

NATIONAL REPORT FOR LUXEMBOURG

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I. INTRODUCTION

Although Luxembourg property law is based on the principles, inherited from the French legal system, that all rights attached to property are necessarily vested in one single person and that patrimonies are essentially conceived of as an attribute of legal personality, a fiduciary ownership has been formally introduced for almost twenty-five years by a statute of July 19th, 1983.¹

This fiduciary ownership appears very close to the concept of the "protected fund", as proposed by the draft directive. The introduction on a European level of such an instrument would therefore not present any substantial difficulties under Luxembourg law. Obviously the present regime would need some adaptations but those changes would certainly not disrupt the current rules. As in 2003, when Luxembourg decided to ratify The Hague Convention of July 1st, 1985 on the law applicable to trust and its recognition, the opportunities and challenges of a European "protected fund" would have to be carefully evaluated. The brief presentation of the current solutions under Luxembourg law preceding some commentaries of the proposed rules is meant to introduce a reflection upon the potential advantages and disadvantages of a European initiative in this domain.

II. EXISTING LAW AND FUTURE DEVELOPMENTS

A. General objectives

The introduction in 1983 of the fiduciary ownership was officially intended to secure the trust business of the Luxembourg banking community because Luxembourg law offered until then no efficient means for ring-fencing property received on a trust basis.² A mere introduction of an

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1 Règlement grand-ducal du 19 juillet 1983 Mém. 29.07.1983, n° 59, p. 2.

2 Document parlementaire numéro 2641.

Anglo-Saxon type trust, as for instance Liechtenstein did, was however considered undesirable as it would have led to a "sui generis" division of property rights conflicting with the general conception of such rights. Rather than venture in this direction, the legislature preferred to introduce a functionally equivalent instrument to the trust in the form of a fiduciary contract endowing it with a minimalistic regime focused on the protection of the fiduciary patrimony.

The grand-ducal regulation of 1983 swiftly became a great success due to the imagination of experts who applied the provisions in a large range of schemes with regard to individual or collective management of savings or debt security issues, and also *inter alia* as a method of power adjustment within companies or as a guarantee instrument.

This development has been achieved without any significant conflict since courts have nearly never dealt with disputes on fiduciary contracts. The fact that they are exclusively concluded with banks can constitute an element of explanation.

In order to strengthen this success, the Luxembourg government decided to ratify The Hague Convention, allowing not only the financial community to resort with greater safety to trusts concluded under foreign legislation, but also to the Luxembourg fiducie to benefit from the recognition system of the Convention. Once meeting the criteria laid down in Article 2 of the Convention, Luxembourg fiduciary contracts will be recognized in every country which has ratified the Convention and therefore will enjoy a real international passport. The legislation of 27 July 2003 led to the ratification and, at the same time, allows for some improvements upon the fiducie regime mainly resulting from experience. The adoption of the legislation of 24 March 2004 concerning securitization has introduced some additional changes providing an extensive application of trusts in this context.

B. Reception and definition of trust

1. The grand-ducal regulation of 19 July 1983

The grand-ducal regulation of 19 July 1983 introduced the fiducie as a new contractual scheme defined as "a contract by which a person, the fiduciant, agrees with another person, the fiduciary, that, subject to the obligations

determined by the parties, the fiduciary becomes the owner of assets which shall form a fiduciary estate" (Article 5).

This connection to contract law aims at covering operations which had hitherto been developed within a conventional framework; it purports to avoid developing a system setting aside existing rules governing mandates that can at least be referred to for organizing the relations between fiduciant and fiduciary.

At the same time operations which are not easily consistent with the Luxembourg legal system fall outside the scope of the fiducie, such as trusts based on an owner's unilateral statement of intention or on a court decision, such not being felt useful by practitioners.

2. Law of 27 July 2003

Since the legislature in 2003 aimed at allowing the Luxembourg fiducie to benefit from the international passport of the Trusts Convention, slight adjustments to the fiducie definition were made in order to draw a comparison with the terminology set forth at Article 2 of the Convention and the autonomous patrimony within the meaning of Article 6 of the regulation.³

These modifications amount to simple adjustments and thus do not alter in any way the rationale of the fiduciary contract set up in 1983.

