

ARENDDT IS BY YOUR SIDE

The three challenges of IFM

Key takeaways from Arendt's first interactive Regulatory & Compliance IFM Seminar

On 17 September, Arendt hosted its first interactive Regulatory & Compliance IFM Seminar to facilitate the exchange of views on how regulatory challenges in retailisation, handling NAV and other operational errors, and delegation translate into practical solutions.

“In increasingly complex regulatory environments, and times where litigation and sanctions are more and more a reality for financial market participants, the role of the control functions and the management of IFM is probably more important than it has ever been”
said **Stéphane Badey**, Partner at Arendt Regulatory & Consulting (ARC), to kick off the event.

Each part of the conference began with a brief topic introduction followed by an interactive poll, where participants—over two-thirds of which were investment fund managers—could vote through their smartphones. Each poll was followed by a panel discussion led by **Isabelle Lebbe**, Partner in the Investment Management practice.

Myth or retailisation?

Over the past 24 months, retailisation has positively developed in Luxembourg, transitioning from a niche area to one with established structuring solutions and broader appeal.

The market has realised Luxembourg has quite a competitive advantage because of the legacy with more mainstream topics.

Adrian Aldinger, Partner in the Private Equity & Real Estate practice noted. *“The reason retailisation has proven so successful in Luxembourg is that we have a good balance between tradition and innovation.”*

When asked whether their organisations had actively considered accessing private wealth channels for investments in private markets, around 37% responded that it was just a fad. For those who were exploring it, responses were equally divided between it being a key focus area versus it still being a nascent trend.

Has your organisation actively looked into accessing private wealth channels for investments in private markets?

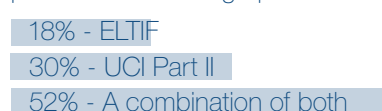


For those that did not have retail AIF solutions in place, cost and complexity of regulatory compliance were cited as the main reason (37%), followed by insufficient service infrastructure and distribution capabilities (26%), not enough investor appetite (23%), and the fact that there's still too much regulatory or legal uncertainty (14%). Meanwhile, for those who had such structures in place, the preferred option was a combination of UCI Part II and ELTIF (52%), then UCI Part II (30%), and ELTIF (18%).

For those that don't have any such solutions in place, what's holding you back?



For those that do have such solutions in place, what is your preferred structuring option?



Panelists **Giovanni Cataldi** (VP, Conducting Officer, AllianceBernstein), **François Ralet** (Head of Management Comp Head of Wellington Luxembourg), and **Tilo Reichert** (Head of Risk & Compliance, Swiss Life Asset Managers Luxembourg) discussed the pros and cons of each structuring strategy, with distribution channels among the main points of discussion.



“You need to define the distribution strategy beforehand, otherwise you might design a fund which is not suitable for the needs of a particular distributor and then it's going to be a commercial failure.”

summarised **François Ralet** - Head of Management Comp Head of Wellington Luxembourg

Handling NAV and other operational errors

During the next segment, **Josiane Schroeder**, Counsel in the Investment Management practice, gave a quick overview of some of the provisions set out in the CSSF's Circular 24/856. One novelty, for instance, is that SIFs and SICARs are now fully brought into the scope.

While threshold tolerances for UCITS funds remain “largely unchanged”, a new category is introduced for money market funds of all types and whether regulated or not, with a tolerance of 0.20% (brought down from 0.25% previously). “For non-UCITs funds, you can also create bespoke tolerance thresholds, but you need to duly justify these and document this decision,” **Ms Schroeder** explained.

↓ 0.20%

Reduction of the tolerance threshold for all types of money market funds.

In addition to outlining the necessary procedures when it comes to intra-day breaches between the calculation of two NAVs, Ms Schroeder emphasised a key change for funds that have a distribution model without access to the end client. “The new Circular says that the fund must ensure the indemnification reaches the end investor,” she added. In cases where it is impossible for funds to see through to the end client, a warning needs to be included into the prospectus by latest 1 January.

When asked how they deem their compliance with the Circular as of today, 78% of participants responded that a gap analysis had been performed and implementation was ongoing. Only 14% responded that they were fully compliant and ready for the 1 January deadline. Meanwhile, roughly 9% responded that they didn't know what to do. As **Ms Schroeder** pointed out, “The clock is ticking, and there's a lot to do.”

How do you deem your compliance with the Circular as at today?



