy with employees and third-party contractors. These agreements should include broad IP assignment clauses affecting all types of IP rights, including trade secrets, and untethered from time or territorial constraints. Moreover, it would be relevant that the assignment clause also includes obligations on the employees to sign periodical confirmatory assignment documents to guarantee that new creations are also covered. The assignment clauses should be coupled with confidentiality and, in the case of employees, also non-compete obligations to prevent them from divulging sensitive information to competitors or to start their own ventures.

> **"In the EU, copyright automatically protects a computer program from the moment it is expressed, i.e., from the moment the source code is written."**

How does the structure of the software affect its commercial exploitability?

Another main issue to consider when analysing the marketability of the software solution of the target is the structure of the software. Many solutions created by a start-up may make use of already existing components or software libraries as building blocks for their proprietary computer program. The future commercialisation of the program highly depends on the licenses under which such components are being employed.

In some cases, the components will be proprietary software themselves, that is to say, software licensed under full copyright terms and generally subject to subscription payments. The main issue here is to analyse the validity of the licenses and any restrictions they may have in terms of duration, scope of use and territory, in order to determine whether there are any possible infringement risks or obstacles to the commercialisation of the target's software.

Many companies also integrate open-source software (OSS) components in their solutions. OSS can indeed offer significant cost savings and accelerate development timelines, but contrary to popular belief, it cannot be used just any old way: OSS comes with specific obligations that, if not properly managed, can create risks to the start-up's intellectual property and overall business strategy.

OSS is subject to the specific terms of its license, which notably determines the user's ability to use, modify, and distribute, including under what terms the software integrating such component is

> **"It is important to keep in mind that copyright protection only extends to the source code and object code, as well as to the technical documentation pertaining to the software, but not the underlying ideas, principles or functionalities."**

to be made available to the public. Some OSS components are licensed under the so-called "restrictive licenses", such as the General Public License (GPL), that allow freedom of use but have a viral effect compelling any software developed using such component to be licensed under the same terms, which could make it virtually impossible to commercially exploit the computer program.
Other OSS licenses, such as Apache 2.0 or MIT, are permissive and not only allow for commercial exploitation but allow the software based therein to be distributed under any other license terms, provided that the corresponding copyright notices are included.
Additionally, investors should assess the start-ups' awareness and handling of the potential security vulnerabilities associated with OSS. While open-source communities often provide regular updates and patches, start-ups need a robust process for monitoring, updating, and securing their software to protect against cyberthreats. Moreover, investors may want to assess whether the concerned start-ups have a clear strategy for addressing any potential legal and IP issues related to OSS, including the management of contributions to open-source projects, which could inadvertently expose proprietary innovations to public disclosure. A comprehensive approach to OSS management will not only mitigate risks but also demonstrate the start-ups' maturity and preparedness for scaling its operations.

How is the start-up making available its AI/software solution in the market?

Where the main activity of the start-ups is selling technology they developed, be it downloadable software or software-as-a-service (SaaS), it is crucial to understand the nature and structure of the licenses they grant to third parties, including the so-called End-User Licence Agreements (EULA), These licenses can significantly impact a start-up's revenue streams, control over its intellectual property, and market positioning.
Investors should carefully assess the scope of the licenses issued, including the rights granted (e.g., use, distribution, modification), their duration, and any territorial restrictions. Broad or perpetual licenses may limit a start-up's ability to capitalize on its IP in the future, particularly if the licensing terms are exclusive or involve key technologies. Furthermore, the inclusion of sublicensing rights can lead to complications in tracking and controlling how the licensed IP is used, potentially diluting its value and the start-up's market leverage. Licenses containing automatic regular updates of the software without any financial compensation if case of major updates may also bear a significant weight on the business of the company overtime.
The commercial implications of licensing agreements are also critical. Start-ups often use licensing as a strategic tool to enter new markets, form partnerships, or generate recurring revenue through royalties. However, poorly negotiated licensing agreements can result in unfavourable terms, such as under-pricing, legal ambiguities, or conditions that restrict the start-up's ability to innovate or expand internationally.
Investors should be on the look-out for licenses that are aligned with the start-up's long-term business strategy, providing adequate protection for its IP while allowing for scalability and revenue optimization.
Additionally, clear terms including robust enforcement mechanisms (e.g., in case of breach of contract or termination) as well as unequivocal dispute resolution provisions are essential to safeguard a company's interests and ensure that it remains in a strong position to enforce its rights should conflicts arise.

Main takeaways

Acquiring equity in AI/software startups could potentially have a high return on investment thanks to the rapid scalability and marketability of digital solutions. However, when evaluating your investment, consider whether:
a) the software has been registered in any public or private registry or put in escrow as a means to prove ownership;
b) any person, be it employees or external contractors, participating in the development process has assigned all their IP rights to the start-up as broadly as possible;
c) the components of the software not created in-house are correctly licensed and whether the conditions of such licenses allow for sound marketability, particularly, if OSS is involved; and
d) the licensing policy to the users of the software is aligned with a long-term business strategy, providing adequate protection for its IP while allowing for scalability and revenue optimization. ●


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By **Sabrina El Abbadi**, Head of Tikehau Capital Luxembourg

Morgane Amiot, Corporate M&A Managing Associate at Linklaters

and **Alexandre Tangton**, Supervising Associate at Simmons & Simmons

Navigating the Complexities of DORA: Insights from Industry Experts on Strengthening Financial Sector Resilience

In an age of rapidly evolving technology and increasing cyber threats, the European Union has introduced the Digital Operational Resilience Act (DORA) to safeguard the resilience of its financial sector. This regulation aims to create a unified and robust framework, ensuring that financial entities, technology providers, and third-party service providers can withstand and recover from cyber incidents and other risks tied to digital services. To better understand the impact of DORA and its implications for Luxembourg's financial sector, we turn to experts Astrid Wagner (partner at Arendt & Medernach), Camille Saettel (counsel at Simmons & Simmons), and Olivier Reisch (Partner at DLA Piper). Their insights provide crucial strategies for navigating DORA's regulatory landscape and enhancing digital resilience.

Reporting Major ICT Incidents: A Structured Approach

One of the critical elements of DORA is the structured reporting process for major ICT incidents. Once a financial entity identifies such an incident, it must notify its local regulator within 4 to 24 hours, detailing the incident's nature and impact. This initial step enables regulators to assess the situation and identify any similar incidents reported in Luxembourg or across the EU.

Within 72 hours, the entity must submit an updated report, including any new findings and the mitigation measures taken. A final report is required within one month, providing a thorough analysis of the incident, an impact assessment, lessons learned, and preventive measures for the future.

Financial entities may have also to notify other relevant authorities if the incident affects personal data, as defined under the GDPR, or triggers other reporting requirements under AML laws or insurance claims. The challenge lies in managing these multiple reporting obligations across various regulatory frameworks on a short notice.

Dual Roles Under DORA: Navigating Governance Challenges

DORA introduces the possibility for financial entities to operate under dual roles: as a regulated entity and as an ICT third-party service provider to other group entities. While this is permissible, it comes with significant governance challenges. Different governance frameworks are required for each role, and there is a need to carefully manage conflicts of interest. For example, documentation, especially customer-facing materials, must transparently address the dual role and include appropriate clauses to prevent conflicts.

