

Interview with Philippe LANCIERS, Director & Odile RENNER, Partner Arendt Regulatory & Consulting

« Consultants must rapidly embrace transformative technological innovation »

Philippe, you recently joined Arendt Regulatory & Consulting and celebrated its fifth anniversary this year, could you recap your activities to date?

Arendt Regulatory & Consulting ("ARC") is a Luxembourg specialist advisory firm composed of seasoned professionals from various fields (legal, compliance, operations, product, PMO, ...), with a strong background in consultancy and financial industry. ARC proposes regulatory advice as well as business & operations support to various professionals in the asset management and asset servicing sectors mainly. Our clients are investment funds, UCITS or AIFs, investment funds managers, professionals of the financial sector as well as depositary banks. ARC is linked to several entities, among which the law firm of Arendt & Medernach, together known as "Arendt". ARC services, which have been developed in parallel to the industry needs, can today be summarised in four categories: Governance - Fund distribution and cross-border activities - Business & Operations — Compliance & Risk Management.

The fully integrated solution proposed by Arendt is unique in Luxembourg, and offers our clients true benefits and efficiencies when dealing with business issues, bridging the gap between legal advice and its implementation. It is in that context that I joined ARC with a mandate to go in the market and sell our services to entities who do not yet work with Arendt, one the one hand, but also to extend our range of services. I can capitalise not only on my strong background as a management consultant but also on my product management background and more recently my experience as conducting officer of regulated entities servicing AIFs, which allows me to reinforce the operating model-, product- and client solutions-expertise of ARC.

How do you help your clients in their strategic decisions?

The diversity of our profiles enables us to answer the strong need of our clients for specialized expertise, helping them to comply with new regulations, anticipate future trends and develop new products. For instance, the Brexit triggered an increased interest from investment managers, to beef-up their presence in Luxembourg to include portfolio management capability and seek



future solutions to continue to market their products and services in the EU. We have been able to assist them with the analysis of the potential impacts in terms of substance and strategy says Odile Renner.

The success of our one-stop shop approach was confirmed in the context of AIFMD where Arendt and ARC have built a very strong reputation and track record in terms of support to the set-up of Luxembourg AIFMs, from filing with the CSSF for authorization to effective implementation of all related policies, processes and contracts. We further believe that the extent and depth of the regulatory challenges and their complex implementation call for true teamwork with our clients, allowing us to define solutions together which are tailored to their particular needs and environments. These regulatory challenges combined with the stronger scrutiny performed by the regulators translate into a further increase of focus on compliance and risk management. Practically, for us, this was translated more recently in a high demand around CSSF Circular 18/698 gap analysis.

What have been the major projects over the last few months?

The entry into force of the Regulation (EU) 2016/679 ("General Data Protection Regulation" or "GDPR") on 25 May 2018 was one of the priorities of our clients for which we developed spe-



cific solutions. In addition to staff training, we are able to offer our clients assistance with the implementation of personal data handling electronic register, setting up of a compliance "Score Card" consisting in a scoping exercise to assess our clients' compliance status and to identify potential issues. We also provide gap analysis in the light of the GDPR requirements, covering both data processes and selection of data processors, potentially resulting in ARC taking on DPO mandate on request of the clients.

The Circular 18/698 not only synthesized substance requirements for investment fund managers but also made a special focus on the fight against money laundering and terrorist financing applicable to investment fund managers and entities carrying out the activity of registrar agent and which is close to the heart of the CSSF. This has been further confirmed by the requests addressed to the different financial sector players to fill in a dedicated AML/CFT questionnaire, for which ARC has provided assistance. The topic remaining of interest, ARC further offers its clients help as regards the update of their documentation, including proper risk based assessment and practical analysis of the operational processes.

More recently, we also have reinforced our risk management services and have a strong team of risk consultants. ARC risk team works closely with world-

wide asset managers, management companies at early stages of the application file process while setting up their investment structures in Luxembourg, or expanding their existing business with the launch of new products. We offer a risk management support to their Risk Managers and Conducting Officers in charge of the oversight of such function. Our risk experts monitor the exposure of funds to market, credit, counterparty and concentration risks. In that context, we have developed a toolkit allowing for example to interface with any Fund Administrator, Custodian Bank or Transfer Agent so as to consolidate data in any format in order to assist you in your risk reporting and to produce, review, as well as monitor PRIIPS-KID metrics (MRM, CRM, SRRI, etc.).

