



C L I F F O R D  
C H A N C E

**LUXEMBOURG LEGAL UPDATE**  
**MARCH 2023**

# CLIFFORD CHANCE

Dear Reader,

We are pleased to provide you with the latest edition of our Luxembourg Legal Update.

This newsletter contains a compact summary of, and guidance on, the new legal issues that could affect your business, particularly in relation to insurance, banking, finance, corporate, litigation, employment, funds, investment management and tax law.

You can also refer to the "**Topics Guides**" on our website to keep you up to date with the most recent developments:

[ESG and sustainability: funds and investment management](#)

[Financial Toolkit](#)

[Fintech guide](#)

[Green and Sustainable Finance Topic Guide](#)

## ONLINE RESOURCES

To view the "**client briefings**" mentioned in this publication, please visit: [www.cliffordchance.com](http://www.cliffordchance.com)

To view all "**editions**" of our "**Luxembourg Legal Update**", please visit: [www.cliffordchance.com/luxembourglegalupdate](http://www.cliffordchance.com/luxembourglegalupdate)



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## **CONTENTS**

Financial Institutions	3
Insurance	17
Corporate	26
ESG	38
Tax	47
Employment	54
Litigation	57
Data Protection	58
IP/IT	60
Glossary	64
Clifford Chance in Luxembourg	66
Your Contacts	67

## FINANCIAL INSTITUTIONS

### GRAND-DUCAL REGULATION OF 14 NOVEMBER 2022 PROVIDING DETAILS ON THE LAW OF 19 DECEMBER 2020 ON THE IMPLEMENTATION OF RESTRICTIVE MEASURES IN FINANCIAL MATTERS

The Grand-Ducal Regulation entered into force on 14 November 2022.

#### Grand Ducal Regulation of 14 November 2022<sup>1</sup>

- Grand-ducal Regulation of 14 November 2022 providing details on the Law of 19 December 2020 on the implementation of restrictive measures in financial matters was published in the Luxembourg official journal (*Mémorial A*) on 14 November 2022.
- The Grand-Ducal Regulation provides that:
  - The restrictive measures provided for by the law of December 19, 2020 relating to the implementation of restrictive measures in financial matters ("**Sanctions Law**") by the natural and legal persons obliged to apply them are executed without delay and without prior notification.
  - The natural and legal persons who are required to execute the restrictive measures provided for by the Sanction Law shall inform without delay the Minister of Finance of the execution of each restrictive measure taken with regard to a State, a natural or legal person, entity or group designated in accordance with the Sanction Law and the implementing regulations, including attempted transactions.
  - The Grand-Ducal Regulation of 29 October 2010 regarding the application of the law of 27 October 2010 regarding sanctions is repealed.

<sup>1</sup> Grand Ducal Regulation:  
<https://legilux.public.lu/eli/etat/leg/rgd/2022/11/14/a561/jo>

## CSSF AML/CTF SURVEY 2022

### 7 December 2022

On 7 December 2022, the CSSF issued a press release to announce details on its 2022 survey related to the fight against money laundering and terrorism financing.<sup>2</sup>

### The annual online survey for the year 2022 started on 15 February 2023.

The objective is to collect standardised key information concerning money laundering and terrorism financing (ML/TF) risks to which professionals under CSSF supervision are exposed and the implementation of measures to mitigate these risks. This cross-sector survey contributes to the CSSF's ongoing assessment of ML/TF risks present in the financial sectors under its supervision and forms part of the AML/CFT risk-based supervision approach put in place by the CSSF.

The CSSF further notes that the 2022 survey remains mostly unchanged compared to the previous year. However, some questions have been removed, added or amended. The new and amended questions have been highlighted in the survey.

### Answers to the survey questions will have to be submitted through the CSSF eDesk portal by 31 March 2023 (at the latest).

The survey must be initiated and submitted within the CSSF eDesk portal by:

- the compliance officer in charge of the control of compliance with the professional obligations (*"responsable du contrôle du respect des obligations professionnelles"* ("RC")); or
- the person responsible for compliance with the professional obligations (*"responsable du respect des obligations professionnelles"* ("RR")).

The completion of the survey, however, may be assigned within the CSSF eDesk portal to another employee of the entity or third party, while bearing in mind that the ultimate

responsibility for the adequate completion of the survey shall remain with the "RC" or the "RR".

In terms of logistics, this implies that the aforementioned persons and their potential delegates must have an eDesk account, which requires an LuxTrust authentication.

In order to avoid connection problems when the survey is launched, the CSSF invites all entities it supervises for AML/CFT purposes to ensure they have an account. Reference, for further details, is made to the "Authentication and user account management" user guide in the dedicated section of the CSSF eDesk portal homepage.<sup>3</sup>

<sup>2</sup> Communiqué: <https://www.cssf.lu/en/2022/12/2022-survey-related-to-the-fight-against-money-laundering-and-terrorism-financing/>

<sup>3</sup> E-Desk portal: <https://edesk.apps.cssf.lu/edesk-dashboard/dashboard/getstarted>

**Financial Institutions**

**CSSF GUIDANCE IN RELATION TO PAYMENT AGENTS AND E-MONEY DISTRIBUTORS FOR THE PREVENTION OF MONEY LAUNDERING AND TERRORISM FINANCING**

**CSSF Guidance of 20 December 2022<sup>4</sup>**

On 20 December 2022, the CSSF issued a press release to announce the publication of its Agents / e-money distributors - Guidance for the prevention of money laundering and terrorism financing.

In this Guidance, the CSSF analyses the risks related to ML-TF to which payment agents and e-money distributors are exposed, and communicates its recommendations in this regard in order to comply with all related professional obligations in the area of anti-money laundering and counterterrorist financing.

The Guidance follows the publication in December 2020 of Luxembourg's national risk assessment of ML-TF, which concluded that payment and e-money services carry a moderate level of residual risk.

The recommendations in the Guidance are intended for:

- i payment agents and e-money distributors established in Luxembourg, and their payment institutions and e-money institutions established in another Member State of the European Union; as well as
- ii payment institutions and e-money institutions authorised and supervised by the CSSF, and which provide their services in other Member States via payment agents and electronic money distributors.

**CSSF COMMUNIQUÉ ON NEW EMIR REFIT REPORTING STANDARDS**

**CSSF Communiqué of 21 December 2022<sup>5</sup>**

On 21 December 2022, the CSSF issued a communiqué to announce the publication of new reporting standards applicable to derivatives reporting under EMIR (the "**EMIR Refit reporting standards**").

The EMIR Refit reporting standards will be applicable as from 29 April 2024, and imply some significant changes, notably on:

- i end-to-end reporting in ISO 20022 XML;
- ii the framework for the mandatory delegation;
- iii information to NCAs for significant reporting issues; and
- iv the new controls and feedback reports by trade repositories.

The communiqué provides more details on the underlying new technical standards, related ESMA Guidelines, the validation rules and the reporting instructions.

The CSSF considers that there is sufficient time for stakeholders to implement the changes until 29 April 2024, and informs all stakeholders that any failure to report accurately will be considered as non-compliance with Article 9 of EMIR.

Therefore, the CSSF reminds all stakeholders in the EMIR reporting value chain that the changes to the reporting framework, which will be applicable as from 29 April 2024, are significant. In order to ensure a smooth transition, the CSSF invites all stakeholders to start preparing for these changes as soon as possible, and is confident that all stakeholders will be able to comply with the new requirements without any delay.

<sup>4</sup> Communiqué: <https://www.cssf.lu/en/2022/12/the-cssf-reviews-the-risks-related-to-money-laundering-and-terrorist-financing-to-which-payment-agents-and-electronic-money-distributors-are-exposed-and-communicates-its-recommendations-in-this-regard/>  
Guidance: [https://www.cssf.lu/wp-content/uploads/Payment-agents\\_AML\\_CTF\\_guidance.pdf](https://www.cssf.lu/wp-content/uploads/Payment-agents_AML_CTF_guidance.pdf)

<sup>5</sup> Communiqué: <https://www.cssf.lu/en/Document/emir-refit-reporting-standards/>  
ESMA Guidelines: <https://www.esma.europa.eu/press-news/esma-news/esma-publishes-guidelines-and-technical-documentation-reporting-under-emir>

## CSSF CIRCULAR LETTER ON THE APPLICATION OF THE EBA GUIDELINES ON LOAN ORIGINATION AND MONITORING

### Circular Letter of 22 December 2022<sup>6</sup>

On 22 December 2022, the CSSF issued Circular 22/824 on the application of the EBA guidelines on loan origination and monitoring dated 29 May 2020 (EBA/GL/2020/06).

The Circular announces that the CSSF applies the Guidelines in its administrative practice.

The Guidelines have been developed with a view to ensuring that In-Scope entities (as defined below) have prudent loan origination and monitoring standards in place to prevent newly originated performing loans from becoming non-performing in the future. The Guidelines pursue not only a prudential objective by imposing on In-Scope entities to implement a prudent risk taking and management process, but also a consumer protection objective to ensure that consumers are treated fairly based on a principle of responsible lending, and that their creditworthiness is correctly assessed to avoid any negative consequences, both for consumers and In-Scope entities.

The Guidelines are attached to the Circular and available on EBA's website.

The Circular applies to credit institutions that are less significant institutions (within the meaning of the SSM Framework Regulation), on an individual, sub-consolidated and consolidated basis, as well as to Luxembourg branches of credit institutions having their registered office in a third country and, subject to the limitation below, professionals granting loans to the public under Article 28-4 of the Law of 5 April 1993 on the financial sector (as amended) (FSL) and creditors (within the meaning of Directive 2014/17/EU (Mortgage Credit Directive) and Directive 2008/48/EC (Consumer Credit Directive)) (In-Scope entities).

However, with respect to professionals granting loans to the public under Article 28-4 of the FSL and creditors, only

Section 5 (Loan origination procedures), Section 6 (Pricing) and Section 7 (Valuation of immovable and movable property) of the Guidelines apply, having regard to the principle of proportionality.

In addition, the CSSF reaffirms that consumer protection remains a competence of the national/host competent authorities and that, accordingly, the CSSF is competent to supervise compliance with the consumer protection-related provisions of the Guidelines by significant institutions (within the meaning of the SSM Framework Regulation) and by Luxembourg branches of EU credit institutions and, in particular, compliance with the provisions regarding the creditworthiness assessment of consumers. For the sole purpose of the consumer protection-related provisions, significant institutions and Luxembourg branches of EU credit institutions shall be regarded as In-Scope entities.

The Circular provides further explanations on the material scope of the Guidelines and their application and reminds In-Scope entities of their responsibility, when complying with the Guidelines, to have regard to the principle of proportionality.

The Circular also explains that the new Guidelines repeal the previous Guidelines on creditworthiness assessment (EBA/GL/2015/11), which were introduced by Circular CSSF 17/651.

The Circular applies as of 31 March 2023.

<sup>6</sup> Circular Letter: <https://www.cssf.lu/en/Document/circular-cssf-22-824/>



**Financial Institutions**

**CSSF CIRCULAR LETTER RELATING TO  
DATA COLLECTION ON INACTIVE  
ACCOUNTS AND INACTIVE SAFE  
DEPOSITS BOXES**

**Circular letter of 22 December 2022<sup>7</sup>**

On 22 December 2022, the CSSF issued Circular 22/825 relating to data collection on inactive accounts and inactive safe deposits boxes.

Circular 22/825 is addressed to all credit institutions established in Luxembourg, as well as to all Luxembourg branches of EU and third country credit institutions and to POST Luxembourg.

Its object is to define the format, content and submission modalities of the data collection on inactive accounts and inactive safe deposit boxes pursuant to the Law of 30 March 2022 on inactive accounts, inactive safe-deposit boxes and unclaimed insurance contracts.

The data related to unclaimed insurance contracts is out of scope of this data collection as the Luxembourg insurance regulator Commissariat aux Assurances (CAA) is competent to collect this information.

The CSSF informs the above-mentioned entities that the data should reflect the situation as of 31 December of the reference year, be transmitted to the CSSF on a yearly basis by the in-scope entities by 28 February at the latest, using the CSSF's eDesk portal, and be provided in accounting version "L". Further explanations on the practical modalities, as well as a user guide, are available on the eDesk portal.

Circular 22/825 entered into force on 31 December 2022, and includes as an annex the data collection templates.



<sup>7</sup> Circular: <https://www.cssf.lu/en/Document/circular-cssf-22-825/>



## GRAND DUCAL REGULATION OF 23 DECEMBER 2022

The Grand Ducal Regulation of 23 December 2022 relating to the fees to be levied by the CSSF was published in the Luxembourg official journal (*Mémorial A*) on 23 December 2022.<sup>8</sup>

The Grand Ducal Regulation mostly retains the existing structure on fee imposition by the CSSF, the Luxembourg financial sector regulator under the amended Grand Ducal of 21 December 2017 on the same subject matter (the "**2017 Regulation**"), but introduces certain changes, including notably:

- increase of most of the lump sum fee amounts to be levied;
- introduction of fees to be levied in respect of certain changes of qualifying participations or reference shareholders;
- a distinction between investment firm classes following the implementation of the new investment firm regime introduced by IFD/IFR in respect of the annual fee to be levied for their supervision;
- the levying of fees on reporting of transactions with financial instruments in accordance with Article 26 of the EU Regulation 600/2014 on financial markets (base fee and variable add-on depending on the number of transaction reports, their annulment or correction, subject to a cap on the add-on amount);
- introduction of fees for authorisation, ongoing supervision and onsite inspections of crowd funding service providers;
- certain further distinction on the fees to be levied in relation to the supervision of investment fund managers.

The Grand Ducal Regulation entered into force on 1 January 2023 and thereby abrogated the 2017 Regulation.

## REPEAL OF CSSF CIRCULAR 20/748 ADOPTING THE EBA GUIDELINES ON REPORTING AND DISCLOSURE OF EXPOSURES SUBJECT TO MEASURES APPLIED IN RESPONSE TO THE COVID-19 CRISIS

### Press release of 23 December 2022<sup>9</sup>

On 23 December 2022, the CSSF repealed its Circular CSSF 20/748 adopting the EBA Guidelines on reporting and disclosure of exposures subject to measures applied in response to the COVID-19 crisis (EBA/GL/2020/07).

Following the EBA communication of 16 December 2022 concerning the repeal of its Guidelines, the CSSF informed the concerned entities (i.e., all Luxembourg credit institutions designated as Less Significant Institutions under the Single Supervisory Mechanism and to all Luxembourg branches of non-EU credit institutions) that the Circular would be repealed from 1 January 2023.

The CSSF also recalls that the COVID-19 reporting and disclosure framework introduced by these EBA Guidelines in June 2020 was set up to monitor the measures taken by credit institutions in response to the COVID-19 crisis, and was originally meant to be in place for a limited period of time only.

<sup>8</sup> Grand Ducal Regulation: <https://legilux.public.lu/eli/etat/leg/rgd/2022/12/23/a662/jo>

<sup>9</sup> CSSF Communiqué: <https://www.cssf.lu/en/2022/12/repeal-of-circular-cssf-20-748-adopting-the-guidelines-of-the-european-banking-authority-on-reporting-and-disclosure-of-exposures->

## Financial Institutions

**CSSF REGULATION CONCERNING  
SYSTEMICALLY IMPORTANT  
INSTITUTIONS AUTHORISED IN  
LUXEMBOURG****Regulation of 23 December 2022<sup>10</sup>**

On 23 December 2022 the CSSF, issued Regulation 22-07 concerning systemically important institutions (SSI) authorised in Luxembourg.

The Regulation identifies the following SIIs authorised in Luxembourg: *Banque et Caisse d'Epargne de l'Etat Luxembourg*, *Banque Internationale à Luxembourg*, *BGL BNP Paribas*, *Clearstream Banking S.A.*, *RBC Investor Services Bank S.A.*, and *Société Générale Luxembourg*, all qualifying as other systemically important institutions (O-SIIs). There is no global systemically important institution (G-SII) authorised in Luxembourg.

Four of these institutions qualify as O-SIIs based on the score obtained by application of the EBA standard methodology (i.e. exceeding the threshold laid down in accordance with the relevant EBA guidelines (EBA/GL/2014/10).

Another institution is identified as an O-SII, based on the relevant authority's judgement and the score obtained by application of the enriched methodology. This classification is justified by the importance of this institution for the investment fund sector and its role as depositary bank for undertakings for collective investment (UCI).

Finally, another institution qualifies as an O-SII by application of the prudential judgement and due to its score, which falls below the relevant threshold but remains very close thereto. The identification of this institution is justified by its role as a market infrastructure.

The Regulation maintains the capital buffer rates for these O-SIIs.

The Regulation entered into force on 1 January 2023.



[subject-to-measures-applied-in-response-to-the-covid-19-crisis-eba-gl/](#)

<sup>10</sup> CSSF Regulation:  
<https://legilux.public.lu/eli/etat/leg/rcsf/2022/11/30/a647/jo>

## CSSF CIRCULAR LETTER RELATING TO PRACTICAL RULES CONCERNING THE STATUTORY AUDIT MANDATE OF THE STATUTORY AUDITORS

### Circular Letter of 23 December 2022<sup>11</sup>

On 23 December 2022, the CSSF issued Circular 22/826 relating to practical rules concerning the statutory audit mandate of the statutory auditors (*réviseurs d'entreprises agréés*).