Compliance becomes more complex when ICT third-party service providers must also adhere to outsourcing regulations. Often, what begins as a DORA compliance project evolves into a broader initiative as organizations realize the additional regulatory requirements for outsourcing. Therefore, diligence and comprehensive attention to all regulatory frameworks are crucial for successful compliance.

CSSF's Proactive Measures for DORA Compliance

The Commission de Surveillance du Secteur Financier (CSSF) has taken several proactive steps to help financial institutions comply with DORA. It regularly provides resources and updates through a dedicated section on its website, offering access to DORA regulations, guidelines, and Regulatory Technical Standards (RTS).

Beyond informational support, the CSSF has taken practical measures to align the industry with DORA's requirements. For instance, it has updated its circular on ICT incident reporting and collaborated with European supervisory authorities to conduct dry runs of the reporting process. Additionally, the CSSF is adapting a high-value cyberattack simulation framework to meet DORA's threat penetration testing standards. While these initiatives are in progress, more updates are expected as additional regulatory circulars are revised.

Managing Subcontracting Under DORA

Subcontracting is another area regulated by DORA, particularly when it involves third-party service providers who engage subcontractors. Financial entities must clearly define in their contracts whether subcontracting is allowed and the specific conditions for such arrangements.

Moreover, financial entities are responsible for ensuring they have complete oversight of the subcontracting chain, especially when critical or important functions are involved. The final RTS on subcontracting, published in July 2024, clarifies that monitoring requirements apply to the entire ICT subcontracting chain, focusing on ICT agreements that support critical or important functions.

As of 2025, financial entities will also be required to maintain registers documenting their use of ICT third-party service providers. This information will enable regulators to track third-party dependencies and identify systemic risks in the financial sector.

Completing Registers of Information: A Complex Task

DORA imposes significant contractual obligations on financial entities, particularly regarding the use of third-party service providers. Financial entities must establish a clear strategy, conduct due diligence, and ensure that contracts include essential provisions such as exit rights, subcontractor rights, and audit rights. Ensuring compliance in both existing and new contracts is vital.

The required register of information is a key component of DORA compliance. It must document all agreements with ICT third-party service providers, focusing on critical business functions supported by ICT agreements. Although DORA offers a template for this register, completing it may require external counsel due to its complexity.

> **"The involvement of management bodies, collaboration with ICT service providers, and strategic resource allocation are key to successfully navigating DORA."**

Harmonizing ICT Arrangements for Compliance

Given DORA's far-reaching contractual requirements, financial entities must conduct a gap analysis of their current agreements and promptly initiate negotiations with third-party service providers. The objective is to harmonize ICT arrangements across both new and existing contracts to ensure seamless compliance.

Board Member Qualification and Accountability

Under DORA, the qualifications requirements for the members of the management body of financial entities as regards ICT risks are elevated and their responsibilities are expressly set out in the regulation. All board members must continuously update their knowledge and skills to assess ICT risks and understand their impact on operations. It is not enough to rely on a few specialists on the board; every member must possess a solid understanding of ICT risks. If board members lack this knowledge upon appointment, it is imperative to provide regular, tailored training sessions. Annual training is generally considered sufficient, given the extensive compliance requirements in the financial sector.

DORA also introduces personal liability for board members and those responsible for ICT risk management. In the event of a breach or failure, management bodies could face significant repercussions. Therefore, it is crucial for management to allocate sufficient resources, including budgets and time, to enforce ICT risk management protocols.

Leveraging Group-Level Compliance Efforts

One common question concerns whether Luxembourg-based entities can leverage group-level compliance efforts for DORA. The answer is yes, but with a caveat: the management body of the Luxembourg entity must critically review, approve, and locally implement the group-level compliance measures. This process ensures that the local entity fully aligns with DORA's requirements.

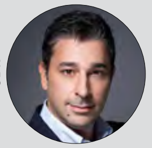
Challenges in Implementing DORA: Expert Perspectives

The January 17th 2025 deadline for DORA compliance poses a significant challenge for financial entities in Luxembourg. The volume of work required to meet the deadline is substantial, and organizations must adopt a strategic approach to ensure they are ready.

Resource allocation is another critical challenge. Financial entities must carefully manage resources to ensure they can meet DORA's requirements while maintaining operational continuity. Collaboration with ICT service providers is essential, and both parties must align their efforts to ensure compliance measures are in place before the deadline.

Preparing for DORA's Impact

With the impending deadline and the complexity of DORA's requirements, financial entities must act swiftly to ensure compliance. The involvement of management bodies, collaboration with ICT service providers, and strategic resource allocation are key to successfully navigating the regulation. While challenges remain, the proactive efforts of regulators like the CSSF and insights from industry experts offer valuable guidance for the financial sector as it prepares for the new era of digital operational resilience. ●



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By **Arnaud Brive,**
Managing Partner
at Forstone

and **Boris Lemiegre,**
Partner - Head of advisory
and tax services at Forstone

Adapting Central Administration Strategies in the Consolidating Private Equity Landscape

There is a consensus in the market that in the next decade, the Private Equity (PE) industry will consolidate from thousands of players to a few hundred major PE houses, with many others evolving into specialized niche PE advisory firms. The central administration market seems to be leaning in the same direction. At the same time, the existence of a number of dynamic smaller and niche players and the emergence of new ones, usually tech driven, seems to indicate that there is more than one view or strategy to succeed. As the PE landscape consolidates through mergers and acquisitions, PE firms face strategic decisions about how to manage their central administration services. This shift presents a challenge for PE firms of all sizes when choosing between internal expansion or external partnerships for central administration or a hybrid model. Corollary, it represents a challenge for central administrators to adapt their services in depth and width to accompany their client in their transition and find the utmost operating model. This questions whether the fully internalised 'one-stop-shop' is the sole valid operating model to future proof central administrators in their relationship with the top PE firms and if there are still other viable options such as a 'one-stop-shop' based on a worldwide network of independent specialised local firms or niche strategies.

Tailoring central administration to alternative asset classes: Can One Size Fit All?

Private Equity, real estate, venture capital, and debt funds each have unique requirements. A one-stop-shop approach to central administration may not always fit every asset class. Understanding the distinct needs of these segments is key to determining whether a comprehensive solution can truly address their requirements or if a specialised approach is more effective.

As PE firms consolidate, cost structures for central administration services are shifting. Larger players are leveraging economies of scale to lower costs, but this often comes at the expense of smaller, niche service providers. Global PE houses tend to negotiate more aggressively for reduced fees, pressuring central administrators to adjust their pricing models.

For large PE firms, efficiency and cost reduction are priorities, while smaller funds may prioritize specialised services, even if they come at a premium as this allows them to focus on their core expertise and value creation. As fee pressure increases, more firms may adopt hybrid models that balance cost-effective solutions with outsourced niche services, this is even more true in the context of a consolidating market, which hybrid models allow firms to phase in internal capabilities due to post-merger internal reorganisation while using external providers during the transition, ensuring operational continuity.

Clients choosing a one-stop-shop are often seeking a globally integrated solution that can handle everything from fund accounting, compliance, and reporting to investor relations. The hybrid model can sometimes create confusion if clients have to deal with different teams or providers for different parts of their needs, undermining the promise of a complete solution under one roof. In the same way, central administrators that offer a one-stop-shop solution typically strive for a high degree of integration across their services, ensuring seamless communication, consistency in client experience and standards processes.