In your opinion, what are the emerging challenges in the financial sector?

According to public market research, alternative assets could reach over EUR 18.5 trillion by 2025 and account for more than 15% of the worldwide total assets under management. With its favourable regulatory regime and provider expertise, Luxembourg is well placed to capture a significant share of this market. This being said, one of the main challenges is that the sector remains in constant evolution, not least due to ongoing regulatory changes and related increase in compliance requirements.

The industry players further face major product transformations such as, for example, environmental issues, corporate social responsibility and improved governance, i.e. ESG guidelines. In this respect, ARC is actively developing services around the implementation of methodologies allowing fund managers, especially in the private equity sphere, to rate the adherence to environmental, social and governance criteria of their funds and underlying investment portfolios. Part of the duty of fund managers being also to conduct ESG due diligence on companies in which they intend to invest, and subsequently to report to investors on how they address ESG performance, ARC is also actively working on related support documentation and questionnaires. Another key driver is the growing impact of innovation and technology on the industry and services provided. IT is an essential element of our services, alongside deep industry expertise and market intelli-

gence so that since inception, ARC has ensured that its service offering also encompasses the provision of innovative tools allowing for the automation of tasks and processes in an outsourced or insourced mode. This is how CAROL, ARNO, OPRA and AYBO came to life. Another example is the use of an artificial intelligence scanning and analysis system based on the identification of key words allowing Fund distribution's teams to automate the production of fund documents and notifications, thus gaining time and money, savings that ultimately to the benefit of our clients. Consultants must rapidly embrace transformative technological innovation which offers major advances in areas such as data security and transparency even more in the alternative sphere where administrative processes typically are more manual.

Which consequences for the consulting sector and ARC especially?

Our clients remain confronted with a constantly growing regulatory burden to which they have to comply with and this in very short delays: UCITS/AIFMD, GDPR, EMIR, FATCA-CRS, MIFID II, PRIIPS, ESG, MMFR, new AML regulations and many more.

On top of this, the growing focus on substance may also prompt some changes in the required operating models leading towards increased externalisation of services, with new outsourcing needs in areas such as advanced reporting, regulatory compliance, including in the field of AML/KYC, due diligences or the development of key risk indicators for example. Alternative asset managers are becoming more and more global, both in terms of asset classes into which they invest (for example infrastructure, debt funds, private equity and other forms of non-bank financing) as well as in terms of categories of investors they seek to attract. ARC's multi-disciplinary approach, both as regards the profiles of its experts and the services it provides to its clients and combined with the IT tool support developed, strives to allow our clients to realign their strategy and concentrate on the key values which are important to their business – performance with compliance, income generation, and meeting their investors' needs concludes Odile Renner.

"... We help you to be compliant ... and to make the best use out of it."

Marchés publics : nouvelles dispositions, nouvelles opportunités

Le mercredi 5 décembre 2018 a été organisé par l'Enterprise Europe Network de la Chambre de Commerce du Luxembourg le 5^{ème} volet du cycle de conférences Fit4Tenders relatif à la nouvelle loi du 8 avril 2018 sur les marchés publics, intitulée «La nouvelle loi sur les marchés publics : ce qui change pour vous !».

Pas moins de 170 personnes se sont retrouvées le temps d'une matinée pour apprendre la teneur des nouvelles dispositions et échanger sur les mesures à prendre. Le but de la loi, transposant deux directives européennes de 2014, est de simplifier les procédures administratives aussi bien pour les pouvoirs adjudicateurs que pour les entreprises soumissionnaires, et surtout les PME.