C. Fiducie regime

Regarded in 1983 as a contract, fiducie is from the very beginning marked by rules of assets law. It is of the utmost importance to prevent assets falling within the scope of the fiducie becoming a part of the general estate of the fiduciary and thus subject to seizures of personal creditors. Nevertheless, the formal assessment of the fiduciary estate as an autonomous estate remains a vain safeguarding measure if the fiduciary fails effectively to keep separate assets received as separate assets and indifferently uses them without any distinction. Beyond the legal recognition of assets

³ See on all aspects of the law of 27th July 2003: A. Prüm et C. Witz, *Trust et Fiducie, La Convention de la Haye et la nouvelle législation luxembourgeoise*, Actes du colloque tenu au Luxembourg le 11 décembre 2003, Montchrestien, Paris, 2005.

autonomy, it was therefore advisable to consider the status itself of the fiduciary.

Regarding the other provisions, the regime of the fiducie is characterized by a very liberal approach where the legislation comes down to some essential or supplementary rules laid down in nine articles – three of them are common to trusts by dealing in particular with the tax system of those two institutions. In order to give an outline of the regime, it is necessary briefly to determine the personal scope and the material scope of the legislation in issue, the concept of autonomy with regard to the fiduciary estate, and the contractual relationships between fiduciant and fiduciary as well as their impact on third parties.

1. *Personal scope and material scope of the legislation*

a. *Personal scope*

From 1983 it has been decided not to grant to any person the opportunity of acting as a fiduciary, but rather to limit this capacity to the banking sector and more precisely to credit institutions established in a country of the European Economic Area which are approved and supervised by a supervisory authority of the country in question. The emergence of new financial professions over the last twenty years, accompanied by a greater professionalisation of the actors within the financial sector, justified authorising other persons to act as fiduciary without changing the rationale of the legislation.

Accordingly, the list of professionals entitled to act as a fiduciary has been extended, beyond credit institutions, to investment firms, investment companies with variable or fixed share capital, securitization companies, fiduciary representatives acting in the context of a securitization transaction, management companies of common funds or of securitization funds, pension funds, or national or international public bodies operating in the financial sector. The law also aimed at insurance or reinsurance undertakings – this extension can be promising in the sector of life insurance.

At the same time, the legislation of 2003 has rightly put an end to the territorial limitation to the institutions established in the EEA. Henceforth, any bank, regardless of its statute and location, can be a fiduciary.

b. *Material scope*

Luxembourg legislation has always refrained from allocating fiducie to definite categories, as it has also refused expressly to ban its use for specific purposes, e.g. the granting of gifts. But it should be borne in mind that the legislature mainly focused upon its use for management purposes when introducing the institution in 1983. Interest in the technique of this field has been reaffirmed by the Securitization Law of 24 March 2004 which has established a statute of fiduciary-representatives, following the example of the English "security trustees"; it has also presented the fiducie as a solution for the constitution of securitization funds beside the more traditional joint ownership.

But for all that, the use of fiducie as a guarantee instrument has not been ignored. The legislation of 2003 directly dealt with it and provides some rules designed to prevent abuses.

2. *Autonomy of the fiduciary estate*

Protecting assets entrusted to the fiduciary from the claims of personal creditors, especially in case of insolvency proceedings, constitutes a major issue for the recognition of the fiduciary estate. The mere recourse to the rules governing mandates or commissions does not permit protecting assets allocated to the fiducie against claims of personal creditors. Only a specific legal provision can provide protection to the beneficiary of the fiduciary operation and protect him as well as the fiduciant from a seizure of assets by a third party.

Therefore it makes sense that the grand-ducal legislation of 1983 sought above all to ensure a segregation of assets owned by a bank as fiduciary from its own assets. The law of 2003 solemnly reaffirms the autonomy of any fiduciary estate and prohibits any creditor whose debt was not derived from the fiduciary estate to raise any claim against this estate. This autonomy is logically extended since the fiduciary is under the obligation to record in its account the fiduciary estate separately from its personal estate and other estates that it can hold as a fiduciary.

Unlike other legislations, the Luxembourg law does not subject the autonomy of the fiduciary estate to any condition and does not grant any advantages by means of exceptions.

3. Contractual relationships and relationships with third parties

Two principles underlie the organization of contractual relationships derived from a fiducie and their impact on third parties: a large margin of appreciation only moderated by crisis of legal authority.

a. Extensive role of contractual freedom

The legislator sought to strengthen and to facilitate contractual freedom. In order to accord the parties the widest margin of discretion, the legislation erases any doubt on the validity of fiduciary arrangements entered into for collateral purposes concerning future debts or providing the evolution of the estate given as a guarantee according to the commitments guaranteed.