The provisions of Circular 22/826 are applicable to credit institutions incorporated under Luxembourg law, including their branches, as well as Luxembourg branches of third-country credit institutions.

The provisions of Circular 22/826 are not applicable to Luxembourg branches of EU credit institutions.

The purpose of Circular 22/826 is to define the scope of the statutory audit mandate and the content of the reports and written comments issued by the *réviseur d'entreprises agréé* ("**REA**") in the context of its audit of the annual accounting documents (audit reports) prepared pursuant to Article 54(1) of the Financial Sector Law. The Circular also clarifies the REA's reporting obligations under Article 54(3) Financial Sector Law.

Circular 22/826 draws upon the provisions formerly contained in Circular CSSF 01/27, the latter being repealed by Circular CSSF 22/821 as of 31 December 2022.

The Circular 22/826 entered into force on 31 December 2022.



<sup>11</sup> CSSF Circular: [https://www.cssf.lu/wp-content/uploads/cssf22\\_826eng.pdf](https://www.cssf.lu/wp-content/uploads/cssf22_826eng.pdf)

**Financial Institutions**

**CSSF PUBLISHES CIRCULAR LETTER UPDATING CIRCULAR CSSF 07/325 ON PROVISIONS RELATING TO CREDIT INSTITUTIONS AND INVESTMENT FIRMS OF EU ORIGIN ESTABLISHED IN LUXEMBOURG BY WAY OF BRANCHES OR EXERCISING ACTIVITIES IN LUXEMBOURG BY WAY OF FREE PROVISION OF SERVICES**

**Circular Letter of 27 December 2022<sup>12</sup>**

On 27 December 2022, the CSSF issued Circular 22/827, updating Circular CSSF 07/325, on provisions relating to credit institutions and investment firms of EU origin established in Luxembourg by way of branches, or exercising activities in Luxembourg by way of free provision of services.

The provisions of Circular 22/827 are applicable to all credit institutions and investment firms.

The purpose of Circular 22/827 is to amend Circular CSSF 07/325 on provisions relating to credit institutions and investment firms of EU origin established in Luxembourg by way of branches or exercising activities in Luxembourg by way of free provision of services, following the introduction of the revised long form report by Circular CSSF 22/821.

Circular 22/827 draws upon the provisions of the revised long-form report and introduces a self-assessment questionnaire to be filled in on an annual basis by Luxembourg branches of credit institutions whose head office is in another Member State.

Circular 22/827 also modifies relevant regulatory references following (i) the latest updates made to the Law of 5 April 1993 on the financial sector, and to the Law of 12 November 2004 on the fight against money laundering and terrorist financing, and (ii) the entry into force of Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments.

The Annex to Circular 22/827 provides details of the amendments to Circular 07/325.

<sup>12</sup> Circular Letter: [https://www.cssf.lu/wp-content/uploads/cssf22\\_827eng.pdf](https://www.cssf.lu/wp-content/uploads/cssf22_827eng.pdf)

**CSSF PUBLISHES CIRCULAR LETTER AMENDING OF CIRCULAR CSSF 20/750 ON REQUIREMENTS REGARDING INFORMATION AND COMMUNICATION TECHNOLOGY (ICT) AND SECURITY RISK MANAGEMENT**

**Circular Letter of 29 December 2022<sup>13</sup>**

On 29 December 2022, the CSSF issued Circular 22/827 amending Circular CSSF 20/750 on requirements regarding information and communication technology (ICT) and security risk management.

The provisions of Circular 22/827 are applicable to all credit institutions and to all professionals of the financial sector (PFS) and to all payment institutions and to all electronic money institutions.

The objective of Circular 22/827 is to amend paragraph 4. “Additional requirement for payment service providers (PSPs)” of Circular CSSF 20/750 to introduce a form regarding the updated and comprehensive risk assessment of the ICT and security risks related to payment services provided by PSPs (named “PSP ICT Assessment”), and to provide further information on the objective, the scope and the submission process and deadline related to this form.

The PSP ICT Assessment form shall be used for the first time concerning the calendar year 2022 and submitted to the CSSF no later than 31 March 2023. The amended version of paragraph 4 is presented in “track changes” in the Annex to Circular 22/827. The revised version of paragraph 4 has entered into force on the date of publication of Circular. Circular is applicable as of its publication date.

<sup>13</sup> Circular Letter: [https://www.cssf.lu/wp-content/uploads/cssf22\\_828eng.pdf](https://www.cssf.lu/wp-content/uploads/cssf22_828eng.pdf)

## CSSF COMMUNIQUÉ ON NEW EMIR REFIT REPORTING STANDARDS

### CSSF Communiqué of 30 December 2022<sup>14</sup>

On 30 December 2022, the CSSF issued a Communiqué to announce the publication by Germany's BaFin of product intervention measures regarding futures.

In its press release, the CSSF drew the attention of those entities supervised by it to the product intervention measure regarding futures, taken by BaFin and published on its website on 30 September 2022.

As a consequence of this measure, entities supervised by the CSSF are prohibited from marketing, distributing and selling futures to retail clients domiciled in Germany except if "additional payment obligations" have been contractually excluded. Transactions for hedging purposes or to close out open futures positions are not subject to this prohibition.

Reference is made by the CSSF Communiqué to the General Administrative Act published by BaFin for the precise scope of the restriction.

The restriction is effective from 1 January 2023.

<sup>14</sup> Communiqué: <https://www.cssf.lu/en/2022/12/bafin-product-intervention-regarding-futures/>

BaFin publication:  
<https://www.bafin.de/SharedDocs/Veroeffentlichungen/EN/Aufsic>

[https://www.bafin.de/SharedDocs/Veroeffentlichungen/EN/Aufsicht/Verfuegung/vf\\_20220930\\_Allgemeinverfuegung\\_Produktintervention\\_bezueglich\\_Futures\\_en.html](https://www.bafin.de/SharedDocs/Veroeffentlichungen/EN/Aufsicht/Verfuegung/vf_20220930_Allgemeinverfuegung_Produktintervention_bezueglich_Futures_en.html)



## Financial Institutions

### CSSF COMMUNIQUÉ ON THE RESULTS OF THE 2021 ENFORCEMENT CAMPAIGN ON INFORMATION PUBLISHED BY ISSUERS

**CSSF Communiqué of 7 January 2023<sup>15</sup>**

On 7 January 2023, the CSSF issued a Communiqué to provide results of the enforcement of the 2021 financial and non-financial information published by issuers subject to the Transparency Law.

The CSSF is the competent authority to ensure the supervision of securities markets. In this context, the CSSF is in charge of examining whether the financial and non-financial information, published by issuers under its supervision, has been drawn up in accordance with the relevant reporting framework and thereby contributes to investors' protection and promotes confidence in financial markets.

In its Communiqué, the CSSF provides an overview of the enforcement activities carried out in 2022. It summarised its main findings on 2022 priorities for financial and non-financial information. Among these findings are the following:

- with respect to the priorities related to financial information:
  - the CSSF urges issuers to clearly disclose judgements and estimates in relation to climate-related matters as well as related uncertainties when they face significant climate-related risks, even when they are not considered as key assumptions by the management;
  - the CSSF recommends credit institutions to ensure that users of their financial statements are able to understand from the notes which quantitative criteria have been applied to distinguish between the two categories "held to collect" and "held to collect and sell";
  - although the CSSF understands that disclosure in the financial statements is governed by the principle of materiality, it

advises credit institutions to monitor guidance and interpretations issued by IASB to determine whether disclosure is needed for financial instruments with sustainability linked features; and

- although the effective application date for the new standard is not yet set, the CSSF is already advising issuers to consider, in advance, the impact, where relevant, of the future requirements for presentation of the statement of profit or loss, in order to improve comparability and transparency of their performance reporting.

With respect to the priorities related to non-financial information:

- the CSSF urges issuers to strengthen their efforts to improve the presentation of climate-related matters in anticipation of the requirements of the future European Sustainability Reporting Standards that will apply with the forthcoming Corporate Sustainability Reporting Directive (CSRD);
- sustainability data is increasingly seen as key information for issuers, in the same way as financial information. Article 8 of the Taxonomy Regulation contributes to provide relevant information in this context. Therefore, the CSSF recommends issuers to improve the qualitative information provided, thus better achieving the objective of the Taxonomy Regulation, namely to provide clear, understandable, relevant and comparable information.

In addition to this, the CSSF also provides further information on financial data and alternative performance measures (APMs).

In terms of next steps, on 2 January 2023 the CSSF announced its priorities in relation to the enforcement of

<sup>15</sup> Communiqué: [https://www.cssf.lu/wp-content/uploads/C\\_Enforcement\\_310123.pdf](https://www.cssf.lu/wp-content/uploads/C_Enforcement_310123.pdf)

the 2022 financial information published by issuers subject to the Transparency Law. These priorities, as well as a link to ESMA's European common enforcement priorities (ECEPs), can be found on the CSSF website referred to in the Communiqué.



## CSSF CIRCULAR LETTER ON THE APPLICATION OF THE EBA GUIDELINES ON THE CRITERIA FOR THE EXEMPTION OF INVESTMENT FIRMS FROM LIQUIDITY REQUIREMENTS

### CSSF Circular Letter of 19 January 2023<sup>16</sup>

On 19 January 2023, the CSSF issued Circular letter 23/829 on the application of the Guidelines on the criteria for the exemption of investment firms from liquidity requirements in accordance with Article 43(4) of Regulation (EU) 2019/2033 (the "IFR") (EBA/GL/2022/10).

The provisions of the Circular are applicable to all investment firms that meet the conditions for qualifying as small and non-interconnected investment firms ("SNI IF") set out in Article 12(1) of the IFR.

The objective of the Circular is to inform the market players that the CSSF, in its capacity as competent authority, applies the Guidelines. Consequently, the CSSF has integrated the Guidelines into its administrative practice and regulatory approach with a view to promote supervisory convergence in this field at European level.

The Guidelines specify that SNI IF, as defined in Article 12(1) of the IFR (the "In-Scope Entities"), are eligible for the exemption if they fulfil the criteria set out in sections 4.1 and 4.2 and point 20 of section 4.3 of the Guidelines.

In-Scope Entities that wish to be exempted from the aforementioned liquidity requirements must obtain prior authorisation from the CSSF.

The CSSF performs a case-by-case assessment in accordance with the Guidelines, and as further described in the Circular.

In-Scope Entities must submit their authorisation request by email to their usual point of contact at the CSSF, with a copy to [ei@cssf.lu](mailto:ei@cssf.lu).

The Circular applies with immediate effect.

<sup>16</sup> Circular Letter: [https://www.cssf.lu/wp-content/uploads/cssf22\\_829eng.pdf](https://www.cssf.lu/wp-content/uploads/cssf22_829eng.pdf)



**Financial Institutions**

**CSSF COMMUNIQUÉ ON A REVIEW OF THE 2023 AML/CTF CONFERENCE ORGANISED BY THE CSSF FOR SPECIALISED PFS**

**CSSF Communiqué of 8 February 2023<sup>17</sup>**

On 30 January 2023, the CSSF held an online conference highlighting the key issues on AML/CTF for the sector. The goal was to foster interaction with the specialised professionals of the financial sector ("**PFS**") under its supervision.

The CSSF is the competent authority to ensure the prudential supervision of specialised PFS incorporated under Luxembourg law, including the activities which they carry out by means of a branch, and to Luxembourg branches of entities originating from abroad.

In its Communiqué, the CSSF reports that the speakers at the conference gave feedback and clarifications on the following topics:

- risk self-assessment and report of responsible person for compliance ("**RC**") - purpose and content;
- ML/TF Vertical risk assessment - Legal persons and legal arrangements;
- vertical risk assessment - Terrorist Financing;
- insights from the FIU for specialised PFS;
- public-private exchange platform for specialised PFS;
- register of fiduciaries and trusts - obligations and requirements;

A link to the key takeaways and the speakers' presentations can be found on the relevant CSSF website page referred to in the Communiqué.

**CSSF PRESS RELEASE ON NEW Q&A ON THE IMPLEMENTATION OF THE CONSOLIDATION EXEMPTION FOR SMALL GROUPS**

**CSSF press release of 10 February 2023<sup>18</sup>**

On 10 February 2023, the CSSF issued a press release (Communiqué), drawing the attention of entities subject to its supervision to a new Q&A<sup>19</sup> published by the Luxembourg accounting rules commission, *Commission des Normes Comptable* (CNC) (Q&A CNC 22/028) on practical modalities of the implementation of the consolidation exemption on accounting standards for small groups according to Article 1711-4(1) of the Luxembourg law of 10 August 1915 on commercial companies, usually referred to as the "small group exemption".

The purpose of this Q&A is to provide accounting doctrine on the practical details of such consolidation exemption. In particular, the CSSF draws the attention of concerned entities in particular to the clarification that the small group exemption is not available for bank holding companies which are subject to prudential supervision on a consolidated basis by the CSSF, and which choose to prepare their consolidated accounts in accordance with Title XVII of the law of 10 August 1915 on commercial companies.

<sup>17</sup> CSSF Communiqué: [https://www.cssf.lu/fr/2023/02/retour-sur-la-conference-lbc-ft-de-2023-organisee-par-la-cssf-pour-les-psf-specialises/?utm\\_campaign=email-230208-5f24e](https://www.cssf.lu/fr/2023/02/retour-sur-la-conference-lbc-ft-de-2023-organisee-par-la-cssf-pour-les-psf-specialises/?utm_campaign=email-230208-5f24e)

<sup>18</sup> CSSF Communiqué: <https://www.cssf.lu/en/2023/02/qa-cnc-22-028-regarding-the-implementation-of-the-consolidation-exemption-for-small-groups-article-1711-4-lsc-only-in-french>  
(only in French)

<sup>19</sup> CSSF Q&A: [https://www.cnc.lu/fileadmin/user\\_upload/publications/doctrine/QA\\_CNC\\_22-028\\_Exemption\\_petits\\_groupes\\_modalites\\_pratiques\\_vf\\_.pdf](https://www.cnc.lu/fileadmin/user_upload/publications/doctrine/QA_CNC_22-028_Exemption_petits_groupes_modalites_pratiques_vf_.pdf) ;  
(only in French)

## CSSF COMMUNIQUÉ ON NEW NOTIFICATION TEMPLATE FOR OUTSOURCING CRITICAL OR IMPORTANT ICT ARRANGEMENTS

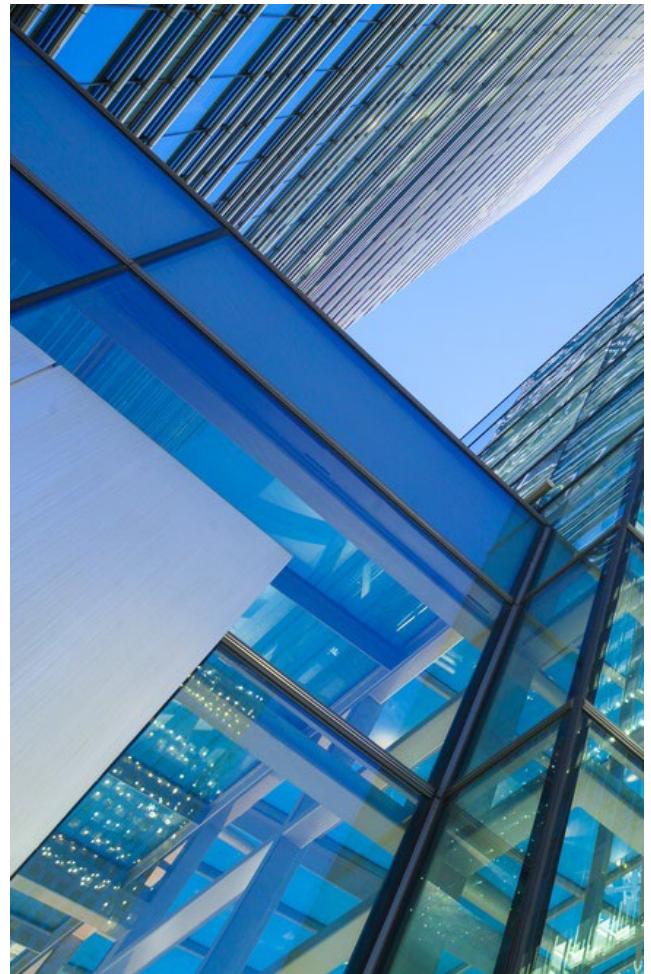
CSSF Communiqué of 17 February 2023<sup>20</sup>

On 17 February 2023, the CSSF issued a press release to announce the publication of a new notification template for outsourcing critical or important ICT arrangements.

