Nº 03

LFFO EDITION

Wealth & Family

LUXEMBOURG

High Net Worth Individuals: Why Not Luxembourg?

INTERVIEW

Family Offices in a Changing Landscape

Luxembourg For Family Office · luxembourgforfamilyoffice.lu

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Dear Readers

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No one really knows what is happening and the collective imagination seems to lead us to dark places... Financial markets continue to live in uncertainty and the recent Brexit vote has even raised the prospect of sustained anxiety in the global economy as investors struggle to surmise what is happening. For this reason Luxembourg for family office and ACI Luxembourg, has brought together a group of experts to give their views and experience on how to find a fulfilling path in today's markets of the zero economy. Luxembourg For Family Office holds annual event in partnership with ACI Luxembourg entitled "Climate change & Uncorrelated investments" at Hotel Place d'Armes and Château de Septfontaines.

"The audience was started by Carl Weinberg who delivers research to 350 institutions in 35 countries worldwide. The Wall Street Journal described Weinberg as choosing "perhaps t he riskiest route" , becoming an "entrepreneurial economist". Daniel Gupta of Anafin explained why in his opinion the UK made such an economical disastrous decision to leave the EU. He said "it is lovely to be back in Luxembourg to see you again – at least whist I can still travel here without a VISA! Guido Veul of NN Investment Partners exposed that more and more people want to invest their assets in a sustainable way, to ensure their money takes into account environmental, social and governance (ESG) factors, next to achieving a financial return. Important ESG factors include a company's carbon footprint, recycling, health and safety measures and respect of shareholders rights. Other interesting panels were opportunities for Family Offices in today's markets by Laurent Roussel; the Luxembourg Art Hub and Auctioneer by Luc Mazet, Adriano Picinati di Torcello and Aude Lemogne; The Climate changes and sustainable development : changes or opportunities for Social and Economic Development by Guido Veul, Virginie Issumo and Jean Philippe de Schrevel and the New Face of European Philanthropy by Tonika Hirdman Fondation de Luxembourg" and Family offices at the Digital Frontier by Peter Schramme: Tools to fully capture the benefits of technology. Within 30 years the biggest transmission of wealth will be transferred to a younger generation, this generation will be "digitally savvy". Family members are better connected and will be OMNI-DEVICE & OMNI-CHANNEL & REAL-TIME!"

Luxembourg For Family Office contributed also to the International Family Office Round Table of AIFO in Milan at the Palazzo Clerici on the 28th of January 2016.

Luxembourg For Family Office launched in March 2016 the European Family Office Alliance with Families For Families. An annual event will be organised every year in March. Another upcoming event is in Slazburg in October together with the Mozart Foundation.

We hope you enjoy the reading and my sincere gratitude goes to all persons who contributed to the redaction and the organisation of the events.