A supplementary reference to the rules governing mandates exempts the parties from having to provide every detail of their relationships, without third parties and even the fiduciant limiting the role of the fiduciary as a representative. The possibility for the fiduciant to waive his right to give instructions to the fiduciary and the exclusion of a unilateral revocation of the contract, in the absence of a contrary clause, enable the parties to provide the necessary stability for their relationships.

Affording the parties as much flexibility as possible, contractual freedom yields to the ineffectiveness of clauses or contracts causing a breach of public order.⁴ More specifically, Article 8 subparagraph 2 of the legislation of 2003 prohibits the parties to fiduciary arrangements entered into for collateral purposes from dispensing the fiduciary from returning to the fiduciant or to a third party beneficiary the net balance resulting from the difference between the value, at the day of realization, of the assets constituting the collateral and the amount of the secured obligations. Hence the fiducie cannot constitute the basis of a "pacte comissoire" within the meaning of security law.

b. Evidence and third party effect

If the conclusion of a fiduciary contract is not subject to any specific formality, it must however be evidenced in writing. Nonetheless, a mandatory registration of the contract has not been considered convenient.

⁴ Article 6 of Civil Code.

As such, fiduciary contracts are effective *vis-à-vis* third parties as from the moment they are entered into. This effectiveness *ipso jure* is of course not extended to the transfers of assets subject to the specific rules on forms or validity. For instance, the contribution of real estate to a fiduciary estate would be effective *vis-à-vis* third parties as from the moment it would have been registered in the mortgage register.

Furthermore, the right of the parties to take advantage of the fiduciary contract *vis-à-vis* the third parties is set aside where the contract provides limitations to the powers of the fiduciary as long as a third party has no knowledge about them. In order to protect the third parties, these limitations are effective only as from the moment the third parties are aware of them.⁵

An original rule, inspired by principles of the European law of contracts drawn up by the Lando Commission, assesses the effectiveness of fiduciary transfers of claims as from the conclusion of the contract, while granting to the debtor the right of being validly discharged from his obligation as long as it has no knowledge of the transfer. This provision is particularly useful for debt securitization.

c. Overriding powers of the judge

Like trusts, fiduciary estates may require the assistance of a judge in specific circumstances. Nonetheless, the Luxembourg legislature did not allow judiciary power to interfere with fiduciary arrangements, regardless of crisis situations. The judge has very exceptional power that contrasts with the Praetorian role of the Anglo-Saxon judges with regard to trusts.

The fiduciant, the fiduciary or the third party beneficiary can refer to the judge only if having a serious ground, such as an interest conflict preventing the fiduciary from achieving his mission in fully independent fashion or the impossibility for the fiduciary to pursue his goal without receiving further instructions from the fiduciant.

In order to tackle this deadlock, the judge who has established there is a serious ground, is entitled to rule on the provisional or final removal or the early termination of the fiduciary contract. By confining the judicial inter-

⁵ Article 7.3 of Law of 27 July 2003.

vention to crisis situations, it was pertinent to provide seemingly radical measures.

III. PRIVATE INTERNATIONAL LAW

The adoption of the Law of 27 July 2003 allowed the Grand Duchy of Luxembourg to ratify The Hague Trusts Convention. This ratification was accompanied with some additional measures, in particular for tax purposes or regarding the inscription conditions of the rights of the trustee in the public assets register. To easily determine the scope of the rights of a trustee on assets located in Luxembourg, the legislation presumes that the position of the trustee is determined by reference to that of an owner.⁶ Without assimilating the trustee to a genuine owner, the presumptions strengthen the recognition of the impacts of an unknown institution in the Luxembourg legal system. Besides, referring to the assets offers the advantage of establishing a common standard for the fiducie and the trust and to provide a connection between two techniques aiming at the same purpose. Nonetheless, in order to avoid any confusion, Article 2 of the Law recalls that estates arising from trust assets remain distinct from those including personal assets of the trustee pursuant to Article 11 of the Convention.

IV. IMPLEMENTATION OF THE DIRECTIVE ON PROTECTED FUNDS

A. General comments

The fiduciary contract presented above corresponds to a very large extent to the protected fund.⁷ A detailed analysis of the proposed regime for the protected fund may reveal slight differences but in substance the protected fund already exists under Luxembourg law. Contrary to countries that do not benefit from a similar institution, Luxembourg would therefore not gain directly from the introduction of a protected fund.