In-scope entities must notify the CSSF of critical or important ICT outsourcing arrangements in accordance with points 59 and 60 of Circular CSSF 22/806 on outsourcing arrangements. In-scope entities comprise, amongst others, credit institutions, investment firms, payment and e-money institutions and investment fund managers.

The new template is to be used, as of 20 February 2023, for this purpose and replaces the previous template (Notification for outsourcing of material IT activities). In order not to penalise in-scope entities that are well advanced in the preparation of a notification based on the previous template, in-scope entities may introduce notifications using the previous template during a transitional period until 20 March 2023. After this date, only notifications received using the new template will be considered as notified in line with the instructions and forms available in accordance with point 59 of Circular CSSF 22/806.

A link to the new notification template can be found on the relevant CSSF website page referred to in the Communiqué.



<sup>20</sup> CSSF Communiqué: [https://www.cssf.lu/fr/2023/02/publication-dun-nouveau-formulaire-de-notification-dexternalisation-de-tic-](https://www.cssf.lu/fr/2023/02/publication-dun-nouveau-formulaire-de-notification-dexternalisation-de-tic-technologies-de-linformation-et-de-la-communication-critiques-ou-importantes/?utm_campaign=email-230217-b4aa4)

[technologies-de-linformation-et-de-la-communication-critiques-ou-importantes/?utm\\_campaign=email-230217-b4aa4](https://www.cssf.lu/fr/2023/02/publication-dun-nouveau-formulaire-de-notification-dexternalisation-de-tic-technologies-de-linformation-et-de-la-communication-critiques-ou-importantes/?utm_campaign=email-230217-b4aa4)

## INSURANCE

### CAA INFORMATION NOTE ON THE EXAMINATION PROGRAMME FOR INSURANCE AGENTS OR SUB-BROKERS

#### CAA Information Note of 11 November 2022<sup>21</sup>

On 11 November 2022, the CAA issued its Information Note on the examination program for insurance agents or sub-brokers.

Given the termination of Covid-19 restrictions and the future implementation of amended CAA Regulation 19/01 on insurance and reinsurance distribution, the CAA has decided to amend the conditions for the examination of insurance agents or sub-brokers.

These amendments are twofold:

1. The examination of December 2022, as well as March, June and September 2023, will take place based on the format of the questions tested before the Covid-19 period, but on paper. The examination will definitely become paperless (digital format) as soon as the examination room in the premises of the CAA (following its move; foreseen currently as happening in the fourth quarter of 2023) becomes available.
2. New questions in relation to the implementation of the new examination program foreseen in CAA Regulation 19/01 will progressively be introduced as of the fourth quarter of 2023.

### CAA INFORMATION NOTICE ON THE PUBLICATION OF THE CAA REPORTING TIMETABLES FOR 2023

#### CAA Information Notice of 12 December 2022<sup>22</sup>

On 12 December 2022, the CAA issued its Information Notice on the publication of the timetable for reporting to the CAA for 2023.

The reporting timetables differ depending on the status of the relevant supervised professional: (i) life- and non-life insurance companies, (ii) reinsurance companies, (iii) pension funds, (iv) groups, (v) professionals of the insurance sector, (vi) brokerage firms and independent brokers, and (vii) insurance agents.

For ease of reference, the Information Notices also includes the naming convention for CAA reporting.

<sup>21</sup> CAA Information Note (22/10):  
[https://www.caa.lu/uploads/documents/files/Note\\_info\\_22-10\\_examen.pdf](https://www.caa.lu/uploads/documents/files/Note_info_22-10_examen.pdf) (only in French)

<sup>22</sup> CAA Information Note:  
<https://www.caa.lu/fr/actualites/calendriers2023> (only in French)

## CAA CIRCULAR LETTER 22/21 ON THE REPORTING OF CONTINUOUS PROFESSIONAL TRAINING OF APPROVED INSURANCE INTERMEDIARIES

### CAA Circular Letter of 20 December 2022<sup>23</sup>

On 21 December 2022, the CAA issued its Circular Letter 22/21 on the reporting of continuous professional training of approved insurance intermediaries.

The Circular is addressed to insurance and reinsurance brokers, natural persons and legal persons with agents, executives of insurance brokerage firms (*dirigeants de société de courtage*) and sub-brokers (*sous-courtiers*) authorised in the Grand Duchy of Luxembourg and registered with the insurance distributors' register ("**Responsible Entities**").

It implements Article 47 of the amended CAA Regulation No 19/01 of 26 February 2019 on insurance and reinsurance distribution, which requires Responsible Entities to provide the CAA with the list of intermediaries, in office on 31 December of the previous year, who have not met their annual training obligations.

For the purpose of this data collection, the CAA has sent two files to the Responsible Entities, which must be filled in and sent back to the CAA. The files are the following:

- Reporting on compliance with the obligation to attend at least 15 hours of annual training during the reference year (hereinafter, the "**Training Reporting**").
- Reporting on compliance with the content and duration of continuous education during the reference period in the field of insurance and reinsurance distribution (hereinafter, the "**Reference Period Training Reporting**").

The Circular Letter provides further explanations on what information is required in these files and how they should be completed.

The latest Circular Letter replaces the previous circular letter 22/11 on the same topic.

<sup>23</sup> CAA Circular Letter 22/21:  
<https://www.caa.lu/uploads/documents/files/LC22-21.pdf> (only in French)

## **CAA CIRCULAR LETTER 22/22 ON THE TAKEOVER OF INTERMEDIATION WITH RESPECT TO CERTAIN LIFE INSURANCE CONTRACT TYPES**

### **CAA Circular Letter of 22 December 2022<sup>24</sup>**

On 22 December 2022, the CAA issued its Circular Letter 22/22 on the takeover of intermediation with respect to certain types of life insurance contracts.

According to the Circular Letter, a takeover of intermediation occurs in one of the following situations:

- the policyholder grants a brokerage mandate to a broker other than the one who acted as insurance intermediary when the life-insurance policy was entered into;
- the policyholder grants a brokerage mandate to a broker for a life-insurance contract that has been sold directly by the insurance undertaking or through one of its agents;
- the policyholder asks to replace the broker who was acting as an insurance intermediary for the life insurance contract in favour of an agent, and vice versa;
- an insurance intermediary transfers to another intermediary the distribution activities of one or more life insurance contracts; or
- an insurance undertaking transfers to an insurance intermediary the distribution activities of one or more life insurance contracts that had been sold through direct sales.

It should be noted that a takeover of intermediation can have the effect of replacing an intermediary in favour of another, or introduce an insurance intermediary in the insurance relationship between the policyholder and the insurance for the first time.

The Circular Letter is addressed to brokers and agents mandated by several life insurance companies not belonging to the same group when these intermediaries

take over intermediation with respect to "other savings and investments" or "bearer" type contracts.

The Circular Letter aims at providing good practice and guidance on the takeover of intermediation with respect to certain types of life insurance contracts, and more specifically on the measures to be taken to comply with the AML/CTF rules and requirements, as well as the conduct of business rules that are applicable to insurance distribution.

The Circular Letter also reminds the distributors and intermediaries involved of the requirement to comply with the legal and regulatory provisions applicable in Luxembourg on professional confidentiality and data protection.

The Circular Letter is effective from 1 January 2023.

<sup>24</sup> CAA Circular Letter 22/22:  
<https://www.caa.lu/uploads/documents/files/LC22-22.pdf> (only in French)

## CAA CIRCULAR LETTER 23/1 ON THE REPORTING OF DORMANT INSURANCE CONTRACTS

### CAA Circular Letter of 17 January 2023<sup>25</sup>

On 17 January 2023, the CAA issued its Circular Letter 23/1 on the reporting of dormant insurance contracts (*contrats d'assurance en deshérence*).

This Circular Letter is applicable to life insurance companies governed by Luxembourg law, as well as to Luxembourg branches of foreign life insurance companies, and aims to define the annual reporting relating to dormant insurance contracts to be submitted to the CAA in a format that is compatible with the obligations to transmit information provided for by law.

The Circular Letter reminds market players that, according to article 27 paragraph 2 of the law of 30 March 2022 on inactive accounts, inactive safe deposit boxes and dormant insurance contracts, insurance companies will have to electronically transmit the total number of dormant insurance contracts as well as the overall balance of said contracts as of December 31 of each year to the CAA and the Luxembourg direct tax authorities, *Administration des contributions directes (ACD)*.

Details on the form and content of this reporting are provided in the Circular Letter.

An insurance contract is to be considered as dormant (*en deshérence*) where it meets the criteria defined in article 23, paragraph 1 of the Law, and as long as the dormant contract has not yet been deposited with, and such deposit has not been accepted by the Luxembourg consignment office (*Caisse de consignation*).

Unless otherwise specified by the insurance company, the CAA is responsible for transmitting the aggregated data reported by a company to the ACD, and, in this case, no direct sending of information to the ACD from the insurance company is required.

The reporting file must be submitted to the CAA via its secure transmission channel by **February 15 each year at the latest**.

The Circular Letter applies as from 18 January 2023.

<sup>25</sup> CAA Circular Letter 22/22:  
<https://www.caa.lu/uploads/documents/files/LC23-1.pdf> (only in French)



## CAA INFORMATION NOTE 23/2 ON THE IMPLEMENTATION OF CLIMATE CHANGE RISK SCENARIOS IN THE ORSA

### CAA Information Note of 24 January 2023<sup>26</sup>

On 24 January 2023, the CAA issued its Information Note 23/2 on the implementation of climate change risk scenarios in the Own Risk and Solvency Assessment (ORSA) ("**Information Note**").

In its Information Note, the CAA follows up on the publication of the CAA Information Note 22/9 on regulatory impacts related to sustainable finance, and provides an update on the implementation in the ORSA report of national operators of these aspects. The CAA highlights the efforts that have been made, and those that are still needed, to comply with the requirements for governance and climate change risk assessment (depending on the activities, size and nature of the operator). The CAA further indicates that it will progressively integrate into its control actions the regulatory changes (including the recent EIOPA publications at the level of the ORSA's narrative reports).

The Information Note further presents the CAA's analysis of the ORSA reports for the years 2019-2021 and its conclusions. The analysis has shown an increase in the consideration of climate change risk in ORSA reports by Luxembourg (re-)insurance undertakings. Currently, this topic is generally covered in the chapters dealing with governance and risk management:

- integration of this risk into an existing committee, or creation of a specific ESG committee which communicates its findings to management,
- consideration of this risk at the strategy level, and indication of risk appetite within the parameters of the definition of risk indicators,
- monitoring of physical, transition and liability risk exposures.

On the other hand, there is still room for improvement, particularly:

- in terms of company-specific climate change risk scenarios. Only 19 companies (including 13 non-life, 3 life and 3 reinsurance companies) have started to develop and assess physical and transition scenarios in a quantitative manner with three-to-five-year and long-term horizons (2040 or 2050); and
- in terms of the consideration of sustainability elements in the estimation of the solvency requirement, as described in Commission Delegated Regulation (EU) 2021/1256 of 21 April 2021 amending Delegated Regulation (EU) 2015/35.

The CAA further emphasised the need to continue to integrate these aspects into the next ORSA reports in accordance with recent EIOPA publications and CAA Information Note 22/9.

Finally, the CAA states that the ORSA must integrate the analysis of the impact of climate change on all activities and, for the companies concerned according to their level of exposure, include specific stress tests. It should be noted that the long-term prospective analyses required for this exercise entail possible developments that the CAA asks companies to anticipate, particularly with regard to models (calibrations, input data, etc.) and the related technical expertise.

<sup>26</sup> CAA Information Note 23/2:  
[https://www.caa.lu/uploads/documents/files/Note\\_info\\_23-2.pdf](https://www.caa.lu/uploads/documents/files/Note_info_23-2.pdf)  
(only in French)



**CAA REGULATION N° 22/01 AMENDING  
CAA REGULATION 19/01 REGARDING  
INSURANCE DISTRIBUTION****CAA Regulation of 26 January 2023<sup>27</sup>**

On 26 January 2023, CAA Regulation N° 22/01 amending CAA Regulation 19/01 on the distribution of insurance and reinsurance (as amended) issued by the Luxembourg insurance sector supervisory authority CAA was published in the Official Journal (*Mémorial A*).

CAA Regulation N° 22/01 amends, amongst others:

- the lists of information and documentation to be submitted to the CAA in the context of the application for authorisation as intermediary, including as a brokerage firm, broker or sub-broker as well as an insurance agency;
- Section 2 as well as Annex 1 of CAA Regulation 19/01 with respect to the examination program and requirements for candidate (re-)insurance brokers and executives of (re-)insurance brokerage firms, agents and sub-brokers; and
- implements certain minor adjustments, such as reflecting the recent change in law that authorisations are issued by the CAA and no longer by the Finance Minister.

CAA Regulation N° 22/01 entered into force on 27 January 2023, with the exception of its article 22 which will apply only as of the December 2023 examination session.

**CAA REGULATION N° 22/03 AMENDING  
CAA REGULATION N° 15/03 REGARDING  
INSURANCE AND REINSURANCE  
UNDERTAKINGS****CAA Regulation of 26 January 2023<sup>28</sup>**

On 26 January 2023, CAA Regulation N° 22/03 amending CAA Regulation N° 15/03 of 7 December 2015 on insurance and reinsurance undertakings (as amended) issued by the Luxembourg insurance sector supervisory authority CAA was published in the Official Journal (*Mémorial A*).

CAA Regulation N° 22/03 amends Article 1 of CAA Regulation N°15/03 to:

- add that annual accounts for the last three years and those of its shareholders with a qualifying holding or control must be provided as part of the licence application as an insurance or reinsurance undertaking;
- require the (re-)insurance undertakings to include in their business plan information on the service providers to which critical and important functions are being outsourced;
- adapt the minimum capital requirement thresholds for insurance and reinsurance undertakings; and
- reflect that authorisation are issued by the CAA and no longer by the Minister of Finance for (re-)insurance undertakings.

CAA Regulation N° 22/03 entered into force on 27 January 2023.

<sup>27</sup> CAA Regulation N° 22/01 (only in French):  
<https://data.legilux.public.lu/filestore/eli/etat/leg/reg/2022/12/06/a44/jo/fr/pdfa/eli-etat-leg-reg-2022-12-06-a44-jo-fr-pdfa.pdf>

CAA Regulation N° 19/01 as amended by CAA Regulation N° 22/01 (only in French):  
[https://www.caa.lu/uploads/documents/files/RCAA\\_19-01\\_coordonne\\_20230127-2.pdf](https://www.caa.lu/uploads/documents/files/RCAA_19-01_coordonne_20230127-2.pdf)

<sup>28</sup> CAA Regulation N° 22/03 (only in French):  
<https://data.legilux.public.lu/filestore/eli/etat/leg/reg/2022/12/06/a46/jo/fr/pdfa/eli-etat-leg-reg-2022-12-06-a46-jo-fr-pdfa.pdf>

CAA Regulation N° 15/03 as amended by CAA Regulation N° 22/03 (only in French so far):  
[https://www.caa.lu/uploads/documents/files/RCAA\\_15-03\\_coordonne\\_20230127.pdf](https://www.caa.lu/uploads/documents/files/RCAA_15-03_coordonne_20230127.pdf)

## **CAA REGULATION N° 22/02 ON PROFESSIONALS OF THE INSURANCE SECTOR (PSA) AS WELL AS CERTAIN PSA EXECUTIVES**

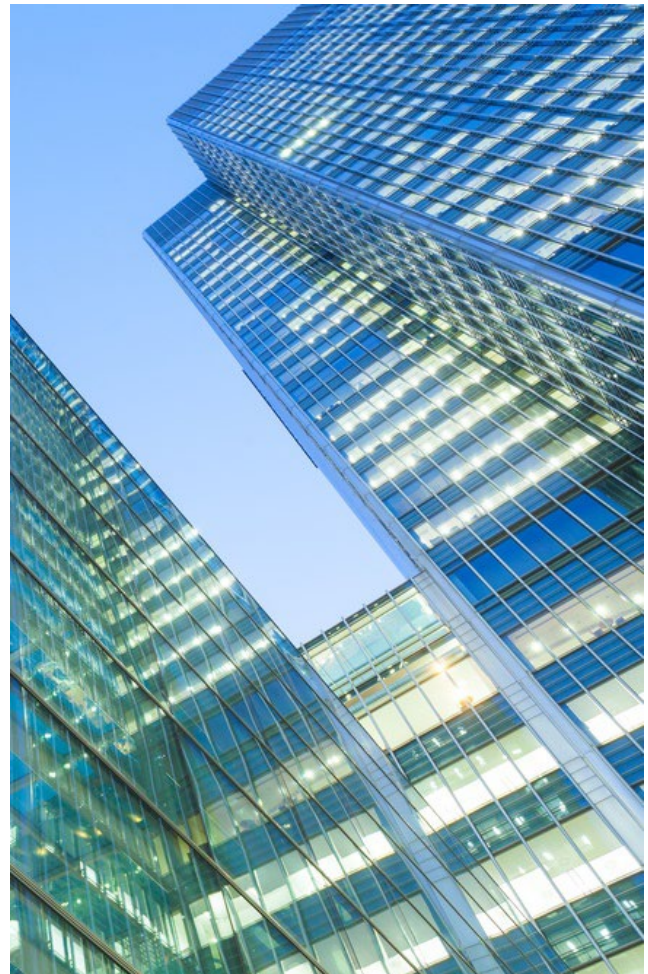
### **CAA Regulation of 26 January 2023<sup>29</sup>**

On 26 January 2023, CAA Regulation N° 22/02 on professionals of the insurance sector (PSA), as well as certain PSA executives, was issued by the Luxembourg insurance sector supervisory authority. This CAA was published in the Official Journal (*Mémorial A*).