There was wide appreciation for the work that had been done with the Circular. Around 70% of participants said they welcomed the codification of the existing practice into one guidance—a sentiment echoed by the panellists, who each added that there were open questions regarding ESG-related breaches. Although there are many remaining questions, **Mr Reichert** reminded the audience that it's “an iterative process... it's very much appreciated that there's a collaboration between CSSF and the industry when writing the topics covered by the new Circular.”

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Delegation: what's new?

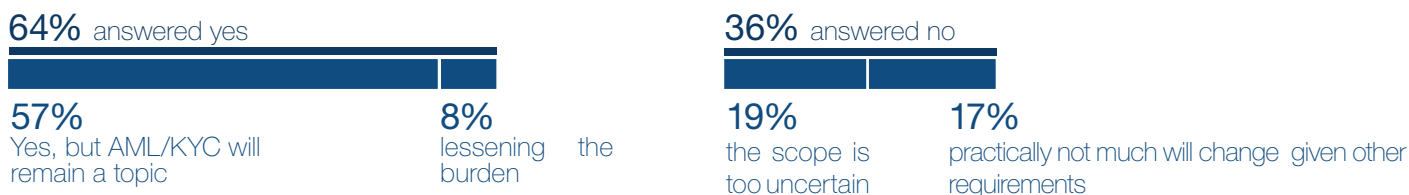
In the third segment, **Piotr Giemza-Popowski**, Partner in the Investment Management practice, described the importance of delegation for Luxembourg. Managers of funds are often abroad, even outside the EU.

“With the UCITS and AIFMD marketing passport, the sponsors avail themselves of an IFM within the EU but then that means that those IFMs need to delegate back certain functions to the managers.” explained **Piotr Giemza-Popowski** - Partner in the Investment Management practice

With delegation initially anticipated to be under more scrutiny in AIFMD II/UCITS VI, “the end results are not so dramatic,” **Mr Giemza-Popowski** added. Among the other points he highlighted were: the levelling of the playing field between UCITS and AIFs; how national authorities will approach the requirement to “comply with the directive”, particularly with regards to third-country entities; and the need to bear in mind AML/KYC obligations, which will continue to apply and be relevant.

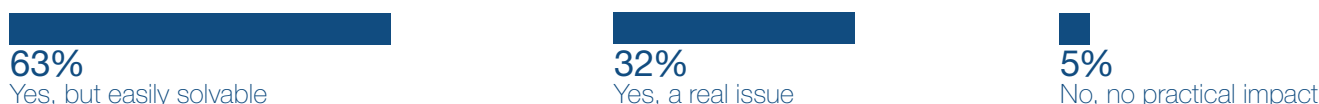
When assessing their level of readiness with the new Directive, 60% of participants responded that they were 75% of the way there, while 33% estimated they were halfway there and 7% were fully ready. Additionally, when asked whether they see exempting distributors acting on own behalf and insurance intermediaries from the delegation rules under AIFMD2/UCITS VI having an actual, practical impact, 57% answered in the affirmative, but believe AML/KYC will remain a topic. Around 19% responded “no, the scope is too uncertain”, followed by “no, practically not much will change given other requirements (17%), and “yes, lessening the burden” (8%).

Do you see exempting distributors acting on own behalf and insurance intermediaries from the delegation rules under AIFMD2/UCITS VI having an actual, practical impact?



Most participants expected new requirements on reporting associated with delegation to add to their compliance burden, with 32% considering it a real issue compared to 63% who think such burdens are easily solvable. For 5%, meanwhile, there was no practical impact.

Do you expect new requirements on reporting associated with delegation to add to the compliance burden?



Part of the panel discussion touched on how AI could help alleviate such burden—turning unstructured data into structured data, for instance—although training algorithms takes time. **Mr Cataldi** also highlighted that similar provisions would also apply in case of subdelegation, regardless of country or regime to which subdelegates subjected to. “Stricter delegation rules, which I understand are there to avoid circumvention of substance requirements, could potentially cause issues for the European funds market”, he stated, adding, however, that he was optimistic that pragmatic solutions would surface.

In his closing remarks, Arendt Co-Chair and Partner in the Investment Management practice **Claude Niedner** talked about the challenges of keeping up with regulations and the granularity imposed by the CSSF with regards to compliance aspects. “It’s not always simple to keep up,” he said.

Sometimes management companies tell us they spend more time on regulations and compliance than taking care of their own business.