Global One-Stop-Shops vs. Boutique firms: Pricing, flexibility, and service offerings

The One-Stop-Shop dilemma: Comprehensive vs. specialised services

The pursuit of comprehensive, integrated central administration services poses a challenge. While large firms benefit from integrated systems, specialised funds such as venture capital or real estate may need more tailored services, like customized reporting or complex asset management tools.

The consolidation of service providers also raises concerns about reduced competition. A few dominant players could lead to a one-size-fits-all model that stifles innovation and reduce flexibility leading to a one-size-fits-all approach that may not be ideal for every segment. Niche providers, offering tailored solutions, are critical in maintaining service diversity, but their viability may be threatened overtime in this concentrated market as the 'one-stop-shop' acquire more talents.

"For large PE firms, efficiency and cost reduction are priorities, while smaller funds may prioritize specialised services, even if they come at a premium as this allows them to focus on their core expertise and value creation."

Niche market positioning: Tailored services and specialisation

Niche firms bring deep expertise in specific areas, often commanding premium pricing due to their tailored services. They are highly flexible and agile, enabling them to quickly adapt to meet clients' unique needs. Rather than competing on price, niche providers offer customization and bespoke solutions, justifying higher fees while providing specialized support that larger firms may not match.

PE houses increasingly seek service providers to act as an extension of their teams, aiming for seamless collaboration and specialized support. Larger providers may struggle to deliver this level of personalized service, as their standardized processes do not always align with PE houses' needs. While technology can address some challenges, people remain the cornerstone of delivering exceptional services.

The situation of small generalist central administrators

Small generalist central administrators position themselves as cost-effective alternatives to larger firms. With lower overhead, they offer competitive pricing, appealing to smaller or mid-sized funds. Although they may lack the global reach of larger firms, they are more adaptable, providing personalized services that meet unique client needs. Generalist firms typically focus on smaller funds with simpler structures, where bundled services are unnecessary. However, they face increasing competition from larger firms offering competitive bundled services. As clients grow, generalists must decide whether to scale or continue focusing on smaller, less complex funds. Additionally, smaller local shops may partner with foreign competitors to create deemed networks, allowing them to compete partially with larger one-stop shops while retaining the advantages of their smaller size.

Navigating global One-Stop-Shop agreements in a rapidly evolving regulatory landscape

PE houses that enter global one-stop-shop agreements for central administration services face challenges in a constantly evolving regulatory environment. While these agreements aim to centralize tasks like accounting, compliance, and reporting, they can hinder agility. As regulations shift and tighten, particularly across jurisdictions, there's a growing risk that tasks may need to be repatriated in-house to ensure compliance, disrupting the efficiency and cost savings promised by one-stop-shop solutions.

PE houses may also struggle to adapt quickly to bespoke needs or legal changes, especially with agreements limiting flexibility. Their internal processes must align with evolving regulations and technological advancements, creating conflicts with these global agreements.

This challenge is compounded by growing demands for more sophisticated data protection, ESG reporting, and transparent investor relations, which require fast and flexible tech solutions. For PE houses, the pressure to stay compliant while maintaining efficiency underscores the risks of relying too heavily on a one-size-fits-all approach. Balancing centralized services with in-house agility is becoming critical for long-term success.

In conclusion, not only is the landscape of central administration companies changing rapidly influenced by PE houses as clients but certainly as investors as well with a clear market trend to build large 'one stop shops'.

Nevertheless, there is definitely room for everyone to grow strong and sustainable business depending on its own vision and strategy. Niche and small generalist central administrators can thrive in this consolidating market by focusing on differentiation whether through specialisation or cost-efficiency. Their long-term competitiveness will depend on how well they develop networks and adapt to their clients' evolving needs and to the ever complexifying regulatory environment in a landscape increasingly dominated by larger players.

As of today, both bigger and smaller/niche players have interest to collaborate on to meet clients' needs of that may not be structurally (conflict of interest) or strategically (geographies, non-scalable activities…) addressed by larger players.

New market entrants, often leveraging advanced technologies or deep operational expertise, are able to differentiate themselves by offering innovative products that attract clients. Agility and technology will remain the key differentiator for the upcoming years.

Once the market consolidation phase stabilises, it will be compelling to observe how the services evolve, as PE houses will be more settled, they may experience shifts in their requirements and expectations of their central administrators. ●


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By **Pascal Hernalsteen,**
Strategic consultant,
GoJuSan

Selecting the Right Outsourcing Partner for Investment Managers

If you were to ask me to choose the next book you should read, my recommendation would have a lot more to do with my preferences than yours. You'll end up knowing much more about me than about the book.

If you dislike the book of my choosing, then, at worst, you incur either the inconvenience of returning it or the book's EUR 7.9 price tag. Now, imagine if the cost were 300,000€ per annum, indexed to inflation over the next decade, and an additional 50,000€ to switch to another book. This leads us to the crucial question: Why do we outsource?

As Investment Managers (IMs), our ultimate goal in outsourcing should be to gain peace of mind and focus on our core activities, such as fundraising, marketing and investment management.

When comparing service providers, evaluating fees is relatively straightforward, even though transparency can sometimes be an issue. Assessing quality is far more challenging. The cheapest option is rarely the best, but the most expensive is not necessarily better either. Moreover, when it comes to quality, one size does not fit all. Quality should be defined as the best fit for our specific needs.

Defining Expectations

Disappointment arises from the gap between our expectations and reality. Therefore, it is essential to clearly define our expectations in terms of services, technology, human resources and operational models. Key considerations include:

- Should we opt for a "one-stop shop" or select the best in class for each function?
- Do we require sophisticated banking services (lending, financing, etc.)?
- What is the typical timeline for investor onboarding?
- What is the average employee retention rate?
- How much is invested in training per employee?
- Are long-term incentive plans offered?
- Which processes are offshored, outsourced or subcontracted and how are they coordinated?
- How is cybersecurity handled?
- How are corporate culture and values defined?
- What are their strategic investments in operational efficiency?

INSIGHTS

> **"Disappointment arises from the gap between our expectations and reality. Therefore, it is essential to clearly define our expectations in terms of services, technology, human resources and operational models."**
>
> Pascal Hernalsteen

Potential Pitfalls When Outsourcing

When managers are dissatisfied with their providers, it often stems from issues related to accuracy and timeliness. Receiving reports late is frustrating; receiving them late and incorrect is unacceptable.

Some managers struggle to reach the person in charge, so their grievances about insufficient responsiveness or a lack of complaint resolution ultimately fall on deaf ears.

Minor negligence can lead to costly consequences, such as:

- Missing the cut-off time for a payment related to a deal
- Forgetting to send an invitation to a board member for an investment committee
- Sending an urgent request to a US-based deal team on July 4th

Such events can tarnish the management company's reputation and impact LPs.

According to Preqin, 23% of IMs changed their Fund Administrator (FA) in 2019 due to the following reasons:

- 56% were dissatisfied with the quality of service
- 33% were concerned about cost
- 11% were influenced by investors' concerns about the service provider

The Cost of Getting It Wrong

"If you don't have time to do it right, when will you have time to do it over?"

Selecting the right business partners is time-consuming and costly. The due diligence process involves several steps, including:

1. Establishing the Due Diligence Questionnaire (DDQ)
2. Compiling a long list of potential providers
3. Performing a Request for Information (RFI)
4. Shortlisting the contenders
5. Performing and analyzing the Request for Proposal (RFP)
6. Comparing fee proposals
7. Negotiating fees

Failing to choose the right business partner will cost you much more and generate frustration. IMs will bear the cost of migration and pay both providers during the parallel run. And, as mentioned earlier, the hefty price tag of choosing the wrong provider can also include additional lost funds and reputational damage.