CAA Regulation N°22/02 sets out the list of information and documentation to be submitted to the CAA in support of applications for authorisation for PSAs (legal person or individuals), as well as PSA executives. It also specifies that a request for authorisation withdrawal must be sent directly to the CAA, and that the CAA must be informed without delay about any PSA's change of address.

In addition, chapter 3 of CAA Regulation N°22/02 also provides guidance on the examination procedure, and outlines the requirements for executives of PSAs, and PSAs who are individuals.

CAA Regulation N° 22/02 entered into force on 27 January 2023.



<sup>29</sup> CAA Regulation N° 22/02 (only in French):  
<https://data.legilux.public.lu/filestore/eli/etat/leg/reg/2022/12/06/a45/jo/fr/pdfa/eli-etat-leg-reg-2022-12-06-a45-jo-fr-pdfa.pdf>

## CAA CIRCULAR LETTER 23/3 ON HARMONISED QUANTITATIVE RISK ASSESSMENT QUESTIONNAIRE FOR ASSESSING ML/TF EXPOSURE RISKS OF INTERMEDIARIES

### Circular Letter of 7 February 2023<sup>30</sup>

On 7 February 2023, the CAA issued its Circular Letter 23/2 on the harmonised quantitative risk assessment questionnaire on the risks of exposure to money laundering and terrorist financing to the intermediaries concerned.

This Circular is addressed to (hereafter, the **"Intermediaries"**):

- insurance brokers;
- insurance brokerage firms; and
- agents appointed by multiple life insurance companies not belonging to the same group,

who have distributed / are distributing individual life insurance contracts (hereafter, the **"Contract(s)"**) of the following classes:

- "savings and other investment" contracts; and/or
- "bearer" contracts.

Taking into account the continuous evolution of the legislative and regulatory framework, the AML/CTF risk factors issued by the EBA and the work of the FATF, the purpose of this circular letter is to:

- present the harmonised quantitative risk assessment questionnaire for assessing the risks of exposure to ML/TF (hereafter, the **"Quantitative Questionnaire"**) for the Intermediaries;
- specify the procedures for introducing the Quantitative Questionnaire; and

- define the content, format and dates for the collection of quantitative data from the quantitative data from the Quantitative Questionnaire.

The Quantitative Questionnaire thus makes it possible to display, at any time, the updated level of ML/TF exposure risk of the Contracts.

This Circular Letter is complemented by several Annexes dealing with the Intermediaries and Contracts. Annex I contains the Quantitative Questionnaire for the Intermediaries and should be complied with, starting from 1 July 2023, with the first data collection filing by 31 January 2024 at the latest.

It is the responsibility of each Intermediary to establish and formalise, in its internal procedures, the operational arrangements for the implementation of this Circular Letter, including:

- practical guidelines for completing the Quantitative Questionnaire, with the understanding that (i) each question must be reviewed, (ii) a score must be assigned separately to each Contract, and (iii) the consideration of hypothetical predetermined responses is not allowed;
- the level of AML/CFT risk and the criteria triggering a new assessment using the Quantitative Questionnaire; and
- the modalities for establishing the annual collection of data from the Quantitative Questionnaires.

The CAA will send personalised Excel files to the Intermediaries before the end of 2023. Annexes I a), b), c) and d) must be sent to the CAA by electronic means and only through the secure transmission channels set up by the CAA.

<sup>30</sup> CAA Circular Letter 23/2:  
<https://www.caa.lu/uploads/documents/files/LC23-3.pdf> (only in French)

## **CAA CIRCULAR LETTER 23/2 ON THE ANNUAL ACTUARIAL REPORT OF LUXEMBOURG NON-LIFE INSURANCE UNDERTAKINGS**

### **CAA Circular Letter of 7 February 2023<sup>31</sup>**

On 7 February 2023, the CAA issued its Circular Letter 23/2 on the annual actuarial report of Luxembourg non-life insurance companies.

The requirement to issue an actuarial report for non-life insurance has existed since 2005. Since the entry into force of Circular Letter 12/4 that contains provisions on the matter of non-life annual actuarial reports, the Solvency II Directive has come into force, and it has been deemed appropriate to amend certain provisions in order to adapt them to the current legislative framework. Circular Letter 21/19 had thus revised the reporting for the year 2021. However, Circular Letter 23/2 now replaces Circular Letter 21/19, because certain of the latter's provisions have been misunderstood or have given rise to questions.

The main novelties introduced by Circular Letter 23/2 compared to Circular Letter 21/19 are the following:

- four additional questions concerning the status and tasks of the actuary have been added;
- the RAC D 0050 tables must now be set up for all insurance classes, as defined in accordance with Annex I of the Insurance Sector Law, for which 500 or more claims are reported;
- table RAC D 0060 now includes all insurance classes defined in accordance with Annex I of the Insurance Sector Law, and the column "*provision pour sinistres évaluée de manière actuarielle* (provision for actuarially assessed claims)" has been removed;
- clarifications have been added on the explanations for the restatements described in section 2.5;

- clarifications have been added on the assumptions to be applied for the calculation of the market stress test;
- clarifications have been added concerning the "loss deterioration" stress tests, particularly for companies that are not affected by the "cyber" and "man-made" scenarios; and
- the statistics requested in Part 6 "*tarification* (pricing)" are now to be provided in Part 1 within the RAC D 0120 tables.

As before, the report consists of two separate parts: Part 1, an Excel file with mainly "yes/no" type of questions, and Part 2, a paper document signed by the actuary. If any of the questions in Part 1 is answered negatively, detailed information is to be provided in Part 2 of the actuarial report. The actuary can also provide detailed information in Part 2 on a voluntary basis; and some issues are only dealt with in Part 2.

This Circular Letter is applicable for the first time to the accounts of the financial year 2021.

<sup>31</sup> CAA Circular Letter 23/2:  
<https://www.caa.lu/uploads/documents/files/LC23-2.pdf> (only in French)

## CORPORATE

### BILL OF LAW IMPLEMENTING DIGITALISATION DIRECTIVE

#### Bill of Law of 15 February 2022<sup>32</sup>

On 15 February 2022, the Ministry of Justice lodged the bill n°7968, which aims to implement Directive (EU) 2019/1151, also known as the "Digitalisation directive", amending Directive (EU) 2017/1132 as regards the use of digital tools and processes foreseen by corporate law, as well as the digitalisation of the notary profession, modifying:

- the Companies Law;
- the amended law of 19 December 2002 on the Luxembourg Trade and Companies register and the annual accounts;
- the amended law of 9 December 1976 on the organisation of the notarial profession; and
- the Civil Code.

This bill will facilitate the use of digital technologies for several aspects of companies' life cycle. Namely, the bill introduces the possibility to incorporate SA, SCA and SARL online and to establish branches under an online digitalised process without any physical presence.

The bill creates a legal basis and a set of rules for the incorporation deed in electronic format, such as for the use of the electronic signature of notarial deed passed with or without the physical presence of the founding shareholders.

The bill also strengthens the exchange of information between European commercial registers, namely by the unification of the filing process, so that the same information shall be filed only once. For instance, a company located within EU, but having a branch in another Member State, will be able to file changes of information in the commercial register of the country where it is registered, without the need to file again the same

changes in the commercial register of the country where its branch is registered.

The deadline to transpose the Digitalisation Directive was initially set as 1 August 2021. However, Luxembourg has used the option to obtain one year's extension, i.e., to 1 August 2022. The new transposition deadline has now expired, and the parliamentary works of bill n°7968 are still ongoing and can be accessed by clicking [here](#).

<sup>32</sup> Bill n°7968: <https://www.chd.lu/fr/dossier/7968>

## **BILL OF LAW RECTIFYING CERTAIN PROVISIONS OF COMPANIES LAWS PURSUANT TO 2016 REFORM**

### **Bill of Law N°8007 of 17 May 2022<sup>33</sup>**

On 17 May 2022, the Ministry of Justice lodged the bill n°8007, which aims to rectify a series of clerical errors, discrepancies and omissions left by the legislator, as part of the 2016 reform, in:

- the Companies Law;
- the amended law of 19 December 2002 on the Luxembourg Trade and Companies register and the annual accounts;
- the amended law of 24 May 2011 regarding the rights of shareholders of listed companies; and
- the Civil Code.

Amongst the amendments to be outlined are:

- Article 450-1, paragraph 9 of the Companies Law will expressly state that shares for which voting rights have been suspended, or shares for which waivers of voting rights have been notified to the company, shall not be taken into account for the quorum and majority of shareholders' meetings.
- Article 710-5, paragraph 6 of the Companies Law will expressly state that redeemed shares in SARLs shall not be taken into account for the quorum and majority of shareholders' meetings, as in the case of redeemed shares in S.A.
- The approval by the company regarding the transfer of shares to non-shareholders in SARLs, provided in article 710-12 of the Companies Law, will be removed, preventing an interpretation according to which there would be a veto right by the company for the transfer of shares to non-shareholders.
- Articles of the Companies Law referred to in article 710-28 will be adjusted to clarify that (i) the approval procedure of article 710-12 is not applicable to an SARL with a sole shareholder

and (ii) the transfer of an SARL's registered office to another municipality by resolutions of the management and the use of authorised share capital are authorised in an SARL with a sole shareholder.

- Finally, article 1100-2 of the Companies Law removes the double-majority requirement for the dissolution of SARL.

Parliamentary works of the bill n°8007 are ongoing and can be accessed by clicking [here](#).

<sup>33</sup> Bill n°8007: <https://www.chd.lu/fr/dossier/8007>



## HARMONISATION OF CROSS-BORDER CONVERSIONS, MERGERS AND DIVISIONS WITHIN THE EU

### Bill of law N°8053 of 27 July 2022<sup>34</sup>

On 27 July 2022, the Ministry of Justice lodged the bill of law n°8053 (the "**Bill**") aiming to transpose into national law the Directive (EU) 2019/2121 of the European Parliament and of the Council of 27 November 2019 as regards cross-border conversions, mergers and divisions, known as the "**Mobility Directive**". The Bill will amend: (i) the Companies Law, and (ii) the amended law of 19 December 2002 on the Luxembourg Trade and Companies Register and the annual accounts.

The Bill establishes a new regime of cross-border operations of companies between Member States into dedicated sections of the Companies Law, that derogates from the general regime of cross-border operations of companies with third countries. This Bill also introduces numerous innovations, facilitating the mobility of companies within the EU, while integrating mechanisms to safeguard the interests of the various stakeholders impacted by a cross-border operation (i.e. employees, creditors and minority shareholders).

Amongst the proposed innovations, it is worth highlighting the following:

- introduction of a procedure for cross-border conversion (*migration*) and a procedure for cross-border demerger by the incorporation of new companies, both of which are harmonised with the cross-border merger procedure;
- implementation of a double control of legality procedure, including an anti-abuse control to be performed by the notary; and
- protection of minority shareholders consisting of (i) a right of withdrawal against fair remuneration if they are opposed to the cross-border operation; and (ii) the possibility to challenge the exchange ratio.

The transposition deadline of the Mobility Directive which was 31 January 2023 has now expired; parliamentary works on the Bill are still ongoing in Luxembourg and can be accessed by clicking [here](#).

The Member States' national transposition measures of the Mobility Directive can be accessed by clicking [here](#).

<sup>34</sup> Bill n°8053: <https://www.chd.lu/fr/dossier/8053>

<https://eur-lex.europa.eu/legal-content/FR/NIM/?uri=CELEX:32019L2121>



## NEW PROCEDURE OF ADMINISTRATIVE DISSOLUTION WITHOUT LIQUIDATION

Law of 28 October 2022<sup>35</sup>

The law of 28 October 2022 introducing a new procedure of administrative dissolution without liquidation (the "**Law**") entered into force on 1 February 2023.

Pursuant to this Law, the commercial companies falling in the scope of article 1200-1, paragraph 1 of the Companies Law<sup>36</sup>, which have no assets and no employees, will be subject to an administrative dissolution procedure without liquidation at the initiative of the State prosecutor.

Many companies that are subject to judicial liquidation do not have any assets, and/or have ceased their activity for some time. The number of closures of liquidation proceedings for insufficient assets is constantly increasing and generates a substantial administrative burden for the courts and significant costs for the State. Therefore, there was an imperative to introduce such a mechanism in the legislation allowing these "empty shells" to be removed in a cost-efficient manner for the State.

If you want to learn more about the new procedure, please check out our client briefing [here](#)

## ACCESS BY THE GENERAL PUBLIC TO THE REGISTER OF BENEFICIAL OWNERS RULED INVALID BY THE CJEU

22 November 2022

On 22 November 2022, the CJEU published a judgment in which it considers invalid the provision of the Directive (EU) 2015/849 ("**AMLD V**") on anti-money laundering that makes information on the beneficial owners of companies accessible to the public (Article 30(5) first subparagraph of the Directive (EU) 2015/849 as amended by Directive 2018/843 stating i.e. that Member States must ensure that information on the beneficial ownership of legal entities incorporated within their territory is accessible in all cases to any member of the general public).

This judgment was rendered further to a request for preliminary ruling from the Luxembourg District Court in a dispute between third parties and the Luxembourg Business Register.

The judgment states that the access to the general public without distinction as to the quality of users, despite the fact that it is provided for in the text of the Directive, contravenes Articles 7 and 8 of the Charter of Fundamental Rights of the European Union as it constitutes an interference which is not limited to what is strictly necessary and proportionate to the objective pursued, i.e. the prevention of money laundering and terrorist financing.

In response to that judgment, the Ministry of Justice, in consultation with the Luxembourg business register, which is responsible for the management of the RBE, has decided to temporarily suspend public access to the RBE via the LBR's internet portal. This suspension was, however, not applicable to national authorities which kept access via a dedicated intranet portal, enabling them to continue to perform their AML/CFT duties. In the meantime, a new procedure has been set up by the Luxembourg Business Register in order to restore access to professionals, subject to the amended law of 12

<sup>35</sup> Clifford Chance Briefing:  
<https://www.cliffordchance.com/briefings/2022/11/new-procedure-of-administrative-dissolution-without-liquidation-.html>

<sup>36</sup> Companies which carry out activities contrary to criminal law, or who seriously contravene the provisions of the Commercial Code, the laws governing commercial companies, and the right of establishment.

November 2004 on the fight against money laundering and terrorist financing.

For more details on the reopening of access to RBE for professionals, check out the Circular LBR 22/01 [here](#).

**Asset Management**

## **ASSET MANAGEMENT**

### **CBDF: ESMA PUBLISHES SUMMARIES OF MEMBER STATE MARKETING REQUIREMENTS FOR AIFS AND UCITS**

**9 December 2022**<sup>37</sup>

ESMA published a document containing hyperlinks and summaries of national laws, regulations and administrative provisions governing pre-marketing and marketing requirements for AIFs and UCITS, as required under the Regulation on the cross-border distribution of funds (CBDF).

### **ESAS UPDATE Q&AS ON PRIIPS KID**

**Last update published on 21 December 2022**<sup>38</sup>

The European Supervisory Authorities' (ESAs') [updated Q&As](#) on the Packaged Retail and Insurance-based Investment Products (PRIIPs) key information document (KID) include revisions and deletions relating to requirements on the presentation, content and revision of the KID that were only applicable until the end of 2022 due to amendments introduced by Delegated Regulation (EU) 2021/2268 that apply from 1 January 2023.

<sup>37</sup> Link : [https://www.esma.europa.eu/sites/default/files/library/esma34-45-1576 – publication on cross-border distribution of funds.pdf](https://www.esma.europa.eu/sites/default/files/library/esma34-45-1576_-_publication_on_cross-border_distribution_of_funds.pdf)

<sup>38</sup> Link : [https://www.esma.europa.eu/sites/default/files/library/jc\\_2017\\_49\\_jc\\_priips\\_qa.pdf](https://www.esma.europa.eu/sites/default/files/library/jc_2017_49_jc_priips_qa.pdf)

## CSSF ISSUES COMMUNIQUÉ ON BAFIN PRODUCT INTERVENTION REGARDING FUTURES

Communiqué published on 30 December 2022<sup>39</sup>

The CSSF issued a communiqué to announce the publication by the German Federal Financial Supervisory Authority (BaFin) of product intervention measures regarding futures.