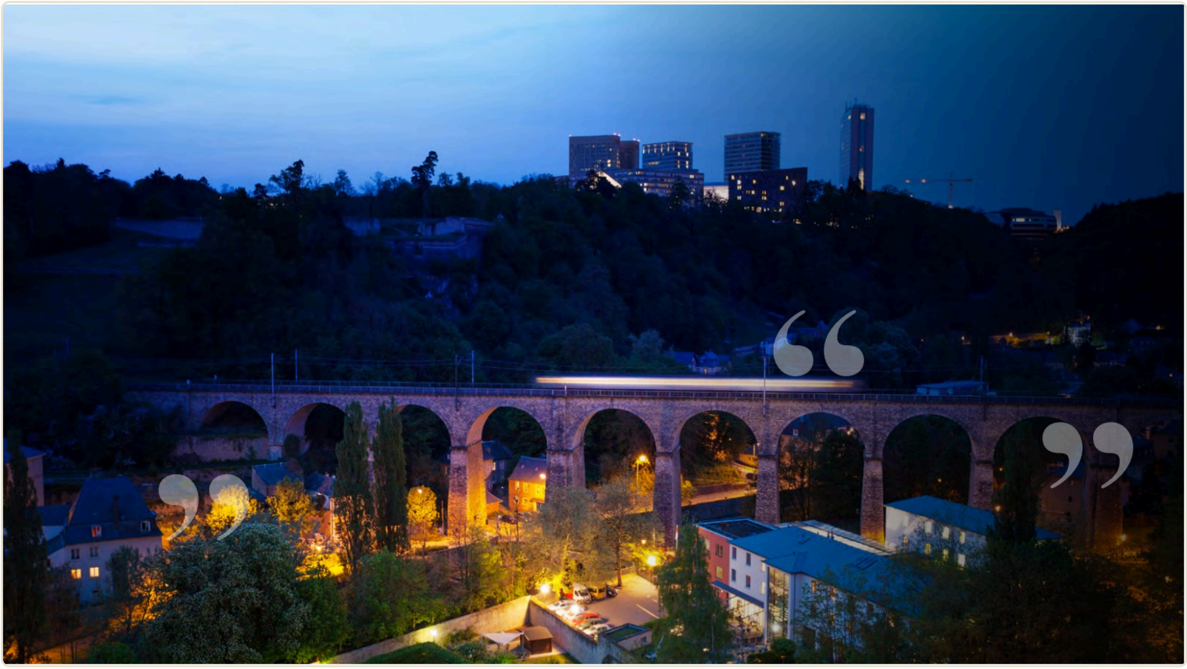
Yours sincerely,

— Diana Diels, Luxembourg For Family Office

WEALTH & FAMILY · LUXEMBOURG

High Net Worth Individuals: Why Not Luxembourg?

WEALTH & FAMILY · Nº 3



> *Well-known for its business-friendly, economically and politically stable environment, Luxembourg has evolved over the years into a leading, safe and open-to-the-world business centre. It offers a full range of investment vehicles and structuring alternatives to investors, asset managers, family offices and high-net-worth individuals (HNWIs).*

1. Luxembourg as a destination for redomiciliation

Settling in Luxembourg: step-up in basis

Until recently, non-resident individuals settling in Luxembourg could not benefit from a step-up in basis on assets. Therefore, upon subsequent sale of these assets, the capital gain realised from a Luxembourg stand point was determined based on the historic acquisition cost of the assets in the jurisdiction of acquisition. In a worst-case scenario, this could lead to double taxation: the individual could be taxed first in his/her home country on latent gains accrued up to the date of transfer (e.g. under an exit tax), and then subsequently in Luxembourg upon sale of the assets. To avoid double taxation in respect of substantial participations, a law voted in December 2015 now allows non-resident individuals to value substantial participations (i.e., participations of more than 10% in Luxembourg or non- Luxembourg resident collective entities) at their fair market value. Sale of a participation representing less than 10% is in practice not really a concern, as it is not a taxable event if the shares have been held for more than six months. The introduction of a step-up in basis clause into Luxembourg legislation surely removes a significant obstacle to HNWIs relocating to Luxembourg.

Being a Luxembourg resident: individuals' taxation

Luxembourg is traditionally viewed as an attractive jurisdiction for HNWIs, established as a European jurisdiction with one of the lowest tax burdens for individuals. The highest income tax rate currently amounts to just 40% (increased by a solidarity surcharge). Luxembourg further combines many appealing features:

- no wealth tax
- limited taxation on dividends (as a 50% exemption is granted when the entity distributing the dividends is a fully taxable company)
- no taxation on capital gains after a six- month holding period (except where the seller holds a substantial participation)
- a 10% final withholding tax on certain interests paid by a Luxembourg paying agent
- no taxation on capital received under a life insurance contract; and
- an exemption from inheritance tax on transfers to children and grandchildren.

A law voted at the end of 2015 further introduces a temporary tax amnesty regime for 2016 and 2017 under which Luxembourg tax residents would be able to voluntarily disclose undeclared assets and income without risk of being pursued for criminal tax penalties (tax fraud and tax

Julie Chartrain-Hecklen, Avocat à la Cour, Allen & Overy evasion). Taxpayers would just be subject to a penalty of 10% of the eluded taxes if they regularise their situation in 2016 or 20% if they do so in 2017.

Although not specifically mentioned in the commentary to the bill, it is clear that the introduction of the temporary tax amnesty regime must be read in the context of the upcoming automatic exchange of financial account information under the so-called

Common Reporting Standard developed by the

OECD as well as under EU Directive 2011/16/EU on Administrative Cooperation in the field of

Taxation (as amended by Directive 2014/107/EU).