Fair Price, Total Cost, and Value for Money

While everyone wants the best price, it is also crucial to ensure that the price paid is fair and sufficient for the service provider to deliver sustainable quality. Additionally, it is key to look at the total cost. Consider two proposals for a EUR 300 million fund.

The first one (P1) costs EUR 300,000, and the second one (P2) costs EUR 330,000. P2 charges 10% more than P1, resulting in an additional cost of EUR 300,000 over 10 years. This is just 1 basis point (0.01%) on a EUR 300 million fund. For a fund's gross performance of 10%, the net performance will be 9.89% instead of 9.90%.

In addition to the fees paid to the service provider, some IMs need to hire accountants to verify, validate, and correct reports from their FA.

Different Shades of Outsourcing

Unlike the European market, the American market remains predominantly "insourced." These IMs administer their funds on their own platforms. Some find the outsourcing model too radical and opt for the "co-sourcing" model. In this model, one or several FAs work remotely on the IM's systems. This approach enables IMs to maintain full control over their data and monitor their global risk exposure, regardless of who is administering them. It also provides more control over quality and reduces switching and migration costs.

> "Failing to choose the right business partner will cost you much more and generate frustration."
> Pascal Hernalsteen

This model requires FAs to train their teams on multiple IT platforms. Significantly reduced migration costs incentivizes service providers to deliver excellence. Some American IMs push this model when working with European service providers too. Yet, it is not easily transposable in Europe due to regulatory constraints, such as data protection.

Conclusion

Selecting the best, or at least the most fitting FA takes time and incurs costs. Choosing a suboptimal service provider will cost much more. Poor quality can impact the fund, its LPs, and result in audit overruns. Migrating to a new FA also demands time, energy, and money. Therefore, selecting the right service provider should be seen as an investment, with peace of mind as the reward.

Additionally, appointing a local independent Non-Executive Director (NED) to monitor the service provider may also be beneficial. In the end, the goal is to ensure that the service provider meets our needs and maintains high standards, ultimately contributing to the success and reputation of the investment management company. ●

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By **Stephanie Atnas,**
Associate Director at
Aztec Group

and **Claude Crauser,**
Director, Member of Management
Luxembourg at United

The Role of the Fund Administrator for Alternative Investment Funds in Luxembourg

The Fund Administrator is a key partner in the daily operations of an investment fund. Yet, especially for first time fund initiators, its role remains unclear. Sometimes, the Fund Administrator, although pivotal to the fund-servicing ecosystem, is seen mainly as a cost factor; a regulatory must-have. However, there is much more intrinsic added value that a Fund Administrator can bring to a fund project and to the fund life-cycle.

Sure, there are the obvious tasks such as accounting, NAV calculation, regulatory and investor reporting, register keeping and compliance procedures processing. But in addition to these, comes a realm of value added services, less visible upfront, that allow the smooth operations of investment funds. The Fund Administrator plays a central role in the efficient operations of the fund and bridges the requirements of the other servicing partners.

Processes are industrialised for the traditional (open-ended) funds following liquid asset strategies along the entire value chain: subscriptions and redemption orders are received via clearing systems, investment and divestment decisions are executed via exchanges and the majority of valuations are being received via data feeds. The key role of the Fund Administrator is system maintenance, processing of plausibility checks and exception handling.

The servicing of funds following illiquid asset strategies shows a completely different picture – all service lines are impacted. On the asset side, the multitude of instruments used to realise the investments require a case-by-case analysis to fully understand and grasp all the terms and conditions of the transaction. Here the Fund Administrator can show its competence and experience, allowing swift handling in case of new instruments or trends. Furthermore, especially smaller fund initiators can leverage the expertise of the Fund Administrator. The latter can guide them, based on past experience, towards attention points and clarification matters.

The same is true for investor relations. Due to the closed-ended character of a majority of alternative investment funds and the frequent disintermediation of the subscription process, the fund / the fund initiator typically has a close relationship with its investors. The backside of this medal is that often investor requirements and issues become those of the fund and its initiator. Although the fund documentation foresees a number of cases and situations with clear guidelines, it is frequent to be exposed to investor requests and concerns that require attention and dedication to be solved. This is more so, if the investor has any sort of relation with the fund initiator. Here again, the experience of the Fund Administrator is an asset as he can leverage on past experience and propose adapted but sometimes creative solutions.

More than a service provider, the Fund Administrator is a partner to the investment fund. Especially for alternative investment funds, it is frequent to see cooperations lasting for years if not decades. With time, a solid degree of confidence develops and, in a best case, the fund initiator and the Fund Administrator will discuss complexities at eye-level; the Fund Administrator being in a position to evaluate impacts based on its generalist knowledge and being able to point out where additional specific expertise is needed.

> **"The Fund Administrator plays a central role in the efficient operations of the fund and bridges the requirements of the other servicing partners."**

For the majority of funds being established by extrinsic initiators, the Fund Administrator represents the local eyes and ears for legal and regulatory developments but also market trends. This is reinforced by the fact that recurrently, the Fund Administrator not only services the alternative fund itself but embraces the overall structure, often consisting of multiple layers of entities with – sometimes – divergent interests: general partner, carry vehicle, financing companies and dedicated asset holding companies. The interaction of the Fund Administrator with all these entities allows it to span a bow across the needs, specificities and requirements of all these vehicles and to identify / highlight impacts that decisions may have at different levels.

Investor confidence is also a topic. The Fund Administrator plays an important role in the protective regulatory framework implemented by the Commission de Surveillance du Secteur Financier in Luxembourg. Without trespassing on the prerogatives, roles and responsibilities of the alternative investment fund manager and / or the depositary bank (if any), the Fund Administrator is normally involved in the transactions realised by the fund on a daily basis. The Fund Administrator may detect any risks or suspicious activities early. This responsibility has been reinforced by CSSF circular 22/811 obliging the fund administrator inter alia to (i) 'perform the compliance monitoring, or part thereof, of the investment policy and investment restrictions in accordance with the applicable laws and regulations, along with the UCI rules as set out in the offering documents' and (ii) 'review […] unusual or significant movements of all or some of the NAV components'.

Given technological advancements, Fund Administrators have to review their servicing model and determine opportunities for scaling and automation. Some, such as automated booking of invoices are low hanging fruits – others require much more analysis and fine tuning. Access to (near) real-time data will be a differentiator for initiators and investors – enhanced integration with reporting platforms will round-off the offering. Automations will also allow Fund Administrators to focus even more on services with a higher added value, leveraging their experience and expertise.

As we have seen, the Fund Administrator is much more than a number aggregator. The choice of the right Fund Administrator will lead to a strong corporate governance structure and will, throughout the lifecycle of the fund ensure it remains in good standing. With a good Fund Administrator, solutions for atypical investor requests will be found and complexities in relation to investments and divestments will be handled in a professional and pro-active manner. Last but not least, the Fund Administrator will forewarn about issues such as regulatory, legal and tax changes that may impact a fund, which will facilitate the involvement of appropriate experts in a timely manner. ●

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By **Lindie Fourie,**
Location Head at Equiom

And **Nathalie Stift,**
Executive Director - Head of Alternative Fund Services at J.P. Morgan

The Evolution of Undertakings for Collective Investment

Exploring the Implications of Circular 22/811 on the Future of UCI Administrator Roles in Luxembourg

A roundtable discussion hosted by the Luxembourg Private Equity and Venture Capital Association HR-Club and Fund Administration Technical Committee on February 6th, 2024.