In its press release, the CSSF draws the attention of entities it supervises to the product intervention measure regarding futures taken by BaFin and published on its website on 30 September 2022. As a consequence of this measure, entities supervised by the CSSF are prohibited from marketing, distributing and selling futures to retail clients domiciled in Germany except where 'additional payment obligations' have been contractually excluded. Transactions for hedging purposes or to close out open futures positions are not subject to this prohibition.

The restriction has been effective since 1 January 2023.

## ESMA UPDATES Q&AS ON UCITS DIRECTIVE

3 February 2023<sup>40</sup>

ESMA updated its questions and answers (Q&A) document on the application of the Undertakings for Collective Investment in Transferable Securities (UCITS) Directive with a new Q&A on issuer concentration.

<sup>39</sup> Link: <https://www.cssf.lu/en/2022/12/bafin-product-intervention-regarding-futures/>

<sup>40</sup> Link: [https://www.esma.europa.eu/sites/default/files/library/esma34\\_43\\_392\\_qa\\_on\\_application\\_of\\_the\\_ucits\\_directive.pdf](https://www.esma.europa.eu/sites/default/files/library/esma34_43_392_qa_on_application_of_the_ucits_directive.pdf)

**Asset Management**

**CSSF PUBLISHES CIRCULAR LETTER INTRODUCING AML QUESTIONNAIRE FOR THE YEAR 2022**

**CSSF Circular Letter dated 7 February 2023<sup>41</sup>**

The CSSF published a circular letter on 7 February 2023 announcing the launch of its annual AML questionnaire for the year 2022 (2022 Questionnaire on financial crime). The questionnaire launched on the CSSF eDesk platform on 15 February 2023. In-scope entities, including, among others, Luxembourg credit institutions, investment firms, investment fund managers and specialised professionals of the financial sector, are required to complete and submit the questionnaire via eDesk by **31 March 2023** (at the latest).

The questionnaire slightly differs from last year's questionnaire. The **"RC"** or **"RR"** of the relevant in-scope entity should initiate and submit the questionnaire. The completion of the questionnaire may also be delegated within eDesk to another employee of the in-scope entity or a third party (bearing in mind that the ultimate responsibility for due completion of this questionnaire remains with the **"RC"** or the **"RR"**).

**CSSF PUBLISHES NEW NOTIFICATION TEMPLATE FOR OUTSOURCING CRITICAL OR IMPORTANT ICT ARRANGEMENTS**

**Communiqué of 17 February 2023<sup>42</sup>**

**ESMA publishes official translations of updated stress test guidelines**

The CSSF announced the publication of a new notification template for outsourcing critical or important ICT arrangements. In-scope entities, which comprise, among others, investment firms and investment fund managers, must notify the CSSF of critical or important ICT outsourcing arrangements in accordance with points 59 and 60 of Circular CSSF 22/806 on outsourcing arrangements.

The new template was to be used as of 20 February 2023 for this purpose and replaces the previous template (Notification for outsourcing of material IT activities). In order not to penalise in-scope entities that are well advanced in the preparation of a notification based on the previous template, in-scope entities may introduce notifications using the previous template during a transitional period until 20 March 2023. After this date, only notifications received using the new template will be considered as being notified in line with the instructions and forms available in accordance with point 59 of Circular CSSF 22/806.

A link to the new notification template can be found on the relevant CSSF website page referred to in the communiqué.

<sup>41</sup> CSSF Circular Letter: <https://www.cssf.lu/fr/Document/lettre-circulaire-2023-02-07/>

<sup>42</sup> CSSF Communiqué: [https://www.cssf.lu/fr/2023/02/publication-dun-nouveau-formulaire-de-notification-dexternalisation-de-tic-](https://www.cssf.lu/fr/2023/02/publication-dun-nouveau-formulaire-de-notification-dexternalisation-de-tic-technologies-de-linformation-et-de-la-communication-critiques-ou-importantes/)

[technologies-de-linformation-et-de-la-communication-critiques-ou-importantes/](https://www.cssf.lu/fr/2023/02/publication-dun-nouveau-formulaire-de-notification-dexternalisation-de-tic-technologies-de-linformation-et-de-la-communication-critiques-ou-importantes/)

**AED LAUNCHES RAIF AML/CFT QUESTIONNAIRE 2022**

The Administration de l'Enregistrement, des Domaines et de la TVA (AED) supervising, among others, Luxembourg unregulated alternative investment funds (AIF) and reserved alternative investment funds (*fonds d'investissement alternatifs réservés* or *RAIF*) from an anti-money laundering and combating the financing of terrorism (AML/CFT) perspective, requests all RAIFs to submit their annual AML/CFT questionnaire and their "RC" report, both with reference period 2022.<sup>43</sup>

The deadline for submitting both the questionnaire and "RC" report is close of business on 31 May 2023.

The AED website contains further information on how to complete the questionnaire and how to file the relevant documentation with the AED.

The AED has not yet published a similar communication for the 2022 AML/CFT reporting of Luxembourg unregulated AIFs.

<sup>43</sup> <https://pfi.public.lu/fr/blanchiment/questionnaire/vehicules-financiers-non-reglementes/fiar/aml-cft-questionnaire.html>

**Asset Management**

## **EU COUNCIL AND PARLIAMENT ADOPT ELTIF2**

The EU Council and Parliament adopted a Regulation amending the European Long-Term Investment Funds Regulation (ELTIF 2).<sup>44</sup>

Among other things, the amendments are intended to:

- remove supply-side and demand-side limitations; and
- improve regulatory oversight and investor protection safeguards in order to accelerate the uptake of ELTIFs.

The new rules are expected to apply nine months after the amending Regulation enters into force (which will be on the 20th day following publication in the Official Journal).

The European Long-Term Investment Fund is an investment structure introduced by the first ELTIF regulation in 2015 providing retail investors within the EU access to private capital in the interest of a smart and sustainable economy.

The 'ELTIF' is an EU label granted to alternative investment funds targeting EU long-term investments and with the ability to pool capital from both retail and institutional investors. The ELTIF is authorised and supervised by its relevant national competent authority, and operates as an overlay to existing regulated and unregulated specific fund vehicles, such as, in Luxembourg, the Part II UCI fund, the SIF or the RAIF. The ELTIF does not come with its own tax regime.

The revamp of the ELTIF regulation is characterised by a need for more flexibility. The spectrum of assets has been broadened and additional structuring options have been introduced. Any restrictions in terms of borrowing limits, diversification requirements, etc. are now limited to ELTIFs targeting retail investors only, whereas those targeting professionals will be able to operate under a more lenient set of rules.

## **CSSF UPDATES FAQs ON THE UCITS LAW, AIFM LAW AND CONCERNING SIFS AND SICARS NOT QUALIFYING AS AIFS IN RELATION TO PRIIPS KID**

The CSSF updated its FAQs on the Luxembourg Law of 17 December 2010 relating to undertakings for collective investment in light of the new Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs) (the PRIIPs Regulation). Among others, the CSSF confirmed that manufacturers of Luxembourg UCITS made available to retail investors in the EU/EEA need to have in place a PRIIPs KID as of 1 January 2023. The CSSF also indicated that it will allow filings by Luxembourg UCITS of such PRIIPs KIDs to the CSSF to be made until 31 January 2023 at the latest and further specified the terms thereof.

The CSSF also aligned its FAQs on the Luxembourg Law of 12 July 2013 on alternative investment fund managers and on SIFs and SICARs that do not qualify as AIFs, stating now that a Luxembourg AIF and/or Luxembourg SIFs and SICARs that do not qualify as AIFs, the units of which are being advised on, offered or sold to retail investors, will have to replace the UCITS-like KIID by a PRIIPs KID as of 1 January 2023, unless the said fund is no longer made available to retail investors within the territory of the EU/EEA.

<sup>44</sup> Press release: <https://www.consilium.europa.eu/en/press/press-releases/2023/03/07/capital-markets-union-council-adopts-revised-framework-for-european-long-term-investment-funds/>



## ESMA UPDATED Q&AS ON AIFMD

ESMA updated its questions and answers (Q&A) document on the AIFMD with a new Q&A on whether managers of special purpose acquisition companies (SPACs) are subject to the AIFMD.<sup>45</sup>

## MONEY MARKET FUNDS

### ESMA publishes official translations of updated stress test guidelines

The European Securities and Markets Authority (ESMA) published the official EU language translations of the November 2022 update of its guidelines on stress test scenarios under the Money Market Funds (MMF) Regulation.

The updated guidelines include new risk parameters in section 5, where shocks have been calibrated to severe, plausible and consistent with the uncertainty about the economic consequences of the Russian invasion of Ukraine, geopolitical tensions and the COVID-19 pandemic.

The updates to the guidelines apply from 27 March 2023.

### ESMA consults on stress test scenarios methodology

ESMA published a consultation on the review of the methodology included in the guidelines on stress test scenarios for MMFs. Views are sought on:

- the proposed revision of the liquidity scenario to better take into account the interaction between liquidity and redemption pressures in light of the COVID-19 related stress of March 2020;
- the proposed addition to the macro scenario of assumptions on underlying markets and other market participants to better capture the macroprudential impact of the scenario; and
- ESMA's decision not to include an additional climate risk scenario.

Comments are due by 28 April 2023.

### ESMA publishes its first market report

ESMA's inaugural market report on EU MMFs provides a market-level view of EU MMFs based on supervisory information collected by national competent authorities (NCAs) and ESMA. Main findings include that:

<sup>45</sup> ESMA Q&A:  
[https://www.esma.europa.eu/sites/default/files/library/esma34-32-352\\_qa\\_aifmd.pdf](https://www.esma.europa.eu/sites/default/files/library/esma34-32-352_qa_aifmd.pdf)

**Asset Management**

- the EU MMF sector had EUR 1.44 trillion of assets in 2021, with 89% of the funds domiciled in France, Luxembourg and Ireland;
- low-volatility NAV (LVNAV) MMFs account for 46% of the total assets, followed by variable NAV (VNAV) MMFs (42%) and constant NAV (CNAV) MMFs (12%);
- the portfolio structure of EU MMFs remains relatively stable over time, and they are mainly exposed to the financial sector;
- the share of daily and weekly liquid assets remained above the regulatory minimum, and increased for CNAVs at a regular pace starting in the third quarter of 2020; and
- professional investors hold more than 90% of EU MMFs, with financial corporations the main unitholders of MMF shares, insurance firms, pension funds and banks accounting together for 25% of NAV, and other financial institutions, including collective investment undertakings, accounting for 45% of the NAV.

Between December 2021 and March 2022 MMFs experienced substantial outflows, partially driven by investor expectations linked to the increase in interest rates and investor sentiment turning away from fixed income instruments in general, a trend that reversed later in 2022.

## ESG-ASSET MANAGEMENT

### ESAS PUBLISH Q&A ON SFDR DELEGATED REGULATION

Q&A published on 17 November 2022<sup>46</sup>

On 17 November 2022, the European Supervisory Authorities (ESAs) published a Q&A document on the Sustainable Finance Disclosure Regulation (SFDR) Delegated Regulation (Commission Delegated Regulation (EU) 2022/1288) covering topics such as principal adverse impacts and taxonomy-aligned disclosures, financial product disclosures and multi-option products.

### ESMA CONSULTS ON GUIDELINES FOR USE OF ESG OR SUSTAINABILITY-RELATED TERMS IN FUNDS' NAMES

Consultation launched from 18 November 2022 to 20 February 2023<sup>47</sup>

The European and Securities Markets Authority (ESMA) launched a consultation on draft guidelines on the use of ESG or sustainability-related terms in funds' names under AIFMD, the UCITS Directive and the CBDF Regulation. In particular, ESMA was seeking stakeholders' feedback on the introduction of quantitative thresholds for the minimum proportion of investments sufficient to support the ESG or sustainability-related terms in funds' names. Comments were due by 20 February 2023.



<sup>46</sup> Q&A: [https://www.esma.europa.eu/sites/default/files/library/jc\\_2022\\_62\\_jc\\_sfdr\\_qas.pdf](https://www.esma.europa.eu/sites/default/files/library/jc_2022_62_jc_sfdr_qas.pdf)

<sup>47</sup> <https://www.esma.europa.eu/press-news/consultations/consultation-guidelines-funds%E2%80%99-names-using-esg-or-sustainability-related>

## **CSSF PUBLISHED AND UPDATED FAQs ON THE SUSTAINABLE FINANCE DISCLOSURE REGULATION (SFDR)**

**CSSF FAQs published on 2 December 2022 and updated on 13 March 2023<sup>48</sup>**

The CSSF published FAQs aiming at providing further clarity on aspects of the Sustainable Finance Disclosure Regulation (SFDR).

Section I of these FAQs offers a consolidated overview of all key European and CSSF publications on the SFDR topic.

Section II includes FAQs relating to (i) SFDR-related updates to prospectuses or issue documents, (ii) website disclosures, (iii) pre-contractual disclosures and (iv) periodic disclosures.

On 13 March 2023, the CSSF updated its FAQs by adding three additional Q&As covering (i) the use of ESG/sustainability-related terminology in fund names, (ii) the methodology used to define sustainable investments and (iii) the use of efficient portfolio management techniques.

## **SFDR RTS ON GAS AND NUCLEAR ENERGY ACTIVITIES**

**Commission Delegated Regulation (EU) 2023/363 of 31 October 2022**

**CSSF communiqué of 8 March 2023<sup>49</sup>**

**SFDR RTS on gas and nuclear energy activities published in the EU Official Journal**

Delegated Regulation (EU) 2023/363 amends the existing Sustainable Finance Disclosure Regulation (SFDR) regulatory technical standards (RTS) to align them with the Taxonomy Complementary Climate Delegated Act, which includes specific nuclear and gas energy activities in the list of environmentally sustainable economic activities covered by the EU Taxonomy.

The amendments are intended as limited adjustments to the existing regulatory framework, including revised pre-contractual and periodic disclosure templates and minor technical revisions.

The Delegated Regulation entered into force on **20 February 2023**.

**CSSF publishes communiqué on implementation of the amended SFDR RTS**

Following the publication of the amended SFDR RTS, the Luxembourg financial sector supervisory authority, the Commission de Surveillance du Secteur Financier (CSSF), published a communiqué directed to the investment fund industry on 8 March 2023.

The communiqué explains that the amended SFDR RTS introduce precontractual and periodic transparency requirements in relation to Taxonomy-aligned fossil gas and nuclear energy-related activities for financial products disclosing under Articles 8 and 9 of SFDR.

In relation to the precontractual documents and as of 20 February 2023, the CSSF indicates that all financial market participants shall make use of the updated precontractual disclosure templates:

<sup>48</sup> <https://www.cssf.lu/en/Document/cssf-faq-sustainable-finance-disclosure-regulation-sfdr/>

<sup>49</sup> Link: [https://eur-lex.europa.eu/eli/reg\\_del/2023/363/oj](https://eur-lex.europa.eu/eli/reg_del/2023/363/oj) and [https://www.cssf.lu/fr/2023/03/communication-a-lindustrie-des-](https://www.cssf.lu/fr/2023/03/communication-a-lindustrie-des-fonds-dinvestissement-sur-lentree-en-vigueur-du-reglement-delegue-ue-2023-363-de-la-commission-du-31-octobre-2022-modifiant-et-rectifiant-le/)

[fonds-dinvestissement-sur-lentree-en-vigueur-du-reglement-delegue-ue-2023-363-de-la-commission-du-31-octobre-2022-modifiant-et-rectifiant-le/](https://eur-lex.europa.eu/eli/reg_del/2023/363/oj)

- immediately, for all investment funds being launched as of 20 February 2023; and
- when introducing changes in the relevant prospectus/issue document, for existing investment funds (although changes to the prospectus/issue document limited to updating the pre-contractual disclosures templates are of course authorised, in which case this shall be specifically mentioned when filing the documentation with the CSSF).

The CSSF further clarifies that for periodic reports, all annual reports issued after 20 February 2023, regardless of the financial year-end of the relevant investment fund, need to take into account the format of the updated templates included in the amended SFDR RTS.

## **CSSF COMMENCED DATA COLLECTION EXERCISE TO ASSESS SFDR COMPLIANCE BY INVESTMENT FUND MANAGERS AND UCITS MANAGEMENT COMPANIES**

**Communiqué published on 1 February 2023<sup>50</sup>**

The Luxembourg financial sector supervisory authority, the Commission de Surveillance du Secteur Financier (CSSF) has commenced a data collection exercise for investment fund managers (IFMs) on regulatory requirements in relation to Regulation (EU) 2019/2088 on sustainability-related disclosures in the financial services sector (SFDR). This is the first stage in a broader data collection effort by the CSSF, and will focus on the organisational arrangements that Luxembourg-domiciled alternative investment fund managers and UCITS management companies have put in place to take account of the integration of sustainability risks into their activities, as is required by SFDR, including in relation to human resources and governance, the investment decision or advice process, remuneration and risk policies and conflicts of interest.

Investment fund managers and UCITS management companies were required provide this information to the CSSF by 2 March 2023.

The data was required to be submitted online, through a new eDesk module called "SFDR-IFM Disclosures" and, after being initially submitted, must be kept up to date. The CSSF plans to extend the data collection exercise in the near future to collect information contained in Principal Adverse Impacts (PAI) statements and in pre-contractual disclosure templates.