In this context, Luxembourg will receive, starting in 2017, information pertaining to financial accounts in existence as of 31 December 2015 and maintained for Luxembourg tax residents by any financial institution located in an EU Member

State or a jurisdiction participating in the OECD

Common Reporting Standard.

2. Luxembourg as hub for portfolio

Management and estate planning

Luxembourg is also a very attractive jurisdiction when it comes to the set-up of a holding or institutional vehicle for, among others, wealth management purposes.

THE LUXEMBOURG TOOLBOX Luxembourg may grant the benefit of a wide range of corporate and contractual estate arrangements. HNWIs may choose to structure their investment portfolio or structure their estate through, among others: a fully taxable company such as the Soparfi

(société de participations financières), an unregulated commercial company that is fully taxable but which benefits from the so-called participation exemption regime on dividend income as well as on capital gains; a tax transparent limited partnership that may be set-up as a regulated or unregulated entity. The key driver of the regime applicable to limited partnerships is flexibility, as major features of such an entity may be determined freely in the limited partnership agreement, such as the entitlement of partners to the profits and losses of the vehicle, the rules governing transfers of partnership interest or the voting rights of partners; a family estate management company aiming at combining an attractive tax regime (exemption from corporate income tax, municipal business tax and wealth tax, submission only to an annual subscription tax capped at EUR125,000) and the security of having a company to manage private wealth; a specialised investment fund responding to demands for a lightly regulated onshore vehicle for alternative products; a fiduciary contract, which can be compared to a trust; or a life-insurance policy. THE PRIVATE WEALTH FOUNDATION In addition to this already wide range of structuring opportunities, Luxembourg is about to create a new vehicle specially tailored for the needs of HNWIs: the private wealth foundation.

Legal framework The private wealth foundation will be an orphan entity having neither shareholders nor members. Basically, the foundation, having its own legal personality, will manage the assets allocated to it by a founder to pursue a particular goal (such as the development of an investment portfolio or the management of a business) or for the benefit of one or more beneficiaries. The founder will thus lose control over the contributed assets, as they will become the property of the foundation, but will have great latitude to determine in advance how the foundation will have to operate them. The formal requirements to set up a foundation have been kept to a minimum, and, in terms of governance, the private wealth foundation offers great flexibility as, for example, the appointment modalities as well as the powers and duties of the directors may be freely determined in the founding deed of the foundation or, as the case may be, in extra-statutory documents. The foundation may further invest without restriction into any type of assets from securities to real estate or works of art. On top of that, the foundation may issue certificates linked to any asset held by it to any individual or entity acting in the course of the management of the estate of individuals, enabling it to allocate to the holder of certificates the return derived from the certified assets. This innovative tool, inspired by existing Belgian or Dutch comparable mechanisms (stichting administratiekantoor), has here a broader scope and more flexible features than in any other country, as any kind of assets (and not only shares) may be certified.

Tax features From a tax perspective, the foundation, as opposed to trusts or fiduciary arrangements, will be an opaque entity, which means that it will itself be a taxpayer, independent from its founders or beneficiaries. As such, it will be fully subject to income tax at the standard corporate income tax rates, as well as to municipal business tax, but will benefit from an exemption for investment income derived from securities, such as shares, profit sharing bonds or loans, for capital gains derived from the disposal of the assets generating such exempt income, as well as for the payment of the capital or the surrender value in relation to a life, death or disability insurance policy.

The private wealth foundation will also be exempt from net wealth tax, exactly like Luxembourg resident individuals. Income distributions by the foundation to its beneficiaries or founders are exempt from withholding tax. In the case of a payment in kind to a beneficiary or to the founder, the transfer of assets is meant to be tax neutral: indeed, the assets are transferred at book value. As a result, potential latent capital gains will not be taxed upon the transfer of an asset from the foundation to its beneficiary, but will be disclosed upon a later disposal of the asset by the beneficiary. With regard to indirect taxation, the law on private wealth foundation has also been drafted to ensure neutrality. Contributions to the foundation (either upon set up or subsequently) are subject to a flat registration duty of EUR12. Transfers of real estate property located in Luxembourg or transfers of property subject to registration during the lifetime of the founder are subject to standard gift tax, calculated on the basis of the family relationship between the founder and the beneficiary. The same rules apply in case of dissolution of the foundation during the lifetime of the founder. Upon death of the founder, inheritance taxes will only apply on transfer of assets to his/her heirs if the deceased was a Luxembourg resident or, alternatively, if real estate located in Luxembourg is transferred. Inheritance taxes will be levied at fixed rates based on the family relationship between the founder and the transferee. It will amount to 0% to a spouse or a direct ascendant or descendant, 12% if the transfer is made to the benefit of any other relatives and 40% in any other cases.