The adoption on a European level of a common technique could however be advantageous as it would imply the recognition in all member states of the fiduciary contract. Such recognition could of course also follow from a ratification of the Hague Convention if all member states decided to

⁶ Article 2 of Law of 27 July 2003.

⁷ Except that the fund must be designated a "protected fund" and must be restricted to commercial purposes.

ratify. In such case, Luxembourg could, together with other countries, continue to benefit from the competitive advantage to offer a secure solution for protected funds.

The introduction of a protected fund on a European level should under no circumstances oblige member states neither to give up institutions that fulfill already the purposes of protected funds nor to introduce a distinct instrument that would inevitably overlap the existing institutions i.e. the fiduciary contract. Member States as Luxembourg or France should thus be allowed to implement the proposed Directive through a mere adaptation of their laws on fiduciary contracts even if the scope of those laws exceeds the scope of the directive.⁸

Technically, the implementation of a protected fund directive would not cause any serious difficulties under Luxembourg as the instrument already exists. Minor changes to the law of 2003 governing the fiduciary contract could cope with the proposed regime of the protected fund. Some modifications would obviously trigger a political discussion as they may call into question solutions that have revealed successful under the current regime of the fiduciary contract.

B. Article by article

Article 1 – Subject matter and scope

The directive proposes to restrict its regime to funds created for a commercial purpose. Fiduciary contracts may be concluded for any purpose even if the "fiduciaire" – administrator – has to be a qualified professional. The limitation of the directive to funds for commercial purposes is reasonable but it should not constitute a restriction on Member States that wish to extend the benefit of their regulation to funds created for non-commercial purposes. As long as those funds satisfy the characteristics laid down by Article 3, it would be desirable they should also benefit from mutual recognition.

The directive does not qualify the relationship established between the originator and the administrator. Still a protected fund comes only into existence through an agreement between both, as the administrator has to

⁸ See comment under Article 1.

accept its appointment by the originator.⁹ Under Luxembourg law this would inevitably lead to a contractual relationship. The fiduciary contract would therefore be the adequate recipient for the protected fund.

While introducing the fiduciary contract into Luxembourg law in 1983, the legislature had cautiously foreseen a formal requirement, similar to the one of the directive that the contract had to refer expressly to the law in order to take advantage of its regime. This condition has been abandoned in 2003 as it could turn out to be quite dangerous for parties and third parties relying on the autonomy of the fiduciary patrimony without paying attention to a mere formal imperfection of the contract. But the introduction of a common instrument at a European level certainly justifies the requirement for a non ambiguous designation of the protected funds by the constitutive documents.

The limitation of the scope of the directive to funds administered by qualified professionals is a wise solution as it gives a certain comfort for the actual segregation and ring-fencing of the assets comprising the protected fund. This same solution has made the success of the Luxembourg fiduciary contracts that have given rise since almost twenty five years to virtually no disputes before the courts. The list annexed to the directive, focusing on professionals from the financial and insurance sector subject to a strict supervision, includes to a large extent the same categories of professionals allowed to act as "fiduciaires" by Luxembourg law.

Article 2 – Definitions

The definitions proposed by Article 2 correspond to a large extent to the concepts on which rests the fiduciary contract: the administrator is the "fiduciaire", the beneficiary the "bénéficiaire", and the originator the "fiduciant".

Under the directive, assets are not necessarily brought to the administrator by the originator. They may also be brought by a different funder including the administrator himself. The same options exist under Luxembourg law as fiduciary contract is characterized by the creation of a distinct patrimony rather than through the transfer of assets to such a patrimony.¹⁰ A definition of the funder was held unnecessary under this approach.

The law on fiduciary contracts does not foresee the intervention of an enforcer.

Article 3 – The Protected Fund

Paragraph 1

Paragraph 1 states that the assets are held by an administrator for the benefit of one or more beneficiaries. The same rule is formulated under Luxembourg law in a slightly different way as the fiduciary patrimony is to be held under specific obligations defined by the "fiduciant" indicating, in particular, to whom and under which conditions assets are to be returned or transferred by the "fiduciaire" during or at latest while liquidating the patrimony.

Paragraphs 2, 3 and 4

Just as in a fiduciary contract, assets of a protected fund form a patrimony separate from the private patrimony of the person who is administrator and from the patrimony of any other protected fund held by that person.