<sup>50</sup> CSSF Communiqué: [https://www.cssf.lu/en/2023/02/sfdr-data-collection-exercise-for-investment-fund-managers-ifms-on-](https://www.cssf.lu/en/2023/02/sfdr-data-collection-exercise-for-investment-fund-managers-ifms-on-regulatory-requirements-in-relation-to-regulation-eu-2019-2088-on-sustainability-related-disclosures-in-the-financial-services-se/)

[regulatory-requirements-in-relation-to-regulation-eu-2019-2088-on-sustainability-related-disclosures-in-the-financial-services-se/](https://www.cssf.lu/en/2023/02/sfdr-data-collection-exercise-for-investment-fund-managers-ifms-on-regulatory-requirements-in-relation-to-regulation-eu-2019-2088-on-sustainability-related-disclosures-in-the-financial-services-se/)

## **CSSF PUBLISHED AND UPDATED FAQs ON THE SUSTAINABLE FINANCE DISCLOSURE REGULATION (SFDR)**

**CSSF FAQs published on 2 December 2022 and  
updated on 13 March 2023<sup>51</sup>**

The CSSF published FAQs aiming at providing further clarity on aspects of the Sustainable Finance Disclosure Regulation (SFDR).

Section I of these FAQs offers a consolidated overview of all key European and CSSF publications on the SFDR topic.

Section II includes FAQs relating to (i) SFDR-related updates to prospectuses or issue documents, (ii) website disclosures, (iii) pre-contractual disclosures and (iv) periodic disclosures.

On 13 March 2023, the CSSF updated its FAQs by adding three additional Q&As covering (i) the use of ESG/sustainability-related terminology in fund names, (ii) the methodology used to define sustainable investments and (iii) the use of efficient portfolio management techniques.

<sup>51</sup> CSSF FAQ: <https://www.cssf.lu/en/Document/cssf-faq-sustainable-finance-disclosure-regulation-sfdr/>



## ESG-GLOBAL FINANCIAL MARKETS

### SUSTAINABILITY DISCLOSURES FOR ISSUERS - A FIRST LOOK ON INFORMATION REPORTED UNDER ARTICLE 8 OF THE TAXONOMY REGULATION FOR THE TRANSITION YEAR

Press release of 26 October 2022<sup>52</sup>

On 26 October 2022, the CSSF issued a press release to announce its key findings further to its first look at the information reported by Issuers (i.e. non-financial undertakings whose securities are admitted to trading on a regulated market, for which Luxembourg is the home Member State, exceeding 500 employees, total assets of EUR 20 million and/or a net turnover of EUR 40 million.) under article 8 of the Taxonomy Regulation for the transition year.

Among others, the CSSF noted that despite the Issuers being confronted with a very short implementation period 60% of the reviewed Issuers were able to achieve compliance with the new disclosure requirements. As regards the remaining 40%, the CSSF reminds them to comply with the requirements of Article 8 of the Taxonomy Regulation.

Further to its findings, the CSSF recommends Issuers to improve the qualitative information provided, thus allowing a better achievement of the objective of the regulation which is to provide clear, understandable, relevant and comparable information.

The authority also notes that for the second year of reporting from 1 January 2023 the disclosure requirements on Taxonomy-alignment information will, in absence of detailed practical guidance and in anticipation of the awaited publication of the Environmental Delegated Act,

be highly challenging for Issuers and as a result, the remaining months, leading up to the publication of the next reporting, will be critical for Issuers in view of ensuring a smooth but successful implementation of Article 8 of the Taxonomy Regulation.

<sup>52</sup> Communiqué: <https://www.cssf.lu/en/Document/sustainability-disclosures-for-issuers/>

Report: <https://www.cssf.lu/wp-content/uploads/Rapport-Publication-Art-8-Taxonomie.pdf>

## CSSF ISSUES PRESS RELEASES ON SUSTAINABLE FINANCE

### Press releases of 24 November 2022<sup>53</sup>

On 24 November 2022, the CSSF issued three press releases in relation to sustainable finance developments.

#### 1. **MiFID rules related to sustainability: application of the requirements relating to product governance**

The CSSF reminds supervised entities under its supervision that from 22 November 2022 onwards, the date of application of the Grand Ducal Regulation of 27 July 2022 amending Grand Ducal Regulation of 30 May 2018 on the protection of financial instruments and funds belonging to clients, product governance obligations and the rules applicable to the provision or reception of fees, commissions or any monetary or non-monetary benefits, in-scope entities are required to take into account sustainability factors when specifying the target markets for the financial instruments and structured deposits they manufacture and/or distribute.

The CSSF also notes that the ESMA is currently finalising the update of its "Guidelines on MiFID II product governance requirements" in order to take into consideration these amendments. These guidelines will provide firms with further guidance on the application of the new requirements.

The CSSF also reminds the public that, according to Commission Delegated Regulation 2021/1253, since 2 August 2022, providers of investment advisory and discretionary portfolio management services are required to obtain specific information on their clients' preferences

regarding sustainability, and to meet such preferences, while also meeting their other investment objectives, taking into account their financial situation and knowledge and experience.

#### 2. **Publication by the European Supervisory Authorities of a Q&A on the regulatory technical standards under Regulation (EU) 2019/2088 on sustainability-related disclosures in the financial services sector**

The CSSF further draws attention to the publication of the Q&A by the Joint Committee of the three ESAs in respect of Commission Delegated Regulation (EU) 2022/1288 of 6 April 2022 supplementing Regulation (EU) 2019/2088 on sustainability-related disclosures in the financial services sector.

The ESAs published the Q&A document on 17 November 2022, aimed at providing clarifications, notably in the following areas:

- current value of all investments in principal adverse impacts ("PAI") and Taxonomy-aligned disclosures;
- PAI disclosures;
- financial product disclosures;
- taxonomy-aligned investment disclosures; and
- financial advisers and execution-only financial market participants.

#### 3. **ESAs call for evidence on greenwashing**

The CSSF reminds the public that, on 15 November 2022, the ESAs published a Call for Evidence on Greenwashing,

<sup>53</sup> Press releases: <https://www.cssf.lu/en/2022/11/mifid-rules-related-to-sustainability-application-of-the-requirements-relating-to-product-governance/>  
<https://www.cssf.lu/en/2022/11/publication-by-the-european-supervisory-authorities-of-a-qa-on-the-regulatory-technical-standards-under-regulation-eu-2019-2088-on-sustainability-related-disclosures-in-the-financial-services-sector/>  
<https://www.cssf.lu/en/2022/11/the-european-supervisory-authorities-call-for-evidence-on-greenwashing/>

Grand-ducal Regulation of 27 July 2022 (in French): <https://www.legilux.public.lu/eli/etat/leg/rqd/2022/07/27/a426/jo>

Commission Delegated Regulation 2021/1253: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32021R1253>

Call for Evidence on Greenwashing (press release ESAs): [https://www.esma.europa.eu/sites/default/files/library/esas\\_call\\_for\\_evidence\\_on\\_greenwashing.pdf](https://www.esma.europa.eu/sites/default/files/library/esas_call_for_evidence_on_greenwashing.pdf)

Call for Evidence on Greenwashing (form): <https://ec.europa.eu/eusurvey/runner/ESAsCfEGreenwashing2022>

aiming at better understanding the key features, drivers and risks associated with greenwashing, and to collect examples of potential greenwashing practices.

Respondents were invited to contribute, through an online form, to this call for evidence, both to the common part and to the ESA-specific sections, or to those sections of the call for evidence which were relevant to a given respondent

Respondents were invited to submit their responses by 10 January 2023.

## **CSSF PRESS RELEASE ON THE UPDATED G20/OECD HIGH-LEVEL PRINCIPLES ON FINANCIAL CONSUMER PROTECTION**

**Press release of 20 December 2022<sup>54</sup>**

On 20 December 2022, the CSSF issued a press release to announce the publication of the updated G20/OECD High-Level Principles on Financial Consumer Protection.

The press release notes that these principles are specifically designed and intended to be applicable to any jurisdiction, and are cross-sectoral in nature (i.e., they can be applied to credit, banking, payments, insurance, pensions and investment sectors).

The CSSF also summarised the main changes to these principles as follows:

- two new principles (12 in total), i.e., "Access and Inclusion" and "Quality Financial Products"; because these concepts, which are important to a holistic approach to financial consumer protection, were not covered in the original principles;
- three new cross-cutting themes that are relevant to the consideration and implementation of each and all of the Principles, namely "Digitalisation", "Financial Well-being" and "Sustainable Finance"; and to include references throughout the Principles to illustrate the cross-cutting themes; and
- incorporation of high-level lessons from the response to the COVID-19 pandemic throughout these principles, such as enhanced protections for consumers who may be vulnerable, and a greater focus on tackling financial scams.

<sup>54</sup> CSSF: <https://www.cssf.lu/en/>

Communiqué: <https://www.cssf.lu/en/2022/12/updated-g20-oecd-high-level-principles-on-financial-consumer-protection/>

OECD: <https://www.oecd.org/finance/high-level-principles-on-financial-consumer-protection.htm>

## CSSF COMMUNIQUÉ ON ENFORCEMENT OF THE 2022 ANNUAL REPORTS PUBLISHED BY ISSUERS SUBJECT TO THE TRANSPARENCY LAW

Communiqué of 2 January 2023<sup>55</sup>

On 2 January 2023, the CSSF issued a Communiqué to announce details on the enforcement of the 2022 annual reports published by issuers subject to the Law of 11 January 2008 on transparency requirements for issuers.

The CSSF draws the attention of those issuers preparing their financial statements in accordance with IFRS and/or their non-financial report in accordance with the Law of 23 July 2016, as well as of their auditors, to a number of topics and issues that will be the subject of a specific monitoring during the CSSF's enforcement campaign planned for 2023.

Furthermore, as in previous years, the ESMA, together with the European national accounting enforcers, including the CSSF, has identified European common enforcement priorities for the 2022 annual reports, to which particular attention will be paid when monitoring and assessing the application of the relevant reporting requirements.

The priorities related to IFRS Financial Statements are:

**Priority 1: Climate-related matters;**

**Priority 2: Direct financial impacts of Russia's invasion of Ukraine; and**

**Priority 3: Macroeconomic environment.**

In the context of Priority 1, it is noted that boilerplate disclosures on climate related topics are not what is needed by users of the financial statements. They require specific and relevant information on how climate risks have been factored into the financial statements.

The priorities related to non-financial Statements are:

**Priority 1: Climate-related matters;**

**Priority 2: Disclosures relating to Article 8 of the Taxonomy Regulation; and**

**Priority 3: Reporting scope and data quality.**

The CSSF notes that the financial year 2022 is the first year for which non-financial undertakings are required to disclose not only the taxonomy eligibility, but also the alignment of their economic activities with climate change mitigation and adaptation objectives as provided by the Taxonomy Regulation. It will continue to examine the information published under Article 8 of the Taxonomy Regulation by issuers that are covered by that regulation, and will challenge issuers on the outstanding issues and recommendations made by, and resulting from, the CSSF's observations in 2022. Issuers are informed of the new FAQs published by the EU Commission in December 2022.

Lastly, the CSSF draws attention to certain matters related to Alternative Performance Measures and the use of European Single Electronic Format.

<sup>55</sup> CSSF Communiqué:  
<https://www.cssf.lu/en/2023/01/enforcement-of-the-2022-annual-reports-published-by-issuers-subject-to-the-transparency-law/>

European common enforcement priorities:  
<https://www.cssf.lu/en/Document/esma-statement-on-european-common-enforcement-priorities-for-2022-annual-reports/>

CSSF Report 26 October 2022:  
<https://www.cssf.lu/en/Document/sustainability-disclosures-for-issuers/>

## TAX

### THE ADMINISTRATIVE TRIBUNAL CLARIFIED THE DEFINITION OF A "BUILDING" FOR THE PURPOSES OF INVESTMENT TAX CREDIT

16 November 2022<sup>56</sup>

On 16 November 2022, the Luxembourg Administrative Tribunal (*Tribunal Administratif*) ruled in case n°44501 and case n°44502 on a tax credit for investments based on article 152*bis* of the Luxembourg income tax law. In this respect, the Administrative Tribunal recalled that an income tax credit could be granted, under certain conditions, for investments made during the operating year, excluding investments in "buildings".

The Administrative Tribunal therefore defined the concept of "building" by referring to §50 of the law of 16 October 1934 on the evaluation of goods and value (*Bewertungsgesetz*) as (i) land, buildings connected to the land, buildings and accessories, (ii) whose purpose is the protection of people, animals or things against external influences, in particular the effects of time, and (iii) which does not extend to machines and installations which are part of the operating instruments even if they are substantial elements of the building.

In the present case, a company had carried out extensive electrical work specific to the premises of a bakery. The Administrative Tribunal concluded that this work did not fall within the definition of a building and allowed the tax credit.

<sup>56</sup> <https://ja.public.lu/40001-45000/44501.pdf>



## LUXEMBOURG 2023 BUDGET LAW: KEY TAX MEASURES ADOPTED BY THE PARLIAMENT

15 December 2022<sup>57</sup>

The Council of the European Union approved the EU Minimum Tax Directive (Pillar Two).

As previously mentioned in the [Legal Update of March 2022](#), the European Commission published on 22 December 2021 a proposal for a directive on ensuring a global minimum level of taxation for multinational groups in the European Union. Indeed, a few days before the proposal, the OECD countries had agreed on a set of rules (Global Anti-Base Erosion Rules – "**GloBE**") in relation to their efforts to fight against tax base erosion and profit shifting (BEPS).

On 15 December 2022, the Council of the EU formally adopted the directive ensuring a global minimum level of taxation for multinational enterprises ("**MNEs**") groups and large-scale domestic groups (the "**Pillar Two**").

Pillar Two applies to entities (i) located in a Member State, (ii) that are members of an MNEs group or a large-scale domestic group which has an annual revenue of EUR 750 million or more in its ultimate parent entity's consolidated financial statements in at least two of the four fiscal years preceding the tested fiscal year. While entities such as pension funds, investment funds or real estate investment vehicles are excluded from Pillar Two, the exact scope of these exclusions remains subject to various factors.

Pillar Two sets forth a system of two rules through which a top-up tax should be collected each time the effective tax rate ("**ETR**") due on the income of an MNEs group is below 15%:

- under the income inclusion rule ("**IIR**"), the minimum tax is paid at the level of the parent entity, in proportion to its ownership interests in the entities of the group that have low taxed income; and
- the undertaxed payments rule ("**UTPR**") acts as a backstop. It works by requiring an adjustment that

increases the tax at the level of the subsidiary – an amount sufficient to result in the group entities paying their share of the top-up tax remaining after the IIR.

However, Member States may opt to apply a domestic top-up tax to constituent entities located in their territory. This election would allow the top-up tax to be charged and collected in the Member State in which the low-level of taxation occurred.

EU Member States have to transpose Pillar Two into their national laws before 31 December 2023. The IIR will be applicable in EU Member States for fiscal years starting on or after 31 December 2023. While waiting for the transposition of Pillar Two into national laws, the tax position of MNEs and large-scale domestic groups should remain carefully monitored.

<sup>57</sup> Council Directive: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32022L2523&from=EN>

## **LUXEMBOURG 2023 BUDGET LAW: KEY TAX MEASURES ADOPTED BY THE PARLIAMENT**

**23 December 2022**<sup>58</sup>

On 23 December 2022, the Luxembourg Parliament adopted the bill n°8080 related to the budget for 2023 (the "**Budget Law**"), which contains certain measures and clarifications regarding the Luxembourg tax legislative environment.

### **Reverse hybrid rule**

The reverse hybrid rule was introduced by the law of 19 December 2019 transposing the Council Directive (EU) 2017/952 of 29 May 2017 amending Directive EU/2016/1164 ("**ATAD II**") into Luxembourg law and resulting in the insertion of an article 168<sup>quater</sup> in the Luxembourg income tax law ("**LITL**"). The reverse hybrid rule applies from the 2022 tax year (i.e., to tax years closing in 2022).

The rule sets out the conditions under which an entity is treated as transparent for tax purposes under Luxembourg tax law, but not by the country where its investor(s) is(are) resident. Such an entity will thus be considered as a resident taxpayer and will become liable to Luxembourg corporate income tax on (a portion) of its net income (if such income is not taxed otherwise). Until now, the major (cumulative) conditions for the reverse hybrid rule to apply were as follows:

- one (or more) investor(s) (being associated enterprises) holding in aggregate at least 50% of the Luxembourg tax-transparent entity; and
- the jurisdiction(s) where the above investors are established consider(s) the entity as a taxable person.

One of the above conditions being that the investor(s) jurisdiction(s) consider the Luxembourg (tax-transparent) entity as a taxable person; this circumstance would typically entail a difference in qualification and create the so-called 'hybridity' of the Luxembourg entity. Such

hybridity could result in a difference in the allocation of income in the sense that the laws of the investor(s) jurisdiction(s) would not consider (or 'pick up') the income from the Luxembourg entity, as for such investor(s) this entity is a taxable person. The result of such mismatch could be a de facto (double) non-taxation of income (at the level of the Luxembourg entity and at the investor level) due to a hybrid entity.