The private wealth foundation will thus constitute a particularly flexible vehicle, adaptable to almost any need of HNWIs. It will surely become an alternative to foundations already available in other jurisdictions and may further be a perfect solution for entrepreneurs willing to resolve potential conflicts between their heirs with respect to the future management of their business.

Julie chartrain-hecklen

Avocat à la Cour Allen & Overy www.allenovery.com

— Julie Chartrain-Hecklen, Allen & Overy

> *Luxembourg has evolved over the years into a leading, safe and open-to-the-world business centre.*

WEALTH & FAMILY · BANK

Bank Secrecy and Professional Secrecy

WEALTH & FAMILY · Nº 3

Nowadays, the "secreta auris", the ear that receives secrets, is no longer respected, with all the leaks and the Panama Papers. What happened to the protection of private life set out in Article 8 of the European Convention for the Protection of Human Rights? We, as individuals, decide about the matters we do or do not want to share with others.

Today bank secrecy is under pressure. Banks and other credit institutions have the legal and deontological obligation of discretion and confidentiality. These professionals are more and more under pressure today due to requests of the authorities, institutions and administrations. In a certain way, the liberty of their professional activity is attacked. The banker is exposed to great risks if he has to give even the smallest information about his clients. His responsibility is engaged on civil and criminal law. The banker can be pursued by his customer in case he communicates any information that is confidential to the administration or judicial authorities. In this case his penal responsibility is engaged. The protection of privacy is very important to the law.

The first quality of the Banker or Financial intermediary was always the unconditional respect of confidentiality and discretion on the business and private affairs of the customer. Today this is totally weakened by growing requests of the Government, Financial authorities, the Administration etc.

Bank secrecy is built onto two fundamental facts: the civil and penal code. The civil code corresponds by the duty of discretion that covers contractual liability and the penal code that covers violation of professional secrecy.

The Bank secrecy is also involved when employees exchange some information. This concerns not only numerical data. The professional secrecy applies even within the bank and without making a difference between an employee of the same establishment or not.

The professional secrecy is the rule. The person who received the confidence of a secret always has the duty to keep it. The revelation of this confidence makes him punishable if it is a confidence bound to the exercise of certain professions.

Let us note that the client can loosen the banker of the obligation of the secret. The secret is a simple protection of the client so that he can even freely decide to give it up. The person who is asking for the information is also an important actor. Who is a third party? For example a spouse, as well as other family members, are thirds parties to the banker. The commercial and confidential relationship between the banker and his client arose from a moral and a business contract between the banker and his client. The bank secrecy has to bring him into conflict. Even when the client dies, the heirs do not have access to any information in touch with the life of the cujus. Access to information is only about patrimonial and extra patrimonial information. In case of dispute, the judge must summon the banker to give up his professional secrecy, in order to solve the situation.

The duty of confidentiality is thus a very wide and important part. The banker has to respect professional secrecy, but also has the obligation not to get involved in the private affairs of his customer.

The non-interference is a very important subject of professional secrecy. The banker is not allowed to analyse the causes of the operations, which his customer asks him to execute, except in the case where the law foresees it within the framework of anti-money laundering.

Limitation of non-interference is the obligation of vigilance for the banker. The banker is free to accept or deny the opening of an account or the execution of a banking transaction. He is free to decide. Bankers have the duty not to supply possibilities to their clients that could damage others. The banker has to be vigilant and has to detect anomalies, whether they are material or subjective. He cannot call upon the principle of non-interference and stay passive when there are irregular transactions or movements. His responsibility is engaged as he facilitated the crime by maintaining the use of an account.

The legislator made notion of professional secrecy in the definition of bank secrecy. In case that the professional let confidential information " leak" and made it public, criminal law will be applied.