The concept of such a distinct patrimony is well known under Luxembourg law and the major consequences specifically vis-à-vis third creditors are defined in the same way.

The obligation for separate book-keeping for each protected fund, as stated under Luxembourg law, could be usefully added to the directive.

Paragraph 5

The extension of the protected fund to the fruits of assets of the fund and any substituted assets derives under Luxembourg from the principles of accessory ownership and real subrogation to apply to each owner including on a fiduciary basis. A specific rule stating those solutions was therefore not held necessary for fiduciary contracts and would not be so either for the protected funds. It could even be found disadvantageous as it may restrict the freedom of parties to foresee different solutions i.e. fruits accruing to the direct benefit of the funder of the assets – unless the funder is then to be regarded as taking such as a beneficiary.

⁹ Directive, Article 4 below.

¹⁰ This is a major difference with the French solution.

*Article 4 – Establishing a protected fund**Paragraph 1*

As mentioned above, the constitutive document would lead, under Luxembourg law, through its acceptance by the administrator to a contract between the originator and the administrator. The relationship would qualify by its purpose as a fiduciary contract.

The proposed directive should leave Member States the necessary freedom to introduce protected funds as a specific type of contract avoiding the need to refer to concepts that are not admitted under their legal system as for instance, under Luxembourg law, the creation of duties and obligations on behalf of another person by a unilateral declaration.

Paragraph 2

The obligation to turn to a qualified professional as administrator/ "fiduciaire" allows the Luxembourg legislature to free the fiduciary contract from any formal requirements, trusting those professionals that they would offer the "fiduciant" the necessary assistance for the preparation of an adequate contract.

Introducing formal requirements for the protected fund could, in this respect, be considered as a counterproductive restriction of contractual freedom.

Paragraph 3

The prohibition of conditions other than for the formal execution of the constitutive document, in particular, the exclusion of a registration of protected funds, is in line with the Luxembourg approach.

Article 5 – Constitutive document: further provisions

No comments

Article 6 – Conferral of powers

Under Luxembourg contract law it would be delicate to grant to a third party the power to remove the administrator, to replace beneficiaries, to amend the constitutive document or to determine the duration of the protected fund. Rights stemming from the creation of the protected fund, in particular the ownership of the assets and rights to those assets of the beneficiaries as well as the obligations determined by the constitutive document may, in principle, only be called into question by the involved parties themselves. A specific statutory provision would therefore be necessary to allow such delegation of powers.

*Article 7 – The administrator**Paragraph 1*

The Luxembourg legislature would probably be hesitant to allow a natural person to act as an administrator. The closed list of persons who can be appointed administrator drawn by Annex I mitigates obviously the potential risks by limiting this possibility to public notaries, lawyers, accountants and bailiffs. However, the Luxembourg government has so far not been favorable to allow any other person than legal persons from the financial sector who are submitted to a close supervision to act as a "fiduciaire". This prudent choice contributes certainly to the high level of protection of the beneficiaries and funders of Luxembourg fiduciary contracts. In more than 25 years the widely used fiduciary contract has in fact not given rise to any disputes before courts.

The condition that those legal persons have a registered office or establishment in a Member State could be considered as inadequate restriction as it would for instance disqualify a Swiss Bank that does not fulfill those conditions even if the managed assets are located within Europe.

Paragraphs 2 through 7

The conditions for the appointment of the first administrator and his acceptance do not cause any difficulties under Luxembourg law.

The constitutive document may well foresee also the conditions for the appointment of a subsequent administrator.

The universal transfer of the protected fund to a subsequent administrator needs however a statutory provision. Luxembourg law already grants this

solution in the case of a change of the fiduciary representative of a securitization.¹¹ In the same context it foresees in equivalent rule to Article 6 paragraph 7 for the save resignation of the administrator.¹²

Paragraphs 3 and 8

The directive does not submit to any specific condition the application by any beneficiary, enforcer or the administrator to ask the court to designate a subsequent administrator or to remove the administrator. This may lead to an interference of the court in a relationship under circumstances that are uncommon to Luxembourg legal tradition. The law on fiduciary contract allows similar demands but only in case they are justified by an exceptional seriousness. Luxembourg legislator may want to define in a equivalent way the conditions of a juridical replacement of the administrator.