There are nearly 8,000 employees working in Luxembourg ManCos, with around €5.2 trillion in AUM, and Mr Niedner noted that positive developments, such as the lowering of corporate income tax by the new government, help showcase the “critical mass and sophistication that should help the industry be stronger going forward.”

Conclusion

The first Interactive Regulatory & Compliance IFM Conference provided a comprehensive overview of the evolving compliance landscape for investment fund managers, highlighting the challenges posed by retailisation, NAV errors, and delegation under current and upcoming regulations.

Luxembourg's evolving regulatory environment requires IFMs to adopt proactive strategies, leverage innovation, and maintain close collaboration with regulators to navigate these complexities effectively.

As the financial sector continues to adapt, the insights and discussions from this event emphasise the importance of agility and preparedness in ensuring compliance and sustaining Luxembourg's competitive edge in the global market.



About Arendt's IFM Regulatory team

As Luxembourg's leading legal, tax, regulatory consulting and investor services firm, we bring together a dedicated IFM regulatory team that seamlessly combines all relevant expertise and insights. Our experts play a tangible role in helping to shape the Luxembourg regulatory landscape through consultations and conversations with regulators and clients.

This helps us nurture our unmatched level of regulatory knowledge and understanding. We translate this on a daily basis into assisting our clients with clear impact assessments and pragmatic solutions on implementing and reporting on all their regulatory requirements.

Your speakers of the September 17 event



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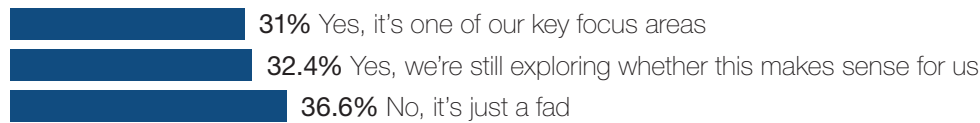
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Appendix

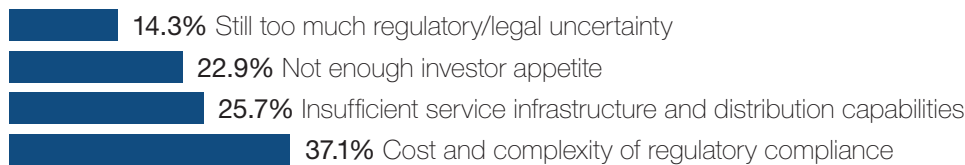
Q1. You are:



Q2. Has your organisation actively looked into accessing private wealth channels for investments in private markets?



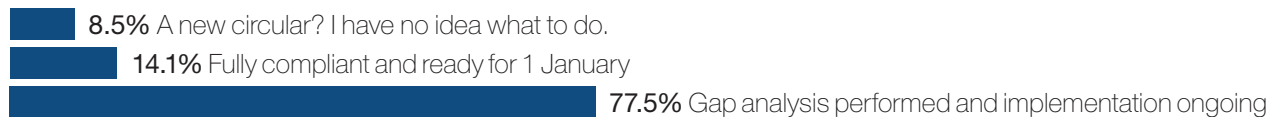
Q3. For those that don't have any such solutions in place, what's holding you back?



Q4. For those that do have such solutions in place, what is your preferred structuring option?



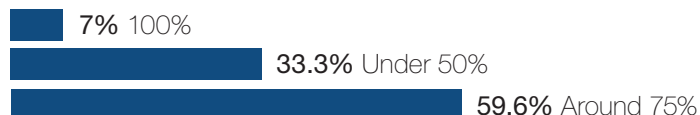
Q5. How do you deem your compliance with the Circular as at today?



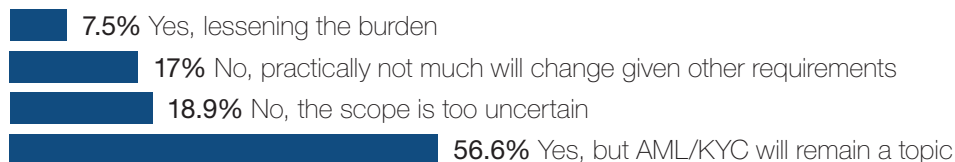
Q6. How do you perceive the new Circular?



Q7. What would be your assessment of the level of readiness with the new Directive?



Q8. Do you see exempting distributors acting on own behalf and insurance intermediaries from the delegation rules under AIFMD2/UCTIS VI having an actual, practical impact?



Q9. Do you expect new requirements on reporting associated with delegation to add to the compliance burden?