UCI fund administration in Luxembourg is a multifaceted landscape, with service providers ranging from global banks and asset managers to specialized boutique firms: this diversity has historically posed challenges in harmonizing regulatory expectations. The industry is changing! The larger service providers might have been outsourcing for the last 10-15 years, while the smaller-sized firms due to the cost of resources and difficulties faced in accessing the talent pool have started to consider it in the last 5 years, as a way to, achieve the scale and efficiency necessary to remain competitive.

Who attended the Roundtable?

A total of 26 participants joined the roundtable, with 17 providing one-stop servicing solutions including for Alternative Investment Fund Managers ("AIFM"), Depositary and Fund Administration, only 9 were stand-alone Fund administrators.

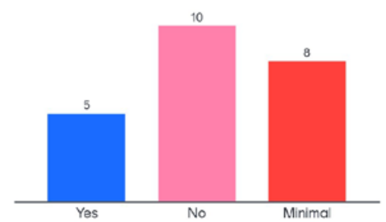
31% of them are new to the Luxembourg market providing services only in the last 2 to 3 years. The participants included Big4 firms, who have applied for fund administration licenses and launched their administration businesses.

7 Participants serviced Undertakings for Collective Investment in Transferable Securities ("UCITS") or Part II funds and the rest were focused on the unregulated funds the latter has grown significantly in the past years as an Alternative investment tool. Per Elvinger Hoss publication CSSF Circular 22/811 on UCI Administrators, non-regulated UCIs, RAIFs and other AIFs not regulated in principal remain outside the scope of the circular, if the IFMs act as for themselves, however in case of the appointment of an external UCI administrator would apply the circular to all entities. Raising the questions if more GP/IFM's are opting to in-house the administration more in the future, to be seen, the number of GP moving to Luxembourg is increasing and the outcome of some elections in the UK and elsewhere might drive this growth further. This will change the local environments, where the service offering in Luxembourg may change in this new landscape. Circular 22/811 established uniform practices and requirements for Fund Administration providers in Luxembourg, encompassing both regulated and unregulated funds, combining retail and products for professional investors into the same bucket and aligning outsourcing models.

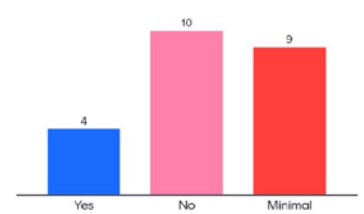
The high cost of labour and talent shortages in Luxembourg have led to an increase in outsourced activities: 15 participants utilize outsourcing arrangements, either within their own group or through B2B partnerships.

The roundtable discussed resourcing in Luxembourg to support this growing sector.

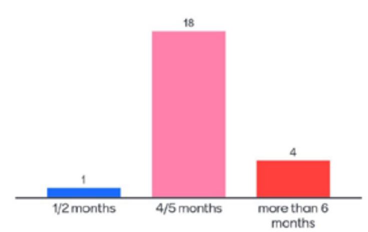
Do you find enough talent locally for your roles in Fund Accounting?



Do you find enough talent for roles in Transfer Agency?



Central Administration for - Average time to hire



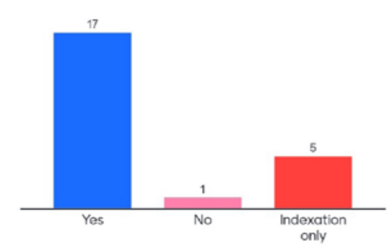
Hiring Challenges in Luxembourg's Employment Market

An analysis of hiring trends in Luxembourg reveals a prolonged hiring process, with an average lead time of over four months for available positions. This extended timeframe poses a critical challenge in an environment where employees typically provide only one month's notice before leaving their current roles.

The demand for experienced candidates has contributed to the hiring delay. Junior-level positions have seen a decline in availability, potentially attributed to the automation of tasks and outsourcing to more cost-effective regions with ample talent pools.

Furthermore, salary expectations have risen significantly in the fund administration sector. This surge is primarily driven by the influx of new market entrants and intense competition for seasoned professionals, rather than solely due to cost-of-living adjustments. The question remains if Luxembourg is attractive as a location, due to the regulatory security and resourcing of talent is resolved.

Do you find that the salary costs for these roles have increased significantly in the last year or two



Key Insights

1. Enhanced Oversight with Outsourcing: Increased outsourcing necessitates heightened oversight, leading to modifications in job responsibilities within Luxembourg's financial sector.
2. Balancing Local and Remote Work: A delicate balance must be struck between work performed domestically and abroad. The Commission de Surveillance du Secteur Financier ("CSSF") may consider implementing a minimum percentage of work to be performed locally, akin to the Irish regulatory model.

> **"The high cost of labour and talent shortages in Luxembourg have led to an increase in outsourced activities."**

3. Knowledge Gap for Junior Employees: The influx of outsourced work has created a knowledge gap among junior employees due to a lack of education in fund administration in Luxembourg. The absence of dedicated courses at higher education institutions, despite Luxembourg being the second-largest global fund administration hub, hinders university graduates from adequately preparing for oversight, net asset value ("NAV") calculation, and anti-money laundering ("AML") roles. This necessitates the recruitment of talent from outsourced jurisdictions rather than developing local expertise.

Addressing the Education Gap

The industry must actively engage in educating the next generation of central administration professionals. The UCI administrators present at this roundtable discussion pledged to collaborate with local educational institutions to develop programs that align with the available job profiles in Luxembourg. Individuals interested in contributing to this initiative are encouraged to contact Lindie Fourie or Nathalie Stift to participate in these discussions. ●

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By **Sophia Karlsson,**
Human Experience Consultant
at Zortify

Embracing AI for People Due Diligence

In the high-stakes world of Venture Capital and Private Equity, due diligence is a crucial process, traditionally focused on financials, market opportunities, and competitive positioning. However, an often overlooked component is the people behind these numbers. People due diligence, i.e. assessing the behaviors, leadership styles, and potential of key executives, should be a fundamental part of both initial and ongoing evaluations. Neglecting this qualitative aspect can lead to significant risks, such as misaligned leadership, toxic workplace environments, failure to leverage key strengths, and ultimately, the jeopardization of the entire investment. An unbiased evaluation of executives' behaviors and team dynamics is vital in making informed, strategic investment decisions.

The Risks of Neglecting People Due Diligence

The consequences of inadequate People Due Diligence (PDD) can be profoundly damaging. Consider the scenario where an executive team includes toxic leaders—individuals exhibiting traits such as narcissism, manipulation, a reckless desire for risk, or a lack of empathy. These tendencies gradually erode a company's culture from within. Notably, companies led by such toxic executives are more likely to make poor strategic decisions, engage in unethical practices, and disregard long-term organizational health, all of which can trigger financial decline or even bankruptcy (A. Cohen, 2018).

Furthermore, it's not uncommon for such counterproductive behaviors to manifest in top positions, as individuals with these tendencies often rise quickly through the ranks. Research by Grijalva et al. (2013) highlights that narcissism significantly increases the chances of an individual emerging as a leader, especially in contexts where people have not known each other for long, such as in new teams or during brief interviews. This is because self-centeredness and lack of empathy, tend to take time to reveal themselves. As a result, individuals with these tendencies often benefit from their boldness and charm when they are new to a group.