In such a case, the Luxembourg tax-transparent entity would become liable to corporate income tax on its net income to the extent such income is not otherwise taxed under Luxembourg domestic or any foreign tax laws.

In its legislative amendment of article 168<sup>quater</sup> LITL, the Budget Law aims to clarify that, for the reverse hybrid rule to apply, the aforementioned non-taxation of net income realised by the investor must result from the difference in qualification (i.e., transparent vs. opaque) of the Luxembourg entity. In other words, if the non-taxation of income realised by the investor is attributable to the investor's tax status (e.g., a tax-exempt vehicle), the reverse hybrid rule would not apply.

### **Other key tax measures**

In addition to the clarification of the reverse hybrid rule, the Budget Law contains other tax measures mainly related to:

- deadline for filing tax returns;
- profit-sharing bonus;
- expat regime;
- VAT rates;
- real estate; and
- tax credit for individuals.

### **Enter into force**

All these measures apply from 1 January 2023 (except for the amendment with respect to the reverse hybrid rule, which applies retroactively from 1 January 2022).

For a more detailed analysis of the Budget Law, we refer you to our [publication dated December 2022](#).

<sup>58</sup> Clifford Chance Briefing:  
<https://www.cliffordchance.com/briefings/2022/12/luxembourg-2023-budget-law--key-tax-measures-adopted-by-the-parl.html>

## APPLICATION OF A FUNCTIONAL ANALYSIS OF THE CONCEPT OF PERMANENT ESTABLISHMENT BY THE ADMINISTRATIVE TRIBUNAL

9 January 2023<sup>59</sup>

Application of a functional analysis of the concept of permanent establishment by the Administrative Tribunal.

On 9 January 2023, the Luxembourg Administrative Tribunal (*Tribunal Administratif*) rendered a decision related to the notion of permanent establishment and fixed place of business by applying a functional analysis of the activities at hand (case n°45908 and case n°45909).

In the present case, a company based in Luxembourg whose activity was the development of software and the management of trademark rights had installations in Italy where the search for scientific information and advertising were conducted. According to the Luxembourg tax authorities, the application of the intellectual property regime provided by article 50*bis* of the Luxembourg income tax law had to be denied since the trademark at stake should have been allocated to the Italian installations.

The Administrative Tribunal recalled that the qualification of a permanent establishment must meet three conditions: (i) a physical place of business of some kind; (ii) which must have a connection with a specific geographical point, characterised by a certain permanence; and (iii) the activity must have been carried on wholly or partly from or through that fixed place of business.

In the present case, the Administrative Tribunal noted that the fixed place of business in Italy was a representative office which had been used to gather information and carry out scientific research in order to promote the activity of the company. Since the said activities were of a "preparatory or auxiliary nature" and were not of a commercial nature, the Italian installations were not to be considered as a permanent establishment, contrary to what the Luxembourg tax authorities argued.

<sup>59</sup> <https://ja.public.lu/45001-50000/45908jug%2B45909.pdf>

## **ATAD 3 OR THE UNSHELL DIRECTIVE – REVISED DRAFT VOTED BY THE EU PARLIAMENT**

17 January 2023<sup>60</sup>

On 9 December 2022, the European Parliament issued its report on the draft directive laying down rules to prevent the misuse of shell entities for tax purposes (the "**Unshell Directive**" or commonly named "**ATAD 3**"), including several amendments to the initial text proposed by the European Commission.

On 17 January 2023, the European Parliament voted the revised draft Unshell Directive as released in its report of December 2022.

The key proposed amendments voted by the Parliament are the following:

- Carve-out for "regulated financial undertakings" (e.g., investment funds like UCITS or AIFs) is maintained, but general exemption for entities with at least five own full-time employees is deleted.
- To qualify as a reporting entity (i.e., "gateway entity"), it is proposed to lower the required portion of "relevant income" (e.g., dividends, interest, capital gains and income from immovable property) over the two preceding tax years from 75% to 65% and to reduce the threshold for income from cross-border transactions from 60% to 55%.
- For the purpose of the substance test, it has been proposed to not only consider own premises in the Member State or premises for its exclusive use, but also "premises shared with entities of the same group".
- The criterion that directors must not be employees of an enterprise that is not an associated enterprise and do not perform the function of director or equivalent of other enterprises that are not associated enterprises is proposed to be deleted (i.e., deletion of qualification requirement

for directors with respect to the minimum substance indicators).

- Request for the rebuttal of the presumption of not having minimum substance within a period of nine months after the introduction of the request (and it shall be considered as accepted in the absence of answer after the nine-month period).
- Change in the consequences of being a "shell company".

Even if this is not the final draft of the Unshell Directive (the European Council can accept or reject these amendments), further developments during the legislative process, involving the European Commission and the European Council, should be carefully monitored.

The Unshell Directive should apply from 1 January 2025 and the two-year assessment period should thus start from 1 January 2023 (or possibly later, depending on the evolution of the legislative process and the final text).

<sup>60</sup> [https://www.europarl.europa.eu/doceo/document/TA-9-2023-0004\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-9-2023-0004_EN.html)

## CLARIFICATION OF THE DEFINITION OF HIDDEN PROFIT DISTRIBUTION AND RELATED BURDEN OF PROOF BY THE ADMINISTRATIVE TRIBUNAL

20 January 2023<sup>61</sup>

On 20 January 2023, the Luxembourg Administrative Tribunal (*Tribunal Administratif*) ruled in case n°42603 on the definition of hidden profit distribution. The Administrative Tribunal reminded that the distribution implies the existence of a shareholder or partner relationship which is the cause of the benefit granted by the company without effective consideration. Hidden distributions also encompass benefits provided to a person with close ties to the shareholder or partner, provided that the relationship between the benefit and the participatory link is verified.

In the case at hand, the company had paid rent to a partner and his wife for their personal accommodation and deducted it as an exploitation expense. Moreover, the company had reduced the partner's debit account by 50%, which was qualified as a debt waiver. Consequently, both operations turned out to be hidden profit distributions.

The Administrative Tribunal also stated that when the Luxembourg tax authorities have reasons to suspect the existence of a hidden profit distribution situation, it is up to the taxpayer to prove that there is no reduction in profit or that this reduction is economically justified, and not merely motivated by the special relationship with the person concerned.

<sup>61</sup> <https://ja.public.lu/40001-45000/42603.pdf>

## **REDEMPTION OF "ALPHABET" CLASSES OF SHARES – GUIDANCE ON THE LUXEMBOURG TAX TREATMENT FROM THE ADMINISTRATIVE TRIBUNAL**

**27 January 2023**<sup>62</sup>

On 27 January 2023, the Administrative Tribunal of Luxembourg ruled in case n°42432 on the Luxembourg tax treatment of the redemption and cancellation of an entire class of shares.

In the present case, a Luxembourg limited liability company (*société à responsabilité limitée* – the "**Company**") had one sole shareholder located in the Cayman Islands and its share capital had been divided into one class of ordinary shares and ten classes of "alphabet" shares (from A to J – the "**Alphabet Shares**"), each class of Alphabet Shares representing circa 5% of the share capital of the Company.

The Alphabet Shares had been put in place after the incorporation of the Company (and shortly before the redemption) and had all the same economic features. The Alphabet Shares could be redeemed in reverse alphabetical order (i.e., from J to A).

The class J Alphabet Shares were thus redeemed, cancelled and followed by a share capital reduction for an amount corresponding to the nominal value of the class J Alphabet Shares.

The Company treated the redemption followed by the cancellation of the class J Alphabet Shares as a partial liquidation, therefore not subject to withholding tax in Luxembourg.

However, the Luxembourg tax authorities considered such redemption could not be viewed as a partial liquidation, but as a distribution of dividend, subject to a 15% withholding tax, due to, among other things, the fact that there were no different economic rights between the Alphabet Shares and that they were entirely held by one sole shareholder.

The Administrative Tribunal concluded that the Luxembourg tax authorities had validly characterised the redemption of the class J Alphabet Shares as a hidden

dividend distribution, to the extent that the Company could not provide any justification explaining the price of the shares redeemed. However, the Administrative Tribunal considered that such characterisation (and, therefore, the related withholding tax consequences) should not apply to the entire amount of the shares redeemed, but only to the portion of the price that exceeded the fair market value of the shares if this amount cannot be supported by valid economic reasons.

For a more detailed analysis of this decision, we refer you to our [publication dated February 2022](#).

<sup>62</sup> <https://ja.public.lu/40001-45000/42432.pdf>



## EMPLOYMENT AND SOCIAL SECURITY

### TAX AND SOCIAL SECURITY TOLERANCE THRESHOLDS FOR CROSS-BORDER WORKERS

**November and December 2022<sup>63</sup>**

The number of days French and Belgian residents employed in Luxembourg may perform work outside Luxembourg (in their country of residence or any third country) without their remuneration becoming taxable in their country of residence increased to 34 days (instead of 29 days for France and 24 days for Belgium).

This increase is effective retroactively from 1 January 2022 for Belgian residents (in accordance with the addendum of 31 August 2021 to the amended tax agreement between Luxembourg and Belgium, entered into force in December 2022).

For French residents, this increase will be effective as from 1 January 2023 (in accordance with an agreement between Luxembourg and France dated 7 November 2022).

In addition, on 22 November 2022, the Luxembourg Ministry of Social Security announced the extension until 30 June 2023 of the social security transition period, during which the working days performed by cross-border workers in their country of residence are not taken into account to determine their country of affiliation. Cross-border workers may hence continue to telework without impact on their social security situation.

### INCREASE OF THE SOCIAL MINIMUM WAGE

**1 January 2023 and 1 February 2023<sup>64</sup>**

On 1 January 2023, the social minimum wage rates increased by 3.2%, in accordance with the Law of 23 December 2023 amending the article L.222-9 of the Labour Code.

A second increase of these rates occurred on 1 February 2023 with the increase of the consumer index price by 2.5% (from 877.01 to 898.93 points).

In this context, since 1 February 2023, the applicable monthly minimum social wage rates for full time employees as follows:

- skilled employees of at least 18 years old: EUR 2,936.48 gross (i.e., EUR 16.9738 gross / hour);
- non-skilled employees of at least 18 years old: EUR 2,447.07 gross (i.e., EUR 14.1449 gross / hour);
- employees of 17 years old: EUR 1,957.65 gross (i.e., EUR 11.3159 gross / hour);
- employees of 15 and 16 years old: EUR 1,835.30 gross (i.e., EUR 10.6087 gross / hour).

The amount of the social minimum wage will further increase in 2023 with the next increase of the consumer price index (one is expected for 1 April 2023, and additional increases may intervene in 2023, depending on the evolution of the national economic situation).

<sup>63</sup> <https://legilux.public.lu/eli/etat/leg/loi/2022/06/22/a338/jo>  
<https://impotsdirects.public.lu/dam-assets/fr/conventions/conv/avenant-a-la-convention-lu-fr-34-jours-et-fonction-publique-signee-7-novembre-2022.pdf>

[https://gouvernement.lu/en/actualites/toutes\\_actualites/communiqués/2022/11-novembre/22-teletravail-periode-transitoire.html](https://gouvernement.lu/en/actualites/toutes_actualites/communiqués/2022/11-novembre/22-teletravail-periode-transitoire.html)  
<sup>64</sup> <https://legilux.public.lu/eli/etat/leg/loi/2022/12/23/a691/jo>  
<https://statistiques.public.lu/en/actualites/2023/stn08-index.html>

## CULTURAL LEAVE

1 February 2023<sup>65</sup>

The law of 6 January 2023 introducing cultural leave, and amending the Labour Code, came into force on 1 February 2023.

According to this law, certain employees involved in cultural activities ancillary to their professional activity may benefit from special leave to participate in certain cultural events.

More specifically:

- Employees considered as "cultural actors" in the meaning of the law (creative and performing artists, and other persons involved in an artistic project or production) may benefit from a cultural leave of up to 12 days per year, in order to participate in certain high-level cultural events or specialised training relevant to the cultural sector.
- Employees working as administrative manager in certain federations, national networks or associations in the cultural sector may be granted cultural leave of between two and 10 days per year, depending on the size of the organisation, in order to manage the organisation, attend international meetings and participate in specialised trainings.

Cultural leave may be split (in fractions of at least four hours) and is reduced in proportion to the working time of employees employed on a part-time basis.

It is subject to certain conditions of eligibility, including at least six months' service with the employer at the time of application (additional conditions apply depending on whether the leave is requested by a cultural actor or an administrative manager).

In the case of a request for cultural leave, the employer must give its opinion within eight working days. The granting of the leave may only be refused if it would have a major impact on the operation of the company or on the smooth running of other employees' paid annual leave.

Cultural leave is treated as a period of actual work, during which the employee receives a compensatory allowance equal to their average daily wage up to an amount corresponding to four times the minimum social wage for unskilled workers.

This allowance is advanced by the employer and reimbursed by the State.

<sup>65</sup> <https://legilux.public.lu/eli/etat/leg/loi/2023/01/06/a16/consolide/20230201>

## WAGE INDEXATION

### 1 February 2023<sup>66</sup>

The consumer index price - on which wages are indexed - increased on 1 February 2023 from 877.01 to 898.93 points, resulting in a mandatory increase in wages of 2.5% with effect as from 1 February 2023.

A second increase of the consumer index price will take place on 1 April 2023.

Depending on the evolution of the national economic situation, one or more further increases in the consumer index price (and hence in wages) could occur in 2023.

<sup>66</sup> <https://statistiques.public.lu/en/actualites/2023/stn08-index.html>

## LITIGATION

### BREAKING NEWS FOR COMMERCIAL SUB-LEASE AGREEMENTS

**Court of Appeal 23 December 2022, n°00176<sup>67</sup>**

Article 1762-6 (4) of the Luxembourg Civil Code provides that save in case of sub-lease where specific investments to the sub-lessee's activity have been made by the lessee, the rents paid to the lessee by the sub-lessee shall not exceed the rents paid by the lessee to the lessor.

Said article was introduced by the law of 3 April 2018 on commercial lease (the "Law") to contain the rise in rent prices of commercial leases and with an entry into force specifically postponed to twelve months after the Law entered into force to enable parties to a commercial sub-lease agreement governed by the Law to fairly amend its terms and abide by that article.

The unconstitutionality of article 1762-6 (4) of the Luxembourg Civil Code was not raised in the legislative process of the Law and case-law previously specified that the provisions of the Law are binding on parties who cannot derogate therefrom.

Called upon to rule on two questions wisely raised by the Justice of the Peace, the Luxembourg Constitutional Court throw a stone into the water by deciding in its preliminary ruling nr.00176 dated 23 December 2022 that:

- article 1762-6 (4) of the Luxembourg Civil Code is contrary to article 11 (6) subparagraph 1 of the Luxembourg Constitution as it does not enable the economic operator who rents commercial premises to sub-lease it at a price covering the operating costs of the sub-lease and to collect a reasonable profit therefrom.
- article 1762 (4) of the Luxembourg Civil Code does not infringe the general principle of legal certainty. The increase of the rent under the commercial sub-lease agreement is conditional upon the evidence of the investments made by

the lessee in the direct interest of the sub-lessee's activity and shall be proportional to such investments to enable an appropriate amortisation.

The Luxembourg Constitutional Court specifies that pending the restorative intervention of the Luxembourg legislator, the balance between the legitimate aim pursued by article 1762-6 (4) of the Luxembourg Civil Code and the freedom of commerce and industry is achieved when the rent of the sub-lease agreement is not higher than that paid by the lessee to the lessor, plus the operating costs of the sub-lease and a reasonable profit.

The question to know which reasonable profit the lessee can achieve from a commercial sub-lease agreement is therefore fully open. The legislator or alternatively the case-law will have the hard task to define it...stay tuned!

<sup>67</sup> Court of Appeal:  
<https://legilux.public.lu/eli/etat/leg/acc/2022/12/23/a19/jo>

## DATA PROTECTION

### THE EDPB ADOPTS TWO BINDING DECISIONS ON BEHAVIOURAL ADVERTISING

6 December 2022<sup>68</sup>

In December 2022, the European Data Protection Board ("EDPB") issued two binding decisions against two social media platforms owned by Meta Platforms Ireland, directing the Irish Data Protection Commissioner ("DPC") to revise its initial decision on the grounds of violation of Art. 6(1)(b) GDPR. The EDPB ruled that the performance of a contract to which a data subject is a party is not a valid legal basis for the processing of their personal data for behavioural advertising on social media platforms.

The one-stop-shop mechanism assigns to companies that operate within several EU member States a data protection supervisory authority to act as the lead supervisory authority ("LSA"), which coordinates complaints between other concerned authorities and consults them in relation to potential sanctions against the aforementioned companies.