Article 8 – Obligations of the administrator

Obligations of the administrator as stated by Article 8 would follow under Luxembourg law to a large extend from the general principles of contract law and the specific regime of the contract of mandate that apply on a supplementary basis to fiduciary contracts.

The possibility to allow the administrator to pool assets from separate protected funds, as foreseen by paragraph 3, may however be considered inconsistent with the essential characteristic of protected funds to establish distinct patrimonies.

Article 9 – Enforcers

The law on fiduciary contract does not provide for the category of an enforcer. Duties of the administrator are owed, besides the beneficiary, directly to the originator and may be enforced by him. The introduction of an enforcer would however not cause any serious difficulties.

For the specific category of fiduciary representatives of a securitization, securitization law grants the supervisory authority of the financial sector a right of compulsory replacement that may be compared to the power of an enforcer.

11 Law on securitization of the 22 March 2004, Article 77, paragraph 1.

12 Law on securitization of the 22 March 2004, Article 77, paragraph 2.

Article 10 – Obligations to third parties

Under Luxembourg law, fiduciary contracts may be immediately effective against third parties except for the limitations of the powers of the "fiduciaire" which may only affect those that are aware of them.

The provisions of Article 10 lead essentially to the same results.

The liability rules for *ultra vires* obligations are in line with the principles under Luxembourg law of contractual liability. A clear statement of those rules appears however useful as the segregation of patrimonies held by one person constitutes an exceptional situation.

Article 11 – Special court powers

Paragraph 1 and 3

Under Luxembourg law, Courts are not supposed to direct a party as to the scope and the proper performance of its duties and obligations. Even in the case of unforeseen circumstances, they are not allowed to amend a contract.

A specific statutory provision would therefore be necessary to grant Courts the powers indicated by Paragraph 1.

Paragraph 2 and 3

On application of the "fiduciant", the "fiduciaire" or the beneficiary, a Court may under the law of 2003 terminate a fiduciary contract before its term. The conditions stated by Paragraph 2 of Article 11 could be considered as "serious reasons" ("motifs graves"¹³) justifying an order of anticipated termination.

Article 12 – Termination

This article would need a statutory basis.

13 Law of 2003, Article 7 (6).

*Article 13 – Shared positions**Paragraphs 1 and 2*

The shared positions considered by Article 13 do not cause any difficulties under Luxembourg law. The law on trust and fiduciary contracts perfectly allows all of those positions.

A "fiduciaire" could even be the sole beneficiary where a fiduciary contract is used as a security for an obligation owed to him by the "fiduciant". Of course assets would have to be returned to the "fiduciant" on completion of its obligation, the security becoming obsolete. But it remains doubtful that the "fiduciant" would therefore qualify as an authentic beneficiary beneath the "fiduciaire" and creditor as he is not strictly speaking taking any benefit out of the protected fund.¹⁴ The proposed Directive should allow the use of a protected fund for such security arrangements.

Paragraph 3

The law on trust and fiduciary contracts does not state a similar rule which would need to be introduced in a new statutory provision.

Article 14 – Joint administrators

In a Luxembourg fiduciary contract, the patrimony may be held on a joint basis by several "fiduciaires". The possibility of joint administrators given by Article 14 would be accepted without any problem.

The consequences of joint administration are not detailed by the law on trusts and fiduciary contracts but are supposed to be solved by the parties themselves.

Supplementary provisions as those stated by Paragraphs 2 till 5, if considered useful, would need to be introduced by a new statutory provision.

Article 15 – Jurisdiction, Article 16 – Mutual Recognition and Article 18 – Implementation

As stated above, Member States that know already an institution satisfying the characteristics of a protected fund should be free to imple-

ment the directive by adapting that instrument and not be required to introduce a supplementary and necessarily overlapping solution. The scope of the directive should therefore be regarded as a minimum standard and not a barrier for funds created for non-commercial purposes.

The mutual recognition granted through the directive could theoretically be limited to funds for commercial purposes, but ideally should be extended to all funds governed by national law that fulfill the main characteristics of protected funds, as defined by Article 3. This approach is the only one that is coherent with the Hague Convention.

The Directive should by the way oblige all member States to ratify the Hague Convention or foresee any other solution to create a coherent solution between both instruments as they relate to the same subjects of applicable law and international recognition.

Article 17 – Review, Article 19 – Entry into force, Article 20 – Addressees

No comments.

Annex – Categories of person who can be appointed as administrator

No comments.

¹⁴ See the definition under Article 2.