Once toxic leaders take charge, they can create hostile work environments that lead to high employee turnover, diminished morale, and, ultimately, a severe drop in employee engagement. (Need a reminder? Luxembourg's engagement rate is a mere 8%.) These aren't just immediate concerns—they're significant triggers for plummeting productivity levels across the board. To grasp the scale of this issue, look to Germany, where disengagement was estimated to cost the economy a staggering 132.6 to 167.2 billion euros in lost productivity in 2023 alone (Engagement Index Germany 2023, Gallup).

Given these stakes, investors must be extremely cautious in their assessments, avoiding processes like unstructured interviews that might favor dark personalities and allow them to mask their traits (Brunell et al., 2008; Paulhus, 1998). This is where AI comes into play. AI can cut through biases and reveal deeper behavioral insights, uncovering nuances that human evaluators might miss and offering a clearer, more objective view of the leaders' potential impact on a company. Michael Lange, Operating Partner at One Equity Partners LLC, states, "AI enables us to analyze the top management of our portfolio companies more comprehensively. It helps us to identify team dynamics, potential risks, and even blind spots that might not be evident through traditional evaluations. This deeper insight allows us to manage and optimize our investments more effectively, ensuring that leadership teams are aligned with our strategic goals."

The Gains from Human Behavioral Insights

It's not just the darker aspects of personality that pose a threat to business success—overlooking the alignment between a leadership team's capabilities and the company's growth stage can be equally detrimental. A team that excels in the fast-paced, innovative environment of a startup might flounder when tasked with scaling operations or managing the complexities of a larger enterprise. Without a deep understanding of the psychological resources and individual skills of its leaders, investors may find themselves backing a company that, despite strong financials, lacks the essential drive and adaptability needed for sustained growth.

On the flip side, incorporating PDD into the investment process can unlock substantial benefits. A thorough assessment can uncover the entrepreneurial capital within a company—the drive, innovation, and leadership potential of its key individuals. Understanding these qualities allows investors to identify teams that not only have the technical skills but also the vision and adaptability to navigate challenges and capitalize on opportunities. Entrepreneurial capital is often a reservoir of untapped potential, and when properly harnessed, it can be the differentiator that pushes a company from mediocrity to market leadership.

However, PDD should not be seen as a tool for making definitive judgments or decisions but rather as a complement to the broader spectrum of information gathered during the due diligence process. It provides investors with insights that go beyond financial statements and past performance, adding an additional layer of understanding that helps them ask the right questions and make more informed decisions.

> **"Investors must be extremely cautious in their assessments, avoiding processes like unstructured interviews that might favor dark personalities and allow them to mask their traits."**
>
> Sophia Karlsson

Time to Leverage Available Technology

This is where AI, particularly through Natural Language Processing, can transform PDD. Unlike traditional self-assessments or extensive interviews, which are often influenced by social desirability bias, NLP can analyze how individuals express themselves in text, providing a more nuanced and less biased understanding of their behaviors and leadership potential. AI has the ability to process vast amounts of data, from written communications to decision-making patterns, revealing insights that might be overlooked by human evaluators. By using AI, we can move beyond surface-level assessments and uncover more about a leader's potential impact on a company.

As this technology advances, it's critical that we leverage it in a controlled, tested, and verified manner to ensure reliable and ethical application. This is particularly important given the EU AI Act and GDPR. While alignment with both is achievable, it's essential to be aware of the complexity involved. Careful navigation of these regulations is necessary to ensure that AI is used responsibly, balancing innovation with the highest standards of data privacy and ethical responsibility.

Cost-effectiveness is another compelling argument for AI. Traditional human-led assessments, are often costly and time-consuming. AI tools, by contrast, are not only more affordable but also scalable. This scalability allows investors to apply PDD more broadly, increasing the likelihood of making successful investments. Prof. Dr. Dominik Matyka, Founder at Cavalry Ventures, emphasizes, "For early-stage investors like us, AI democratizes PDD by making it affordable and accessible. It allows us to gain deeper insights into founder teams, helping us to better support their development and make complementary hires that align with their growth trajectory."

Conclusion

In conclusion, the time has come for VC and PE investors to fully embrace AI in their due diligence processes. By integrating AI-driven PDD into both initial evaluations and ongoing monitoring, investors can make more informed decisions, mitigate risks, and ultimately drive better outcomes, at a lower cost. The future of due diligence lies in leveraging technology to gain deeper, more accurate insights into the people who lead the companies in which we invest. This approach not only enhances the quality of our decisions but also aligns with the dynamic, data-driven nature of modern investment practices. ●

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By Riccardo del Tufo, iNED

Allen Foley, iNED

Anabela Lourenço, iNED

François Pfister, iNED

and Jane Wilkinson, iNED

Short Stories from the Boardroom – Good Governance in Action (Part I)

Introduction

In Private Equity and alternative investing, governance is a crucial component of integrity and efficiency. It includes all of the systems, procedures, and policies that direct how fund structures (including the GP, the fund(s), the SPVs) operate and make decisions. While ineffective governance can cause serious setbacks or even scandals, effective governance can contribute to stability and sustainable growth This article is the first in a series, penned by the LPEA iNED club members, inspired by real stories from PE house boardrooms. Our stories are split between examples of "failing," "sub-optimal," and "optimal" governance. Based on surveys and conversations conducted by the LPEA iNED Club, the analysis focusses on the functions performed by independent non-executive directors (iNEDs), the difficulties they encounter, and the changes that must be made to increase their efficacy and usefulness. The instances discussed in this article are far from being exhaustive but aim to increase awareness to enhance governance.

Failing Governance due to failure to manage conflicts of interest

Scenario: "At the GP board meeting, Julia, the independent director, is faced with pressure from the sponsor executive board members to approve a consulting contract with the fund sponsor, which makes limited sense for the LPs/investors…"

Consequence: The pressure leads to a biased contract approval, risking financial loss and reputational damage.

The "failing" side of fund governance is characterised by severe failures, often resulting from ethical breaches, lack of transparency, lack of resources, or inadequate oversight. The possible conflicts of interest that arise when executive directors, whether representatives of the fund sponsor or a major service provider, sit on fund boards alongside independent has been brought up in recent discussions as a source of failing governance, due to the existing conflicts of interest.

Indeed what if a director is asked to approve an investment, which they consider to be overpriced, or which doesn't quite fit into the fund's investment focus; or what if there are shortcomings in the quality of the services rendered and information provided by the third party service provider or sponsor? Will the director (in particular the executive director) be comfortable to challenge the decisions and or be transparent about such shortcomings?

These are examples illustrating instances where executive directors may have conflicting interests, which prevents them from appropriately addressing issues.

These situations undermine the quality of the decisions, thus potentially investor confidence in addition to jeopardising the governance of the fund. Decisions that are not optimal for investors or the wider investment fund may result from a lack of distinction between the functions and interests of various board members. A well balanced board composition as well as the presence of independent non-executive directors on the board would help to mitigate those risks and bring complementary skills to the boardroom, provided the iNEDs have access to the required quality of information.

Sub-optimal Governance

Scenario: "The evening prior to the scheduled board meeting, Julia, is provided with a last minute addition to the Board Agenda, a memo requesting the approval of an acquisition which, despite being in the works for several months, has never been brought to the board's attention…."