In the present case, multiple authorities disagreed with the draft decision of the Irish DPC, and the matter was referred to the EDPB's dispute resolution mechanism under art. 65 GDPR, resulting in a binding decision on the authorities.

The Irish DPC held that behavioural advertising is a "*distinguishing characteristic of the service*" of Meta's services, and it therefore could be justified on the legal basis of the performance of a contractual obligation.

The EDPB, however, disagreed with this position, and upheld the oppositions raised by other supervisory authorities.

The EDPB held, notably, that the "*mutual perspectives and expectations of the parties to the contract*" should be considered in relation to the "*complexity, massive scale and intrusiveness*" of the processing.

The EDPB requested the Irish DPC to increase its fines respectively from EUR 36 and 23 million to EUR 210 and 180 million.

<sup>68</sup> Press release: [https://edpb.europa.eu/news/news/2022/edpb-adopts-art-65-dispute-resolution-binding-decisions-regarding-facebook-instagram\\_en](https://edpb.europa.eu/news/news/2022/edpb-adopts-art-65-dispute-resolution-binding-decisions-regarding-facebook-instagram_en)

## **THE CNPD UPDATES ITS GUIDELINES ON TRACKING SYSTEMS ON VEHICLES PROVIDED TO EMPLOYEES**

**22 February 2023<sup>69</sup>**

On 22 February 2023, the CNPD published its updated guidelines on tracking systems on vehicles provided to employees.

The guidelines address the privacy issues of personal data processing during the use of these devices by the employer to track the employees' movements (i.e., geolocation).

The update of the guidelines focuses on the Data Protection Impact Assessment ("**DPIA**") to be performed for this processing of personal data (pursuant to article 35 GDPR), and the criteria to determine if the processing is likely to entail a high risk for the rights and freedoms of the data subjects (i.e., the employees).

The CNPD requires employers to carry out a DPIA before putting in place such tracking systems if the purpose is a regular and systematic tracking of employees, or if it results in a systematic surveillance of employees (e.g., if it is implemented for tracking working hours).

However, the CNPD does not necessarily require a DPIA to be drawn up if the purpose for processing is the optimisation of work processes and procedures.

The CNPD encourages employers to document the purpose of the tracking systems with a high degree of precision, as such description will entail whether a DPIA is required or not.

Furthermore, irrespective of the DPIA requirement, the underlying processing of personal data (e.g., location of the employee at a given time) must be based on a legal basis under the GDPR – in this case, the CNPD would expect the employer to rely on the legitimate-interests legal basis.

In this respect, the CNPD insists that, should an employer deem a DPIA to be unnecessary, the employer is nevertheless expected to assess, and document, the

balance of the rights and freedoms of employees against the employer's legitimate interests (which would lead to the conclusion that the interests of the latter are not overridden by the interests of the former).

The CNPD also reminds employers of the accountability principle under the GDPR: employers are expected to document their assessments in view of making them promptly available to the CNPD upon request.

<sup>69</sup> Guidelines: <https://cnpd.public.lu/content/dam/cnpd/fr/dossiers-thematiques/geolocalisation/cnpd-lignes-directrices-geolocalisation-vhicules.pdf>



## IP/IT

### LUXEMBOURG CITY'S DISTRICT COURT RULES ON ORIGINALITY CRITERIUM FOR COPYRIGHT PROTECTION

7 December 2022<sup>70</sup>

On December 7, 2022, Luxembourg City's District Court handed down a ruling on a claim in copyright infringement filed by a Singaporean photographer against a Luxembourg artist alleging a breach of copyright of one of her photographs.

The District Court held, after striking down the procedural defences raised by the defendant, that the claim is unfounded as the claimant's photograph is not protected by copyright.

The District Court ruled that the first requirement for copyright protection (the existence of a concrete expression of the creator's personality) was met by the claimant as the artwork was affixed to a tangible medium.

However, the District Court found that the claimant failed to evidence the originality of her work, which is one of the conditions for copyright protection (in addition to having a sufficient degree of originality).

After considering the Luxembourg and French case law distinguishing "original" work attracting copyright from "professional" or "high quality" work, the District Court held the absence of originality of the photograph on the basis of the details of the work (regarding, *i.e.*, the lighting, staging, and technique used), and the lack of evidence or descriptions by the claimant pointing to original elements.

70

[https://anon.public.lu/D%C3%A9cisions%20anonymis%C3%A9s/Tribunal%20d%27arrondissement%20Luxembourg%20civil/08\\_Chambre/2022/20221207\\_TAL8\\_TAL-2022-07608\\_pseudonymis%C3%A9-accessible.pdf](https://anon.public.lu/D%C3%A9cisions%20anonymis%C3%A9s/Tribunal%20d%27arrondissement%20Luxembourg%20civil/08_Chambre/2022/20221207_TAL8_TAL-2022-07608_pseudonymis%C3%A9-accessible.pdf)

### THE DIGITAL OPERATIONAL RESILIENCE FOR THE FINANCIAL SECTOR ACT (DORA) ENTERS INTO FORCE

13 January 2023<sup>71</sup>

On the 13th of January, Regulation (EU) 2022/2554 of the European Parliament and of the Council of 14 December 2022 on digital operational resilience for the financial sector ("**DORA**") entered into force.

DORA provides a comprehensive regulatory framework on digital operational resilience at the European level for actors in the financial sector (including certain entities from the insurance sector), as well as third party ICT service providers. In practice, DORA may overlap with existing obligations stemming from the CSSF and CAA circulars on outsourcing arrangements.

Key aspects of DORA include:

- **ICT risk governance requirements.** The management bodies of in-scope entities shall adopt and oversee the implementation of adequate ICT risk management procedures and policies. In-scope entities should put in place an internal governance and control framework for ICT-related matters, notably to deal with ICT-related incidents.
- **ICT-related incident management.** In-scope entities shall ensure the monitoring, handling and follow-up of ICT-related incidents (including ransomware and DDoS attacks). These include: warning indicators, incident identification, classification, and tracking procedures; and internal escalation procedures for client-facing communications, including ICT-related customer complaints.
- **Digital operational resilience testing.** Procedures and policies implemented by the in-scope entities shall also include penetration

71

<https://eur-lex.europa.eu/eli/reg/2022/2554/oj>

Clifford Chance Briefing:

<https://www.cliffordchance.com/briefings/2022/11/dora--what-the-new-european-framework-for-digital-operational-re.html>

testing of IT systems performed by independent parties.

- **Risk-management of third-party service providers.** In-scope entities shall mitigate the risk of relying on third party service providers for their ICT-related tools and services. This includes requirements before engaging the service provider (e.g., assessment of the critical or important function, which is outsourced, whether regulatory conditions are met, identifying potential conflicts of interests, etc.), and during the provision of services (e.g., keeping a register of third-party service providers up to date with the relevant contractual arrangements, and reporting to the regulator any information regarding new service providers).
- **Contractual requirements with ICT third party service providers.** In-scope entities must ensure that their contractual arrangements include specific provisions (*i.e.*, rights regarding termination, audits, and exit strategies) to limit the risks associated with subcontracting.

DORA will enter into application from late 2024 or early 2025 at the latest.

## THE NIS2 DIRECTIVE ENTERS INTO FORCE

16 January 2023<sup>72</sup>

On 16 January 2023, Directive 2022/2555 of 14 December 2022 on measures for a high common level of cybersecurity across the Union (the "**NIS2 Directive**") entered into force and repealed former Directive 910/2014 (the "**NIS Directive**"). Entities benefit from a grace period until 18 October 2024.

Key impacts of the NIS2 Directive include:

- **A broader scope of application.** The NIS2 Directive eliminates the distinction between **operators of essential services** ("OES") and **digital service providers** ("DSP") under the former NIS Directive.

The NIS2 Directive, instead, differentiates between two categories: "*essential*" and "*important*" entities, covering a broader scope of application than the NIS Directive.

"*Essential entities*" refer to any entity within the listed sectors qualifying as a *medium* or large size company, as well as micro or small size companies in certain circumstances (*i.e.*, top-level domain name registries, DNS service providers, and providers of public electronic communications networks).

"*Important entities*" refer to any entity *within* the sectors within the scope of the NIS2 Directive which do not meet the above requirements for essential entities.

The category in which an entity belongs will determine the supervisory regime - and notably the fines - applicable to said entity.

- **Cybersecurity risk-management measures.** The NIS2 Directive requires both essential and important entities to adopt "*Cybersecurity risk-management measures*", *i.e.*, appropriate and

proportionate technical, operational and organisational measures to manage the risks posed to the security of network and information systems. The NIS2 Directive emphasises that such measures shall aim to prevent or minimise the impact of incidents on recipients of their services and on other services.

The NIS2 Directive provides a non-exhaustive list of the required measures, which include: policies on risk analysis and information system security; basic cyber hygiene practices; cybersecurity training; the use of multi-factor authentication; secured communications and secured emergency communication systems within the entity; human resources security; access control policies; and asset management.

The NIS2 Directive also takes into account the suppliers relied upon by essential and important entities, including the vulnerabilities of their tools, the overall quality of products and cybersecurity practices, etc.

- **Governance requirements.** The NIS2 Directive provides that management bodies of both essential and important entities can be held liable for not implementing the required cybersecurity risk-management measures. In addition, members of management bodies must approve and oversee the implementation of the aforementioned measures, and be required to follow trainings on cyber-security topics to that end.
- **Incident and cyber threat reporting requirements.** Incidents that may have a significant impact on the services are subject to strict reporting obligations, notably a 24-hour deadline for notification to the CSIRT.
- **Increased administrative fines.** The NIS 2 Directive foresees high administrative fines of up to EUR 10 or 7 Mio., or 2% or 1.4% of worldwide

<sup>72</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32022L2555&qid=1672747885309&from=EN>

annual turnover for essential and important entities, respectively.

## GLOSSARY

"**ABBL**": Luxembourg Banks and Bankers Association

"**ACA**": Association des Compagnies d'Assurance, Luxembourg Association of Insurance Undertakings

"**AIF**": Alternative Investment Fund

"**AIFM**": Alternative Investment Fund Managers

"**AIFM Law**": Luxembourg law of 12 July 2013 (as amended) on alternative investment fund managers

"**AIFMD**": Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on alternative investment fund managers

"**AML/CTF**": Anti-Money Laundering and Counter Terrorism Financing

"**AML/CTF Law**": law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended

"**BaFin**": German Federal Financial Supervisory Authority

"**CAA**": Commissariat aux assurances, the Luxembourg insurance sector regulator

"**CPC**": Criminal Procedure Code

"**CRR**": Regulation (EU) No 575/2013 as regards the leverage ratio, the net stable funding ratio, requirements for own funds and eligible liabilities, counterparty credit risk, market risk, exposures to central counterparties, exposures to collective investment undertakings, large exposures, reporting and disclosure requirements

"**CRD IV**": Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms amending and repealing Directives 2006/48/EC and 2006/49/EC

"**CSSF**": Commission de Surveillance du Secteur Financier, the Luxembourg supervisory authority of the financial sector

"**EBA**": European Banking Authority

"**ECB**": European Central Bank

"**EIOPA**": European Insurance and Occupational Pensions Authority

"**ESAs**": European Supervisory Authorities (EBA, ESMA and EIOPA)

"**ESMA**": European Securities and Markets Authority

"**FATF**": Financial Action Task Force

"**Financial Sector Law**": Luxembourg law of 5 April 1993 (as amended) on the financial sector

"**FIU**": Cellule de renseignement financier, the Luxembourg Financial Intelligence Unit

"**MiFID Law**": law of 30 May 2018 on Markets in Financial Instruments (as amended)

"**ML/TF**": Money Laundering and Terrorism Financing

"**ORSA**": Own Risk and Solvency Assessment

"**RBE**": register of beneficial owner

**Glossary**

**"Solvency 2 Directive"**: Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (as amended)

**"SSM Framework Regulation"**: Regulation (EU) No 468/2014 of the European Central Bank of 16 April 2014 establishing the framework for cooperation within the Single Supervisory Mechanism between the European Central Bank and national competent authorities and with national designated authorities

**"Taxonomy Regulation"**: Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088

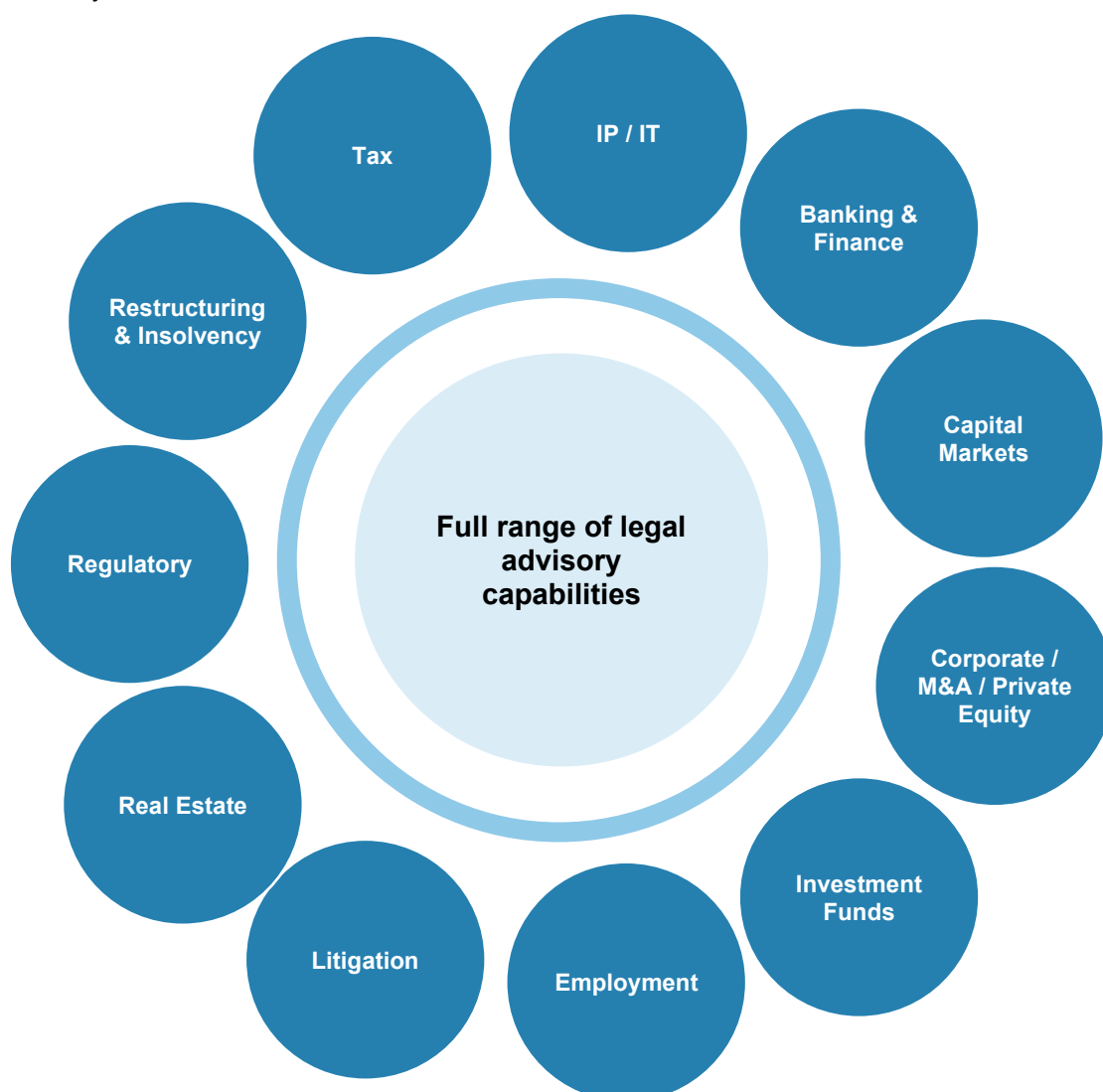
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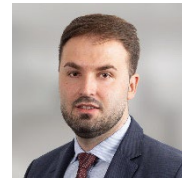
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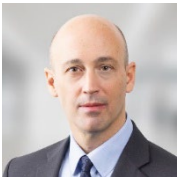
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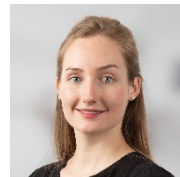
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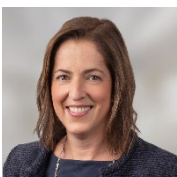
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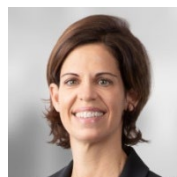
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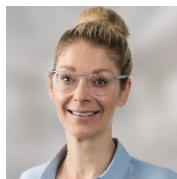


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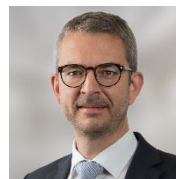
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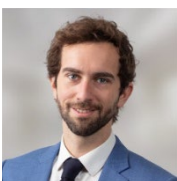
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## TAX



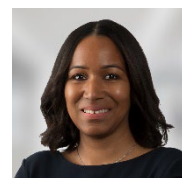
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This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

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