We see that bank secrecy and all the responsibilities that go with it, is very well defined by legal texts. The offence is established when confidential information is published. This information can be clients or non-clients. In general, confidential information is information that concerns the intimacy of affairs, the fortune or private life of the client. Penalties are foreseen even when there was no intention to damage or bring personal injury. Even when there is absence of the intention to violate the professional secrecy the criminal law is very clear, it is still a crime! Bank secrecy is limited in case of suspicion of Money laundering. The banker has to declare when he suspects such a happening and has his obligation of vigilance. Fiscal administrations have some power to retrieve some information and try sometimes to obtain more than the law authorizes them.

Another limitation of bank secrecy is in the case of divorce. The Civil code foresees that all information can be obtained in case the bank holds accounts for the spouses. In that case, professional secrecy cannot be used. Also when spouses have common stock shares in a company they own together, an expert will be designated to interrogate the banker. Nowadays with the recent Lux Leaks and Panama papers that legislation is not respected anymore as well as International Human Rights.

Bank secrecy and professional secrecy can be considered as a guaranty for democracy *1. Others pretend that bank secrecy is a guaranty for social peace *2. Democracy likes obscure fortunes; the dream of equal rights is not disturbed if the wealth stays hidden.

— Diana Diels, Luxembourg For Family Office

> *Professionals are more and more under pressure today due to requests of the authorities, institutions and administrations.*

WEALTH & FAMILY · PHILANTHROPY

New Philanthropy in Africa

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Africa's philanthropic tradition is based, for instance, on Ubuntu (meaning "humanity to others") or on religious precept, and constitutes the foundations for its new philanthropy. Today philanthropy occupies a significant place in Africa, contributing to the growth of the continent and offering new opportunities for impact investment.

Africa philanthropy tradition is based for instance on Ubuntu (meaning humanity to others) or on religious precept and constitutes the foundations for its new philanthropy. Today philanthropy occupies a significant place in Africa. Philanthropy has significantly contributed to the growth of the African continent and offers new opportunities for impact investments. Philanthropy is indeed a true risk capital either as main funder of numerous public benefit entities or as subscriber of social bonds.

Systemic changes require indeed long term vision and appropriate allocations of human, natural and material resources and common action from the public and private sectors. To face challenges such as unemployment, water scarcity, political instability or climate change and to reach objectives such as the Sustainable Development Goals (http://www.un.org/sustainabledevelopment/sustainable-development-goals/), Africa is developing green energy infrastructures to boost industry and create jobs locally. The African Biofuel and Renewable Energy Company (ABREC) is a public-private organization initiated by Mr Thierno Bocar Tall with 15 African States and 6 major banks. ABREC is based in Lomé, Togo and promotes renewable energy and energy efficient technologies in Africa from solar, wind, biomass and hydro power. ABREC brings together human skills, expertise, financial resources (through tools such as the AREF Fund, the Abrec Investment JV notably with the Oragroup, the Abrec Finance Utile crowdfunding platform and the ethiCarbon- Afrique© to support mitigation and adaptation projects). It also contributes to institutional and policy change to shift to a clean energy system. The impacts of ABREC's work in less than a decade on livelihoods improvement and energy security are substantial thanks to the implementation of innovative solutions and with a special focus on women.

In Africa, paradigm has definitely changed thanks also to philanthropy which is has accelerated for million of people the access to education, health, social entrepreneurship and non-banking finance going from mobile payments to microinsurance.

Youth and creativity are Africa most valuable resources. Private and public initiatives tend more and more to create start-up hubs, innovation awards and knowledge centres to develop and boost these unique capacities. Thanks to new technologies it is henceforth possible to register to long distance university courses, to diagnose and cure numerous diseases and also to offer access to additional sources of funding and to the transfer of complex technologies.

African new philanthropy is therefore supporting adapted ways of producing, processing, consuming and learning and addressing population growth, humanitarian crisis and climate change issues. Philanthropy initiatives such as the African Innovation Foundation (AIF) founded by the investment banker Mr Jean-Claude Bastos de Morais focus on innovation to boost efficient development. AIF acts through innovative programs in the fields of access to technologies, law and governance and social impact development. Since five years AIF promotes the Innovation Prize for Africa (IPA). "IPA encourages innovative achievements that contribute toward developing new products, increasing efficiency or saving cost in Africa. Specifically, the award targets technological breakthroughs in 5 main areas: manufacturing & service industry, health & well- being, agriculture & agribusiness, environment, energy & water and ICTs."