Consequence: The rushed decision bypasses due consideration, potentially leading to insufficient scrutiny and weakening governance quality.

"Sub-optimal" fund governance, while not as severe as "failing governance," still poses significant risks for all parties. Common issues include insufficient information flow, inadequate communication, and improper oversight. iNEDs regularly express concern about their position being reduced to merely approving decisions rather than actively participating in strategic and investment conversations. The problem is made worse by the deluge of board documents and their late distribution, which prevents iNEDs from offering thoughtful feedback. Indeed how can any non-executive director properly review and challenge lengthy documents, contracts, draft financial reports or other information received a few hours (and sometimes even minutes) before the board of directors meeting?

Moreover, in certain instances the limited engagement of iNEDs during the initial phases of transaction discussions or strategy development curtails their potential to make meaningful contributions. Stepping back and adopting a holistic (re)view is part of the added value an iNED is expected and expecting to bring to a board. Receiving partial information, being involved late in the day in the decision-making does not allow for directors, whether iNED or not, to take this thoughtful and holistic approach.

Better, smoother processes and awareness from the strategic and operational teams on the importance to involve iNEDs at an earlier stage as well as regular communications between executives and iNEDs will enhance decision-making.

> **"It is crucial for PE houses to constantly enhance their governance procedures as the investing landscape changes."**

Optimal Governance

Scenario: "The board is presented with three offers from reputable companies, one of which is the sponsor of the fund, to enter into a consulting agreement. The directors receive an analysis of strengths and weaknesses for each provider and are able to question the executives."

Scenario: "At the board meeting the Investment Manager presents the potential pipeline acquisitions currently progressing through the investment committee's review cycle, and which may proceed in the coming months. The Manager illustrates the merits and the strategic fit of the targets and the high-level financials are discussed. This will make them comfortable executing the deal quickly once the negotiations are concluded."

Consequence: Timely and complete information provided to the board facilitates Julia's and other directors' active engagement ensuring thorough evaluation and transparency, leading to a decision that upholds best governance practices and strengthens investor confidence.

Optimal Governance is characterised by transparency, accountability, and strong ethical standards. This refers to having a well-balanced board, with the right balance of executive, non-executive and independent members such that each board offers the right level of objective monitoring and oversight in the context of Private Equity and alternative investments. Timely and thorough communication is another essential component of effective governance, which enables all board members to be informed and involved. Regular strategy/offsite days, periodical reporting on portfolio pipeline and performance, and precise role and responsibility delineation are some of the best practices that came up throughout the iNED survey and club discussions. Such procedures promote an honest and trustworthy culture, guaranteeing that decisions are made in full knowledge of any ramifications.

Conclusion

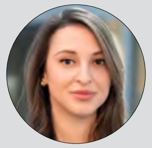
Governance is a critical determinant of a Private Equity or alternative investment fund's success and ethical standing. "Failing Governance" represents serious governance shortcomings that can cause a great deal of harm, whereas the "sub-optimal" represents more prevalent but nonetheless undesirable shortcomings. The "optimal" stands for the ideal situation in which there is strong, open, and moral governance institutions and procedures.

It is crucial for PE houses to constantly enhance their governance procedures as the investing landscape changes. Our best next practices call for not just adhering to legal obligations but also taking the initiative to resolve possible conflicts of interest, guarantee clear communication, and strengthen the position of iNEDs in strategic deliberations ensuring that funds and the PE house sponsors preserve their long-term viability and uphold the confidence of their investors.

Riccardo, Anabela and François will discuss good governance practices on stage at the upcoming LPEA Insights conference on the 17th of October. ●

More information on the Insights conference:

LPEA CLUB FOCUS



By **Maria Rodriguez,**
Co-chair and Counsel
at Dentons

Jérôme Mullmaier,
Co-chair and Partner
at Loyens & Loeff

And **Adrian Aldinger,**
Co-chair and Partner
at Arendt & Medernacht

LPEA

Private Funds Technical Committee

At the origin

The committee initially started out as a working group to assess and provide guidance on the RAIF-regime around the time of its inception. With the continued use of the RAIF-regime and establishment of its status as a pillar in the Luxembourg fund structuring universe, the need for legal and practical guidance decreased and the group's focus shifted to unregulated AIFs more generally as well as regulated funds used for alternative investments, ie SICARs and SIFs. The technical committee's objectives have remained largely unchanged since but undergone a rebranding to "private funds technical committee" to underscore its focus area.

Who

The committee is co-chaired by Maria Rodriguez (Dentons), Jérôme Mullmaier (Loyens & Loeff) and Adrian Aldinger (Arendt & Medernach). It currently boasts 20 members from the Luxembourg legal community (both in-house counsel and lawyers from private practice). The composition aims at thought diversity and a complementary skillset ensuring that a variety of legal and regulatory topics related to private funds can be thoroughly assessed.

What

As the committee's name illustrates, its activities are meant to cover a broad set of topics as long as they are relevant to sponsors of private funds as well as their servicers, advisors and other relevant stakeholders. Such topics span, among others, structuring, marketing, reporting and regulatory compliance in general. The term "private funds" in this context is meant to cover any funds investing in alternative asset classes (irrespective of the fund's regulatory status or whether they are open or closed ended) as long as they target institutional/professional investors; recent trends of democratizing access to alternative asset classes for the benefit of retail investors are largely covered by other technical committees. To avoid any overlap, "retailisation" aspects would then only be exceptionally picked up by this working group on an "as needed" basis when joining forces with the ELTIF and other committees is deemed beneficial.

In line with the above renewed focus and re-branding, the committee has also implemented a mission statement to concentrate its efforts on high value-add initiatives. According to such mission statement the declared goals are as follows:

- Establish and maintain forums of exchange with regulators to foster transparency and share practical as well as operational insights;
- Analyze the impact of changes in regulation and legislation and help stakeholders understand/maneuver practical implications to avoid business disruption;
- Foster exchange between stakeholders to understand how regulation/legislation is shaping business, eg through surveys, market reports, roundtables, etc.;
- Identification of market trends that either result from regulatory changes or may trigger the same;
- Provide guidance in relation to targeted policy/legislative changes to avoid business disruption, eg push initiatives expanding the AIF toolbox (compartments for unregulated AIFs), seek inspiration from other fund jurisdictions (eg Delaware); and
- Create legal certainty by filling regulatory gaps, eg FAQs, white papers.

When

The committee members meet virtually once a month and in person quarterly, in order to exchange on ongoing initiatives as well as any ad-hoc developments (regulatory or other) that may have an impact on LPEA's members as well as the Luxembourg fund market in general. Between meetings, sub-groups or task forces of the committee meet to progress any work streams allocated to them, so there is constant activity.

How to apply

Individuals interested in joining or receiving additional information on the committee's activities are invited to reach out to the co-chairs, or submit an application outlining the applicant's background and expected contributions to the committee. ●

Adrian Aldinger
Arendt & Medernach

Daniel Krauspenhaar
Luther Law Firm

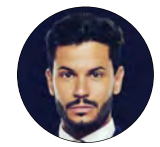
Jérôme Mullmaier
Loyens & Loeff

Manfred Dietrich
Maples and Calder (Luxembourg) Sarl

Marie-Laure Mounguia
Ernst & Young S.A.