Sabrina Sagromola, gérant de l'Enterprise Europe Network-Luxembourg, a souligné dans son mot de bienvenue l'importance de la commande publique dans l'économie luxembourgeoise et européenne. Représentant 18% du PIB de l'Union Européenne, les marchés publics sont un formidable moyen de développement économique pour une entreprise, comme le témoigne la participation de plus de 550 chefs d'entreprises aux conférences Fit4Tenders depuis 2015. L'intérêt pour cette matière complexe ne décroît pas, et c'est aussi dans ce cadre que l'Enterprise Europe Network joue un rôle d'interlocuteur



auprès des entreprises, et particulièrement des PME. Par le biais de l'organisation de séances d'informations comme celle-ci, ou par son service de veille sur les marchés publics, l'Enterprise Europe Network a su ériger la commande publique comme une passerelle pour l'internationalisation de ses membres.

Afin de permettre aux participants de comprendre les enjeux des nouvelles dispositions de la loi du 8 avril 2018, M^{re} Sébastien Couvreur, avocat à la Cour et Partner chez Etude Krieger Associates, a tenu à faire passer les messages les plus importants, en insistant que la nouvelle loi ne serait pas tant une révolution qu'une évolution dans les pratiques des pouvoirs adjudicateurs et des entreprises

soumissionnaires. La loi, tout comme les directives européennes à son origine, ont deux leviers : un économique pour favoriser l'accès à la commande publique pour les PME, et un environnemental et social afin d'implémenter de telles valeurs dans ce domaine.

Expliquant de manière très détaillée comment la simplification de la procédure de soumission par le biais de la dématérialisation procède de la volonté d'alléger les procédures administratives, Marc Nosbusch, conseiller de Direction 1^{ère} classe auprès du ministère de la Mobilité et des Transports Publics, a exposé de manière pratique aux participants les nouveautés du Portail des Marchés Publics. Cette nouvelle démarche se place dans une logique de

sécurité et de confidentialité, un important développement par rapport au régime juridique précédent.

Enfin, M^{re} Elie Dohogne, avocat inscrit au Barreau de Namur, Etude Krieger Associates, a présenté les grandes lignes la principale nouveauté issue des directives européennes et de la loi du 8 avril 2018 : le Document Unique de Marché Européen (DUME). Si ce document n'est obligatoire que pour les marchés publics de grande envergure, il simplifie de manière considérable l'accès aux soumissions pour les entreprises et les PME.

Les interrogations qu'avaient les participants concernant la loi du 8 avril 2018 ont résulté en une session de questions-réponses aussi animée que riche en réflexions, permettant à chacun de pouvoir s'exprimer. C'est après une pause-café, propice aux échanges et au réseautage, que l'événement a pris la forme de deux ateliers thématiques, ayant pour objectif d'approfondir des questions clés précises relatives aux nouvelles dispositions.

Sous la forme d'un cas pratique, Marc Nosbusch a expliqué ce qu'impliquait la dématérialisation pour les entreprises et PME, ainsi que pour les pouvoirs adjudicateurs, le dépôt d'une offre via le Portail des Marchés Publics. Riche en questions, en échanges, et en suggestions de la part de l'auditoire, l'approche pratique et pragmatique de la présentation a permis aux participants de mieux saisir les changements

de la soumission d'offres à partir de janvier 2019. Expliquant comment la commande publique s'est constituée en un service pour la stratégie européenne de développement durable, d'inclusion sociale et d'innovation, M^{re} Gabriel Bleser, avocat à la Cour, Partner chez Moysse | Bleser, a de plus insisté sur l'attention particulière que le droit de la concurrence imposait aux marchés publics pour ce qui concerne la sous-traitance et les associations momentanées dans ce domaine. Par notamment des exemples jurisprudentiels, les participants ont compris comment la commande publique avait évolué pour implémenter en grande partie des valeurs environnementales et sociales.

Aussi bien lors de la séance inaugurale que pendant les deux ateliers, l'intérêt des participants et la pertinence de leurs questions a su démontrer à quel point les marchés publics sont un sujet important pour l'économie luxembourgeoise. Représentant une formidable opportunité pour le développement d'une entreprise, et passerelle de choix vers l'internationalisation, la commande publique a su s'imposer comme un débouché économique de premier rang pour les entreprises du Grand-Duché. Les participants ont pu par la suite se retrouver autour d'un sandwich-lunch afin de clôturer l'événement par des discussions et du réseautage dans une ambiance décontractée.