Sustainable and inclusive development also implies to integrate good governance, gender equality, global leadership and cultural factors at every level of decision and action and in the education early stage. These are sine qua non conditions to celebrate Africa's future built by responsible people and institutions amongst which philanthropy plays a key role.

— Virginie Issumo

> *In Africa, the paradigm has definitely changed thanks to philanthropy.*

WEALTH & FAMILY · SUSTAINABILITY

Responsible Investing

WEALTH & FAMILY · Nº 3

More and more people want to invest their assets in a sustainable way, to ensure their money takes into account environmental, social and governance (ESG) factors, alongside achieving a financial return.

More and more people want to invest their assets in a sustainable way, to ensure their money takes into account environmental, social and governance (ESG) factors, next to achieving a financial return. important ESG factors include a company's carbon footprint, recycling, health and safety measures and respect of shareholders rights.

There are various ways to invest sustainably, such as:

- exclusion of controversial activities (e.g. tobacco, weapons, alcohol),
- exclusion of controversial behaviours

(breach of regulations with regards to labour rights, environmental care, corruption etc), but also by selecting companies with advanced ESG policies and performance relative to their competitors. Of course the vast majority of sustainable investors do not want to give up financial returns by investing their assets in a sustainable matter. Therefore a growing body of research papers has investigated links between a sustainable investment style and investment returns. A well- known example from the past showed a negative link on performance on US equity returns when excluding so-called 'sin' stocks (tobacco, weapons, gambling, alcohol). This gave rise to the perception that taking into account sustainability might hurt investment returns. However, until now little academic research has been done on the effects of ESG factors on risk and return of global equity portfolios. Moreover, many existing research papers lack academic thoroughness. As a result, NN Investment Partners started a research in collaboration with the European Centre for Corporate Engagement (ECCE) at Maastricht University. Our multi-year research project aims to address existing knowledge gaps in the industry and enable important advances in ESG integration. Using ESG data from well-known data providers Sustainalytics and Governance Metrics International (GMI), we analysed data on more than 3,000 firms from developed markets. This study evaluated not only the performance based on absolute levels of firms' ESG scores, but also of changes or momentum in ESG scores. A key finding was that ESG ratings/scores typically used in equity selection tend to be simply higher for larger companies and vary across industries. Selecting stocks on the basis of high ESG scores may therefore lead to unintended size and industry tilts in equity portfolios. Adjusting for size and industry bias, we tested various ESG criteria, with the following main results: Exclusion of firms with controversial ESG behaviour from the universe helped improve performance in the research period.

Guido Veul,

Client Portfolio Manager Sustainable Equities at NN Investment Partners

Portfolios of stocks with positive ESG momentum (positive change in ESG scores) outperformed their lower-scoring counterparts in most cases. In contrast, portfolios of stocks with already high ESG scores underperformed portfolio with low ESG scores in most cases. Return differences between stocks with strong ESG momentum and those with weak momentum were largest among stocks with medium absolute ESG scores, suggesting that stock selection benefits from joint consideration of levels and changes in ESG scores. For investors, the results have a number of implications. The exclusion of ESG controversies has shown to be a relatively simple way to improve portfolio performance. Contrary to popular belief, it appears that exclusion can enhance rather than harm investment performance. Furthermore, until now ESG scoring and its application have been one-dimensional, focusing on absolute scores. This study opens up a debate whether a two-dimensional approach, combining absolute scores with ESG momentum is more appropriate. These research findings reinforce our longstanding belief that an ESG score in itself is insufficient to obtain a complete understanding of a company's ESG behaviour and its consequences for risks and returns. In light of these results, we are already overweight stocks with positive ESG momentum in our sustainable equity portfolios and continue to scrutinise our portfolios on controversial behaviours. Our research project with ECCE continues as we see much scope for further research into the materiality of ESG factors and controversies. We have recently started the next phase of our research collaboration with ECCE in which we investigate the effects of certain governance factors on the performance of emerging markets portfolios.

NN investment partners in collaboration with the ECCE at Maastricht university

— Guido Veul, NN Investment Partners

> *Our research project aims to address existing knowledge gaps in the industry and enable important advances in ESG integration.*