Nikolina Ivancevic
Fidelity International

Simon Recher
Hogan Lovells (Luxembourg) LLP



Alen Langella
Waystone (MDO Management Company S.A.)

Gilles Ralet
Sofina

Jevgeniy Nesch
AKD Luxembourg S.à r.l.

Maren Stadler Tjan
Clifford Chance

Mathieu Voos
Debevoise & Plimpton (Luxembourg) SCS

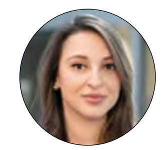
Ronn Henry
EQT Fund Management

Stephane Ober
Ober Law Firm

Benjamin Bada
CMS

Jeremie Schaeffer
ATOZ Tax Advisers Luxembourg

Lisa Klemann
A&O Shearman



Maria Rodriguez
Dentons Europe

Miao Wang
A&O Shearman

Silke Bernard
Linklaters

INSIGHT/OUT #31

CAREER CHANGES

This section aims to share the promotions and the career moves of Private Equity and Venture Capital professionals in Luxembourg. We wish great successes ahead to the people joining a new team and extend our congratulations to newly promoted individuals.

People on the Move

Keith Hale
Member of the Board of Directors
Fundcraft

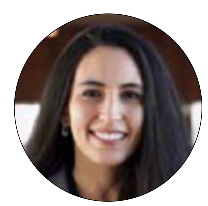
Kevin d'Antonio
Managing Director
PwC

Valeriia Kotsur
Country Head Risk and Compliance
Stonehage Fleming

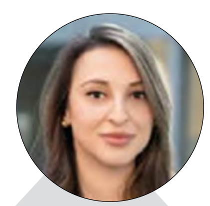
Loic Bertoli
Head of Investor Relations
MiddleGame Ventures

People on the Way Up

Sara Huda
Head of Investment Services
EQT Group



Sonia Michel
Supervising Associate I Business Development
EY



Maria Rodriguez
Counsel in the Investment Funds Team
Dentons

Tina Schwind-Jelvani
Senior Manager
PwC

Christian Krons
Partner
PwC

Loic Choquet
Head of Jurisdiction
Aztec Group

©DR

... Networking Cocktail in Berlin

David Zackenfels & Susanne Weismüller (ALFI), H.E. Jean-Paul Senninger, Stephane Pesch & Evi Gkini (LPEA)

Stephane Pesch (LPEA)

... Seminar in Hong Kong

Frederic Azemard (TR Capital) and Jayesh Peswani (IQ-EQ)

Hong Kong Seminar Speakers

... Seminar in Tokyo

Pierre Beissel (Arendt & Medernach) and David Huang (Prosnav Capital)

Julien Ghata (PwC), Jean-Baptiste Feat (Tikehau Investment Management) and Charlotte Chen (Elvinger Hoss Prussen)

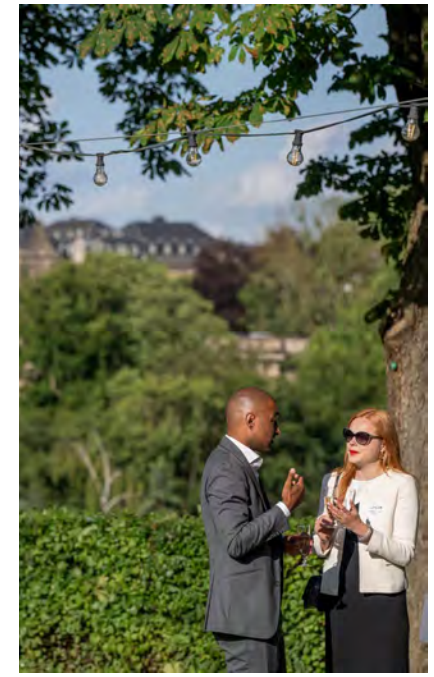
... Seminar in Vienna

Maddalena Bonamini Leitner (Ogier Luxembourg), Nina Wöss (Fund F), Laurent Hengesch (Ilavska Vuillermoz Capital), Laura Raggl (ROI Ventures) and Markus Fleischer (3TS Capital)

Arnaud Béasse (invest.austria) and Stephane Pesch (LPEA)

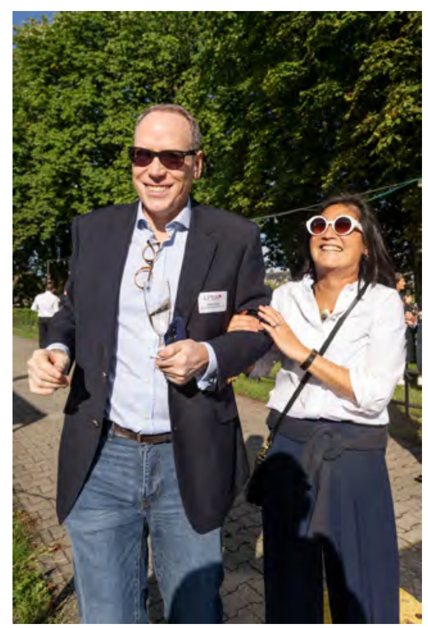
LPEA Summer Party

Luis Galveias (LPEA), Ksenia Golubeva (The Untitled Ventures), Yulia Kulakova (Aztec Group), Valerier Tixier (PwC) and Pascal Hernalsteen (Gojusan)



Daniel Engel (Edmond de Rothschild Asset Management) and Semi Park (2be.lu)

Sherry Lu (Hauck Aufhäuser), Baptiste Cuffaro (Value Partner), Evi Gkini (LPEA) and Antony Bonmariage (Value Partner)



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 574 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 the 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 ("PE") 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 in the industry across the value chain.

Executive Committee


Claus Mansfeldt
President
LPEA


Hans-Jürgen Schmitz
Vice-President
Mangrove


Laurent Capolaghi
Vice-President
EY


Nick Tabone
Treasurer
Deloitte


Yannick Arbaut
Governance Secretary
Allen & Overy


Gilles Dusemon
Member
Arendt & Medernach


Gautier Laurent
Member
Cinven


Claude de Raismes
Member
Wendel


Jérôme Wittamer
Member
Expon


Hind El Gaidi
Member
Intermediate Capital Group


Giuliano Bidoli
Member
BC Partners


Stephane Pesch
CEO
LPEA

Technical Committees

Legal
- AML
- AIFMD
- Corporate Law
- YPEL
- CMU
- Un/Regulated Funds
- Financing In PE

Tax
- YPEL
- VAT

Market Practice & Operations
- Risk Management

Central Intelligence
Fund Administration
Promotion Sounding Board
PE/VC Depositary Services
Pre-Marketing & Distribution
ELTIF

Clubs

- ESG
- Private Equity For Women (PE4W)
- Venture Capital
- Large Buyout
- Single Family Offices (SFO)
- Wealth Management
- Human Resources (HR)
- Insurance
- Corporate Venture Capital (CVC)
- PE Tech
- Independent and Non-executive Directors
- Chief Financial Officer
- Infrastructure
- Private Debt
- Secondaries

LPEA Team

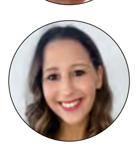

Stephane Pesch
Chief Executive Officer


Luis Galveias
Chief Operating Officer

Kheira Mahmoudi
Executive Office, Governance & Operations


Evi Gkini
Head of Business Development and Project Management


Johann Herz
Head of Events and Communications


Joana Barreiro
Marketing & Events Officer


Emilie Moray
Legal & Regulatory Coordinator