

## Investment Funds : Things to keep an eye on in the months ahead

“Winter is coming” is the motto of an imaginary dynasty in a famous book series. While it is October and autumn has certainly arrived, the motto of the Luxembourg fund industry could also be “Regulation is coming”. The aim of the present article is to briefly highlight three upcoming developments in this area which will have an impact on a large number of investment funds, and should be included in planning the months (and even the year) ahead. Because, as Benjamin Franklin put it, *“By failing to prepare, you prepare to fail”*.

### **I. ESG Fund Names**

In May this year, ESMA published a new set of rules on the use of ESG terminology in names of investment funds. This means that if an existing or envisaged investment fund (or sub-fund) has a term in its denomination that has an ESG connotation (such as “sustainable”, “green”, “climate” or “equality”), it needs to be verified whether it can continue to use this name under the new rules, or whether it needs to change it or alternatively change the composition of its portfolio.

The potential impact of these rules is high: Not only do they concern any and all investment funds, no matter if they are UCITS, AIFs, so-called art. 8 or art. 9 funds. They also introduce new minimum thresholds, in addition (but of course not identical to) what already had to be taken into account due to the Sustainable Finance Disclosure Regulation (SFDR), in terms of the proportion of investments that are understood to be in line with these ESG terms. A study performed by [Morningstar](#) shortly after the Guidelines were published found that around 2/3 of the funds that were reviewed would need to either change their name or the composition of their portfolio. [EFAMA](#) also recently drew the attention to - probably inadvertent, but still negative - consequences for funds investing into green bonds.

Changing the name of a (sub-)fund can take time, in particular if it involves an approval procedure with the Luxembourg regulator CSSF or the change of its articles of incorporation or limited partnership agreement.

#### **When do these new rules start to apply ?**

- 21 November 2024 for new (sub-)funds
- 21 May 2025 for existing (sub-)funds

- [Link to the ESMA Guidelines](#)
- [Link to my explanatory article](#)

## II. CSSF Circular 24/856: NAV calculation errors and investment breaches

At the end of March this year, the CSSF released the replacement for its Circular 02/77 which set out the rules to follow for investment funds and their managers in case of a net asset value calculation error or a breach of its investment policy. The new circular carries the number 24/856 and integrates the evolution of the supervisory practice of the past 20 years into one single document. It is therefore not really fundamentally new, but rather a written summary of what is for the most part already done in practice.

Still, its impact remain substantial, as it now applies directly to all funds that are under the direct supervision of the CSSF (UCITS and SIFs mostly), and can be expected to have indirect repercussions to those funds that are not directly supervised by the Luxembourg regulator but indicate in their documentation that they apply the rule of the circular 02/77 by way of analogy (or with certain modifications). They should at least verify whether they can continue to refer to a defunct circular or apply the new circular directly.

More fundamentally, all management companies and AIFMs will need to revise their internal policies and procedures that deal with both NAV errors and investment breaches, and potentially also review the interplay with other service providers such as the depositary bank or delegates such as administrators and valuation agents. Board meetings of investment funds should include this topic on their agenda and request a status update on the integration of the new rules from the fund's service providers.

Also to note is that in case a fund permits an investment through financial intermediaries, such as the use of omnibus accounts by banks, the fund's prospectus has to disclose going forward that the final beneficiaries behind such an aggregator can be affected by this indirect investment and that a potential compensation may not take all their individual factors into account. As a consequence, if the prospectus has to be updated, this should be included in the planning although the CSSF has not explicitly indicated that such update has to be immediate.

Lastly, the CSSF intends to publish an FAQ document relating to the new circular within short.

### When do these new rules start to apply ?

- 1 January 2025

- [Link to the new circular](#)

### III. AIFMD 2.0: Liquidity management tools, debt fund rules

Admittedly, this topic is looking somewhat further in to the future, as the recent amendments to the AIFM Directive (and also to the UCITS Directive) are unlikely to enter into force before the beginning of 2026. Nevertheless, a first draft law to implement these changes in Luxembourg should be available next summer, and in particular for new fund projects it appears vital to anticipate as much as possible the upcoming new rules.

From experience, and especially for alternative investment funds, it can be quite laborious and time consuming to change the fund documentation once the fund is up and running. It can therefore be useful to try to integrate the upcoming rules already now, even though they are not obligatory yet.

The first main novelty that will be introduced is the obligation to provide for – at least four – **liquidity management tools** in case of an open-ended fund. While in the author's experience most of these tools will be used in the fund documentation anyway, that does not necessarily include all of those that could be obligatory, and before the fund's inception it is easier to integrate them than after the fact.

The second new set of rules concerns **funds that originate loans**, which will have to adhere among others to leverage and concentration limits, and even further rules in case they will be open-ended in nature.

While in both cases, a substantial number of practical details are still outstanding and will only be revealed by ESMA sometime next year in its – doubtless very detailed – regulatory and technical standards or guidelines, some elements of the new rules can already be anticipated and incorporated into the documentation of new funds that are in planning. Also, a provision can already be included in the documentation on how to deal with any obligatory amendment to the fund documentation resulting from the new rules.

#### When do these new rules start to apply ?

- Probably in the first quarter of 2026
- Grandfathering period for certain existing loan originating funds until 16 April 2029

- [Link to the text amending the AIFM and UCITS Directives](#)
- [Link to my article about the upcoming rules on liquidity management tools](#)

# VANDENBULKE

Corporate | Finance | Investment Funds

[Dr. Marcel Bartnik](#)

Investment Funds Partner at Vandenburg

[mba@vdbl.com](mailto:mba@vdbl.com)

[!\[\]\(23d9fc146e83b5c3013cfa32c784f8d5\_img.jpg\) LinkedIn](#)

